

# Application Pursuant to Clause 4.15 of the EP and A Act Statement of Environmental Effects

## Use of Unauthorised Works associated with the existing dwelling



Client:	Rowena Brookes
Project:	34A Cumberland Avenue Collaroy
Project No:	0017-2023
Date:	January 2024
Project	Section 4.15 Application
Contact:	Mitchell Drake

## **1. EXECUTIVE SUMMARY**

### **1.1. Introduction**

This Statement of Environmental Effects (SEE) is to accompany the plans lodged as part of the application under Section 4.15 of The EP and Act 1979, pertaining to Councils correspondence relating to unauthorised works at the subject site. The letter issued by Northern Beaches Council was for the investigation of alterations and additions to an existing dwelling at 34A Cumberland Avenue Collaroy.

This statement addresses the relevant elements of Section 4.15 Evaluation of the Environmental Planning and Assessment Act 1979, together with relevant State Environmental Planning Policies and Regional Environmental Plans, The Regulations and local plans and policies.

### **1.2. Legislative Requirements**

The site is located in the Warringah Local Government Area (LGA) within the R2 Low Density Residential Zone. The following state and local legislative controls are relevant to the proposal:

- State Environmental Planning Policy Resilience and Hazards 2021
- State Environmental Planning Policy – BASIX
- State Environmental Planning Policy –Transport and Infrastructure 2021
- Warringah Local Environmental Plan 2011

### **1.3. Non-Legislative Requirements**

The following non-Legislative control is applicable to the development:

- Warringah Development Control Plan

### **1.4. Conclusion**

It is our professional opinion that the works allow the approval to remain consistent with the relevant controls, their underlying objectives, together with the plans and policies at both local and state levels. The proposal offers a high-quality, flexible, contemporary, residential outcome. The upgraded dwelling will provide for and contribute to the housing diversity in this residential precinct comprised of a varied and eclectic mix of dwelling types.

We recommend the works for your approval, subject to conditions of consent.

## 2. SITE SUMMARY

Address of Site:	34A Cumberland Avenue Collaroy.
Local Government:	Northern Beaches Council.
Local Environmental Plan:	Warringah L.E.P. 2011.
Development Control Plan:	Warringah D.C.P.
Zone:	R2 Low Density Residential.
Brief Description / Purpose of Proposal:	Use of a Dwelling House

## 3. SITE DESCRIPTION

The site is legally known as Lot 51 DP 867062 and is commonly referred to as 34A Cumberland Avenue Collaroy. The site is a battle-axe allotment located on the western side of Cumberland Avenue, has an area of 391.8m<sup>2</sup>. (Refer to Figure 1)

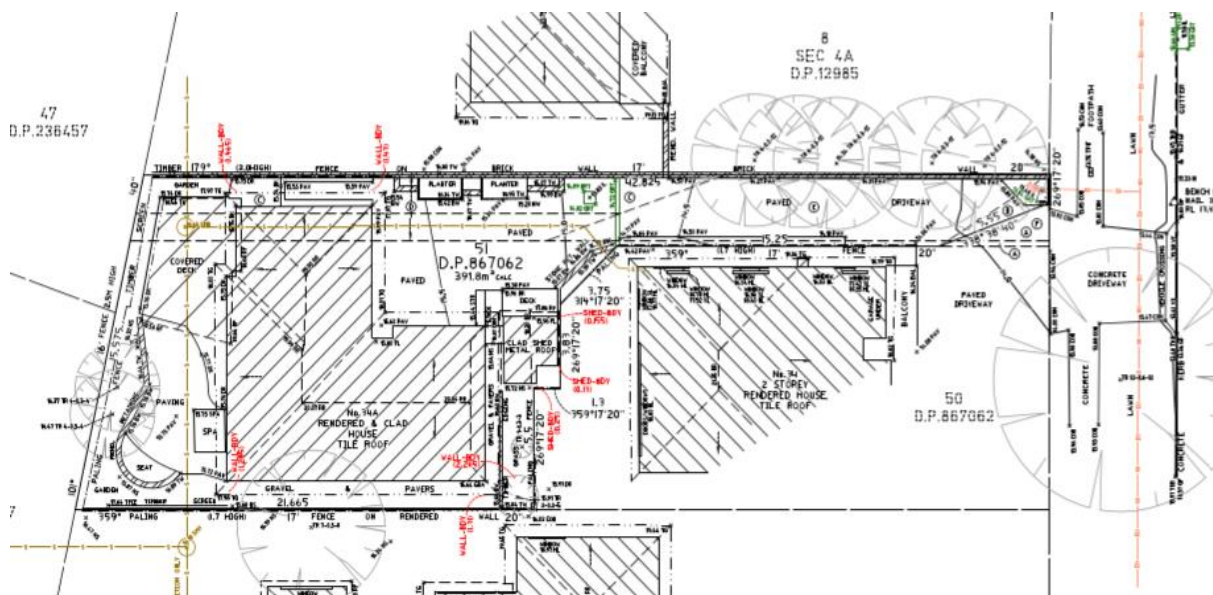


Figure 1: Site Survey

Source: CMS Surveyors

The allotment is generally level and gently slopes down towards the east. Existing development includes a single storey dwelling with an attached garage accessed via the right of carriageway on the northern boundary of No. 34 and 34A Cumberland Avenue and outbuilding in the rear yard. (Refer to Figures 2 and 3 overleaf) The development on-site is well kept, modern and of contemporary design.

The surrounding development consists of detached residential dwellings with associated landscaping and parking in a well-established residential locale. The area enjoys close proximity to public transport on Pittwater Road to the east and further public open spaces and infrastructure.



Figure 2: Subject Site

Source: Real Estate.com



Figure 3: Subject Site Access

Source: MHD Planning

#### **4. RELEVANT SITE HISTORY**

The allotment was subject to an investigation by Council officers (BLD2023/01938) for unauthorised alterations and additions to an existing dwelling dated 30 October 2023. It is noted that at the time of the preparation of this document Council has not issued a Notice of Intention pursuant to Section 132 of The Local Government Act 1993.

It is also noted that the current owner has not undertaken any works, save a garden bed which is exempt development under State Environmental Planning Policy Exempt and complying development codes, since purchase some 4-5 years ago. A current 10.7(5) Certificate was provided at time of sale.

## **5. APPLICATION FOR USE**

The applicant seeks approval to legalise the use of the existing development, no building works are proposed as part of this application as Section 4.3.(b) does not allow for Section 4.15 of The Environmental Planning and Assessment 1979 to grant retrospective approval.

The physical works will be the subject of a Building Information Certificate to be lodged with Council, pursuant to Part 6 of the Environmental Planning and Assessment Act 1979 pending the determination and Conditions of any approval relating to this application.

## **6. THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979**

### **6.1. Section 4.15(1) Evaluation Assessment**

#### **6.1.1. Environmental Planning Instruments**

##### **State Environmental Planning Policy Resilience and Hazards 2021**

#### **CHAPTER 4 REMEDIATION OF LAND**

The State Environmental Planning Policy requires consideration whether land is contaminated. A review of council records and an inspection of site attributes indicates that the site has been utilised for residential purposes for a significant period.

In this regard, the works have not resulted in risks being posed in terms of contamination of land and thus no further consideration is required under the provisions of the SEPP. No evidence of contamination was indicated during the initial application assessment. The land remains suitable for the continuation of the residential land use, consistent with the original consent.

##### **State Environmental Planning Policy – BASIX**

A BASIX certificate is not required as the works do not exceed the numerical threshold. No further investigation is required.

##### **State Environmental Planning Policy –Transport and Infrastructure 2021**

#### **CHAPTER 2 INFRASTRUCTURE**

##### **2.48 Determination of development applications: other development**

(1) This section applies to a development application (or an application for additions of a consent) for development comprising or involving any of the following;

(a) The penetration of ground within 2m of an underground electricity power line or an electricity distribution pole or within 10m of any part of an electricity tower,

(b) Development carried out;

- (i) Within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists), or
- (ii) Immediately adjacent to an electricity substation, or
- (iii) Within 5m of an exposed overhead electricity power line,
- (c) Installation of a swimming pool any part of which is;
  - (i) Within 30m of a structure supporting an overhead electricity transmission line, measured horizontally from the top of the pool to the bottom of the structure at ground level, or
  - (ii) Within 5m of an overhead electricity power line, measured vertically upwards from the top of the pool,
- (d) Development involving or requiring the placement of power lines underground, unless an agreement with respect to the placement underground of power lines is in force between the electricity supply authority and the council for the land concerned.

Comment:

The proposed additions are not caught by the provisions of this policy and thus, a referral to Ausgrid is not required to be undertaken by the consent authority. No further investigation is required in this regard.

**Warringah Local Environmental Plan 2011**

**PART 1 - PRELIMINARY**

The proposal is subject to the provisions of the Warringah Local Environmental Plan 2011. The proposals response to the relevant objectives of the Plan remain as follows:

Clause 1.2 Aims of the Plan

The particular aims of this Plan remain responded to as follows:

Aim	Response
To maintain and enhance the existing amenity and quality of life of the local community by providing for a balance of development that caters for the housing, employment, entertainment, cultural, welfare and recreational needs of residents and visitors,	CONSISTENT
In relation to residential development, to:	
<ul style="list-style-type: none"> <li>• protect and enhance the residential use and amenity of existing residential environments, and</li> </ul>	CONSISTENT
<ul style="list-style-type: none"> <li>• promote development that is compatible with neighbouring development in terms of bulk, scale and appearance, and</li> </ul>	CONSISTENT
<ul style="list-style-type: none"> <li>• increase the availability and variety of dwellings to enable population growth without having adverse effects on the character and amenity of Warringah,</li> </ul>	CONSISTENT

In relation to environmental quality, to:	
<ul style="list-style-type: none"> <li>• Achieve development outcomes of quality urban design, and</li> </ul>	CONSISTENT
<ul style="list-style-type: none"> <li>• Encourage development that demonstrates efficient and sustainable use of energy and resources, and</li> </ul>	CONSISTENT
<ul style="list-style-type: none"> <li>• Achieve land use relationships that promote the efficient use of infrastructure, and</li> </ul>	CONSISTENT
<ul style="list-style-type: none"> <li>• Ensure that development does not have an adverse effect on streetscapes and vistas, public places, areas visible from navigable waters or the natural environment, and</li> </ul>	CONSISTENT
<ul style="list-style-type: none"> <li>• Protect, conserve and manage biodiversity and the natural environment, and</li> </ul>	CONSISTENT
<ul style="list-style-type: none"> <li>• Manage environmental constraints to development including acid sulphate soils, land slip risk, flood and tidal inundation, coastal erosion and biodiversity,</li> </ul>	CONSISTENT

## PART 2 – PERMITTED OR PROHIBITED DEVELOPMENT

The Warringah L.E.P.2011 identifies the land use remaining as a:

- ***Dwelling house***: means a building containing only one dwelling.

**NOTE.** ***Dwelling houses*** are a type of residential accommodation.

The L.E.P lists the land use as:

- ***Dwelling houses*** are permissible with development consent.

### Relevant Objectives of zone

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

The dwelling configuration together with the internal upgrades enables the dwelling to continue to contribute to the locale and its function of meeting the housing needs of the community within this low density residential environment.

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

The dwelling does not impact upon the existing dwellings in the surrounds, is sympathetic in its built form response to the scenic, aesthetic and landscape settings of the locality. The proposal remains consistent with this objective of the zone. It is also noted that there are no building works proposed as part of this application. Notwithstanding, it is pertinent to visit the LEP controls.

PART 4 - BUILT FORM CONTROLS (LEP)				
Control	Required	Existing	Comment	Complies
Minimum Site Area	600m <sup>2</sup>	391.8m <sup>2</sup>	No Change	As Existing
Building Height	8.5m	4.2m	No Change	YES

### 6.1.2. Proposed (Draft) Environmental Planning Instruments

There are no Draft Environmental Planning Instruments being formulated at strategic level or on exhibition at the time of preparing this report. Therefore there are no draft controls relating to the proposal.

No further investigation is required in this regard.

### 6.1.3. Development Control Plans

#### 6.1.3.1. Warringah Development Control Plan

DEVELOPMENT CONTROL TABLE (DCP)				
Control	Required	Existing	Comment	Complies
Wall Height	7.2m	3.13m	No Change	YES
Front Setback	Not applicable	Battle-axe allotment	No Change	N/A
Side Setback East	0.9m	0.15m	No Change	As Existing
Side Setback North	0.9m	1.4m	No Change	YES
Side Setback South	0.9m	1.28m	No Change	YES
Side Envelope East	4m @ 45°	No Change	No Change	YES
Side Envelope North	4m @ 45°	No Change	No Change	YES
Side Envelope South	4m @ 45°	No Change	No Change	YES
Rear Setback	6m	16.33m	No Change	YES
Landscaping	40%	18.1%	No Change	As Existing
Parking	2 spaces	2 spaces (Stack configuration)	No Change	YES

#### East Side Boundary Setback Variation

The existing elements of the dwelling are required to provide a 0.9m setback to the eastern boundary as the front setback provisions do not apply. the proposal is successful in providing ample opportunities for landscaping and does not result, by virtue of the 2.07m wall height adjacent to the timber privacy screens on this boundary, not becoming visually dominant. Thus the scale and bulk of buildings is minimised.

The shed provides adequate separation between buildings to ensure a reasonable level of amenity and solar access, and, there are no sharing of views to and from public and private properties, that will be impacted upon.

## **6.2. Additional Considerations**

### Visual Privacy

The proposal does not result in overlooking of adjoining private open spaces by virtue of area locations and the overall regular pattern of the built form and location. The visual privacy is maintained to what would be considered a reasonable level in this well-established residential locale.

### Acoustic Privacy

The proposal does not include a change of use or intensification of the existing permissible use being a dwelling. Any resultant noise from the site as a result of the proposal will be commensurate with that of the existing dwelling and a residential use. No further investigation is required in this regard.

## **6.3. Planning Agreements**

There are currently no Draft Planning Agreements or Planning Agreements applicable to the development. No further investigation is required in this regard.

## **6.4. The Regulations**

### **6.4.1. Clause 36 and 91**

Were Council to require additional information, consideration must be given to the number of days taken in this assessment in light of this clause within the Regulation. No additional information has been requested at the time of writing of the statement.

### **6.4.2. Clause 62**

The consent authority is to consider the upgrading of a building (including fire safety upgrade of development). This matter may be addressed via a condition of consent.

### **6.4.3. Clause 69**

The consent authority is to consider AS 2601 – 1991: The Demolition of Structures. This matter may be addressed via a condition of consent.

## **6.5. Site Suitability**

### **6.5.1. Environmental**

Australia's National Strategy for Ecologically Sustainable Development (1992) defines ecologically sustainable development as:

*"using, conserving and enhancing the community's resources so that ecological processes, on which life depends, are maintained, and the total quality of life, now and in the future, can be increased."*

In referring to the above definition, the communities' resource in this case is the allotment on which the development is currently located. The ecological process is the functionality of the site and its management of stormwater, drainage and the use of other natural resources available to the site. Processes also refers to the use of electricity gas water and other infrastructure based services together with the actual use of the land and the building footprint occupying the parcel.

Whilst it is accepted that any change to the sites functionality with regards to integrated ESD principles is minor, it is noted that planning best practice will pursue a more economical land use and an intent to maximise the sites use as a residential/commercial resource whilst minimising the carbon footprint, (that is use of resources both infrastructure driven and site driven).

The increased usability of the site and the changes to the built form to enable a more economical use of the land and existing infrastructure is directly and clearly consistent with the intent of utilising the site to its maximum potential. The works, whilst reducing the ecological footprint and resource expenditure, make provision for increased site utilisation and thus, a consistency with the fundamental principles of ESD. Therefore, the proposal is consistent with this aim of the plan.

The assessment of the proposal has shown that any environmental impacts resulting from the works will be negligible. Regard is shown for the natural environment in terms of on-site management of stormwater and drainage, with appropriate measures incorporated into the overall design that operate in concert with the landscaping provided by the site layout.

The built environment will be enhanced by the upgraded site allowing for the more economical use of the available resource, without impacting or dominating the area in terms of built form. The proposal satisfies the requirements of both the natural and built environments.

#### 6.5.2. Social

The proposal adds to housing diversity, allowing for a more diverse accommodation typology within the appropriate R2 Low Density Residential Zone. This allows a more diverse population cross section to “settle and stay” within the LGA. The increased choice of housing in this area provided by the proposal increases the longevity of the site whilst allowing residents an upgraded modern alternative.

The dwelling will continue to utilise local services available to the occupants of dwellings in terms of housing. The proposal adds to the available housing stock within the area and provides opportunities for more varied dwelling choice. The proposal will allow the occupants to “age in place” and remain in occupation. The proposal is consistent with the social requirements in these regards.

#### 6.5.3. Economic

The provision of appropriately serviced housing opportunities within this appropriately zoned locality, contributes to the easing of housing affordability pressure on potential homeowners whilst showing regard for the requirements of this R2 Zone.

Maintaining resident numbers in this appropriate zone will add to the economic stability of the area by allowing for residents to live in a locality that is gentrified and economically vibrant. The site is in close proximity to local services and within reasonable distance to local business and upgraded infrastructure. All of these entities will benefit from the employment and economic input provided by the future residents.

### 6.6. Submissions

There are no submissions relating to the proposal from the community at this stage of the proposal process. No further investigation is required in this regard.

### 6.7. The Public Interest

The public interest is serviced by the accommodating of an upgraded dwelling in a manner that adds to housing stock and site longevity. The dwelling remains consistent with other dwellings in the street and remains consistent with the streetscape character and built form as existing. The proposal is clearly within the public interest

## **7. CONCLUSIONS AND RECOMMENDATIONS**

The project, located within suburban Collaroy, offers a high-quality, flexible, contemporary, residential outcome which provides for and contributes to the housing diversity in this residential precinct comprised of a varied and eclectic mix of types of dwellings.

The proposal has demonstrated consistency with the underlying objectives of the controls and general compliance with the numerical standards contained within both State and Local policies and plans. The proposal shows regard for Section 4.15 of the Act, shows regard for all heads of consideration including site suitability, economic, social and environmental impacts and the public interest.

MHD Planning and Development

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