

STATEMENT OF ENVIRONMENTAL EFFECTS

FOR THE CONSTRUCTION OF A PROPOSED DECK

LOCATED AT

60 ALEXANDER STREET, COLLAROY

FOR

THE OWNERS SP 81259



**Prepared
July 2025**

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1.0 Introduction

This Statement of Environmental Effects accompanies architectural plans prepared on behalf of The Owners – SP 81259 by Morrison Design Partnership Pty Ltd, Reference No. 3388, Revision DA 01 dated 9 April 2025 detailing the proposed construction of a new deck area at **Unit 2 / 60 Alexander Street, Collaroy**.

The architectural plans which are noted as revision DA 01 dated 9 April 2025 comprise:

DA001	COVER SHEET
DA010	PROPOSED SITE PLAN
DA020	EXISTING SITE PLAN / DEMOLITION PLAN
DA101	LOWER GROUND FLOOR
DA201	NORTH ELEVATION
DA202	SOUTH ELEVATION
DA203	EAST ELEVATION
DA204	WEST ELEVATION
DA301	SECTIONS
DA930	MATERIAL BOARD

This Statement describes the subject site and the surrounding area, together with the relevant planning controls and policies relating to the site and the type of development proposed. As a result of this assessment it is concluded that the development of the site in the manner proposed is considered to be acceptable and is worthy of the support of the Council.

In preparation of this document, consideration has been given to the following:

- *The Environmental Planning and Assessment Act, 1979 as amended*
- *The Environmental Planning and Assessment Regulation 2021*
- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *State Environmental Planning and Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Sustainable Buildings) 2022*
- *Warringah Local Environmental Plan 2011*
- *Warringah Development Control Plan 2011*

2.0 Property Description

The subject allotment is described as part of an existing dual occupancy (attached) development being Unit 2/60 Alexander Street, Collaroy, Lot SP81259 and is zoned R2 Low Density Residential within the provisions of the Warringah Local Environmental Plan 2011.

The site is not listed as a heritage item, nor is not located within a conservation area.

The land is noted as being Landslip Area E. A Geotechnical Addendum Letter has been prepared by Crozier Geotechnical Consultants, Job No. 2020-097, Revision 1 dated 22 July 2025 and is discussed further within this submission.

The site is identified on Council's Bushfire Prone Land map. A report prepared by Bushfire Hazard Solutions, Reference 250520, dated 21 January 2025 accompanies this submission.

No other hazards have been identified.

3.0 Site Description

The site is located on the southern side of Alexander Street, between Pittwater Road and Edgecliffe Boulevard.

The site has northern frontage to Alexander Street of 15.355m. The western and eastern side boundaries measure 28.975m and 29.44m respectively and the rear boundary measures 15.03m. The site has a total area of 445.2m² (by survey).

The site falls steeply from the northern front boundary towards the rear, southern boundary, with a total fall of approximately 7m over its length.

The site is an existing three level attached dual occupancy with two separate residential Units. Unit 2 contains the lower level of the three storey building, while Unit 1 is the mid and upper level of the building.

Vehicular access is available via a concrete driveway from Alexander Street, with parking provided within garage at the front of the site.

The site contains two canopy trees within the south-west corner of the site. There is no ground level recreational areas due to the sloping topography and location of the dwelling on the site.

An existing easement for sewer exists in the southern area of the site and extends from the western to the eastern side boundary.

The details of the site are as indicated on the survey plan prepared by C.M.S Surveyors Pty Limited, Drawing Name 19374A, dated 20 May 2024, which accompanies the DA submission.



Fig 1: Location of Subject Site
(Source: Six Maps)



Fig 2: View of the subject site, looking south-west from Alexander Street



Fig 3: View of the rear yard and area of previous instability, looking south-west



Fig 4: View of the rear yard and location of new deck, looking east



Fig 5: View of the rear yard and location of new deck, looking south-east

4.0 The Surrounding Environment

The site is located within a predominately low density residential area of Collaroy, which is characterised by a mixture of traditional and modern multi-level dwelling houses corresponding with the sloping topography of houses positioned high on the escarpment.

The existing dwellings along the southern side of Alexander street display varied front, side and rear setbacks and landscaped garden areas due to the sloping topography.

The associated ancillary structures such as garages, storage sheds and swimming pools are common place within Collaroy and nearby Collaroy Plateau.

Collaroy Beach, beach reserve, local shops and public transport are located a short distance to the east.

The site and its surrounds are depicted in the following aerial photograph:

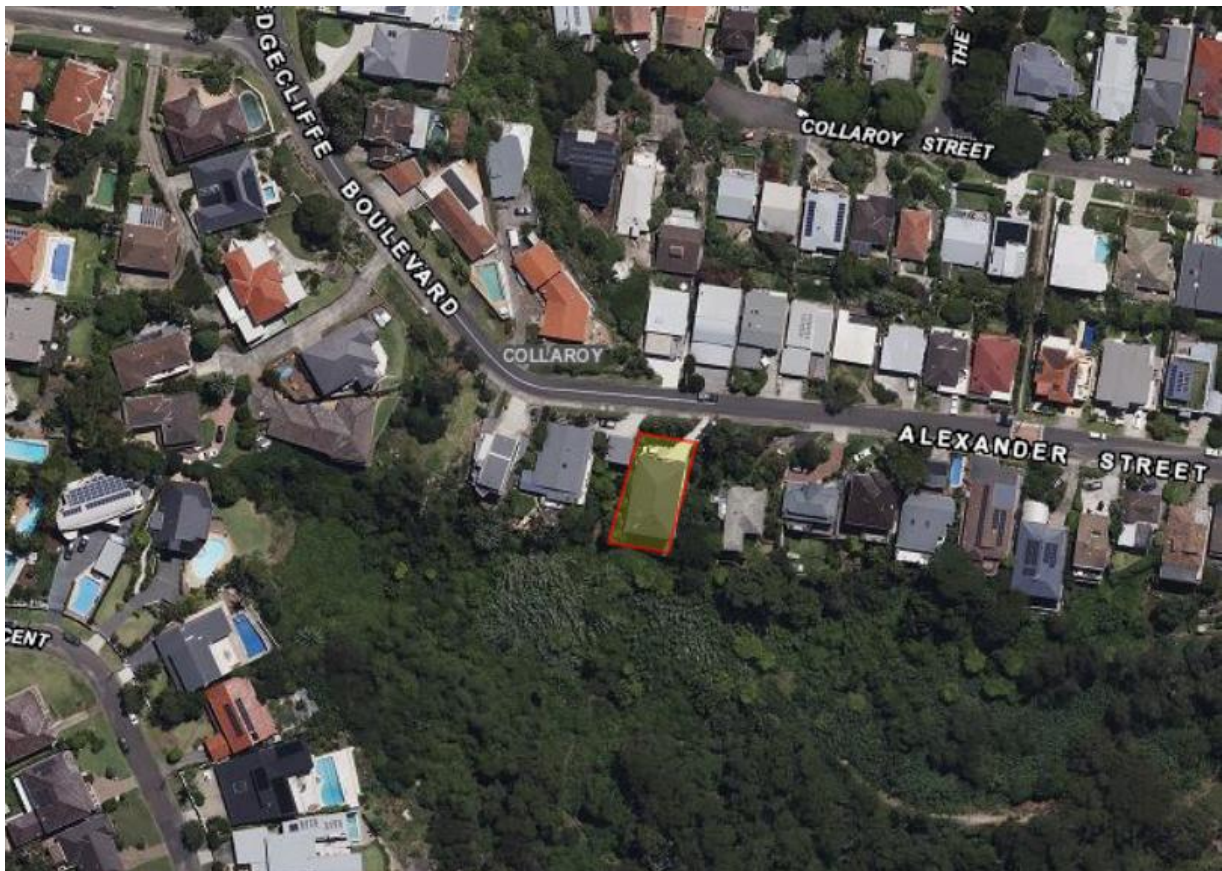


Fig 6: Aerial view of locality
(Source: Six Maps)

5.0 Proposed Development

As a result of previous storm damage and land instability at the rear of the site, which resulted in a retaining wall at the rear boundary and areas of the rear yard failing, the proposal intends to construct a new elevated steel framed deck supported on peers and screw piles within the rear garden to allow for a functional

The proposed new deck will extend to the rear boundary of the site, which adjoins the Collaroy Centre site which comprises seniors housing and function centres under a SP1 - Special Activities zoning.

The portion of the neighbouring site which adjoins the proposed deck comprises vegetated land with no immediate structures or facilities within the vicinity of the proposed new work.

The proposal will not require the removal of any significant vegetation to accommodate the new works.

As the proposed deck essentially replaces a pre-existing yard level which failed during a storm event, the re-establishment of the ground levels will not result in any adverse impacts to the neighbouring properties in terms of privacy, overlooking or any unreasonable bulk and scale impacts when viewed from the area surrounding the site.

The extent of the proposed new works is as indicated in the Figure below.

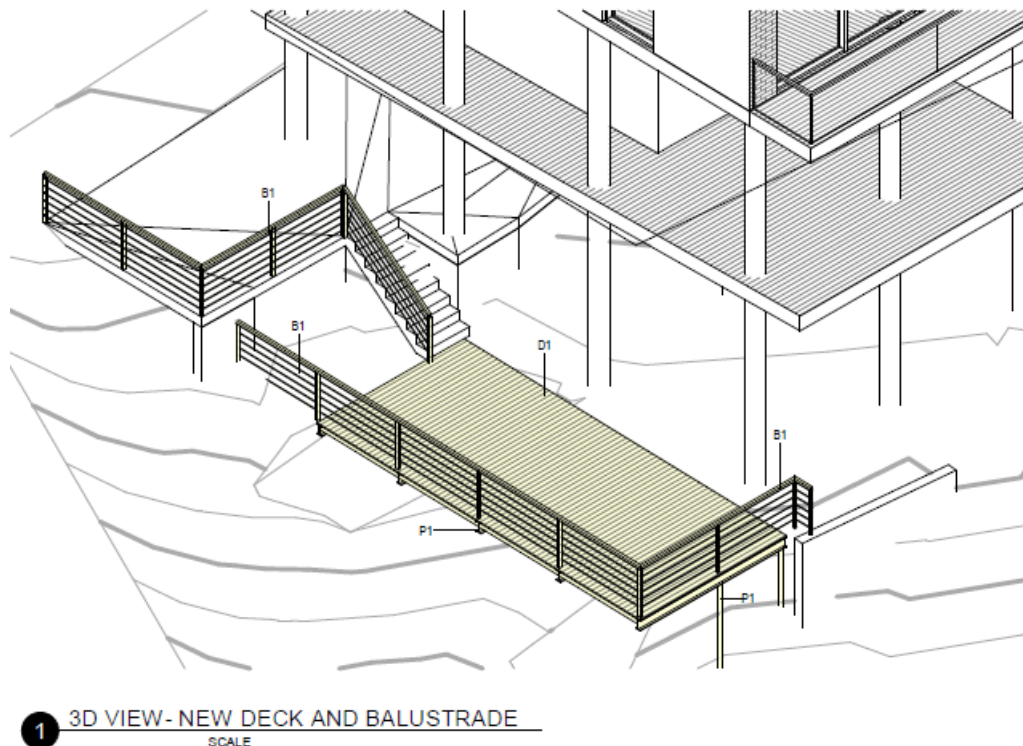


Fig 7: Aerial view of locality

6.0 Zoning and Development Controls

6.1 State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2 – Vegetation in Non-rural areas

Chapter 2 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 (the Biodiversity & Conservation SEPP) contains planning controls for the removal of vegetation on the land within non-rural areas of the State. The policy aims to protect the biodiversity values of trees and other vegetation in non-rural areas of the State and to preserve the amenity of nonrural areas of the State through the preservation of trees and other vegetation.

No significant or high value vegetation is proposed to be removed as part of the proposed decking. The works are located a significant distance from any existing trees meaning the biodiversity value on the site will be maintained. No further consideration of the SEPP is required.

6.2 State Environmental Planning Policy (Resilience and Hazards) 2021

SEPP (Resilience and Hazards) 2021 and in particular Clause 4.6(1) suggests that a consent authority must not grant consent to the carrying out of any development on land unless it has considered whether the land is contaminated.

Given the history of residential use of the land, the site is not considered to be subject to contamination and further investigation is not required at this stage.

6.2 State Environmental Planning Policy (Sustainable Buildings) 2022

A BASIX certificate is not required in this instance.

Bushfire Prone Land

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires the consent authority to be satisfied that the development conforms to the specifications and requirements of the *Planning for Bush Fire Protection 2019*.

A Bushfire Risk Assessment has been prepared by Bushfire Hazard Solutions, dated 21 January 2025 which states that the development conforms to the relevant specifications and requirements within *Planning for Bush Fire Protection 2019*.

6.3 Warringah Local Environmental Plan 2011

The land is zoned R2 Low Density Residential under the provisions of the WLEP 2011.

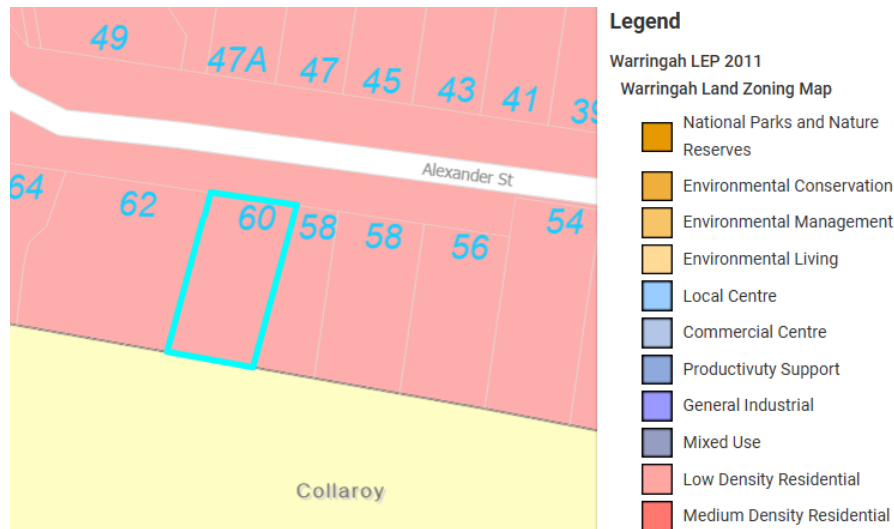


Fig 8: Extract of Warringah Local Environmental Plan 2011

Dual occupancy (attached) housing is not permitted within the R2 Low Density Residential zone. It is our opinion that the existing dual occupancy housing development appropriately benefits from existing use rights (EUR). In demonstrating EUR, we have provided the following submission to support the proposed alterations and additions.

We note that the site is within the R2 Low Density Residential Zone under Warringah Local Environmental Plan 2011. The existing dual occupancy development is defined in the Dictionary to the WLEP 2011 as

“dual occupancy means a dual occupancy (attached) or a dual occupancy (detached).

Note—

*Dual occupancies are a type of **residential accommodation**—see the definition of that term in this Dictionary.*

dual occupancy (attached) means 2 dwellings on one lot of land that are attached to each other, but does not include a secondary dwelling.

Note—

*Dual occupancies (attached) are a type of **dual occupancy**—see the definition of that term in this Dictionary.”*

Residential accommodation is defined as:

residential accommodation means a building or place used predominantly as a place of residence,

and includes any of the following —

- (a) attached dwellings,*
- (b) boarding houses, (baa) co-living housing,*
- (c) dual occupancies,*
- (d) dwelling houses,*

- (e) group homes,*
- (f) hostels, (faa) (Repealed)*
- (g) multi dwelling housing,*
- (h) residential flat buildings,*
- (i) rural workers' dwellings,*
- (j) secondary dwellings,*
- (k) semi - detached dwellings,*
- (l) seniors housing,*
- (m) shop top housing, but does not include tourist and visitor accommodation or caravan parks.*

The proposal seeks to provide for additions and alterations to the existing dual occupancy development which is not a permissible use under the R2 Low Density Residential zone.

The proposal however is able to be considered by Council under the existing use rights regulated within Section 4.65 and Section 4.66 of the Environmental Planning and Assessment Act 1979 ("the EP & A Act") and Clauses 163-166 of the Environmental Planning and Assessment Regulation 2021 ("the Regulation").

Under the provisions of Section 4.65 of the Environmental Planning and Assessment Act 1979, existing use means:-

(a) The use of a building, work or land for a lawful purpose immediately before becoming into force of an Environmental Planning Instrument which would, but for division 4 of this part, have the effect of prohibiting that use, and;

(b) The use for building, work or land;

(i) For which Development Consent was granted before the commencement of the provision of an Environmental Planning Instrument having the effect of prohibiting the use, and

(ii) That has been carried out, within 1 year after the date on which that provision commenced in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the Development Consent would not lapse.

Establishment of Existing Use Rights

The investigation of the history of the development of the subject site notes:

Development Consent No.1988/248

Development Consent No.1988/248 was granted on 10 August 1988 for Internal alterations to the existing dwelling to create an attached dual occupancy.

Development Consent No.2004/0466

Development Consent No.2004/0466 for Alterations and additions to an existing dual occupancy was approved on 1 July 2005. An Interim Occupation Certificate (No.04109 - IOC) was issued on 24 March 2008 for completed works in relation to the approved development.

These types of dual occupancy (attached) housing developments are not uncommon in this portion of Collaroy or Collaroy Plateau.

The use of the subject site for a dual occupancy development (attached) development became prohibited in December 2011 through the gazettal of the Warringah Local Environment Plan 2011, which zoned the subject site as R2 Low Density Residential and which prohibits the use of the site for dual occupancy housing. This current use has continued, unabandoned, until the present day and in accordance with the provisions of Section 4.65 of the EPA Act, the current use is considered to meet the requirements to benefit from the existing rights provisions.

It is in my opinion, the fundamental use of the site for a dual occupancy development (attached) has not been relinquished or abandoned and the development is entitled to continue to rely on the establishment of "*existing use rights*" for the building.

This proposal for the construction of a proposed deck on the subject site relies upon the provisions of existing use rights regulated under Section 4.65 and Section 4.66 of the Environmental Planning and Assessment Act 1979 ("the EP&A Act") and clauses 163-166 of the Environmental Planning and Assessment Regulation 2021 ("the Regulation").

The relevant provisions relating to the application of Environmental Planning Instruments to developments relying upon existing use rights are as follows:-

Section 4.65 of EP & A Act -

- (1) *Except where expressly provided in this Act, nothing in this Act or an environmental planning instrument prevents the continuance of an existing use.*
- (2) *Nothing in subsection (1) authorises:*
 - (a) *any alteration or extension to or rebuilding of a building or work, or*
 - (b) *any increase in the area of the use made of a building, work or land from the area actually physically and lawfully used immediately before the coming into operation of the instrument therein mentioned, or*
 - (c) *without affecting paragraph (a) or (b), any enlargement or expansion or intensification of an existing use, or*
 - (d) *the continuance of the use therein mentioned in breach of any consent in force under this Act in relation to that use or any condition imposed or applicable to that consent or in breach of any condition referred to in section 4.17 (1) (b), or*
 - (e) *the continuance of the use therein mentioned where that use is abandoned.*
- (3) *Without limiting the generality of subsection (2) (e), a use is to be presumed, unless the contrary is established, to be abandoned if it ceases to be actually so used for a continuous period of 12 months.*

The EP & A Act under Section 4.66 states that if provisions of an environmental planning instrument will derogate from the existing use rights provisions, then these provisions do not have any force or effect whilst the existing use rights remain.

4.67 Regulations respecting existing use

(cf previous s 108)

- (1) The regulations may make provision for or with respect to existing use and, in particular, for or with respect to:
 - (a) the carrying out of alterations or extensions to or the rebuilding of a building or work being used for an existing use, and*
 - (b) the change of an existing use to another use, and*
 - (c) the enlargement or expansion or intensification of an existing use.*
 - (d) (Repealed)**
- (2) The provisions (in this section referred to as the incorporated provisions) of any regulations in force for the purposes of subsection (1) are taken to be incorporated in every environmental planning instrument.*
- (3) An environmental planning instrument may, in accordance with this Act, contain provisions extending, expanding or supplementing the incorporated provisions, but any provisions (other than incorporated provisions) in such an instrument that, but for this subsection, would derogate or have the effect of derogating from the incorporated provisions have no force or effect while the incorporated provisions remain in force.*
- (4) Any right or authority granted by the incorporated provisions or any provisions of an environmental planning instrument extending, expanding or supplementing the incorporated provisions do not apply to or in respect of an existing use which commenced pursuant to a consent of the Minister under section 4.33 to a development application for consent to carry out prohibited development.*

The existing dual occupancy (attached) housing development was erected pursuant to Development Consent No DA1988/248, issued 10 August 1988 and has been continuously used for residential purposes.

The proposal seeks consent for the carrying out of additions and alterations to the existing dual occupancy (attached) housing development which is consistent with Section 4.67 of the Act.

The following clauses of the Environmental Planning & Assessment Regulation are applicable to the proposed works to the existing shop top housing development.

Clause 163(1) states that:

- 163(1)** *(1) An existing use may, subject to this Part—*
- (a) be enlarged, expanded or intensified, or*
 - (b) be altered or extended, or*
 - (c) be rebuilt, or*
 - (d) be changed to another use, but only if the other use is a use that may be carried out with or without development consent under the Act, or*
 - (e) if it is a commercial use—be changed to another commercial use, including a commercial use that would otherwise be prohibited under the Act, or*
 - (f) if it is a light industrial use—be changed to another light industrial use or a commercial use, including a light industrial use or commercial use that would otherwise be prohibited under the Act.*

Clause 164 notes that Development Consent is required for the enlargement, expansion or extension of an existing use.

Clause 164 of the Regulation states:-

- 164 (1)** *Development Consent is required for any enlargement, expansion or intensification of an existing use.*
- (2)** *The enlargement, expansion or intensification:*
 - (a) must be for the existing use and for no other use and*
 - (b) must be carried out only on the land on which the existing use was carried out immediately before the relevant date.*

Clause 165 of the Regulation states:-

- 165 (1)** *Development consent is required for any alteration or extension of a building or work used for an existing use.*
- (2)** *The alterations or extension*
 - (a) must be for the existing use of the building or work and for no other use and*
 - (b) must be erected or carried out only on the land on which the building or work was erected or carried out or immediately before the relevant date.*

Clause 166 of the Regulation states:-

- 166 (1)** *Development consent is required for any rebuilding of a building or work used for an existing use.*
- (2)** *The rebuilding:*
 - (a) must be for the existing use of the building or work and for no other use, and*
 - (b) must be carried out only on the land on which the building or work was erected or carried out immediately before the relevant date.*

The utilisation of the EUR provisions of the Act are necessary in this instance due to the non-compliance of the existing dual occupancy development within the R2 Low Density zone, which prohibits dual occupancy (attached) residential development.

The proposed development is in my opinion consistent with the existing use provisions as contained within the Act and therefore worthy of a favourable merit-based assessment.

More recently Commissioner Roseth provided guidance for the assessment of EUR through a four-step process under a Planning Principle in *Fodor Investments v Hornsby Shire Council* [2001] NSWLEC 71.

An assessment of the proposal under the Planning Principle is provided over:

How do the bulk and scale (expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?

The subject site is zoned R2 Low Density Residential, which permits uses such as dwelling houses, in low density development, which together with a number of existing dual occupancy developments form the local character of the immediate vicinity.

Whilst the R2 Low Density Residential zone does not permit dual occupancy (attached) development, it does not accurately reflect the existing and past residential use of the land.

The Warringah LEP 2011 and the supporting Warringah Development Control Plan contain provisions restricting bulk and scale for buildings in this locality, by restricting the overall height of a building to a maximum of 8.5m. The proposed alterations include the inclusion of a new external deck area up to 1m in height and therefore observe Council's maximum height control.

The proposed works will also not see any change to the existing overall height of the dual occupancy building.

What is the relevance of the building in which the existing takes place?

Commissioner Roseth provided in his judgement:

'Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists.'

It is noted that the proposal seeks to carry out minor alterations and additions that include a new decking area at the rear of the site.

The surrounding properties single housing and other similar dual occupancy (attached) housing developments within the Collaroy and Collaroy Plateau area and in this regard, the proposal is consistent with the housing density of the immediate area.

What are the impacts on adjoining land?

The proposal seeks to provide for a new 24.75m² deck at the rear of the site, which are residential in its scale and form compatible with other residential development in this portion of Alexander Street in Collaroy.

The height and general form of the deck will be compatible with the surrounding properties on the steeply sloping topography and will not unreasonably affect the views and outlook for the surrounding properties.

The modest nature of the changes will also ensure that there are no significant solar access issues for neighbouring properties.

What is the internal amenity?

The proposal will see no change to the building or internal residential amenity of the dual occupancy

(attached) or surrounding residential development. The proposal includes a new external deck area at the rear of the site, which will enhance the external amenity of the occupants of Unit 1 with improved private open space and aesthetics for the property. Current solar access and natural light to be maintained.

It is therefore considered that the proposal as assessed under the Planning Principles for Existing Use Rights is acceptable and should be supported by Council.

Warringah Local Environmental Plan 2011 Compliance Table

The property is zoned R2 Low Density Residential under the Warringah Local Environmental Plan 2011 (WLEP 2011), as is the surrounding land. The existing dual occupancy (attached) residential development is prohibited within the R2 Low Density Residential zone under WLEP 2011. However, the property benefits from existing use rights under section 4.11 of the Environmental Planning and Assessment Act.

Therefore, the current zoning provisions, development standards under the LEP are not applicable to the property. However, development standards have relevance to the assessment of the application, therefore the assessment has been completed below.

Clause 2.1 provides for the approved land use within the R2 Low Density Residential zone. The approved development is defined as “*dual occupancy (attached)*”, which is noted as being prohibited within the R2 Low Density Residential zone.

As discussed, the proposal is considered to benefit from Existing Use Rights.

Land Use Table – Zone R2 Low Density Residential

The R2 Low Density Residential zone objectives are noted as:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

It is considered that the proposed alterations and additions existing development will achieve the Objectives of the zone for the following reasons:

- The proposal will be consistent with and complement the existing detached style housing within the locality.
- The proposed deck respects the scale and form of other new development in the vicinity and therefore compliments the locality.
- The external amenity of the apartments will be upgraded by the proposed works.
- The proposed development respects the scale and form of the existing residential development, other new development in the vicinity and complements the locality.
- The setbacks are compatible with the existing balconies and surrounding development.

- The proposal does not have any significant impact on the existing landscaped area or long distance views.

Clause 4.3 provides controls relating to the height of buildings.

The dictionary supplement to the LEP notes building height to be:

building height (or height of building) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

The building height limit for development in this portion of Collaroy is 8.5m. The proposed deck will result in a maximum height of approximately 1m above existing ground level and therefore complies with Council's maximum building height.

Clause 6.2 relates to earthworks.

The works will see some excavation below the existing ground level to provide for the footings for the new deck. The works will not see any substantial disturbance to the existing levels outside of the proposed building footprint.

A Geotechnical Addendum Letter dated 22 July 2025 has been prepared by Crozier Geotechnical Consultants and is submitted with this application. Subject to the recommendations of the Geotechnical Report, the proposed development will not impact the development of the subject site or neighbours.

As required, appropriate sedimentation controls will be implemented throughout construction to prevent transportation of sediment to adjoining properties.

Accordingly, all excavation works will be carried out in accordance with the recommendations of the consulting Structural Engineer and Geotechnical Report, and will therefore satisfy the provisions of this clause.

Clause 6.4 relates to development on sloping land. The site is noted on Council's Landslip Risk Map as being within Area E.

Accordingly, Geotechnical Addendum Letter dated 22 July 2025 has been prepared by Crozier Geotechnical Consultants and accompanies the application.

The proposal will be carried out in accordance with the recommendations of the consulting Structural and Geotechnical Engineers and therefore satisfy the provisions of this clause.

There are no other clauses of the WLEP 2011 that are considered to be relevant to the proposed development. It is considered that the proposal achieves the requirements of the WLEP.

6.4 Warringah Development Control Plan

Built Form Controls

The proposed development is reliant upon existing use rights pursuant to Division 4.11 of the Environmental Planning and Assessment Act 1979 as discussed later in this report. Therefore, in accordance with the Land and Environment Court of NSW judgement of *Fodor Investments v Hornsby Shire Council [2005] NSWLEC 71 (Fodor) (at 15)*, it is made clear that planning controls that limit the size of a proposal (as do the Built Form Controls applicable under the Warringah Development Control Plan 2011) "have no application".

However, the questions posed in the above caselaw pertaining to the assessment of existing use rights impose the importance of a merit assessment of the development, rather than a quantifiable numerical assessment that would normally be undertaken. Thereby, the below built form control table is for reference of the scale of the development only as numerical compliance has no application.

The applicable areas of the WDCP are summarised as follows:

Part B - Built Form Controls			
Standard	Required	Proposed	Compliance
B1 – Wall heights	Max 7.2m	N/A	N/A
B2 – Number of storeys	No requirement identified on map	N/A	N/A
B3 – Side Boundary Envelope and Side Setback	Building envelope 45 degrees from 5m. Setback 0.9m	N/A	N/A
B4 – Site Coverage	No requirement identified on map	N/A	N/A
B5 – Side Boundary setbacks	R2 zoned land 0.9m	Minimum proposed southern side and rear setback from new deck is 100mm	Yes – on merit (see below)
B6 – Merit assessment of Side Boundary Setbacks	No requirement identified on map		N/A
B7 – Front Boundary Setbacks	Minimum 6.5m	The new works are wholly contained within the rear yard.	N/A
B8 – Merit assessment of front boundary setbacks	No requirement identified on map		N/A
B9 – Rear Boundary Setbacks	Min 6m rear setback	The proposed deck rear setback to the	Yes – on merit (see below)

		southern boundary is 100mm	
B10 – Merit Assessment of rear boundary setbacks	No requirement identified on map		N/A
B11 – Foreshore Building Setback	No requirement identified on map		N/A
B12 – National Parks Setback	No requirement identified on map		N/A
B13 – Coastal Cliffs Setback	No requirement identified on map		N/A
B14 – Main Roads Setback	No requirement identified on map		N/A
B15 – Minimum Floor to Ceiling Height	No requirement identified on map		N/A
Part C – Siting Factors			
C2 – Traffic, Access and Safety	Vehicular crossing to be provided in accordance with Council's Vehicle Crossing Policy	The existing vehicle cross will be maintained.	N/A
C3 – Parking Facilities	Garages not to visually dominate façade Parking to be in accordance with AS/NZS 2890.1	Existing parking unchanged.	N/A
C4 – Stormwater	Hydraulic Design to be provided in accordance with Council's Stormwater Drainage Design Guidelines for Minor Developments and Minor Works Specification	The existing stormwater arrangements for the dwelling will be unchanged. A Proposed Deck Drainage plan has been prepared by Hyve Designs, Job Number SC22063, Sheets SW01, SW02 & SE01 Issue B dated 6 February 2025.	Yes
C5 – Erosion and Sedimentation	Soil and Water Management required	Erosion and sediment control measures to be provided as detailed in the Sediment and Erosion Plan prepared by Hyve Designs dated 6 February 2025.	Yes

C6 – Building over or adjacent to Constructed Council Drainage Easements	All development on land containing or adjacent to or proposing to reconstruct/relocate a public drainage system must comply with Council's Water Management Policy and Building Over or Adjacent to Constructed Council Drainage Systems and Easements technical specifications.	A portion of the rear yard is burdened with a sewerage easement. The deck and associated footings will not impact the sewerage easement.	Yes
C7 – Excavation and Landfill	Site stability to be maintained	A Preliminary Geotechnical Assessment prepared by Crozier Geotechnical Consultants concludes the proposal will be carried out in accordance with the recommendations of the consulting Structural and Geotechnical Engineers and therefore satisfy the provisions of this clause.	Yes
C8 – Demolition and Construction	Waste management plan required	Waste management and appropriate sediment and control measures are to be employed throughout construction.	Yes
C9 – Waste Management	Waste storage area to be provided	No change to the existing bin storage on the site.	Yes

Part D – Design			
D1 – Landscaped Open Space and Bushland	Min 40% Landscaped Area to be maintained	The proposal will maintain the previous area for the site yard and official grass surface was in place.	Yes – on merit (see below)
D2 – Private Open Space	Dwelling houses with three or more bedrooms Min 60m ² with min dimension 5m	The existing private open space is retained and enhanced through the introduction of the proposed deck. The private open space receives excellent solar access.	Yes
D4 – Electromagnetic Radiation	N/A to proposed development		N/A
D5 – Orientation and Energy Efficiency	Dwellings to be orientated to receive northern sun Appropriate construction to enhance thermal properties and ventilation/natural cooling Compliance with SEPP (BASIX) requirements	The site enjoys good access to northern sun to the front and rear yards.	Yes
D6 – Access to sunlight	This control requires that sunlight to at least 50% of private open space to adjoining properties is not to be reduced to less than 2 hours between 9am and 3pm on the winter solstice.	N/A – the deck area will not have any effect on the solar access enjoyed by the neighbouring dwellings.	N/A
D7 – Views	View sharing to be maintained	The controls require that development should enable the reasonable sharing of views. The site and surrounding receive district views to the north-east. Due to the	Yes

		modest extent of the new works, and the location of the deck on the sloping topography it is not considered that the minimal sized deck area will have a significant impact on any existing views currently enjoyed by surrounding properties.	
D8 – Privacy	This clause specifies that development is not to cause unreasonable overlooking of habitable rooms and principle private open space of adjoining properties	<p>The deck is located in the rear yard of the site and the existing privacy enjoyed by the neighbours will be maintained.</p> <p>The proposed deck is located a substantial distance from the eastern neighbouring dwelling.</p> <p>Due to the sloping topography of the site, some overlooking currently exists, however the new deck area does not create any additional unreasonable overlooking impacts given the location of the deck on the site.</p> <p>The location of the proposed deck and existing on site and surrounding vegetation plantings will retain a suitable level of privacy between the site and surrounding properties.</p>	Yes (see below)

D9 – Building Bulk	This clause requires buildings to have a visual bulk and architectural scale that is consistent with structures on nearby and adjoining properties and not to visually dominate the street or surrounding spaces	The existing surrounding development comprises a mix of dwellings between one and three storeys. The proposed deck is modest in height and scale and consistent with the development on the surrounding sloping topography.	Yes
D10 – Building Colours and materials		The decking will be provided with recessive colours and natural material finishes to respect the surrounding residential locality.	Yes
D11 – Roofs	The LEP requires that roofs should not dominate the local skyline.	N/A	N/A
D12 – Glare and Reflection	Glare impacts from artificial illumination minimised. Reflective building materials to be minimised	The proposed finishes and colours will be selected to reflect the surrounding residential locality. No significant glare impacts will result from proposed new works.	Yes
D13 – Front Fences and Front Walls	Front fences to be generally to a maximum of 1200mm, of an open style to complement the streetscape and not to encroach onto street	N/A – no new front fencing proposed	N/A
D14 – Site Facilities	Garbage storage areas and mailboxes to have minimal visual impact to the street Landscaping to be provided to reduce the view of the site facilities	Bin storage area is available adjacent to the garage. The existing mailbox is to be maintained.	Yes

D15 – Side and Rear Fences	Side and rear fences to be maximum 1.8m and have regard for Dividing Fences Act 1991	The existing side and rear fencing will be maintained.	N/A
D17 – Tennis Courts	N/A		N/A
D20 – Safety and Security	Buildings to enhance the security of the community. Buildings are to provide for casual surveillance of the street.	The proposed works are at the rear of the site. Casual surveillance of the street remains available from the dwelling to the street over and through the front landscaped area.	Yes
D21 – Provision and Location of Utility Services	Utility services to be provided	Normal utility services are available to the site	Yes
D22 – Conservation of Energy and Water	Compliance with SEPP BASIX	A BASIX Certificate is not required necessary in this instance.	Yes
D23 – Signs	Building identification signage to be appropriate for proposed use and not to impact on amenity of surrounding locality. Signs not to obscure views vehicles, pedestrians or potentially hazardous road features or traffic control devices.	No signage proposed	N/A

Part E – The Natural Environment			
E1 – Private Property Tree Management	Arboricultural report to be provided to support development where impacts to trees are presented	No significant protected trees are affected by the works.	Yes
E2 – Prescribed Vegetation	Not identified on map		N/A
E3 – Threatened species, populations, ecological communities	Not identified on map		N/A
E4 – Wildlife Corridors	Not identified on map		N/A
E5 – Native Vegetation	Not identified on map		N/A
E6 – Retaining unique environmental features	Not identified on map	No significant features within site	Yes
E7 – Development on land adjoining public open space	Not identified on map		N/A
E8 – Waterways and Riparian Lands	Not identified on map		N/A
E9 – Coastline Hazard	Not identified on map		N/A
E10 – Landslip Risk	Identified on map as Area D & E.	The proposal is accompanied by Geotechnical Addendum Letter dated 22 July 2025 has been prepared by Crozier Geotechnical . Consultants Subject to compliance with the recommendations contained within the report, the proposal will satisfy the provisions of this clause.	Yes
E11 – Flood Prone Land	Not identified on map		N/A

Clause B5 – Side Boundary Setback

Due to the topography of the site and the existing siting of the dual occupancy dwelling the new decking is to be located close to the rear and eastern side boundaries to ensure the safe provision of outside private open space while also providing safe site stability.

The location on the boundary is not considered to result in any adverse impacts for neighbouring properties in terms of privacy, solar access or general amenity, particularly as the eastern adjoining

property, No. 58 Alexander Street dwelling house is sited much further forward into the site when compared to the subject sites dual occupancy dwelling.

The consistency with similar decking areas along this sloping area of Alexander Street that present similar reduced setbacks to the boundaries, the proposed works are considered to be reasonable in this instance.

B9 –Rear boundary setbacks

The proposed decking area is located within the rear setback due to the location of the existing dual occupancy residential dwellings being positioned close to the rear boundary. The deck will continue to provide for a sense of openness and will not impact upon existing significant trees or landscaped areas. The proposal will significantly enhance a sense of openness by making the space more usable and accessible.

The proposed setbacks of the new deck will see visual amenity maintained for neighbouring properties. The existing screening vegetation and its position on the sloping topography when compared to neighbouring properties ensures reasonable privacy levels are maintained for the occupants of the subject site and neighbouring properties.

Therefore, the proposed works are not considered to result in any unreasonable overlooking or privacy impacts to the neighbour or surrounding sites, and as a result, no further mitigation measures or privacy treatments are required.

D1 – Landscape Open Space

The site is quite developed with a small percentage of the site allocated to landscape treatments.

The proposal will provide for sufficient area for the private open space and recreational requirements of the owners, whilst maintaining good areas of deep soil planting within the front and rear yard area.

Additionally, the proposal does not involve the removal of significant vegetation, thus conserving the topographical features of the site and habitats for wildlife. New plantings can be provided throughout the site if Council requires.

The proposed works are of reasonable dimensions, given the context of the site, and is supported by existing stormwater management arrangements. The property retains sufficient soft open space on site that sufficiently minimises the impact of stormwater runoff, erosion or siltation.

Accordingly, will retain more than sufficient areas of soft landscaping areas within the front and rear boundary setbacks and the decking area will increase the function and enjoyment of the rear yard for occupants and their guests.

7.0 Matters for Consideration under Section 4.15 of The Environmental Planning and Assessment Act, 1979

7.1 The provisions of any environmental planning instrument

The proposed development is reliant upon existing use rights pursuant to Division 4.11 of the Environmental Planning and Assessment Act 1979 as discussed previously in this report.

In accordance with the Land and Environment Court of NSW judgement of *Fodor Investments v Hornsby Shire Council* [2005] NSWLEC 71 (Fodor) (at 15), it is made clear that planning controls that limit the size of a proposal (development standards and built form controls applicable under the Warringah Local Environment Plan 2011 and the Warringah Development Control Plan 2011) "*have no application*".

However, the questions posed in the above caselaw pertaining to the assessment of existing use rights impose the importance of a merit assessment of the development, rather than a quantifiable numerical assessment that would normally be undertaken.

Accordingly, relevant development standards and built form controls have relevance to the assessment of the application, therefore an assessment has been completed with the proposal achieving compliance with the relevant provisions.

7.2 Any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and

It is not considered that there are any draft environmental planning instruments applying to the site.

7.3 Any development control plan

While the is reliant upon existing use rights, the development has been designed to comply as far as possible with the requirements of the Warringah Development Control Plan 2011.

It is considered that the proposed design respects the desired character objectives of the DCP in that it reinforces the existing residential character of the area and is compatible with the existing uses in the vicinity.

The development respects the conservation area and streetscape character objectives of the DCP and will provide a cohesive and sympathetic addition to the site which will make a positive contribution to the area.

7.4 Any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4

No matters of relevance are raised in regard to the proposed development.

7.5 The regulations (to the extent that they prescribe matters for the purposes of this paragraph),

No matters of relevance are raised in regard to the proposed development.

7.6 The likely impacts of that development, including environmental impacts on both the natural and built environments, and the social and economic impacts in the locality.

It is considered that the proposal, which seeks consent for the construction of a new deck area ancillary to a dual occupancy (attached) residential dwelling, is reasonable in circumstances where resultant development is compatible with and will complement the character of the conservation area.

While the development is reliant upon existing use rights the proposal is considered to be well designed having regard to the relevant provisions of the Council's LEP and Council's Codes and Policies, in particular the Warringah DCP 2011.

7.7 The suitability of the site for the development

The subject land remains suitable for the dual occupancy (attached) residential development reliant upon existing use rights.

The subject site does not exhibit any significant constraint to the construction of the proposed development.

7.8 Any submissions made in accordance with this Act or the regulations

This is matter for Council in the consideration of this proposal.

7.9 The public interest

The proposal will not impact upon the environment, the character of the locality or upon the amenity of adjoining properties and is therefore considered to be within the public interest.

8.0 Conclusion

The proposal provides for a new deck area for an existing dual occupancy (attached) residential building.

As a dual occupancy development is not a permissible within the R2 Low Density Residential Zone, the development relies on the existing use rights regulated within Section 4.65 and Section 4.66 of the Environmental Planning and Assessment Act 1979 and clauses 163-166 of the Environmental Planning and Assessment Regulation 2021.

The arguments within this submission confirm that the existing dual occupancy (attached) building has established and relies on the existing use rights provisions.

There is no lawful reason why Council cannot consider the proposed deck area as sought in this application.

The proposal is a site-specific design response which takes advantage of the properties superior locational attributes whilst respecting the environmental characteristics of the site and the amenity of adjoining development.

The outcome is a deck area which appropriately responds to the sites steeply sloping site and constraints imposed by the siting and design of the dual occupancy development on the site and adjoining residential development in relation to privacy, solar access and views.

The deck displays a complimentary and compatible building form when compared to other decking and ancillary development located along this section of Alexander Street and within the site's visual catchment generally.

As the proposed development will not have any significant adverse impacts on the environment, scenic quality of the area or the amenity of the adjoining allotments, there is no statutory impediment or meritorious reason as to why Council should not grant consent to the proposed development.

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