

STATEMENT OF ENVIRONMENTAL EFFECTS

**FOR PROPOSED ALTERATIONS AND ADDITIONS TO
AN EXISTING DUAL OCCUPANCY**

LOCATED AT

2/40 SERPENTINE CRESCENT, NORTH BALGOWLAH

FOR

GABRIEL PERERA



**Prepared
September 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	8
6.1	State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	9
6.2	Warringah Local Environmental Plan 2011	9
6.3	Warringah Development Control Plan	16
7.0	Matters for Consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979 ..	25
7.1	The provisions of any environmental planning instrument	25
7.2	Any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority	25
7.3	Any development control plan	25
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	26
7.5	The regulations (to the extent that they prescribe matters for the purposes of this paragraph),	26
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.	26
7.7	The suitability of the site for the development	26
7.8	Any submissions made in accordance with this Act or the regulations	26
7.9	The public interest	26
8.0	Conclusion	27

1.0 Introduction

This Statement of Environmental Effects accompanies architectural plans prepared by Brianna Emily Design, Drawings No. DA00A – DA15, dated 11 September 2020 detailing the construction of additions and alterations to the existing first floor dwelling within the two storey dual occupancy at **2/40 Serpentine Crescent, North Balgowlah**.

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*
- *Warringah Local Environmental Plan 2011*
- *Warringah Development Control Plan*

2.0 Property Description

The subject allotment is described as 2/40 Serpentine Crescent, North Balgowlah, being Lot 2 within Strata Plan 62628 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 it located within a conservation area.

The site is identified as Area A Landslip Risk.

No other hazards affect the site.

3.0 Site Description

The property is located on the northern side of Serpentine Crescent. The site is irregular in shape, with a street frontage to 22.20m, eastern and western side boundaries of 31.555m and 30.015m, and a northern rear boundary of 17.765m. The land has a total site area of 610.93m².

The property has a fall to the south, with stormwater currently directed to the street gutter. A drainage easement affects the north-eastern portion of the site and is discussed further within this submission.

The site is currently developed with a two storey rendered brick dual occupancy development with a tile roof.

The details of the site are as indicated on the survey plan prepared by C.M.S Surveyors Pty Ltd, Ref No. 14107A detail, dated 3 December 2015 & 27 May 2020, which accompanies the DA submission.

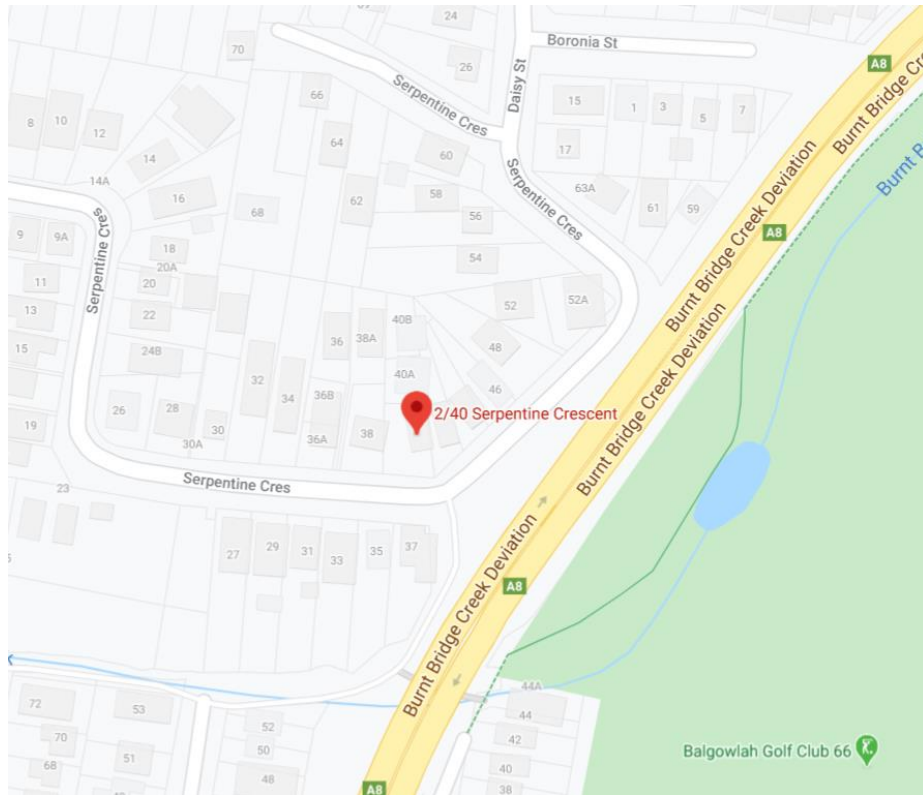


Fig 1: Location of Subject Site
(Source: Google Maps)



Fig 2: View of subject site as viewed from Serpentine Crescent, looking north



Fig 3: View of the subject site and access driveway to the lots at the rear, looking north



Fig 4: View of the existing ground floor level carport, with area at first floor level to be extended to provide and ensuite and walk in robe for the first floor level dwelling



Fig 5: View of subject site and neighbouring dwelling at 42 Serpentine Crescent, looking north-west

4.0 The Surrounding Environment

The general vicinity of the site is characterised by a mix of single detached dwellings and attached dual occupancies, in conjunction with associated ancillary structures such as garages, storage sheds and swimming pools.

The site is within close proximity to the Burnt Bridge Creek Deviation and Balgowlah Golf Course to the south-east.

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

As detailed within the accompanying plans the proposal seeks consent for alterations and additions to the existing first floor dwelling within the two storey dual occupancy development, comprising an extension over the existing carport to provide for a new ensuite with walk in robe.

The external finishes of the new works will comprise weatherboard cladding, with new tile roofing to be provided to the first floor addition.

The new works are discreet and will maintain the articulated streetscape presentation.

The proposed alterations and additions will not necessitate the removal of any significant trees.

The proposed external finishes have been detailed in the DA submission.

The proposal results in the following development indices:

Site Area:	610.93m ²
Required Landscaped Area:	244.37m ² or 40%
Existing Landscaped Area:	179.09m ² or 29.3%
Proposed Landscaped Area:	179.09m ² or 29.3% (Unchanged)

Recent History

- 96/192: Development consent granted for "Alterations and additions to an existing dwelling house for the purpose of creating an attached dual occupancy" on 12 July 1996. This consent relates to the existing building at No.40 Serpentine Crescent.
- 97/37: Development consent for "An attached dual occupancy and subdivision of the site into two (2) lots" granted on 12 February 1997. This consent had the result of creating a new allotment (Lot 331) upon which the current building was located. Another allotment (Lot 332) to the north (rear) of the subject land, was also created upon which an attached dual occupancy was located. These dwellings are now known as No.40A and No.40B Serpentine Crescent.
- 2634DA: Development consent granted for "Strata subdivision of an approved attached dual occupancy" on 22 October 1999. This consent has the effect of creating the strata plan in which Unit 1, on which the subject application relates, is located.
- DA2016/0570: Development Consent granted for "Alterations and additions to a dual occupancy building" for Lot 1 DP 62628, No 1/40 Serpentine Crescent, North Balgowlah. These works were commenced under CC2017/0094, with a Final Occupation Certificate issued 18 January 2019.

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

The proposal meets water, thermal and energy standards required by BASIX. A BASIX certificate has been submitted with the development application.

6.2 Warringah Local Environmental Plan 2011

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

The proposal involves alterations and additions to an approved dual occupancy development which was granted consent under DA96/192. Dual Occupancy development is not specified in Item 3 of the zoning table for Zone R2 Low Density residential. Accordingly, the application seeks to rely on existing use rights and a submission details the relevant site history below.

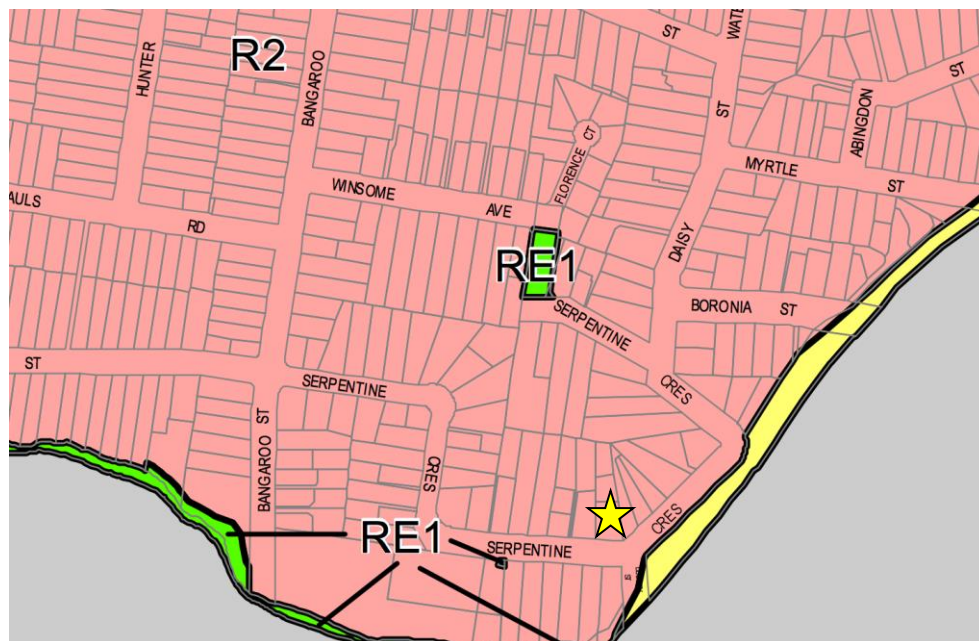


Fig 7: Extract of Warringah Local Environmental Plan 2011

The proposed development as a dual occupancy is defined in the Dictionary to the WLEP 2011 as:

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

In this instance, the subject dwelling, known as 2/40 Serpentine Crescent, is located above its attached neighbouring dwelling, known as 1/40 Serpentine Crescent.

The subject building is considered to be a dual occupancy (attached) which is defined as:

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

The development is considered to comply with the definition of dual occupancy as outlined in WLEP 2011 not contain a secondary dwelling.

Dual occupancy development is not a 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 development history of the subject site notes that alterations and additions to an existing dwelling to provide for *"Alterations and additions to an existing dwelling house for the purpose of creating an attached dual occupancy"* was approved by Warringah Council under Development Consent No. 96/192 on 12 July 1996.

Further consent was granted for *"Strata subdivision of the approved dual occupancy"* was granted under Development Consent No. 2634DA, dated 22 October 1999.

The use of land as a dual occupancy 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 dual occupancy development.

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.

This proposal for *alterations and additions to the existing dual occupancy dwelling 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 (over):-

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

- (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 development was granted consent for the use of the building as a dual occupancy in 1996 and granted further consent for the strata subdivision of the approved dual occupancy in 1999 and been continuously used for residential purposes.

The attached dwelling at 1/40 Serpentine Crescent was granted consent for additions and alterations under DA2016/0570 on 3 November 2016.

The proposal, which seeks consent for the carrying out of alterations and additions to the existing dual occupancy dwelling, 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 dual occupancy with the permitted uses within the zoning table to the R2 Low Density zone, which does not note dual occupancy in Item 3 of the zoning table.

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 multi dwelling developments form the local character of the immediate vicinity.

Whilst the R2 Low Density Residential zone does not permit dual occupancy dwellings, it does not accurately reflect the existing and past residential use of the subject 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 dual occupancy 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 minor building alterations to the existing first floor level. The new works will continue to be compatible with the bulk, scale and character of the locality.

The surrounding properties include a mix of multi dwelling development and other, 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 alterations and additions to the existing dual occupancy, 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 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. Suitable privacy will be maintained for occupants of the subject site and neighbouring properties.

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 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 alterations and additions to the existing dual occupancy 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 complements 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.

Clause 4.3 – 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 North Balgowlah is 8.5m.

The proposed alterations and additions to the existing first floor level of the dwelling provides for a maximum height of 6.915m which complies with this control.

The overall height of the development is unchanged.

Clause 5.9 – Preservation of trees or vegetation

The proposed works will not see the loss of any significant vegetation.

Clause 6.2 – Earthworks

The proposal will not require any excavation of the site, and the proposal is therefore considered to be consistent with the provisions of this clause.

Clause 6.4 – Development on sloping land

The land is noted as being Landslip Area A. The proposal seeks to provide alterations and additions to an existing first floor level dwelling, with no further site disturbance required. The proposal is therefore in keeping with this control.

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.

6.3 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 wall height 5.25m	Yes
B2 – Number of storeys	No requirement identified on map		N/A
B3 – Side Boundary Envelope and Side Setback	Building envelope 45 degrees from 4m. Setback 0.9m	Building envelope complies	Yes
B4 – Site Coverage	No requirement identified on map		N/A
B5 – Side Boundary setbacks	R2 zoned land 0.9m	The proposed works will observe the existing western setback of the carport which is well in excess of the minimum 900mm setback with the current right of carriageway driveway separating the new first floor works from the western boundary.	Yes
B6 – Merit assessment of Side Boundary Setbacks	No requirement identified on map		N/A
B7 – Front Boundary Setbacks	Minimum 6.5m On corner allotments or sites with a double street frontage, where the minimum front building setback is 6.5 metres to both frontages, the front building setback may be reduced to a minimum of 3.5 metres for the secondary frontage, but secondary street variations must consider the character	N/A – existing front setback maintained	Yes

	of the secondary street and the predominant setbacks existing to that street.		
B7 – Front boundary exceptions	No requirement identified on map		N/A
B8 – Merit assessment of front boundary setbacks	No requirement identified on map		N/A
B9 – Rear Boundary Setbacks	Min 6m rear setback On corner allotments where the minimum rear building setback is 6 metres the rear building setback does not apply	The proposed works are located to the south-western corner of the first floor level and will not encroach on the existing rear setback.	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	Existing crossing and driveway to be retained.	Yes
C3 – Parking Facilities	Garages not to visually dominate façade Parking to be in accordance with AS/NZS 2890.1	Existing parking arrangements remain unchanged, with two car spaces to be retained along the western elevation of the dwelling.	N/A

C4 – Stormwater	Hydraulic Design to be provided in accordance with Council's Stormwater Drainage Design Guidelines for Minor Developments and Minor Works Specification	Stormwater will be connected to existing system, which directs overflow to the street gutter.	Yes
C5 – Erosion and Sedimentation	Soil and Water Management required	Proposal accompanied by an Erosion and Sediment Control Plan which details measure to be in place during construction.	Yes
C6 – Building over or adjacent to Constructed Council Drainage Easements	N/A	The site is affected by a private interallotment drainage easement located at the north eastern corner of the site. The works are located to the south western corner of the dwelling and well clear of the existing drainage infrastructure.	N/A
C7 – Excavation and Landfill	Site stability to be maintained	The proposal involves works at the first floor level, with no further site disturbance.	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 area available	Yes
Part D – Design			
D1 – Landscaped Open Space and Bushland	Min 40% Landscaped Area to be maintained	<p>As the proposal involves works at first floor level, which do not increase the building footprint, the existing landscaped area of 29.3% will be retained.</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. 	Yes – on merit

		<ul style="list-style-type: none"> • 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 between buildings. • To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants. • To provide space for service functions, including clothes drying. • To facilitate water management, including on-site detention and infiltration of stormwater. <p>The proposal will provide for sufficient area for the private open space and recreational requirements of the owners, whilst maintaining good areas of deep soil planting within the front and rear yard area.</p>	
D2 – Private Open Space	Dwelling houses with three or more bedrooms Min 60m ² with min dimension 5m	<p>The proposal maintains the existing areas of private open space for each dwelling.</p> <p>The development within the site will continue to achieve the Objectives of the controls, which are noted over as:</p>	Yes – on merit

		<p>Objectives</p> <ul style="list-style-type: none"> • To ensure that all residential development is provided with functional, well located areas of private open space. • To ensure that private open space is integrated with, and directly accessible from, the living area of dwellings. • To minimise any adverse impact of private open space on adjoining buildings and their associated private open spaces. • To ensure that private open space receives sufficient solar access and privacy. <p>The private open space is directly accessible from the dwelling. The proposed minor first floor extension will provide improved amenity for the occupants of the subject dwelling whilst retaining a suitable outdoor area for the enjoyment of the occupants. The private open space receives good access to the northern sun.</p>	
D3 - Noise	Mechanical noise is to be attenuated to maintain adjoining unit amenity. Compliance with NSW Industrial Noise Policy Requirements	No new mechanical equipment.	Yes
D4 – Electromagnetic Radiation	N/A to proposed development		N/A
D5 – Orientation and Energy Efficiency	Dwellings to be orientated to receive northern sun Appropriate construction to enhance thermal properties and	The rear yard enjoys good access to the northern sun.	Yes

	ventilation/natural cooling Compliance with SEPP (BASIX) requirements		
D6 – Access to sunlight	This control requires that sunlight to at least 50% of private open space to adjoining properties is not to be reduced to less than 2 hours between 9am and 3pm on the winter solstice.	Due to the northerly aspect, the subject site and neighbouring properties will maintain access to at least three hours sunlight between 9.00am – 3.00pm in mid-winter.	Yes
D7 – Views	View sharing to be maintained	The controls require that development should enable the reasonable sharing of views. The works see additions to the existing dwelling, which maintain a modest bulk and scale. The primary outlook for the surrounding properties is not unreasonably diminished.	Yes
D8 – Privacy	This clause specifies that development is not to cause unreasonable overlooking of habitable rooms and principle private open space of adjoining properties	The proposed works are considered to maintain appropriate privacy for occupants of the subject site and adjoining properties through the considered placement of window openings.	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 a mix of one and two storey dwellings and dual occupancies. The proposed alterations and additions maintain a modest height and scale, similar to that of other dwellings in the vicinity. The proposal is in keeping with the streetscape and will	Yes

		not visually dominate the street.	
D10 – Building Colours and materials		The proposed colours and finishes are in keeping with the existing dwelling and sympathetic to the Serpentine Crescent streetscape.	Yes
D11 – Roofs	The LEP requires that roofs should not dominate the local skyline.	Other than the minor increase in the roof area for the new first-floor extension, the existing overall roof form remains unchanged.	Yes
D12 – Glare and Reflection	Glare impacts from artificial illumination minimised. Reflective building materials to be minimised	New colours and finishes will be provided to the dwelling to ensure that the new works 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	Existing fencing remains unchanged.	N/A
D14 – Site Facilities	Garbage storage areas and mailboxes to have minimal visual impact to the street Landscaping to be provided to reduce the view of the site facilities	No change to garbage storage areas or mailbox	N/A
D15 – Side and Rear Fences	Side and rear fences to be maximum 1.8m and have regard for Dividing Fences Act 1991	Existing fencing will be retained	N/A
D16 – Swimming Pools and Spa Pools	Pool not to be located in front yard or where site has two frontages,	N/A – no pool proposed	N/A

	pool not to be located in primary frontage. Siting to have regard for neighbouring trees.		
D17 – Tennis Courts	N/A		N/A
D18 - Accessibility	Safe and secure access for persons with a disability to be provided where required	Not applicable to residential development	N/A
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 habitable room windows to the street.	Yes
D21 – Provision and Location of Utility Services	Utility services to be provided	Normal utility services are available to the site	Yes
D22 – Conservation of Energy and Water	Compliance with SEPP BASIX	A BASIX Certificate is provided to support the development	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		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 A. Nature of works to excavate >2m requires the submission of a Geotechnical Hazard Assessment.	The proposal does not necessitate any excavation. Accordingly, no further geotechnical investigation is required in this instance.	Yes
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 Warringah 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 off 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 draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority

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 and 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 74BA 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 variations to numerical development controls in the DCP as justified in this report. In particular we consider that the variation to the landscaped area control provides a reasonable outcome given the proposal maintains suitable landscaped and recreation areas for the enjoyment of the dwelling's occupants.

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 will provide a cohesive and sympathetic addition to the site and which will make a positive contribution to the area.

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

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

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

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

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

It is considered that the proposal, which seeks consent for alterations and additions to the first floor level of an existing dwelling, which have been located and designed to appropriately minimise impacts on the amenity of adjoining properties and are 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 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 additions and alterations to the first floor level of the existing dual occupancy development.

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 nor the character of the locality and 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 alterations and additions to the first floor level within an existing two storey dual occupancy 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.

VAUGHAN MILLIGAN

Town Planner

Grad. Dip. Urban and Regional Planning (UNE)