

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2016/1357
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Responsible Officer:	Nick England
Land to be developed (Address):	Lot 27 DP 439609, 12 Melwood Avenue FORESTVILLE NSW 2087
Proposed Development:	Alterations and Additions to existing dwelling
Zoning:	LEP - Land zoned R2 Low Density Residential
Development Permissible:	No
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Budhiarti Ng
Applicant:	Jeffrey Ng

Application lodged:	28/12/2016
Application Type:	Local
State Reporting Category:	Residential - Alterations and additions
Notified:	11/01/2017 to 27/01/2017
Advertised:	Not Advertised, in accordance with A.7 of WDCP
Submissions:	0
Recommendation:	Refusal

Estimated Cost of Works:	\$ 650,000.00
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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 all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (upto the time of determination) by the applicant, persons who have made submissions regarding the application and any advice provided by relevant Council / Government / Authority Officers on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - Zone R2 Low Density Residential

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Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - C2 Traffic, Access and Safety
Warringah Development Control Plan - C4 Stormwater

SITE DESCRIPTION

Property Description:	Lot 27 DP 439609 , 12 Melwood Avenue FORESTVILLE NSW 2087
Detailed Site Description:	The subject site consists of one (1) allotment located on corner of Melwood Avenue and Riverhill Avenue, Forestville. The site is regular in shape with a frontage of approximately 12.8m along its principal frontage on Melwood Avenue and 42.67m along the secondary frontage on Riverhill Avenue. The site has a surveyed area of 913.6m². The site is located within the R2 Low Density Residential zone and accommodates a single storey residential dwelling house and outbuildings. Vehicular access is from Riverhill Avenue. Surrounding development consists of residential dwellings to the north, south and west of the site. Forestville Public School is to the east. The site is relatively flat. Vegetation is limited to shrubs with no significant trees.

Map:



SITE HISTORY

There is no site history relevant to the proposed development.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development as stated with the documentation provided with the application involves "alterations and additions to an existing dwelling house". The works in detail involve:

- a separate two-storey structure connected to the existing dwelling by a passageway;
- alterations to the existing dwelling, including conversion of covered patio into store and ensuite, internal connection to the separate new structure, and relocation of current entry from Melwood Ave to Riverhill avenue; and
- 1 new driveway crossing and widening of the existing driveway (resulting in 2 driveways from Riverhill Avenue), new fencing, sliding gates and hedge planting on the northern boundary.

The Statement provided with the application states that the works are to cater for an "extended family unit", with the applicant to occupy the new structure and their elderly parents to occupy the modified existing dwelling.

It should be noted that The BASIX certificate lodged with the application specifies that the development is a "Separate dwelling house".

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment C.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 79C (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 79C (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 79C (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters could be addressed via a condition of consent. <u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to

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Section 79C 'Matters for Consideration'	Comments
	this application. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000, permits Council to request additional information and therefore consider the number of days taken in this assessment in light of this clause within the Regulations. However, no additional information was requested. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. These matters could be addressed via a condition of consent. <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). These matters could be addressed via a condition of consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. These matters could be addressed via a condition of consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter could be addressed via a condition of consent. <u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 79C (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	(i) 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. (ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 79C (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” in this report.
Section 79C (1) (e) – the public interest	This assessment has found the application to be contrary to the relevant requirement(s) of both the Warringah Local Environmental Plan 2011 and the Warringah Development Control Plan 2011, as detailed elsewhere in this report. This will result in a development which will create an undesirable precedent such that it would

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Section 79C 'Matters for Consideration'	Comments
	undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development is not considered to be in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
Development Engineers	The application for a secondary dwelling cannot be supported because of the following reasons. 1) The application has not provided on site stormwater detention(OSD) in accordance with councils " On Site Detention Technical Specification" , in this regard as the secondary dwelling is greater than 60m2 OSD is required to minimise the impacts of stormwater runoff into Councils existing street drainage system. 2) The two vehicle crossing/ porte cochere is not supported firstly because there is no justification has been provided , RiverHill Parade is not a busy street . The secondary vehicle crossing will also result in the loss of an on street carparking space.
Landscape Officer	No objections subject to conditions as recommended.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs),

Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 778880S dated 16 December 2016). The certificate indicates that the development will achieve the requirements of this State policy, based on the "separate dwelling house" proposed.

SEPP (Infrastructure) 2007

Ausgrid

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

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

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

Warringah Local Environment Plan 2011

Is the development permissible?	No
After consideration of the merits of the proposal, is the development consistent with: aims of the LEP?	No

zone objectives of the LEP?	No
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Principal Development Standards

Standard	Requirement	Proposed	Complies
Height of Buildings:	8.5m	7.5m	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

Zone R2 Low Density Residential

A detailed assessment of the proposal has found that the development is consistent with the definition of a **dual occupancy (attached)**, as described within WLEP 2011, which:

means 2 dwellings on one lot of land that are attached to each other, but does not include a secondary dwelling.

Despite the assertion in the documentation provided with the application that the proposed development is a “dwelling house”, the development in its current form is more consistent with the land use of a dual occupancy (attached).

The primary reasons for finding the application consistent with this definition are as follows:

1. Two (2) distinct physical entrances to both the existing dwelling and the proposed additions are provided from Riverhill Avenue;
2. The existing dwelling and the proposed additions comprise of separate bedroom, sanitary function areas and food preparation areas which would permit these separate parts of the building to be readily adapted for the purpose of a “dwelling”(*) in each;
3. The plans for the proposed alterations to the dwelling house do not sufficiently describe the use of each room, making it inconclusive that this existing dwelling will not be retained for this purpose;
4. The connecting “passage” between the existing dwelling and the proposed additions is not substantial in nature to fully integrate the existing dwelling into the proposed works, hence making the development more consistent with the definition of a dual occupancy (attached) than a dwelling house; and
5. The proposed “passage” in its current form would not preclude any person/s from using the existing dwelling and the proposed additions each as a separate dwelling.

This is reasonably concluded by the fact that the junctions of the passage with the existing house and the proposed additions are to be separated by doors, which could be easily locked/secured to permit the 2 separate parts of the buildings to be readily occupied as separate dwellings, rather than as single dwelling.

(*) Note: "Dwelling" means a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile (WLEP 2011).

In this regard, the proposal is a prohibited land-use in the R2 Low Density Residential zone under the Warringah Local Environmental Plan 2011 (WLEP 2011). It is therefore recommended that the application be refused.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	7.2m	-	Yes
B3 Side Boundary Envelope	4m	no encroachment (all sides)	-	Yes
B5 Side Boundary Setbacks (corner lot)	East - 0.9m	3.2m	-	Yes
	South - 0.9m	1.4m	-	Yes
B7 Front Boundary Setbacks (corner lot)	Primary (Melwood Avenue) - 6.5m	10.5m	-	Yes
	Secondary (Riverhill Avenue) - 3.5m	3.5m (ground) 3.5m (1 st)	- -	Yes Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (365.6m ²)	46.4% (424.1m ²)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
R2 Side Boundary Envelope Exceptions	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
Side Setbacks - R2	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
R2 - All other land in R2 Zone	Yes	Yes
Front Boundary Exceptions - R2	Yes	Yes
Rear Boundary Exceptions on Corner Allotments - R2	Yes	Yes
C2 Traffic, Access and Safety	No	No
C3 Parking Facilities	Yes	Yes
C4 Stormwater	No	No
C5 Erosion and Sedimentation	Yes	Yes
C7 Excavation and Landfill	Yes	Yes

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Clause	Compliance with Requirements	Consistency Aims/Objectives
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	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
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
E1 Private Property Tree Management	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B7 Front Boundary Setbacks

C2 Traffic, Access and Safety

The proposed 2 driveways on Riverhill Avenue, will result in a loss of on-street car parking.

This is not consistent with the the objective of Part C2, which requires all development to limit:

f) the loss of "on street" kerbside parking.

The development is also not consistent with Requirement 4 which states that:

4. Vehicle crossing approvals on public roads are to be in accordance with Council's Vehicle Crossing Policy (Special Crossings) LAP-PL413 and Vehicle Access to Roadside Development LAP-PL 315.

These policies discourages all low-density residential development to have no more than 1 vehicle crossing. It is therefore recommended that the application be refused.

C4 Stormwater

Council's Development Engineer has advised that the extent of the works proposed will require the provision of On-Site Detention (OSD) of all stormwater as required by Part C4 Stormwater of WDCP 2011. However, no details have been provided with the application for OSD. Therefore, the application does not comply with the provisions of the WDCP 2011 and cannot be supported for this reason.

CONCLUSION

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

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

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

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

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

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council , as the consent authority REFUSE Development Consent to Development Application No DA2016/1357 for the Alterations and Additions to existing dwelling on land at Lot 27 DP 439609, 12 Melwood Avenue, FORESTVILLE, subject to the reasons outlined as follows:

1. Pursuant to Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the plans and policies of Council and therefore not in the public interest.
2. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Warringah Local Environmental Plan 2011.
3. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of the R2 Low Density Residential zone under the Warringah Local Environmental Plan 2011, as the development falls under the definition of a Dual Occupancy (Attached), which is a prohibited form of development in the zone.
4. Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Part C2 Traffic, Access and Safety of the Warringah Development Control Plan 2011.
5. Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Part C4 Stormwater of the Warringah Development

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Control Plan 2011.

I am aware of Warringah's Code of Conduct and, in signing this report, declare that I do not have a Conflict of Interest.

Signed

Nick England, Planner

The application is determined under the delegated authority of:

Steven Findlay, Development Assessment Manager

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ATTACHMENT A

Notification Plan	Title	Date
 2017/005301	Plan - Notification	16/12/2016

ATTACHMENT B

Notification Document	Title	Date
 2017/007931	Notification Map	11/01/2017

ATTACHMENT C

Reference Number	Document	Date
 2017/005300	Plans - Survey	13/10/2016
 2017/005314	Plans - Landscape	14/12/2016
 2017/005306	Report - BASIX Certificate	15/12/2016
 2017/005301	Plan - Notification	16/12/2016
 2017/005299	Builders Quote	20/12/2016
 2017/005298	Cost Summary Report	21/12/2016
 DA2016/1357	12 Melwood Avenue FORESTVILLE NSW 2087 - Development Application - Alterations and Additions	28/12/2016
 2016/419064	DA Acknowledgement Letter - Jeffrey Ng	28/12/2016
 2017/005295	Development Application Form	09/01/2017
 2017/005296	Applicant Details	09/01/2017
 2017/005304	Report - Statement of Environmental Effects	09/01/2017
 2017/005311	Plans - External	09/01/2017
 2017/005312	Plans - Internal	09/01/2017
 2017/005307	Plans - Certification of Shadow Diagrams with Plans	09/01/2017
 2017/005309	Plans - Stormwater	09/01/2017
 2017/005315	Plans - Master Set	09/01/2017
 2017/007931	Notification Map	11/01/2017
 2017/007938	Notification Letter - 6	11/01/2017
 2017/010252	Development Engineering Referral Response	12/01/2017
 2017/041473	Working Plans	14/02/2017
 2017/058613	Landscape Referral Response	01/03/2017
 2017/114721	Request for Withdrawal of Development Application - Jeffrey Ng	26/04/2017