

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2018/1290
<b>Responsible Officer:</b>	Catriona Shirley
<b>Land to be developed (Address):</b>	Lot B DP 377414, 2 Tourmaline Street NARRABEEN NSW 2101
<b>Proposed Development:</b>	Alterations and additions to an existing dwelling house
<b>Zoning:</b>	Warringah LEP2011 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Tony Ian Nicol
<b>Applicant:</b>	Micris Design Pty Ltd
<b>Application lodged:</b>	01/08/2018
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	08/08/2018 to 23/08/2018
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	3
<b>Recommendation:</b>	Refusal
<b>Estimated Cost of Works:</b>	\$ 732,000.00

### ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;

- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

## SUMMARY OF ASSESSMENT ISSUES

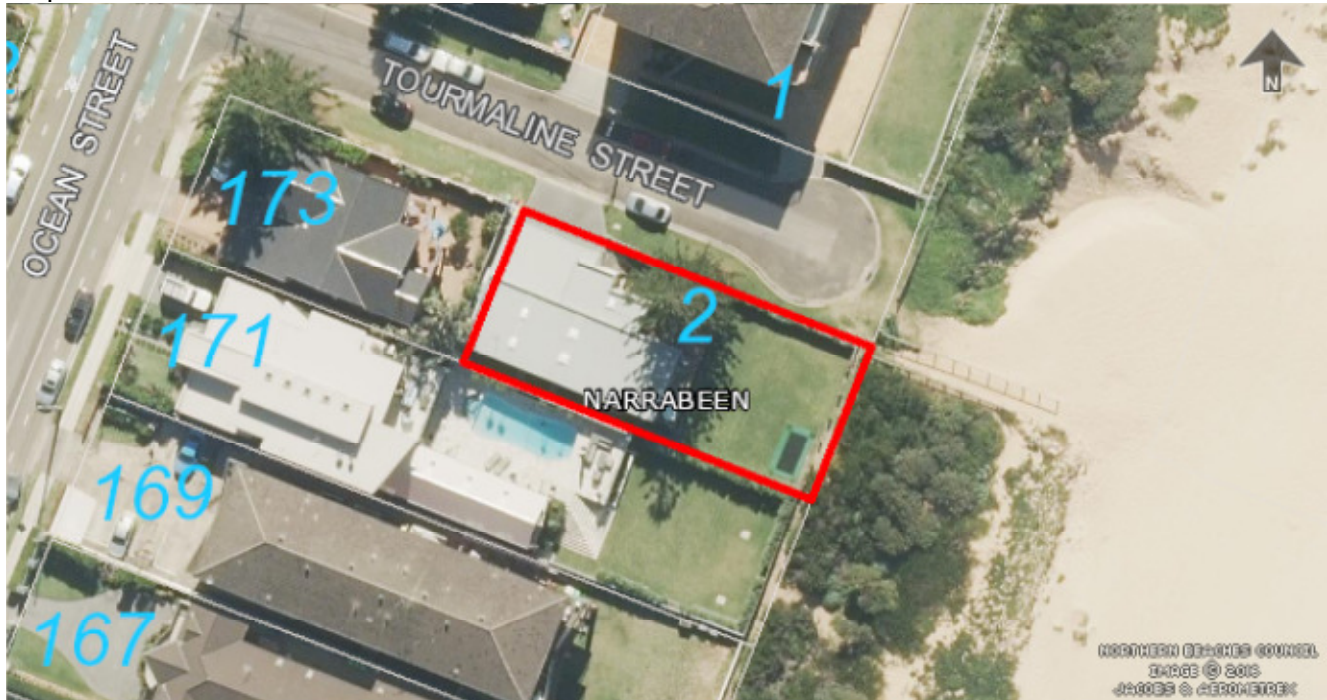
Warringah Local Environmental Plan 2011 - 4.3 Height of buildings  
 Warringah Development Control Plan - B1 Wall Heights  
 Warringah Development Control Plan - B3 Side Boundary Envelope  
 Warringah Development Control Plan - B7 Front Boundary Setbacks  
 Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting  
 Warringah Development Control Plan - D7 Views  
 Warringah Development Control Plan - D8 Privacy  
 Warringah Development Control Plan - D9 Building Bulk  
 Warringah Development Control Plan - D11 Roofs  
 Warringah Development Control Plan - D12 Glare and Reflection  
 Warringah Development Control Plan - E4 Wildlife Corridors

## SITE DESCRIPTION

<b>Property Description:</b>	Lot B DP 377414 , 2 Tourmaline Street NARRABEEN NSW 2101
<b>Detailed Site Description:</b>	<p>The subject site is legally identified as Lot B in DP 377414, and is known as 2 Tourmaline Street Narrabeen. The site located within the R2 Low Density Residential zone.</p> <p>The subject property is located immediately south of Tourmaline Street, with Collaroy-Narrabeen Beach adjoining the site on the eastern boundary.</p> <p>The overall site area is 569.1m<sup>2</sup>. The subject site has a northern street frontage to Tourmaline Street of 36.27 metres, a eastern boundary dimension of 15.71 metres, southern boundary dimension of 36.345 metres, and a western boundary dimension of 15.635 metres.</p> <p>The surface of the site is relatively flat with the site being previously excavated for the lower ground floor. The Lower Ground Floor Level of the existing dwelling has a finished floor level of 7.6m AHD, and is below the natural ground level, separated by a retaining wall with a crest level of 8.2m AHD. The Ground Floor finished floor level is 9.9m AHD.</p> <p>The site currently contains a two level dwelling house, with lawned area in the eastern area of the site adjoining the vegetated sand dunes of Collaroy/Narrabeen beach.</p> <p>Surrounding sites consist of a range of dwelling types,</p>

including single dwelling house, dual occupancy and residential flat buildings. The site to the south and the west contains two storey dwelling houses, with the site to the north being a three storey residential flat building on the opposite side of the street.

Map:



## SITE HISTORY

A search of Council's records has revealed the following relevant history for this site:

- Application number **DA2018/0238** for Alterations and additions to a dwelling house, for a proposal similar to the current application, was lodged on the 16/02/2018 and withdrawn from Council on the 14/05/2018 due to a number of areas of non-compliance. The areas of non-compliance included the building height, wall height, side boundary envelope, landscape open space, access to sunlight, privacy, building bulk and view sharing.
- Building Application number **317/86** for Alterations and additions to a dwelling house was approved by Council on the 10/02/1986.

## PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for alterations and additions to the existing dwelling house. The proposal includes the following works;

### Lower Ground Floor Level (FFL 7630)

- No works proposed

### Ground Level (FFL 9870)

DA2018/1290

- Demolition of the overhang to the garage and the northern garage wall
- Garage extension to allow for two vehicles
- New internal stairs
- New entry door
- Minor internal alterations

#### First Floor Level (FFL 13020)

- New bedroom, walk in wardrobe and en-suite
- New sitting room
- New rear balcony

The proposal includes the replacement of the existing flat roof with a curved roof.

#### External Works

- Removal of artificial lawn and paved paths
- New access stairs from the lower ground floor to the proposed first floor
- New access stairs from the lower ground floor to the ground floor
- New stone letterbox

The existing driveway will be retained for access to the existing garage.

### **ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)**

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

<b>Section 4.15 Matters for Consideration'</b>	<b>Comments</b>
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000, Council requested</p>

Section 4.15 Matters for Consideration'	Comments
	<p>additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
<p>Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p>	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. In summary the proposal involves the following impacts, privacy, building bulk and scale that creates amenity and view loss, and additional overshadowing which are unsatisfactory for the reasons discussed below.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered unsuitable for the proposed development.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>See discussion on “Notification &amp; Submissions Received” in this report.</p>
<p>Section 4.15 (1) (e) – the public interest</p>	<p>This assessment has found the proposal to be contrary to the relevant requirement(s) of the WDCP 2011. There are non-compliances/inconsistencies with the planning controls in relation to setbacks, building envelope, bulk and sale, view loss that will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be</p>

Section 4.15 Matters for Consideration'	Comments
	contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 3 submission/s from:

Name:	Address:
Mr George Marner Colvin Smith	173 Ocean Street NARRABEEN NSW 2101
Mrs Kathleen Kerrie Amy Hayes	30 Addison Road INGLESIDE NSW 2101
Hendrik Pieter Laubscher	171 Ocean Street NARRABEEN NSW 2101

The following issues were raised in the submissions:

- Loss of Views
- Building Height
- Loss of Privacy
- Building Bulk
- Overshadowing
- Inaccuracies of Information
- Unapproved Building Renovations

The matters raised within the submissions are addressed as follows:

- ***Concerns are raised that the proposal will cause unreasonable loss of views from No.171 and No.173 Ocean Street Narrabeen***

### Comment:

The submissions received from No.171 and No.173 Ocean Street Narrabeen, both solely object to the proposal on the grounds of view loss. A detailed view loss assessment as per the Planning Principles established in the Land and Environment Court case Tenacity Consulting v Warringah Council is included in this report which addresses the above-mentioned concern. This issue is discussed in detail under Clause D7 in this report. In summary, the proposal does not demonstrate a reasonable sharing of views.

The submissions are supported and accordingly, this matter is included as a reason for refusal.

- ***Concern that the building height is excessive and creates amenity impacts on the surrounding properties***

Comment:

There is concern that the building height is not reflective of the actual building height due to the lower ground floor siting below natural ground level.

In the case *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070 and *Stamford Property Services Pty Ltd v City of Sydney & Anor* [2015] NSWLEC 1189 it is made apparent that the measure of existing building height should relate to the levels and natural topography of the site, and not relate to artificially modified levels (such as those achieved through excavation). Therefore, in measuring the natural ground level of a site, reliance must be placed upon known levels of the site which can be relied on to extrapolate the natural slope of the land.

Therefore, for the purpose of this assessment, natural ground level is extrapolated from survey points around the perimeter of the site as detailed on the architectural plans accompanying the application. In measuring the building height using this methodology, the development does not comply with the building height standard of 8.5m, being 8.6m measured from natural ground level.

This minor height variation has been discussed in detail under Part 4.6 Exceptions to development standards, and pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to Development Standards of the Warringah Local Environmental Plan 2011.

Accordingly, this matter is included as a reason for refusal.

- ***Concerns are raised that the proposal will impact on the privacy levels of the southern adjoining property at No. 171 Ocean Street Narrabeen***

Comment:

This matter is discussed in detail under the Part D8 Privacy section in this report. In summary, the proposal does not incorporate design solutions to minimise privacy impacts on the southern adjoining property. However conditions could be applied to maintain a satisfactory level of privacy and to No. 171 Ocean Street.

Therefore, this issue does not warrant refusal of the application.

- ***Concern is raised that the proposal displays unreasonable building bulk that impacts the amenity of surrounding sites***

Comment:

This matter is discussed in detail under the Part D9 Building Bulk section in this report. In summary, the proposal does not incorporate design solutions to minimise bulk and scale of the development on the adjoining properties. The proposal seeks benefit from a first floor addition that sits across the ground floor existing building footprint and hence the visual impact. This design solution is not considered to be an appropriate response to the sites location and siting relative to adjoining properties, in that the front setback and envelope will have a significant bearing on the overall height and bulk of the development, such that it will have an unreasonable amenity impact upon surrounding properties.

Therefore, the assessment of the application has found that the development does not satisfy the objectives of Part D9 Building Bulk of the WDCP 2011.

Accordingly, this matter is included as a reason for refusal.

- ***Concerns are raised that the proposal creates unreasonable overshadowing of adjoining properties***

Comment:

Detailed shadow diagrams were submitted with the application demonstrating the shadows for the the winter solstice on June 21 for 9:00am, 12 midday and 3:00pm. The shadow details provided demonstrate that 3 hours of solar access will be maintained to the private open space of the adjoining sites in compliance with Part D6 Access to Sunlight.

Notwithstanding the assessment of the application has found that breaches of the built form controls under WDCP 2011 contribute to unnecessary overshadowing of the southern and western neighbour's private open space. In this regard, overshadowing impacts could be improved through a more skillful design changes to the proposal.

However, as the proposal complies with Part D6 Access to Sunlight, it does not warrant refusal of the application.

- ***Concerns are raised that there are inaccuracies in the shadow diagram, and architectural plans submitted***

Comment:

The survey plan was prepared by an appropriately qualified professional (Map Surv dated 24/09/2017), and the architectural plans and shadow diagrams have been prepared by Micris Design Pty Ltd. Councils has reviewed the documentation and is satisfied the details are correct.

Accordingly, this matter does not warrant the refusal of the application.

- ***Concerns are raised that there are unapproved works existing on the subject site***

Comment:

The concern relates specifically to the existing garage that encroaches into the previously approved 6.7m setback. However, a search of Councils records indicate that the existing garage was approved in 1986.

There may be unauthorised works that have been undertaken on the subject site dwelling house without approval, such as the conversion of the garage, and a bathroom on the lower ground floor. This matter has been referred to Council Building Compliance department for their assessment.

The application relates to the first floor addition which does not rely on the areas which are subject to an investigation. Therefore refusal of the application is not warranted under the circumstances.

## MEDIATION

No requests for mediation have been made in relation to this application.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The plans indicate retention of 1 x <i>Araucaria heterophylla</i> (Norfolk Island Pine) adjacent to the existing building, which is supported.</p> <p>However concern is raised regarding impacts of the works on the Tree Protection Zone and Structural Root Zone of the tree due to excavation for retaining walls and impacts on the existing canopy of the upper storey addition and consequential impacts of scaffolding, etc required to be erected during construction.</p> <p>No Arboricultural Impact Assessment was sighted with the application.</p> <p>It is considered that insufficient information has been provided to be satisfied that impacts on the tree are acceptable.</p> <p>At this stage, the proposal is not supported with regard to landscape issues. If additional information is provided regarding the issues raised above, further assessment can be undertaken.</p> <p>Planners comments: Due to insufficient information this issue will form a reason for refusal.</p>
NECC (Bushland and Biodiversity)	<p>Council's Bushland and Biodiversity section considers the Development Application to be consistent with the following Warringah DCP 2011 Controls:</p> <p>Part E The Natural Environment  E1 Preservation of Trees or Bushland Vegetation  E2 Prescribed Vegetation  E3 Threatened Species, Populations, Ecological Communities listed under State or Commonwealth legislation, or High Conservation Habitat  E4 Wildlife Corridors  E5 Native Vegetation  E6 Retaining Unique Environmental Features  E7 Development of Land Adjoining Public Open Space</p>
NECC (Coast and Catchments)	<p>The proposed development has been considered against the requirements of the Coastal Zone Management Plan for Collaroy-Narrabeen Beach and Fishermans Beach. It is supported subject to conditions confirming that the works will be designed and constructed in accordance with the coastal engineering report prepared by Horton Coastal Engineering Pty Ltd demonstrating that the portion of the proposed development seaward of the minimum setback for development on conventional foundations is founded on deep piles.</p>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.</p>

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

## State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

### SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

### SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 878867S\_02 and 31 July 2018). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. 878867S\_02 and 31 July 2018).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	Pass
Thermal Comfort	Pass	Pass
Energy	40	Pass

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

### SEPP (Infrastructure) 2007

#### Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).

- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

## **SEPP (Coastal Management) 2018**

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

### **12 Development on land within the coastal vulnerability area**

*Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:*

- (a) *if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and*
- (b) *the proposed development:*
  - (i) *is not likely to alter coastal processes to the detriment of the natural environment or other land, and*
  - (ii) *is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and*
  - (iii) *incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and*
- (c) *measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and*

*future  
coastal  
hazards.*

Comment:

The proposal will not cause an adverse impact on the relevant matters described above.

### **13 Development on land within the coastal environment area**

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
  - (b) *coastal environmental values and natural coastal processes,*
  - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
  - (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
  - (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
  - (f) *Aboriginal cultural heritage, practices and places,*
  - (g) *the use of the surf zone.*

Comment:

The proposal will not cause an adverse impact on the relevant matters described above in subclause (1).

- (2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
- (a) *the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*
  - (b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
  - (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment:

The proposal will avoid adverse impact on the relevant matters described above.

### **14 Development on land within the coastal use area**

- (1)
- (a) *has considered whether the proposed development is likely to cause an adverse impact on the following:*
    - (i) *existing, safe access to and along the foreshore, beach, headland or rock platform*

- for members of the public, including persons with a disability,
- (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
  - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
  - (iv) Aboriginal cultural heritage, practices and places,
  - (v) cultural and built environment heritage, and
- (b) is satisfied that:
- (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
  - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
  - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The proposal will not cause an adverse impact on the relevant matters described above.

As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

### Warringah Local Environmental Plan 2011

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.6m	1.2%	No

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	No
5.5 Development within the coastal zone	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes
6.5 Coastline hazards	Yes

## Detailed Assessment

### **4.6 Exceptions to development standards**

The site is subject to an 8.5m height control measured from existing ground level pursuant to the definition of building height under Clause 4.3 WLEP 2011. In the circumstances of this assessment, it is important to note that the site has been excavated to a depth of up to approximately 1.3m below the natural ground level.

In the case *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070 and *Stamford Property Services Pty Ltd v City of Sydney & Anor* [2015] NSWLEC 1189 it is made apparent that the measure of existing building height should relate to the levels and natural topography of the site, and not relate to artificially modified levels (such as those achieved through excavation).

Therefore, in measuring the natural ground level of a site, reliance must be placed upon known levels of the site which can be relied on to extrapolate the natural slope of the land. In the circumstances of this case, it is evident that the natural landform prior to any development would likely rise in a east - westerly direction away from Collaroy/Narrabeen beach. This is further evidenced by the gradient and levels of the surrounding road and properties.

Therefore, for the purpose of this assessment, natural ground level is extrapolated from survey points around the perimeter of the site as detailed on the architectural plans accompanying the application. In measuring the building height using this methodology, the development does not comply with the building height standard of 8.5m, being 8.6m measured from natural ground level.

### **4.6 Exceptions to Development Standards**

#### Description of non-compliance:

Requirement:	8.5m
Proposed:	8.6m
Is the planning control in question a development standard?	YES
If numerical enter a % variation to requirement	1.2%

#### Assessment of Request to vary a Development Standard:

The following assessment of the variation to Clause 4.3 - Height of Buildings development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

#### Clause 4.6 Exceptions to Development Standards:

*(1) The objectives of this clause are as follows:*

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

*(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

#### Comment:

Clause 4.3 Height of buildings development standard is not expressly excluded from the operation of this clause.

*(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

*(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

*(b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

*(4) Development consent must not be granted for development that contravenes a development standard unless:*

*(a) the consent authority is satisfied that:*

*(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

*(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

*(b) the concurrence of the Secretary has been obtained.*

#### **Clause 4.6 (4)(a)(i) (Justification) Assessment:**

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

*(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

#### Applicants Written Request

The Applicant's written request (attached to this report as an Appendix) has not demonstrated that the objectives of the development standard are achieved.

#### Planners Comment

In doing so, the Applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

*(b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

#### Conclusions on Environmental Planning Grounds

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

*'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'*

s 1.3 of the EPA Act reads as follows:

### *1.3 Objects of Act(cf previous s 5)*

*The objects of this Act are as follows:*

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The applicants written request argues, in part:

### *"Reasons for Clause 4.6 Variation Consideration*

- *Streetscape – The visual quality of the streetscape is to be enhanced with the new additions to the northern facade off Tourmaline Street as it will accentuate a modern design to complement the existing dwelling and other dwellings within the vicinity.*
- *Setback - The eastern and western boundaries have not been compromised to suit this new addition to the property. The proposed first floor deck and roof is in line with the side and front building lines to create a seamless finish to the dwelling. In addition the proposal is not out of character for the neighbourhood.*
- *Bulk & Scale is maintained for the area the ground & first floor decks and new first floor roof is in keeping with the overall bulk and scale from Tourmaline Street.*
- *Site Access & Circulation is to remain consistent with the existing property and therefore will not be changed to suit this proposal.*
- *Openness - A sense of openness has been created as the proposed design creates flow between the internal & the external non-habitable zones."*

In the circumstances of the relatively flat site conditions, compliance with the development standard of 8.5m while continuing to allow for a consistent architectural style throughout the entire building, is not considered unreasonable.

Whilst the building height variation is minor and is confined to the rear section of the roofline over the first floor deck area, when combined with the variations to the front setback, wall height, and side boundary envelope, it creates unreasonable building bulk and moderate to severe view loss. Hence, the proposal significantly affects the amenity of the adjacent land.

Therefore, the proposal is unreasonable within its context due to the significant amenity impacts, including view loss to the surrounding sites.

Consequently, it is concluded that the applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard (as required by cl 4.6 (3)(b)) when full building height compliance could be achieved, nor that the addition is of a good design that will reasonably protect and improve the amenity of the surrounding built environment. Therefore, the proposal does not satisfy cl 1.3 (g) of the EPA Act.

#### **Clause 4.6 (4)(a)(ii) (Public Interest) Assessment:**

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

*(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out*

#### Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

#### **Objectives of Development Standard**

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the WLEP 2011 are:

*a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*

#### Comment:

The site is in an area of relatively flat terrain and the surrounding development is generally one, two and three storeys. The presence of a dwelling that is part 2 / part 3 storey is not unique within the Tourmaline Street streetscape, or in the general area of the subject site. The site to the south and west are both two storey dwelling houses, with Collaroy/Narrabeen beach adjoining the site to the east.

In this case, the proposed curved roof over the first floor balcony exceeds the height limit, however it could be accurately surmised that the height and scale of the development is consistent and compatible with surrounding and nearby development and satisfies this objective.

*b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*

#### Comment:

It is noted that the non-compliance with the height requirement is in itself not detrimental to view loss, privacy or solar access. It is however found that the design of the proposal will have adverse amenity

impacts on the adjoining properties, with regards to view loss, visual privacy, solar access and visual bulk.

Therefore, the proposal is found to be inconsistent with this objective.

*c) to minimise adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*

Comment:

The development is not found to result in an adverse impact on the scenic quality of the Northern Beaches bush environment and therefore satisfies this objective.

*d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities,*

Comment:

The development is not found to have any adverse or unreasonable visual impact when viewed from any surrounding public places, and therefore satisfies this objective.

## **Zone Objectives**

The underlying objectives of the R2 Low Density Residential zone are:

- - *To provide for the housing needs of the community within a low density residential environment.*

Comment:

The site will continue to cater for providing housing for the community.

It is considered that the development satisfies this objective.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment:

The development is within a residential zone and accommodates a residential landuse.

It is considered that the development satisfies this objective.

- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Comment:

The new work is located within the existing building footprint, and maintains the existing eastern landscaped setback to the Collaroy/Narrabeen beach. Therefore, the proposal does not adversely affect the landscaped setting for the building.

It is considered that the development satisfies this objective.

### Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone.

### **Clause 4.6 (4)(b) (Concurrence of the Secretary) Assessment:**

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the Development Assessment Panel.

### **Warringah Development Control Plan**

#### Built Form Controls

The subject site is treated as corner allotment located on Tourmaline Street and a waterway reserve, Collaroy/Narrabeen Beach. Whilst the foreshore building line setback is not applicable to the subject site, the assessment of the application for purpose of applying the applicable setback controls to the site is taken the boundary fronting the waterway reserve as rear boundary, and the side boundaries to be southern and western sides of the site.

<b>Built Form Control</b>	<b>Requirement</b>	<b>Proposed</b>	<b>% Variation*</b>	<b>Complies</b>
B1 Wall height	7.2m	up to 8m	11.1%	No
B3 Side Boundary Envelope	4m West	Encroachment of up to 1.0m for a length of 11m	25%	No
	4m South	Encroachment of up to 0.8m for 6.5m, and encroachment up to 0.4m for 10.5m	20% 10%	No No
B5 Side Boundary Setbacks	0.9m West	0.9m Garage 1.9m - 2.1m First Floor	N/A N/A	Yes Yes
	0.9m South	1.4m - 2.4m First Floor	N/A	Yes
B7 Front Boundary Setbacks	6.5m	0.6m Garage 0.0m Roofing 3.1 - 3.7m First floor	90.7% 100% up to 52.3%	No No No
B9 Rear Boundary Setbacks	6m	13.3m First Floor Balcony 10.7m Access Stairs	N/A N/A	Yes Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	37% (211.5sqm)	7.5%	No

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	No
B3 Side Boundary Envelope	No	No
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	No
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	No	No
D8 Privacy	No	Yes
D9 Building Bulk	No	No
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	No	No
D12 Glare and Reflection	No	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E5 Native Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E9 Coastline Hazard	Yes	Yes
E10 Landslip Risk	Yes	Yes

#### Detailed Assessment

#### **B1 Wall Heights**

#### Description of non-compliance

The proposal has a wall height of up to 8.0m, which does not comply with the maximum wall height of 7.2m, representing a variation of 11.1%.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

Comment:

The wall height is influenced by the existing excavation of the lower ground floor and the design of the curved shaped roof for the proposed first floor. The proposed curved roof design will be visually dominating when viewed from the adjoining properties.

Additionally, the proposed western facade of the first floor addition lacks any articulation or visual interest and is a blank 3.0m high, 10.5m wide wall with no openings, stepping, or change of material which is considered to be a poor design outcome and contributes to excessive visual impact when viewed from adjoining properties.

Accordingly, the development is not consistent with this objective.

- *To ensure development is generally beneath the existing tree canopy level*

Comment:

Given the location of the subject site and the views enjoyed over the subject and adjacent dwellings, trees with substantial canopy levels are seldom present as they would severely impact upon the views enjoyed from the properties on Tourmaline Street and neighbouring Ocean Street. However, currently existing on the site is a large Norfolk Island pine to be retained as part of the proposal.

Therefore, the proposed first floor addition will remain generally beneath the existing tree canopy level and hence is consistent with the objective.

- *To provide a reasonable sharing of views to and from public and private properties.*

Comment:

The proposed wall height will result in unreasonable and detrimental view loss from adjoining properties and public spaces given the height and setbacks of the development.

It is considered that the overall wall height of 8m, and the floor to ceiling height of the proposed first floor of up to 3.547m significantly impacts the reasonable sharing of views from adjoining private properties. The provision of view sharing is discussed later in this report under Part D7.

Accordingly, the development is not consistent with this objective.

- *To minimise the impact of development on adjoining or nearby properties.*

Comment:

The non-compliance with the wall height will result in unreasonable and detrimental impacts upon adjoining properties by virtue of visual impact, privacy, overshadowing or view loss.

The proposal has not been designed to break up the western wall plane by stepping in the side elevation as the wall height increases and does not include elements to improve visual interest and articulation.

Accordingly, the development is inconsistent with this objective.

- *To ensure that development responds to site topography and to discourage excavation of the natural landform.*

Comment:

The proposed addition does not propose any excavation to the natural land form. It is acknowledged that the site is constrained by virtue of the previously excavated lower floor area.

In order to comply with the requisite built form controls of the WDCP 2011, development is envisaged to respond to the topography in order to minimise non-compliance and excessive visual impact. Such is not the case for this application.

The proposal seeks benefit from a first floor addition that sits across the majority of the ground floor existing building footprint, which results in a significant visual impact. This design solution is not considered to be an appropriate response to the site's topography and location in that the wall height will have a significant bearing on the overall height and bulk of the development, such that it will have an unreasonable impact on the amenity of adjoining properties.

Accordingly, the development is inconsistent with this objective.

- *To provide sufficient scope for innovative roof pitch and variation in roof design.*

Comment:

The proposal includes a curved arc shaped roof for the upper storey that enables a 3.547m ceiling height for the proposed first floor.

It is considered that the proposed roof design has a significant impact on surrounding properties by virtue of its height and potential glare, in that the proposed colourbond colour is "natural white".

This roof design will be visually dominating when viewed from the adjoining properties. The roof design also has direct impact on the view loss to adjoining properties.

Therefore, the roof design is inconsistent with this objective.

with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

### **B3 Side Boundary Envelope**

#### Description of non-compliance

The proposed development encroaches the side boundary envelope of 4m and 45 degrees on both the southern and western elevations as follows:

- **South Elevation** (2 sections of wall) - Encroachment of 0.8m for a length of 6.5m (20% variation) and encroachment of up to 0.4m for 10.5m (10% variation); and
- **West Elevation** - Encroachment up to 1.0m and for a length of 11.0m (25% variation).

#### Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To ensure that development does not become visually dominant by virtue of its height and bulk.*

#### Comment:

The areas of encroachment are located on the southern and western portion of the building. Given the substantial scale of these non-compliances, it is considered that they will have a significant impact on the overall height and bulk of the development and unreasonable impacts on the amenity of adjoining properties.

The proposed western facade of the first floor addition lacks any articulation or visual interest and is a blank 3.m high, 10.5m wide wall with no openings, stepping, or change of material which is considered to be a poor design outcome and contributes to excessive visual impact when viewed from adjoining properties.

The proposed southern elevation encroachment runs for the entire length of the building, being 17.0m. Whilst an attempt to break up the southern facade has been made with windows and a step in of 1.0m, the encroachment creates an unreasonable building bulk and scale and therefore amenity impact particularly to the southern adjoining property.

Therefore, the proposal is inconsistent with this objective.

- *To ensure adequate light, solar access and privacy by providing spatial separation between buildings.*

#### Comment:

The submitted shadow diagrams A-017 to A- 019 drawn by Micris Design demonstrate compliance with solar access requirements of the Warringah DCP 2011. However, the envelope variation creates unnecessary overshadowing of the southern and western neighbour's private open space.

The proposed development also results in adverse privacy impacts on the southern side by virtue of the inadequate spatial separation between buildings.

Therefore, the proposal is inconsistent with this objective.

- *To ensure that development responds to the topography of the site.*

Comment:

The proposal does not incorporate design solutions that respond to the sites topography, so to minimise bulk and scale of the development on the adjoining properties. The proposal seeks to maximise the size and extent of the first floor addition by siting across the majority of the ground floor existing building footprint and hence the significant visual impact.

This design solution is not considered to be an appropriate response to the sites location and siting relative to adjoining properties, in that the envelope breach will have a significant bearing on the overall height and bulk of the development, such that it will have an unreasonable impact upon the amenity of adjoining properties.

Therefore, the proposal is inconsistent with this objective.

Having regard to the above assessment, it is concluded that the proposed development is not consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

## **B7 Front Boundary Setbacks**

### Description of non-compliance

The existing garage is located within the front boundary setback area at a distance of 1.1m from the front boundary, with the roofline sited 0.8m from the front boundary which does not comply with the minimum requirement of 6.5m.

The proposed garage extension is situated on a 0.626m setback, with the associated roofing being on a nil setback to the front boundary. This represents a variation of 90.7% and 100% respectively to Tourmaline Street.

The proposed first floor level is situated on a front setback of 3.1m to 3.7m. This represents a variation of up to 52.3%.

### Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To create a sense of openness.*

Comment:

The existing dwelling house has a integrated into the ground floor design. The proposal includes

reducing the front setback of the garage by approximately 0.48m to provide an increased length which is over the existing hardstand driveway area.

The existing sense of openness is maintained at ground floor thereby maintaining the existing front setback distances of 2.2m to 6.796m.

There is no boundary fencing proposed for the Tourmaline Street front boundary. The landscaped corridor from the dwelling house to the adjoining Collaroy/Narrabeen Beach area remains unchanged and visible from Tourmaline Street.

Therefore, given the minor change to the front setback of the garage, combined with the existing front setbacks and open style soft landscaped area, it is found that there is minimal impact to the existing sense of openness.

- *To maintain the visual continuity and pattern of buildings and landscape elements.*

Comment:

The front setback of the site is currently dominated by the garage parking structure. Given the site has an existing garage located forward of the front setback, the minor addition to ensure the garage can accommodate a standard car, will result in a very minor change to the overall visual quality of the street view. Therefore, the garage addition is consistent with this objective.

The associated garage roofing is proposed to be extended to the front boundary (100% variation). This is not consistent with the visual continuity or the pattern of building in the street. Therefore, the roofline should provide a greater front setback to ensure there is sufficient spatial distance between the front boundary and the associated roofline. This could be undertaken via conditions, and is therefore not a reason for refusal.

The first floor addition is retaining the existing visual continuity and pattern of buildings, being atop of the existing footprint. The adjoining building to the west currently provides a smaller setback of approximately 2.6m to Tourmaline street.

Therefore, the variation in the first floor is consistent with maintaining the visual continuity and pattern of buildings in the street.

- *To protect and enhance the visual quality of streetscapes and public spaces.*

Comment:

It is important to note that the context of the site is largely determined by the siting of the existing dwelling house. The proposed minor change to the existing garage will not negatively detract from the existing visual quality of the streetscape.

In order to reduce the visual impact of the garage extension within the front boundary setback, it is recommended that the associated roofing provide a greater front setback to ensure there is sufficient spatial distance between the front boundary and the roofline. Conditions could be applied to maintain a satisfactory front setback.

The proposal does not incorporate design solutions to minimise the bulk and scale of the development and the impact on the streetscape. The proposal seeks to benefit from a first floor addition that sits across the majority of the ground floor existing building footprint which will

result in a significant visual impact. This design solution is not considered to be an appropriate response to the sites location and siting relative to adjoining public and private properties, in that the front setback will have a significant bearing on the overall height and bulk of the development, such that it will have an unreasonable impact upon the amenity of adjoining properties.

Therefore, the development is inconsistent with the control.

- *To achieve reasonable view sharing.*

Comment:

The new ground floor garage addition and associated roofing will have no additional adverse impact on views.

However, there will be an adverse impact on views as a result of the proposed first floor front setback variation. This issue is discussed in more detail under clause D7 in this report.

The views affected are particularly valuable in the context of the view sharing principles, and are across a side boundary. Design changes could be undertaken, such as an increase in the front setback variation via further stepping-in of the first floor from both the north, south and western sides of the building, to provide a greater viewing corridor.

The proposal does not demonstrate a reasonable sharing of views.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

## **D1 Landscaped Open Space and Bushland Setting**

### Description of non-compliance

The development proposes 37% (211.5sqm) of the site as landscaped open space, which is a variation of 7.5% from the required 40% of the site.

### Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To enable planting to maintain and enhance the streetscape.*

Comment:

The proposal is for a first floor addition within the existing footprint. The site currently contains a large Norfolk Island pine tree and established landscaping that is unaltered by the proposal. The landscape setting when viewed from Collaroy/Narrabeen Beach is considered to be in accordance with Part E7 Development on land adjoining public open space.

- *To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.*

Comment:

The site is generally free of any substantial topographical features such as rock outcrops. The primary location of landscaped open space will remain as per the existing (i.e. in the eastern area of the site), and the existing Norfolk Island pine on site is to be retained.

Therefore, the landscape open space provision is considered satisfactory to conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.

- *To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.*

Comment:

The proposed areas of landscaping in the front and eastern area of the site will be retained. The large Norfolk Island pine tree will also be retained and assists to mitigate the height, bulk and scale of the proposed works, and thus ensure consistency with this merit consideration.

- *To enhance privacy between buildings.*

Comment:

The existing fence lines and low level landscaping are so as not to obstruct the view lines and assist in mitigating potential privacy impacts. Thus, the proposal contains sufficient landscaped area to ensure that privacy is maintained for the property and the adjacent public land.

- *To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.*

Comment:

The proposal includes changes to the private open space areas at the rear of the property, i.e. a new first floor deck area and associated roofing over the rear deck area. These changes will enhance the outdoor recreational opportunities to better meet the needs of the occupants.

Therefore, appropriate outdoor recreational opportunities that meet the needs of the occupants are provided by the development.

- *To provide space for service functions, including clothes drying.*

Comment:

The site contains adequate space for service functions, clothes drying and the like to service the domestic needs of the occupants.

- *To facilitate water management, including on-site detention and infiltration of stormwater.*

Comment:

Drainage from the new works will be directed into the approved stormwater drainage system.

The remaining deep soil landscaped open space will be sufficient to cater for infiltration of stormwater.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## D7 Views

During the notification period of this application, three submissions were received from neighbouring property owners, including to the south (171 Ocean Street), the west (173 Ocean Street) and the north (1 Tourmaline Street) of the subject site.

As a result, Council undertook two view loss inspections from each of the following properties:

- 171 Ocean Street, Narrabeen
- 173 Ocean St Narrabeen

The relevant sections of the submissions which relate to view loss read as follows:

### 171 Ocean Street, Narrabeen

*"Our property, which is located immediately to the south of the development site, enjoys significant and substantial ocean views of Narrabeen Beach to the east, northeast and southeast. These views are obtained from both the ground floor and upper levels of our dwelling as well as the rear yard. Whilst it is acknowledged that the direct east view will not be compromised by the proposal there will be view loss to the north east."*

### 173 Ocean St Narrabeen

*"The proposed third storey addition will completely block views to the horizon looking east from my property. This impact will be caused by a non-compliant height. The plans propose a vast curved roof. This curved roof is an architectural design inconsistent with the predominant pitched roof designs of the area. Reference to the plans shows that much of the impact upon view loss is by non-compliant elements:*

- *the ceiling height under the curved roof is 4.35 m; and*
- *that the building an roofline does not comply with the side boundary envelope requirements of the DCP.*

*There has been no proper attempt to design the proposed dwelling to provide view sharing."*

An assessment of the proposal against the view sharing provisions in WDCP 2011 is undertaken below.

### Merit consideration

The development is considered against the underlying Objectives of the Control as follows:

- *To allow for the reasonable sharing of views.*

### Comment:

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, are applied to the proposal.

## 1. Nature of the views affected

*"The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured".*

### Comment to Principle 1:

The views which are subject to be affected from the proposed development are as follows:

- (i) East - sand dunes, beach dune area, surf zone area, ocean, horizon
- (ii) North/East - sand dunes, beach dune area, surf zone area, ocean, horizon, North Narrabeen rock platforms in the intertidal zone.
- (iii) South/East - sand dunes, beach dune area, surf zone area, ocean, horizon, Long Reef rock platforms in the intertidal zone.

The views obtained by 171 and 173 Ocean Street dwelling houses is as follows:

- (i) East - sand dunes, beach dune area, surf zone area, ocean, horizon
- (ii) North/East - sand dunes, beach dune area, surf zone area, ocean, horizon, North Narrabeen rock platforms in the intertidal zone.
- (iii) South/East - sand dunes, beach dune area, surf zone area, ocean, horizon, Long Reef rock platforms in the intertidal zone.

The focal point for both dwellings is generally in an easterly direction and comprises of the ocean and the ocean horizon.

The views from No.171 are unobstructed to the east. To the north-east the views are over the roof of the dwelling on the subject sites with a Norfolk Island pine partly obscuring the ocean and horizon views, and views to the south-east are obstructed by the lower ground floor of the dwelling itself and the neighbouring residential flat building (No.169 Ocean St.).

The views from No.173 to the east are partially obstructed over the roof of the dwelling on the subject sites with a Norfolk Island pine partly obscuring the ocean and horizon views. The views to the north-east are partially obscured by the residential flat building (1 Tourmaline Street) and the existing Norfolk Island pine on the subject site. The views to the south-east are obstructed by the lower ground floor of No.171 Ocean Street and the residential flat building (No.169 Ocean St.).

## 2. What part of the affected property are the views obtained

*"The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic".*

### Comment to Principle 2:

The views from both affected properties are enjoyed over side boundaries.

#### Number 171 Ocean Street

Number 171. Ocean Street was designed to capitalise on the amenity of the coastal reserve and ocean views.

The views enjoyed from No.171 Ocean Street ground floor are principally from the internal living room and outdoor terrace areas over the eastern side boundary to the ocean. The views of the surf zone, ocean and horizon are obtained from a sitting and standing position.

The views from the first floor are principally from the outdoor rear terrace area, the main bedroom, and two bedroom/offices (from all rear windows and doors). These views are obtained over the eastern rear boundary and both the northern and southern side boundaries.

The eastern and south-eastern view is unaffected by the proposal.

The effected view to the north-east, including vegetated sand dunes, beach dune area, surf zone area, ocean views, North Narrabeen rock platform in the inter-tidal area and the ocean horizon are obtained from a sitting and standing position.

#### No.173 Ocean Street

The views enjoyed from No.173 Ocean Street are principally from the first floor balconies, the living and dinning room, kitchen and bedroom. There are no views from the ground floor.

The views are obtained over the eastern side boundary and both the northern front and southern side boundary. The view of the ocean and ocean horizon to the east (from all rear windows and doors) is partially obscured by the roof of the dwelling on the subject site and Norfolk Island pine. These views are obtained from a sitting and standing position.

The views to the north-east and south-east, including the vegetated sand dunes, the beach dune area, surf zone area, ocean and horizon views are obtained from a sitting and standing position.

It is considered that the view opportunities currently afforded to No.173 Ocean Street could be more reasonably shared by increasing specific setbacks of the proposed development.

### **3. Extent of impact**

*“The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating”.*

#### Comment to Principle 3:

The applicant has provided a view loss analysis for the proposal, however no photo montages were provided. There are details within the view analysis which are believed to be inaccurate in their depiction of the view loss, such as the statement that the office on the first floor of No.173 Ocean Street has no existing view and that the proposal has no significant impact on the

adjoining properties views.

However, assessment of the proposal against the View controls in WDCP 2011 has been undertaken and the proposed development does not comply with the built form controls and will encroach into the view corridor for both properties, significantly impacting the area of views available.

#### 171 Ocean Street

Given the design and layout of the home, ocean views are obtained from the majority of the internal and external spaces over the rear boundary of that property. The dwelling house will retain expansive uninterrupted ocean views towards the east.

However, the view lines from the first floor to the north-east, are across a side boundary and will be significantly impacted.

In conjunction with the planning principle, the north-east view loss associated with the proposed development is qualitatively assessed as follows:

- Outdoor Terrace - Moderate to severe
- Master Bedroom - Moderate to severe
- Bedroom/Office 1 - Moderate
- Bedroom/Office 2 - Moderate

#### 173 Ocean Street

Given the design and layout of the home, ocean views are obtained from the majority of the first floor internal and external spaces and are over the side boundary.

All views to the east of the property from a sitting and standing position will be severely affected by the proposal.

In conjunction with the planning principle, the north-east view loss associated with the proposed development is qualitatively assessed as follows:

- Outdoor Terrace 1 and 2 - moderate to severe
- Lounge - minor to moderate
- Dinning - moderate
- Bedroom - moderate to severe

The view impact is ranked as moderate to severe due to the impact on high quality ocean views. In this regard the proposal does not demonstrate a reasonable sharing of views.

#### **4. Reasonableness of the proposal that is causing the impact**

*"The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable."*

#### Comment to Principle 4:

The subject development does not comply with the controls of the WDCP 2011 and in the circumstances it is found that the view loss for the neighbouring properties is unacceptable and warrants the refusal of the application.

These non-compliance, being wall height, side boundary envelope and front boundary setback give rise to unreasonable view impacts.

It is acknowledged that context and siting of the existing dwelling on the subject site, makes views for No.171 and No.173 extremely vulnerable to any form of two storey development. However, it is concluded that the extent of the breaches of the planning controls is excessive and a more skillful and compliant design would vastly improve the outcome.

It is considered that an increase in the front setback, combined with a reduction in the wall height and stepping-in of the side wall (southern and western) would provide the applicant with a similar development potential and amenity but significantly reduce the impact on the view corridors of neighbours. Design change to the roof, such as incorporating a flat roof, would also result in a improvement to the provision of views and without being detrimental to the amenity of the occupants of 2 Tourmaline Street.

Therefore, the proposed first floor addition is considered unreasonable in the circumstances of this application in that the application does not demonstrate a reasonable sharing of views.

- *To encourage innovative design solutions to improve the urban environment.*

#### Comment:

The proposal has a high-set curved arch shaped roof design, with a non-complying front setback, combined with a building envelope encroachment that will result in unnecessary view impacts.

- *To ensure existing canopy trees have priority over views.*

#### Comment:

A large Norfolk Island Pine to be retained as part of the proposal. Conditions could be applied to ensure that impacts from the proposal on the Norfolk Island Pine are acceptable.

Having regard to the above assessment, it is concluded that the proposed development is not consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

## **D8 Privacy**

In a dense urban environment, it is generally accepted that complete privacy is an unrealistic expectation.

Privacy and the potential for overlooking was considered in the assessment of this application in conjunction with multiple site visits.

There are no additional privacy impacts in relation to No. 173 Ocean Street (property to the west) as there are no proposed windows or openings to the western elevation.

There are privacy impacts in relation to No. 171 Ocean Street (property to the south) due to the first floor windows and rear deck area.

The adjoining property to the south has private open space adjoining the length of the subject site and its proposed first floor. The additional windows and rear balcony on the southern elevation of the subject site will have views directly into the private open space of No. 172 Ocean Street.

In summary, the proposal does not incorporate design solutions to minimise privacy impacts on the southern adjoining property. However, conditions could be applied to maintain a satisfactory level of privacy to No. 171 Ocean Street.

Therefore, this issue does not warrant refusal of the application.

## **D9 Building Bulk**

### Merit consideration

The development is considered against the underlying Objectives of the Control as follows:

- *To encourage good design and innovative architecture to improve the urban environment.*

#### Comment:

The planning outcome is not site responsive in that the multiple variations to the built form controls of WDCP 2011 do not relate to any natural constraints of the site (such as slope). Given the substantial scale of these non-compliances, it is considered that they will have a significant impact on the overall height and bulk of the development and will have caused unreasonable amenity impacts, including view loss for adjoining properties.

Therefore, the proposal is inconsistent with this objective.

- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

#### Comment:

The proposal seeks to benefit from a first floor addition that sits over the majority of the ground floor existing building footprint which will have a significant visual impact. The design is not considered to be an appropriate response to the site's location and siting relative to adjoining properties, in that the front setback and envelope will have a significant bearing on the overall height and bulk of the development, such that it will have an unreasonable amenity impact upon surrounding properties.

Additionally, the proposed western facade of the first floor addition lacks any articulation or visual interest and is a blank 3.m high, 10.5m wide wall with no openings, stepping, change of material which is considered to be a poor design outcome and contributes to excessive visual impact when viewed from adjoining properties.

The encroachment of the side boundary envelope on the southern side runs for the entire length of the building, being 17.0m. Whilst an attempt to break up the southern facade has been made

with windows and a step in of 1.0m, the encroachment will create an unreasonable impact on the amenity of the southern adjoining property due to the excessive visual bulk.

Therefore, the proposed addition will appear overbearing and visually dominant and the design does not provide sufficient articulation.

Therefore, the proposal is inconsistent with this objective.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

## **D11 Roofs**

### Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To encourage innovative design solutions to improve the urban environment.*

#### Comment:

The existing dwelling house has a low-style flat roof. The proposal, which provides an arc shaped curved roof design, is not considered to be an innovative design solution due to the impact this style of roof has on the overall height and bulk of the development and the unreasonable amenity impacts on the southern adjoining property. This roof design also impacts on the extent of the view loss for adjoining properties and will result in loss of significant views.

It is considered that an alternate roof designs would achieve compliance with the height control and have a significantly lesser impact by virtue of privacy, amenity, views and visual impact.

Therefore, proposal is inconsistent with this objective.

- *Roofs are to be designed to complement the local skyline.*

#### Comment:

The proposed roof design is generally consistent with the existing roof lines. However, due to the unreasonable amenity impacts upon adjoining properties the proposed roof design is unsatisfactory.

Therefore, proposal is inconsistent with this objective.

- *Roofs are to be designed to conceal plant and equipment.*

#### Comment:

This objective relevant to the proposal.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the

Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

### **D12 Glare and Reflection**

The proposed curved roof is to have a colour of 'Natural White'.

This light colour will create unnecessary glare and sunlight reflectivity, and will significantly impact the amenity of the surrounding private properties.

Therefore, the proposal is inconsistent with objectives.

However, conditions could be applied to require the proposed colour of the roof to have a medium to dark range (BCA classification M and D) to maintain a satisfactory solar reflection to the neighbouring properties.

Consequently, as a condition would ensure that excessive glare or reflectivity nuisance does not occur as a result of the development it does not warrant the refusal of the application.

### **E4 Wildlife Corridors**

The development application does not seek the modification or removal of any native vegetation and thereby, complies with the requirements of E4.

### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

The proposal will not significantly effect threatened species, populations or ecological communities, or their habitats.

### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

The proposal is inconsistent with the principles of Crime Prevention Through Environmental Design.

### **CONCLUSION**

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

This report provides a comprehensive assessment of the Development Application for the alterations and additions to 2 Tourmaline Street, Narrabeen.

#### Public Exhibition

The public exhibition of the application resulted in three (3) response from neighbouring residents. Those objecting to the proposal raised concerns in relation to the building height and consequent visual impacts of the development, building bulk, privacy, overshadowing and the view loss that would be generated by the development.

The issues raised in the submissions have been addressed in the “Public Exhibition & Submissions Received’ section” in this report.

#### Referrals

The application was referred to internal departments and external authorities.

External: there was no response from Ausgrid within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

Internal: Council’s Landscape officer raised fundamental concerns with the proposal and its impact on the sites existing Norfolk Island pine. Council’s Natural Environment and climate change sections (Bushland and Coast and Catchment) has indicated that the proposal is acceptable subject to specific conditions.

#### Assessment of the Development Application

The works sought as a part of this application include a first floor addition siting across the majority of the ground floor existing building footprint.

The assessment of the proposed development against the provisions of WLEP 2011 found that the proposal does not comply with the ‘Height of Buildings’ Development Standard under the WLEP 2011 which permits a maximum building height of 8.5m within the R2 – Low Density Residential zone.

Whilst the building height variation is minor and confined to the rear section of the roofline over the first floor deck area, when combined with the variations to the front setback, wall height, and side boundary envelope it creates unreasonable building bulk and moderate to severe view loss. Hence, the proposal significantly affects the amenity of the adjacent properties and is unreasonable within its context. Furthermore, the applicant has not provided sufficient justification for the substantial departure from the Development Standard.

In addition, the assessment of the proposed development against the provisions WDCP 2011 found that the proposal is not consistent with a number of clauses, i.e wall height, side boundary envelope and front boundary setback. Given the substantial scale of these non-compliances it is considered that they will have unreasonable amenity impacts, including moderate to severe view loss for adjoining properties.

Council’s Landscape Officer concluded that there is insufficient information submitted with the application as ascertain the likely impact of the proposed development on the sites Norfolk Island

pine.

#### Recommendation - Refusal

In summary, the proposal should be refused as the design is unreasonable for the site by virtue of the level of non-compliance that creates unreasonable amenity impacts and moderate to severe view loss to the adjoining properties.

It is considered that all processes and assessments have been satisfactorily addressed and that proposed development does not constitute the proper and orderly planning for the site or the locality. It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

### **RECOMMENDATION**

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2018/1290 for the Alterations and additions to an existing dwelling house on land at Lot B DP 377414,2 Tourmaline Street, NARRABEEN, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.3 Height of Buildings of the Warringah Local Environmental Plan 2011.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to Development Standards of the Warringah Local Environmental Plan 2011.
3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B3 Side Boundary Envelope of the Warringah Development Control Plan 2011.
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B7 Front Boundary Setbacks of the Warringah Development Control Plan.
5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D7 Views of the Warringah Development Control Plan.
6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D9 Building Bulk of the Warringah Development Control Plan.
7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D11 Roofs of the Warringah Development Control Plan.