

STATEMENT OF ENVIRONMENTAL EFFECTS

**FOR THE CONSTRUCTION OF A NEW SEMI-DETACHED DWELLING INCLUDING
THE RETENTION OF SUBSTANTIAL PORTIONS OF THE EXISTING
SEMI-DETACHED DWELLING**

LOCATED AT

22 CARLTON STREET, FRESHWATER

FOR

JEREMY & ALEX FYFE



**Prepared
February 2020**

TABLE OF CONTENTS

1.0	Introduction	3
2.0	Property Description	3
3.0	Site Description	3
4.0	The Surrounding Environment.....	7
5.0	Proposed Development	8
6.0	Zoning and Development Controls	10
6.1	State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	10
6.2	State Environmental Planning Policy No. 55 – Remediation of Land	10
6.3	State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017.....	10
6.4	Warringah Local Environmental Plan 2011	10
6.5	Warringah Development Control Plan	18
7.0	Matters for Consideration under Section 4.15 of The Environmental Planning and Assessment Act, 1979 ..	31
7.1	The provisions of any environmental planning instrument	31
7.2	Any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and	31
7.3	Any development control plan.....	31
7.4	Any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F	32
7.5	The regulations (to the extent that they prescribe matters for the purposes of this paragraph),	32
7.6	The likely impacts of that development, including environmental impacts on both the natural and built environments, and the social and economic impacts in the locality.	32
7.7	The suitability of the site for the development.....	32
7.8	Any submissions made in accordance with this Act or the regulations	33
7.9	The public interest.....	33
8.0	Conclusion.....	33

1.0 Introduction

This Statement of Environmental Effects accompanies architectural plans prepared on behalf of Jeremy & Alex Fyfe by Action Plans, Drawings No. DA00 – DA14, dated 11 March 2020, detailing the construction of a new semi-detached dwelling which includes the retention of substantial portions of the existing semi-detached dwelling at **22 Carlton Street, Freshwater**.

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

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

- *The Environmental Planning and Assessment Act, 1979 as amended*
- *The Environmental Planning and Assessment Regulation 2000*
- *State Environmental Planning Policy No. 55 – Remediation of Land*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *Warringah Local Environmental Plan 2011*
- *Warringah Development Control Plan*

2.0 Property Description

The subject allotment is described as 22 Carlton Street, Freshwater, being Lot 2 within Deposited Plan 235732 and is zoned R2 Low Density Residential within the provisions of the Warringah Local Environmental Plan 2011.

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

The land is noted as being Landslip Area B, and a Preliminary Geotechnical Assessment has been prepared by Ascent Geotechnical Consulting, Reference No. AG 20021, dated 6 February 2020. This matter will be discussed further within this report.

No other hazards have been identified.

3.0 Site Description

The property is located on the western side of Carlton Street, with a gentle fall towards the rear, western boundary. The site has a total fall of 3.1m over its length.

The site is generally rectangular in shape, with a primary street frontage of 6.515m to Carlton Street, northern and southern side boundaries of 37.41m and 37.415m respectively and a rear boundary of 6.33m. The land has a total site area of 234m².

Stormwater from the existing dwelling is dispersed within the rear yard in conformity with the current arrangements.

The site is currently developed with a single storey semi-detached brick dwelling with a tile roof. Vehicular access is currently available to the site via a concrete driveway from Carlton Street, with parking provided in an attached carport forward of the dwelling.

The details of the site are as indicated on the survey plan prepared by C&A Surveyors NSW Pty Ltd, Reference No. 11241-19 DET, dated 2 May 2019, which accompanies the DA submission.

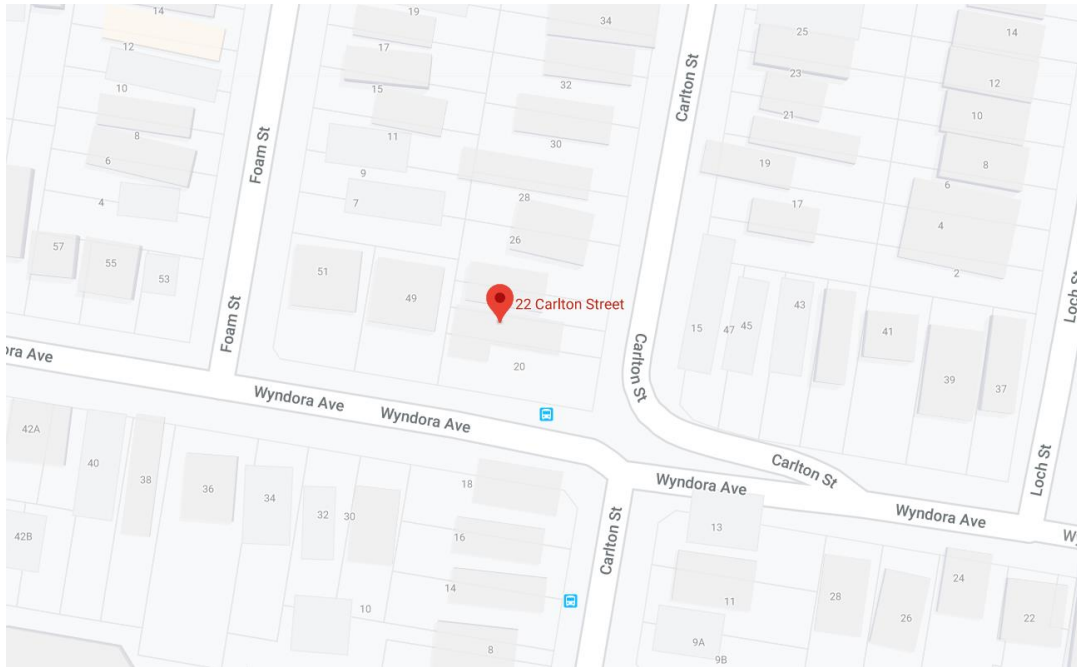


Fig 1: Location of Subject Site
(Source: Google Maps)



Fig 2: View of subject semi-detached dwelling (LHS of group), looking west from Carlton Street



Fig 3: View of subject semi-detached dwelling (LHS of group) and its existing single carport, looking west from Carlton Street



Fig 4: Streetscape view of subject site (RHS of view) and neighbouring dwelling at No 20 Carlton Street, looking west



Fig 5: Streetscape view of development to the north of the site, looking north-west

4.0 The Surrounding Environment

The general vicinity of the site is characterised by a mix of detached and semi-detached dwellings and associated ancillary structures such as parking structures and swimming pools.

The site immediately to the north comprises the adjoining semi-detached dwelling, which forms the subject pair of semi-detached dwellings. The neighbouring lot to the south is developed with a two storey dwelling.

Properties in the area enjoy district views of Freshwater, and views towards Freshwater Beach to the south-west.

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

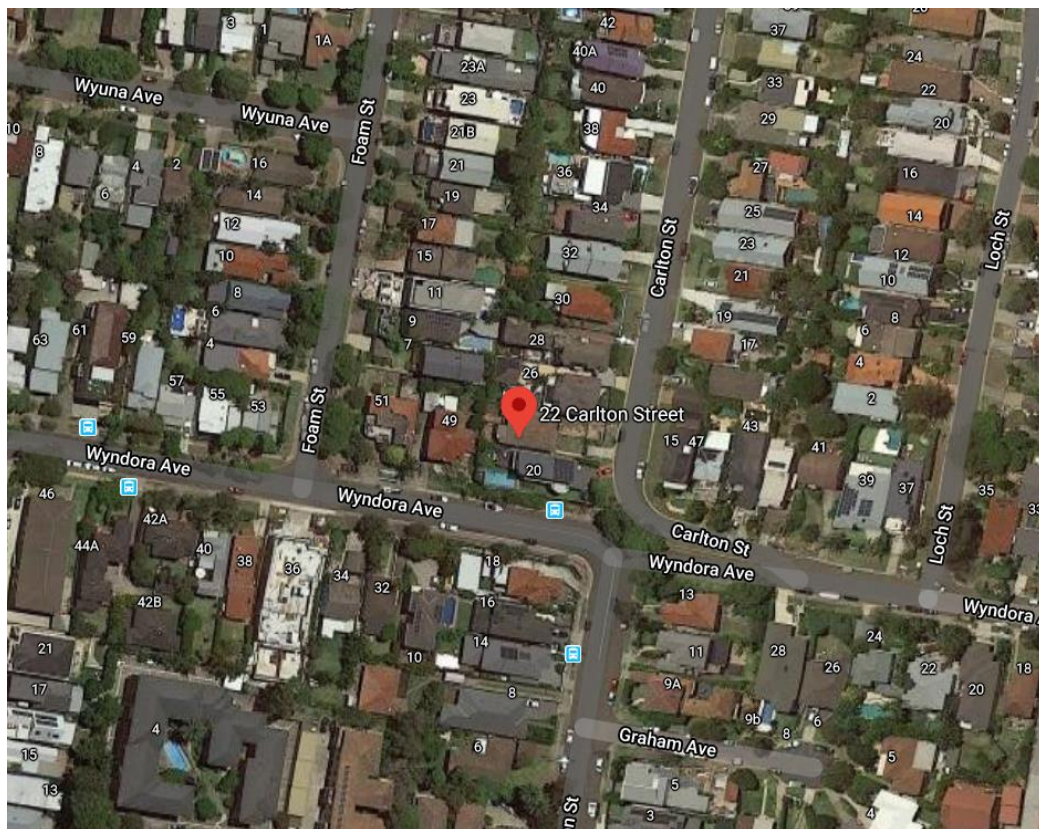


Fig 6: Aerial view of locality
(Source: Google Maps)

5.0 Proposed Development

The proposal development has been assessed against the Land & Environment Court's Planning Principle *Coorey v Municipality of Hunters Hill [2013]* as to whether the extent of demolition constitutes alterations and additions or a new dwelling.

As detailed within the accompanying plans, the proposal seeks to provide for proposed demolition of portions of the existing single storey dwelling, including the roof and elements of the external walls, with modifications to wall and door openings. The existing common wall, the majority of the existing floor and footing structures and portions of the ground floor walls will be retained and incorporated in the new design.

When assessed against the *Coorey Principle*, it is considered that notwithstanding significant elements of the existing dwelling are to be retained, the external appearance and form of the new semi-detached dwelling will be altered and for abundant caution, the development is best described as a "*New semi-detached dwelling which includes the retention of significant portions of the existing semi-detached dwelling*".

It is also noted that an application for works with a similar external form and scale is being prepared for the adjacent semi-detached dwelling at No 24 Carlton Street, which will allow for a harmonious and cohesive development for each dwelling in the group and provide increased amenity and floor area for each dwelling in the group.

The proposed works will comprise:

Ground Floor

- Alterations and additions to existing ground floor level to provide for new entry, open plan living, dining and kitchen with pantry, WC, laundry and rear deck
- Internal access stairs to a proposed new upper level

First Floor

- New first floor level to provide for three bedrooms including master bedroom with walk-in robe, WC, walk-in robe and balcony, bathroom and rumpus

External Works

- Remediation and extension of existing single carport including new bin storage
- New landscaping within front and rear yards

The external finishes of the new works will be constructed of vertical timber cladding with metal roofing, with the proposed colours and finishes to complement the existing development on site.

The proposal results in the following development indices:

Site Area	234m ²
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Required Landscaped Area:	40% or 93.6m ²
Existing Landscaped Area:	25% or 57.66m ²
Proposed Landscaped Area:	28% or 66.09m ² (see WDCP Part D1 discussion)

6.0 Zoning and Development Controls

6.1 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

The proposal is accompanied by a BASIX Certificate which confirms that the works meets water, thermal and energy standards required by BASIX.

6.2 State Environmental Planning Policy No. 55 – Remediation of Land

SEPP 55 – Remediation of Land and in particular Clause 7(1)(a) suggests that a consent authority must not grant consent to the carrying out of any development on land unless it has considered whether the land is contaminated.

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

6.3 Warringah Local Environmental Plan 2011

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

Development for the purposes of a dwelling house is permissible in this zone under the WLEP 2011.

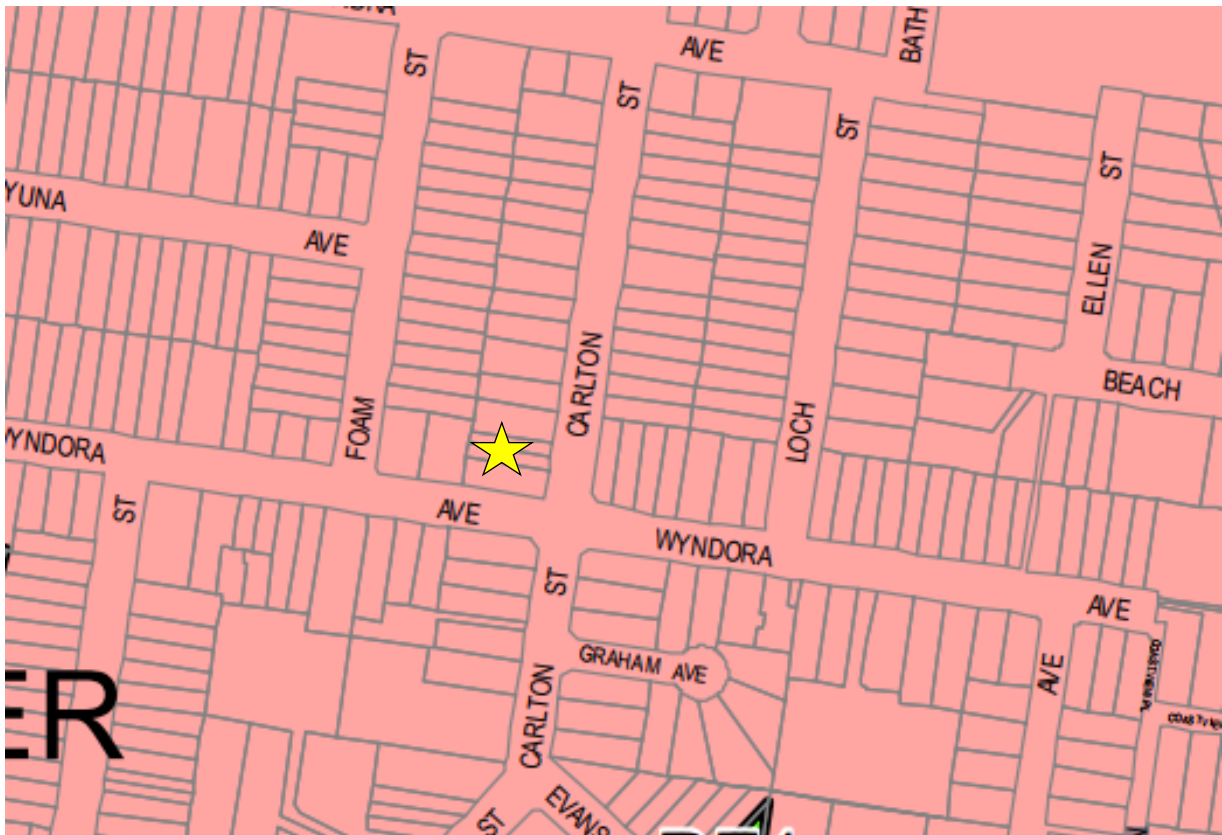


Fig 7: Extract of Warringah Local Environmental Plan 2011

The proposed development as a semi-detached dwelling is defined in the Dictionary to the WLEP 2011 as:

semi-detached dwelling means a dwelling that is on its own lot of land and is attached to only one other dwelling.

The proposed new semi-detached dwelling including the retention of substantial portion of the existing dwelling on the subject site is not permissible use under the R2 Residential zone.

The proposal however is able to be considered by Council under the existing use rights regulated within Section 4.65 and Section 4.66 of the Environmental Planning and Assessment Act 1979 ("the EP & A Act") and Clauses 40-43 of the Environmental Planning and Assessment Regulation 2000 ("the Regulation").

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

- (a) The use of a building, work or land for a lawful purpose immediately before becoming into force of an Environmental Planning Instrument which would, but for division 4 of this part, have the effect of prohibiting that use, and;*
- (b) The use for building, work or land;*
 - (i) For which Development Consent was granted before the commencement of the provision of an Environmental Planning Instrument having the effect of prohibiting the use, and*
 - (ii) That has been carried out, within 1 year after the date on which that provision commenced in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the Development Consent would not lapse.*

Establishment of Existing Use Rights

The investigation of the history of the development of the subject site notes that photographic information (See Figure 8 over) confirms that the subject building was in existence as early as 1943, with the general form and external appearance of the current building being representative of a semi-detached residential dwelling of the interwar era and it is largely in an intact form.

These types of semi-detached dwelling building stock are not uncommon in this portion of Freshwater.

The existing single carport was approved by Warringah Council under approval number C146/76 dated 1 March 1976. Details of this previous approval are provided with the DA submission.

The use of the subject site for a semi-detached dwelling became prohibited in December 2011 through the gazettal of the Warringah Local Environmental Plan 2011, which zoned the subject site as R2 Low Density Residential, which prohibits the use of the site for semi-detached dwellings.

This current use has continued, unabandoned, until the present day and in accordance with the provisions of Section 4.65 of the EPA Act, the current use is considered to meet the requirements to benefit from the existing rights provisions.

As previously discussed, when assessed against the Land & Environment Court's Principal in *Coorey*, it is considered that notwithstanding significant elements of the existing dwelling are to be retained, the external appearance and form of the new semi-detached dwelling will be altered and for abundant caution, the development is best described as a *"New semi-detached dwelling which includes the retention of significant portions of the existing semi-detached dwelling"*.

It is my opinion that while the works will see an extent of demolition and change to the external form which would constitute the proper description of the work as a "new semi-detached dwelling", the fundamental use of the site as a semi-detached dwelling for residential purposes is not relinquished or abandoned and the development is entitled to continue to rely on the establishment of "existing use rights" for the building.



Fig 8: Extract of 1943 Aerial Mapping
(Source: SIX Maps)

This proposal for a *new semi-detached dwelling which includes the retention of significant portions of the existing semi-detached dwelling* on the subject site relies upon the provisions of existing use rights regulated under Section 4.65 and Section 4.66 of the Environmental Planning and Assessment Act 1979 ("the EP& A Act") and clauses 40-43 of the Environmental Planning and Assessment Regulation 2000 ("the Regulation").

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

Section 4.65 of EP & A Act -

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

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

4.67 Regulations respecting existing use

(cf previous s 108)

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

The existing semi-detached dwelling building is believed to have been erected over seventy seven years ago and has been continuously used for residential purposes.

The proposal seeks consent for the carrying out of a new semi-detached dwelling which includes the retention of significant portions of the existing semi-detached dwelling which is consistent with Section 4.67 of the Act.

The following clauses of the Environmental Planning & Assessment Regulations is applicable to the proposed works to the existing residential building.

Clause 41(1) states that:

- 41 (1)** *An existing use may, subject to this division:*
- (a) be enlarged, expanded or intensified, or*
 - (b) be altered or extended, or*
 - (c) be rebuilt, or*
 - (d) be changed to another use, including a use that would otherwise be prohibited under the Act.*

Clause 42 notes that Development Consent is required for the enlargement, expansion or extension of an existing use.

Clause 42 of the Regulation states:-

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

Clause 43 of the Regulation states:-

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

Clause 44 of the Regulation states:-

- 44 (1)** *Development consent is required for any rebuilding of a building or work used for an existing use.*
- (2)** *The rebuilding:*
- (a) must be for the existing use of the building or work and for no other*

- use, and*
(b) *must be carried out only on the land on which the building or work was erected or carried out immediately before the relevant date.*

The utilisation of the existing use rights provisions of the Act are necessary in this instance due to the non-compliance of the existing semi-detached dwelling with the R2 Low Density zone, which prohibits semi-detached dwellings.

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

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

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

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

The subject site is zoned R2 Low Density Residential, which permits uses such as dwelling houses, which together with a number of existing residential flat buildings form the local character of the immediate vicinity.

Whilst the R2 Low Density Residential zone does not permit semi-detached dwellings, it does not accurately reflect the existing and past residential use of the land.

The Warringah LEP 2011 and the supporting Warringah Development Control Plan contain provisions restricting bulk and scale for buildings in this locality, by restricting the overall height of a building to a maximum of 8.5m. The new works will observe Council's maximum height control.

The proposed new works to the existing semi-detached dwelling will see a resultant height and scale that is compatible with the overall height and general bulk and scale of the surrounding single dwelling development.

The new works will largely maintain the existing generous setbacks to the front boundary and a compatible rear boundary setback and is considered to retain the existing complementary relationship when compared to the scale of the surrounding development.

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

Commissioner Roseth provided in his judgement:

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

It is noted that the proposal seeks to carry out building alterations including the addition of a new first floor level, including the replacement of an existing carport. In conjunction with the anticipated new works to be carried out at No 24 Carlton Street, the overall bulk and scale and height of the new building will be compatible with its neighbours.

The surrounding properties include a mix of duplex development and similar 1-2 storey residential buildings and in this regard, the proposal is consistent with the housing density of the immediate area.

What are the impacts on adjoining land?

The proposal seeks to provide for a new semi-detached dwelling which includes the retention of substantial portions of the existing dwelling, which are residential in their scale and form. The height and general form of the building will be compatible with the surrounding properties and will not unreasonably affect the views and outlook for the surrounding properties.

The proposed new window and door replacement works will not introduce unreasonable or adverse impacts for the privacy enjoyed by the surrounding properties.

What is the internal amenity?

The proposal will see enhanced internal amenity for the existing dwelling, with the current solar access and natural light to be maintained.

The proposal will allow for perimeter landscape screening to be provided enhancing privacy.

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

The development of and use of the land for residential purposes is consistent with the R2 Low Density zone objectives, which are noted as:

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

It is considered that the proposed new semi-detached dwelling will be consistent with the desired future character of the surrounding locality for the following reasons:

- The proposal will be consistent with and complement the existing varied residential development within the locality.
- The proposed development respects the scale and form of other new development in the vicinity and therefore compliments the locality.
- The setbacks are compatible with the existing surrounding development.
- The proposal does not have any significant impact on the existing landscaped area or long distance views. Suitable view sharing opportunity is maintained over and past the development for uphill properties.

Clause 4.3 provides controls relating to the height of buildings.

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

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

The building height limit for development in this portion of Freshwater is 8.5m. The proposed new dwelling will provide for a height of up to 8.13m which complies with the maximum height control.

Clause 6.2 relates to earthworks. The proposal will not require any significant excavation of the site. All site works will be carried out in accordance with the recommendations of the Consulting Structural and Geotechnical Engineer and therefore satisfy the provisions of this clause.

Clause 6.4 relates to development on sloping land. The site is noted as Area B on Council's Geotechnical Risk Map.

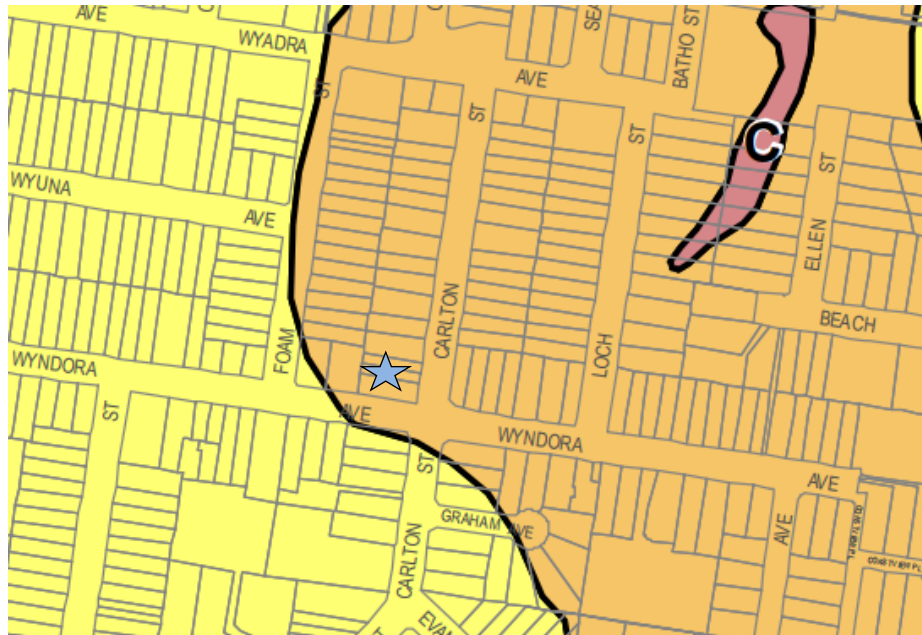


Fig 9: Extract of Warringah Local Environmental Plan 2011

A Preliminary Geotechnical Assessment has been prepared by Ascent Geotechnical Consulting, Reference No. AG 20021, dated 6 February 2020.

The report concludes that subject to compliance with the recommendations contained within the report “...the existing site conditions and proposed development are considered to constitute an ‘ACCEPTABLE’ risk to life and a ‘LOW’ risk to property...”

The proposal is therefore considered to be in keeping with the provisions of this clause.

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

6.5 Warringah Development Control Plan

The relevant numerical and performance based controls under WDCP are discussed below:

Part B - Built Form Controls			
Standard	Required	Proposed	Compliance
B1 – Wall heights	Max 7.2m	Max proposed wall height 7.2m, which complies with this control.	Yes
B2 – Number of storeys	No requirement identified on map		N/A
B3 – Side Boundary Envelope and Side Setback	Building envelope 45 degrees from 5m. Setback 0.9m	<p>As noted in the submitted East and West Elevations (Drawing No. DA07 and DA08), the proposed new dwelling will present a minor variation to the building envelope control to the southern elevation.</p> <p>The objectives of this control are as follows:</p> <ul style="list-style-type: none"> • To ensure that development does not become visually dominant by virtue of its height and bulk. • To ensure adequate light, solar access and privacy by providing spatial separation between buildings. • To ensure that development responds to the topography of the site. 	Yes – on merit

		<p>Compliance with the building envelope control is constrained by the narrow width of the subject allotment (min 6.33m).</p> <p>The proposal provides for <i>“New semi-detached dwelling which includes the retention of significant portions of the existing semi-detached dwelling”</i> which is modest in height and scale.</p> <p>The proposal will not result in any unreasonable impacts on neighbouring properties in terms of privacy, light or solar access, and suitably responds to the sloping topography of the site.</p> <p>The proposal achieves the desired outcomes of this clause, and is therefore considered worthy of support.</p>	
B4 – Site Coverage	No requirement identified on map		N/A
B5 – Side Boundary setbacks	R2 zoned land 0.9m	<p>Minimum proposed setback of new works from southern side boundary 975mm.</p> <p>As the existing dwelling is semi-detached, the nil northern boundary setback will be maintained.</p>	Yes

B6 – Merit assessment of Side Boundary Setbacks	No requirement identified on map		N/A
B7 – Front Boundary Setbacks	Minimum 6.5m	Minimum proposed front setback of the dwelling to Carlton Street 10.3m, and therefore complies with this control. The siting of the new carport maintains the location of the existing carport.	Yes
B8 – Merit assessment of front boundary setbacks	No requirement identified on map		N/A
B9 – Rear Boundary Setbacks	Min 6m rear setback	6.0m	Yes
B10 – Merit Assessment of rear boundary setbacks	No requirement identified on map		N/A
B11 – Foreshore Building Setback	No requirement identified on map		N/A
B12 – National Parks Setback	No requirement identified on map		N/A
B13 – Coastal Cliffs Setback	No requirement identified on map		N/A
B14 – Main Roads Setback	No requirement identified on map		N/A
B15 – Minimum Floor to Ceiling Height	No requirement identified on map		N/A

Part C – Siting Factors			
C2 – Traffic, Access and Safety	Vehicular crossing to be provided in accordance with Council's Vehicle Crossing Policy	The proposal maintains the existing driveway and vehicle crossing.	Yes
C3 – Parking Facilities	Garages not to visually dominate façade Parking to be in accordance with AS/NZS 2890.1	The proposal provides for alterations to the existing carport, which maintains a modest height and scale and will not dominate the dwelling façade.	Yes
C4 – Stormwater	Hydraulic Design to be provided in accordance with Council's Stormwater Drainage Design Guidelines for Minor Developments and Minor Works Specification	The proposed new semi-detached dwelling will not see any substantial change to the site coverage and stormwater will continue to be directed to the existing system.	Yes
C5 – Erosion and Sedimentation	Soil and Water Management required	Suitable sediment and erosion control measures to be provided during construction.	Yes
C6 – Building over or adjacent to Constructed Council Drainage Easements	N/A		N/A
C7 – Excavation and Landfill	Site stability to be maintained	The proposal will not require any significant excavation of the site. All site works will be carried out in accordance with the recommendations of the Consulting Structural and Geotechnical Engineers.	Yes
C8 – Demolition and Construction	Waste management plan required	Waste management measures to be employed	Yes

C9 – Waste Management	Waste storage area to be provided	Bins storage available within the yard areas surrounding the dwelling.	Yes
Part D – Design			
D1 – Landscaped Open Space and Bushland	Min 40% Landscaped Area to be maintained	<p>The proposal will provide a soft landscaped area of 28% or 66.09m².</p> <p>Whilst this presents a non-compliance to the required landscaped area, the proposal will increase the available area of soft landscaping by 8.4m².</p> <p>The development within the site will continue to achieve the Objectives of the controls, which are noted as:</p> <p>Objectives</p> <ul style="list-style-type: none"> • To enable planting to maintain and enhance the streetscape. • 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. • To enhance privacy 	Yes – on merit

		<p><i>between buildings.</i></p> <ul style="list-style-type: none"> • <i>To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.</i> • <i>To provide space for service functions, including clothes drying.</i> • <i>To facilitate water management, including on-site detention and infiltration of stormwater.</i> <p>The proposal will not require the removal of any significant vegetation, and will provide for sufficient area for the private open space and recreational requirements of the owners, whilst maintaining areas of soft soil planting within the front and rear yard area.</p> <p>Given the proposal will increase the available area of soft landscaping, the proposed variation to the control is considered acceptable in this instance.</p>	
D2 – Private Open Space	<p>Dwelling houses with three or more bedrooms</p> <p>Min 60m² with min dimension 5m</p>	<p>The proposal will maintain a generous area of private open space, which is directly accessible from the dwelling.</p>	Yes

D3 – Noise	Mechanical noise is to be attenuated to maintain adjoining unit amenity. Compliance with NSW Industrial Noise Policy Requirements	No new mechanical equipment proposed.	N/A
D4 – Electromagnetic Radiation	N/A to proposed development		N/A
D5 – Orientation and Energy Efficiency	Dwellings to be orientated to receive northern sun Appropriate construction to enhance thermal properties and ventilation/natural cooling Compliance with SEPP (BASIX) requirements	The site enjoys good access to northern sun to the rear yard area.	Yes
D6 – Access to sunlight	At least 50% of the required area of private open space of each dwelling and at least 50% of the required area of private open space of adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21.	The proposal is accompanied by shadow diagrams which demonstrate the impact of the new works on the solar access received by the subject and adjoining properties. The proposal will result in some additional overshadowing to the neighbouring properties to the south. As the adjoining dwelling at No. 20 Carlton Street is sited immediately to the south of the subject dwelling, compliance with Council's solar access requirements is constrained.	Yes – on merit

		<p>The southern neighbour will retain greater than 3 hours solar access to their private open space areas throughout the day, however, do not appear to receive suitable solar access to their internal living areas.</p> <p>Due to the constraints posed by the siting of the southern neighbour immediately to the south of the subject dwelling, the proposal is considered acceptable on merit.</p>	
D7 – Views	View sharing to be maintained	<p>The controls require that development should enable the reasonable sharing of views. The proposal seeks to provide for the construction of a new semi-detached dwelling which includes the retention of significant portions of the existing semi-detached dwelling.</p> <p>The primary outlook for the neighbouring properties comprises district views to the south-east.</p> <p>The proposed new semi-detached dwelling maintains a modest height and scale, readily complying with the statutory height limit</p>	Yes

		and is not considered to result in any substantial additional view loss for uphill properties. Suitable view corridors are maintained for uphill properties.	
D8 – Privacy	This clause specifies that development is not to cause unreasonable overlooking of habitable rooms and principle private open space of adjoining properties	<p>The proposed new works have been designed to primarily overlook the yard areas of the subject site and will not unreasonably reduce the privacy enjoyed by the neighbours.</p> <p>The considered location of habitable room windows, together with the use of highlight windows and screening, will ensure that the privacy of the subject and neighbouring properties is maintained.</p>	Yes
D9 – Building Bulk	This clause requires buildings to have a visual bulk and architectural scale that is consistent with structures on nearby and adjoining properties and not to visually dominate the street or surrounding spaces	The existing surrounding development comprises one and two storey dwellings. The form of the proposed new works will maintain a height and scale that complements the prevailing scale of the surrounding development.	Yes
D10 – Building Colours and materials		The new works will utilise recessive colours and finishes to match the surrounding area.	Yes

D11 – Roofs	The LEP requires that roofs should not dominate the local skyline.	The proposal provides for a low profile skillion which will not dominate the skyline.	Yes
D12 – Glare and Reflection	Glare impacts from artificial illumination minimised. Reflective building materials to be minimised	The proposed external finishes and colours will be selected to minimise glare and will complement the existing dwelling. No significant glare impacts will result from proposed new works.	Yes
D13 – Front Fences and Front Walls	Front fences to be generally to a maximum of 1200mm, of an open style to complement the streetscape and not to encroach onto street.	N/A	Yes
D14 – Site Facilities	Garbage storage areas and mailboxes to have minimal visual impact to the street Landscaping to be provided to reduce the view of the site facilities	Garbage storage areas and mail box available	N/A
D15 – Side and Rear Fences	Side and rear fences to be maximum 1.8m and have regard for Dividing Fences Act 1991		N/A
D16 – Swimming Pools and Spa Pools	Pool not to be located in front yard or where site has two frontages, pool not to be located in primary frontage. Siting to have regard for neighbouring trees.		N/A
D17 – Tennis Courts	N/A		N/A
D18 – Accessibility	Safe and secure access for persons with a disability to be	Not applicable to residential development	N/A

	provided where required		
D19 – Site Consolidation in the R3 and IN1 Zone	N/A		N/A
D20 – Safety and Security	Buildings to enhance the security of the community. Buildings are to provide for casual surveillance of the street.	The proposed works will not reduce the security of the street area or the subject property. Casual surveillance of the street is available from the dwelling to the street over and through the front landscaped area.	Yes
D21 – Provision and Location of Utility Services	Utility services to be provided	Normal utility services are available to the site	Yes
D22 – Conservation of Energy and Water	Compliance with SEPP BASIX	A BASIX Certificate has been provided.	Yes
D23 – Signs	Building identification signage to be appropriate for proposed use and not to impact on amenity of surrounding locality. Signs not to obscure views vehicles, pedestrians or potentially hazardous road features or traffic control devices.	No signage proposed	N/A

Part E – The Natural Environment			
E1 – Private Property Tree Management	Arboricultural report to be provided to support development where impacts to trees are presented	No significant protected trees are affected by the works.	Yes
E2 – Prescribed Vegetation	Not identified on map		N/A
E3 – Threatened species, populations, ecological communities	Not identified on map		N/A
E4 – Wildlife Corridors	Not identified on map		N/A
E5 – Native Vegetation	Not identified on map		N/A
E6 – Retaining unique environmental features	Not identified on map	No significant features within site	Yes
E7 – Development on land adjoining public open space	Not identified on map	The works are wholly within the private land and will not have any direct impact on the adjacent public land. The modest height and scale of the works will not present any significant visual impacts either to or from the public areas surrounding the site.	Yes
E8 – Waterways and Riparian Lands	Not identified on map		N/A
E9 – Coastline Hazard	Not identified on map		N/A
E10 – Landslip Risk	Identified on map as Area B.	A Preliminary Geotechnical Assessment has been prepared by Ascent Geotechnical Consulting, Reference No. AG 20021, dated 6 February 2020. The report concludes that subject to compliance with the recommendations contained within the report “...the existing	Yes

		<p><i>site conditions and proposed development are considered to constitute an 'ACCEPTABLE' risk to life and a 'LOW' risk to property..."</i></p> <p>The proposal is therefore considered to be in keeping with the provisions of this clause</p>	
E11 – Flood Prone Land	Not identified on map		N/A

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

7.1 The provisions of any environmental planning instrument

The proposal is subject to the provisions of the Local Environmental Plan 2011. It is considered that the provisions of these environmental planning instruments have been satisfactorily addressed within this report and that the proposal achieves compliance with its provisions.

The subject application is submitted under the provisions of Section 4.65 and 4.66 of the Environmental Planning and Assessment Act and Clauses 41 to 43 of the Environmental Planning and Assessment Regulation pertaining to existing use rights.

The proposal is considered to achieve the criteria necessary to establish existing use right pertain to the site.

There are no other environmental planning instruments applying to the site.

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

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

7.3 Any development control plan

The development has been designed to comply with the requirements of the WLEP 2011 & the controls of the Warringah Development Control Plan.

It is considered that the proposed design respects the aims and objectives of the DCP however we note that the Environmental Planning and Assessment Amendment Act 2012 No 93 (Amendment Act) which received assent on 21 November 2012 commenced on 1 March 2013.

Key amongst the amendments are requirements to interpret DCPs flexibly and to allow reasonable alternative solutions to achieve the objectives of DCP standards.

The new section 3.42 provides that the 'principal purpose' of DCPs is to 'provide guidance' on:-

- giving effect to the aims of any applicable environmental planning instrument
- facilitating permissible development
- achieving the objectives of the relevant land zones.

The key amendment is the insertion of section 4.15(3A) which:

- prevents the consent authority requiring more onerous standards than a DCP provides,
- requires the consent authority to be 'flexible' and allow 'reasonable alternative solutions' in applying DCP provisions with which a development application does not comply,

- limits the consent authority's consideration of the DCP to the development application (preventing consideration of previous or future applications of the DCP).

We request that Council applies considered flexibility where the application seeks a variation to the numerical development controls in the DCP as justified in this report. In particular, we consider that the variation to the landscaped area control is a reasonable alternative solution to compliance where the relatively small size of the allotment and location of the existing development presents a challenge to full compliance with the controls.

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

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

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

No matters of relevance are raised about the proposed development.

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

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

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

It is considered that the proposal, which seeks consent for the construction of a new semi-detached dwelling which includes the retention of significant portions of the existing semi-detached dwelling which has been located and designed to appropriately minimise impacts on the amenity of adjoining properties, is compatible with and will complement the character of the area.

The proposal is considered to be well designed having regard for the relevant provisions of the SEPP, Council's LEP and DCP.

7.7 The suitability of the site for the development

The site is considered suitable for the proposed development.

The proposal will provide for the construction of a new semi-detached dwelling which includes the retention of significant portions of the existing semi-detached dwelling.

It is suggested that the proposal will not have a detrimental impact on the amenity of the adjoining properties or any impact on the streetscape.

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

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

7.9 The public interest

The proposal will not impact upon the environment; the character of the locality and with the inclusion of perimeter screen planting will mitigate any unreasonable visual impacts on the amenity of adjoining properties and is therefore considered to be within the public interest.

8.0 Conclusion

The proposal provides for the construction of a new semi-detached dwelling which includes the retention of significant portions of the existing semi-detached dwelling, which will not have a detrimental impact on the adjoining properties or the locality.

As the proposed development will not have any significant impact on the environment, scenic quality of the area or the amenity of the adjoining allotments, the issue of Development Consent under the delegation of Council is requested.

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