

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2025/0095
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<b>Responsible Officer:</b>	Ryan Fehon
<b>Land to be developed (Address):</b>	Lot 83 DP 215008, 133 Starkey Street KILLARNEY HEIGHTS NSW 2087
<b>Proposed Development:</b>	Use of an existing carport as a carparking space and use of a garage as habitable floor space as part of 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>Land and Environment Court Action:</b>	No
<b>Applicant:</b>	Nicole Topple

<b>Application Lodged:</b>	07/02/2025
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	26/03/2025 to 09/04/2025
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Deferred Commencement Approval

<b>Estimated Cost of Works:</b>	\$ 0.00
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### PROPOSED DEVELOPMENT IN DETAIL

The development application seeks consent for the use of a carport as a car space and the conversion of a garage into a habitable space.

There is no physical works involved with the application, with it seeking consent only for the already existing unauthorized carport and garage.

The application has been prepared in the context of BC2025/0010.

### 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 Development Control Plan - B5 Side Boundary Setbacks  
Warringah Development Control Plan - C3 Parking Facilities

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 83 DP 215008 , 133 Starkey Street KILLARNEY HEIGHTS NSW 2087
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the Northeastern side of Starkey Street, Killarney Heights.</p> <p>The site is regular in shape with a frontage of 18.29m along Starkey Street and a depth of 41.81m. The site has a surveyed area of 776.6m<sup>2</sup>.</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a single-storey dwelling.</p> <p>The site has a minimal slope from the rear of the property towards the frontage on Starkey Street, but appears vastly flat.</p> <p>The site does not have any known endangered species on site, with small vegetation to the frontage and larger trees to the rear.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p>

Adjoining and surrounding development is characterised by detached residential one or two-storey dwellings.

Map:



## SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

- **BC2025/0010** - Building Information Certificate (Unauthorised) - Dwelling house and associated features (Ongoing - includes carport for this Development Application)

## APPLICATION HISTORY:

On 11 March 2025 the applicant requested to amend the development application pursuant to Section 37 of the Environmental Planning and Assessment Regulation 2021 to seek retrospective approval for the use of habitable floor space which was formerly a garage.

Accordingly, the development application was amended and re-notified for 14 Days with the following description of works:

- *Use of an existing carport as a carparking space and use of a garage as habitable floor space.*

The additional information submitted with this amendment included:

- Updated Statement of Environmental Effects
- New Master Set including elevations and sections
- Site plans
- Floor plans

- New Estimated Development Cost Report (EDC Report)
- Car parking and vehicular access plan

It is important to not that this amendment along with the original application only seeks consent for the use of the use of the unauthorised structures, noting that a development application cannot grant approval to retrospective building works. As noted above, a Building Information Certificate is currently lodged with Council, seeking retrospective approval for the unauthorised building works.

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

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

Section 4.15 Matters for Consideration	Comments
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	There are no current draft environmental planning instruments.
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 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&amp;A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 62 and/or 64</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p>

Section 4.15 Matters for Consideration	Comments
	<p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 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>
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>(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.</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>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application 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 application has been publicly exhibited from 26/03/2025 to 09/04/2025 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.



## REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	<p>The applicant is requesting approval for an unauthorized alteration, including the addition of a carport, driveway, and a new vehicular crossing. While the crossing appears to be visually satisfactory upon inspection, a formal approval process is required.</p> <p>There are no objections from Development Engineering, provided that the conditions are met.</p>

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

All, Environmental Planning Instruments (SEPPs 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 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)

Nil

## 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	3.8m (Carport built prior to this Development Application - heights gathered from 'as built' plans provided as a part of BC2025/0010)	N/A	Yes
		4.5m (Portion of dwelling where garage is situated)	N/A	Yes

### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes

### **Warringah Development Control Plan**

#### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	2.9m	N/A	Yes
B3 Side Boundary Envelope	4m (Southwest)	Carport - Inside Garage - Inside	N/A	Yes
	4m (Northeast)	Carport - Inside Garage - Inside	N/A	Yes
B5 Side Boundary Setbacks	0.9m (Southwest)	13.6m from closest works (carport)	N/A	Yes
	0.9m (Northwest)	0.35m (Carport) 900mm (Garage)	61.1% N/A	No Yes
B7 Front Boundary Setbacks	6.5m	8.67m (Carport)	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	47.3%	N/A	Yes

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B5 Side Boundary Setbacks	Yes	No
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D12 Glare and Reflection	Yes	Yes
D20 Safety and Security	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

#### Detailed Assessment

### **B5 Side Boundary Setbacks**

#### Description of non-compliance

The side setback for the already built carport is 0.35m to the Northwest boundary, adjacent to the property of 131 Starkey Street, Killarney Heights. The non-compliance is considered acceptable due to not being a habitable space and having open sides, meaning it does not provide any significant bulk and scale nor privacy concerns.

#### Merit consideration

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

- *To provide opportunities for deep soil landscape areas.*

#### Comment:

The existing carport has not taken away the opportunity for deep soil landscape areas to be distributed across the site. This section of the site in which the carport is situated has been a hardstand area/driveway access for an extended period of time, meaning this new carport does not reduce or miss opportunity for landscaped areas.

- *To ensure that development does not become visually dominant.*

#### Comment:

The development, due to its openness, does not create a visually dominant structure in comparison to the surrounding streetscape. The streetscape of Starkey Street often sees structures enter the front setback further than the 8.67m setback of this carport. An intrusion into the side setback at a 61.1% variation would not create a large amount of visual dominance, as this type of carport and garage setback Variation is commonly seen along side boundaries on Starkey Street.

- *To ensure that the scale and bulk of buildings is minimised.*



Comment:

The dimensions of the carport are not considered to contribute to the overall bulk and scale of the property at 133 Starkey Street. The carport is open built with no solid walls proposed. The carport is lower at its maximum height than the dwelling at its maximum, meaning no increased bulk and scale has occurred.

- *To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.*

Comment:

The carport does not sit directly adjacent to any buildings at 131 Starkey Street, creating adequate separation between buildings. Due to the carport not being a habitable space, there are no increased privacy or amenity concerns for the streetscape.

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

Comment:

The carport does not provide any significant view loss for other properties around the streetscape. With wall heights of 2.9m and a maximum building height of 3.58m, the carport does not intrude on any potential view corridors.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP 2011 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.

### **C3 Parking Facilities**

The built carport ensures that there is adequate parking opportunity both on and off the site.

Starkey Street possesses opportunity for street parking to take place, and the lot of 133 Starkey Street provides opportunity for 1 car to park undercover and 1-2 cars to park on the uncovered driveway.

The design of the on-site carport is not visually dominant due to be open on all sides, ensuring the design integrates into the streetscape.

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

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

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

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

### **POLICY CONTROLS**

## **Northern Beaches Section 7.12 Contributions Plan 2024**

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this application.

### **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 2021;
- 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, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

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

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

### **RECOMMENDATION**

#### **DEFERRED COMMENCEMENT APPROVAL**

A. THAT Council as the consent authority grant a Deferred Commencement Development Consent being subject to a two (2) year time frame for Deferred Commencement Consents detailed within Clause 76 of the Environmental Planning and Assessment Regulation 2021 to DA2025/0095 for Use of an existing carport as a carparking space and use of a garage as habitable floor space as part of an existing dwelling-house on land at Lot 83 DP 215008, 133 Starkey Street, KILLARNEY HEIGHTS, subject to the conditions printed below:

B. THAT once the matters detailed within the Deferred Commencement Development Consent conditions are satisfactorily addressed then an operational development consent be issued subject to the time frames detailed within Part A of this recommendation.

## Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

### DEFERRED COMMENCEMENT CONDITIONS

#### 1. Building Information Certificate

The applicant is required to obtain a Building Information Certificate from Council for the unauthorised building works that form part of Building Information Certificate No. BC2025/0010.

Reason: A development application cannot retrospectively approve unauthorised building works.

Evidence required to satisfy these conditions must be submitted to Council (through the NSW Planning Portal) within two (2) years of the date of this consent, or the consent will lapse in accordance with the Environmental Planning and Assessment Regulation.

Applicants must submit a request for operational consent to Council via the NSW Planning Portal and upload all relevant documentation. This can be completed through accessing the relevant portal application ID and navigating to 'Request for Operational Consent' in the Actions dropdown menu.

Upon satisfaction of the deferred commencement condition/s, the following conditions apply:

### GENERAL CONDITIONS

#### 2. Approved Plans and Supporting Documentation

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
AB-02	01	Carport Plan	All Dimensions	Jan 2025
AB-01	01	Floor Plan	All Dimensions	Jan 2025
AB-02	01	As Built Sections	All Dimensions	Jan 2025

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

## **CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**

### **3. Driveway Crossing**

The applicant must submit an application to Council for driveway levels to verify that the already constructed vehicular crossing complies with Northern Beaches Council standards. If the crossing is found to be non-compliant, reconstruction may be required.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

Council approval is to be submitted to the Certifier prior to the commencement of any works required to reconstruct the crossing if required.

Reason: To facilitate suitable vehicular access to private property.

## **DURING BUILDING WORK**

### **4. Road Reserve**

The applicant shall ensure the public footways and roadways adjacent to the site are maintained in a safe condition at all times during the course of any remedial works required to satisfy the requirements of the driveway and crossing works.

Reason: Public safety.

### **5. Property Boundary Levels**

The Applicant is to maintain the property boundary levels. No approval is granted for any change to existing property alignment levels to accommodate the development.

Details demonstrating compliance are to be submitted to the Principal Certifier.

Reason: To maintain the existing profile of the nature strip/road reserve.

## **BEFORE ISSUE OF THE OCCUPATION CERTIFICATE**

### **6. Certification of Off Street Parking Works**

The Applicant shall submit a certificate from a suitably qualified person certifying that the parking facility has been constructed in accordance with the details included in this development consent and the relevant provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities for Domestic Driveways.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: Compliance with this consent.

In signing this report, I declare that I do not have a Conflict of Interest.

**Signed**



**Ryan Fehon, Planner**

The application is determined on 11/04/2025, under the delegated authority of:



**Steven Findlay, Manager Development Assessments**