

RESIDENTIAL DEVELOPMENT – DEVELOPMENT APPLICATION ASSESSMENT REPORT

Development Application Number: DA2011/0714

Assessment Officer: Phil Lane

Property Address: Lot 63, DP 578780 , No.24 Carcoola Road, Cromer

Proposal Description: Retrospective approval of a deck and landscape works

Recommendation: **APPROVED**

Clause 20 Variation: Yes – side setback

Proposal in Detail: This application seeks retrospective approval for a covered timber deck at the rear of an existing laundry that is located towards the rear of the site. Additionally, the proposal seeks retrospective approval for an elevated rock garden area at the rear of the site within the 1 in 100 year flood event (ARI).

History and Background: BLD2011/00046 - On 4 February 2011 Councils Development Compliance Officer issued a Notice of Intention to Give an Order No. 2(a), 12(a) & 14.

On 7 April 2011 – “A Notice of Intention was served on you on 04/02/2011 under Section 121H of the Environmental Planning and Assessment Act 1979 (NSW), advising that an Order was intended to be served. After consideration of the representations you made Council in light of the Notice of Intention, Council will assent to an extended period of time to comply with the Order.”

In light of the above a Development Application (DA2011/0714) was lodged 3 June 2011, which is the subject of this application. Additionally, a concurrent Building Certificate (BC2011/0068) was lodged on 2 June 2011.



Covered timber deck (pergola)



Elevated rock garden

Plans Reference

Drawing Number	Title	Revision	Dated	Drawn By
Sheet 2 of 5	Plan View	1.00	May 2011	The Computer Crew
Sheet 3 of 5	Elevations & Section	1.00	May 2011	The Computer Crew
Sheet 4 of 5	Site Plan	1.00	May 2011	The Computer Crew

Report Section	Applicable – Yes or No
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Section 1 – Code Assessment	Yes
Section 2 – Issues Assessment	Yes
Section 3 – Site Inspection	Yes

Notification Required:	Yes	14 DAYS
Submissions Received:	Yes	Number of Submissions: 1
Cost of Works:	\$8830	
Section 94A Applicable:	No (Refer to Table below)	TOTAL: (If applicable) N/A

SECTION 1 – CODE ASSESSMENT REPORT

ENVIRONMENTAL PLANNING INSTRUMENTS

Warringah Local Environmental Plan 2000

Locality: B7 Narrabeen Lake Suburbs

Development Definition: Housing

Category of Development: Category 1

Desired Future Character Statement:

“The Narrabeen Lake Suburbs will remain characterised by detached style housing in landscaped settings interspersed by a range of complementary and compatible uses which are compatible with the residential nature of the locality. The land occupied by the Cromer Golf Club will continue to be used only as a recreation facility.

Comment: The proposed development is considered to be consistent with detached style housing within the vicinity and the locality. The proposal will be enhance with landscaped front yard and elements of landscaping within the rear yard.

Future development will maintain the visual pattern and predominant scale of existing detached housing in the locality. The streets will be characterised by landscaped front gardens and consistent from building setbacks. Unless exemptions are made to the housing density standard in this locality statement, any subdivision of land is to be consistent with the predominant pattern, size and configuration of existing allotments in the locality.

Comment: The design of the proposed development is considered contemporary in design and will reduce the visual bulk of the resultant development. In addition, the proposed landscaped rear setback landscaped rear yard will be maintained.

The spread of indigenous tree canopy will be enhanced where possible and the natural landscape, such as rock outcrops, remnant bushland and natural watercourses will be preserved. The use of materials that blend with the colours and textures of the natural landscape will be encouraged. Development on hillsides, or in the vicinity of ridgetops, must integrate with the landscape and topography.

Comment: The proposed development will integrate with the natural landscape and topography.

The locality will continue to be served by the existing local retail centres in the areas shown on the map. Future development in these centres will be in accordance with the general principles of development control listed in clause 39.”

Comment: Not applicable

Is the development consistent with the Locality’s Desired Future Character Statement? Yes



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BUILT FORM CONTROLS

Built Form Compliance Table B7 Narrabeen Lake Suburbs Locality Statement					
Built Form Standard		Required	Proposed	Comment	Compliance
Building Height	Ridge	8.5m	3.1m		Yes
	Ceiling	7.2m	3m		Yes
Housing Density		1 dwelling per 600sqm	1 dwelling per 948.3sqm		Yes
Front Setback		6.5m	53.9m		Yes
Side Setback (north)		0.9m	0.7m (elevated rock garden)	Clause 20 – supported	No
Side Setback (south)		0.9m	0.1 – 0.4m	Clause 20 – supported	No
Side Boundary Envelope		4m @ 45 degrees	4m @ 45 degrees (within envelope)		Yes
Side Boundary Envelope		4m @ 45 degrees	4m @ 45 degrees (within envelope)		Yes
Rear Building Setback		6m	7m - Proposed covered deck 1m – elevated rock garden		Yes
Rear Setback Area		50% (49.83sqm)	24% (23.92sqm) elevated rock garden		Yes
Landscape Open Space		40% (379.3sqm)	45.1% (427.3sqm)		Yes

GENERAL PRINCIPLES OF DEVELOPMENT CONTROL

General Principles	Applies	Comments	Complies
CL38 Glare & reflections	Yes	Standards conditions will be ensure that reasonable amenity of adjoining and surrounding properties is maintained.	Yes, subject to condition
CL39 Local retail centres	No		N/A
CL40 Housing for Older People and People with Disabilities	No		N/A
CL41 Brothels	No		N/A
CL42 Construction Sites	Yes	Standards conditions will be ensure that reasonable amenity of adjoining and surrounding properties is maintained.	Yes, subject to condition
CL43 Noise	Yes	Standards conditions will be ensure that reasonable amenity of adjoining and surrounding properties is maintained.	Yes, subject to condition



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General Principles	Applies	Comments	Complies
CL44 Pollutants	No		N/A
CL45 Hazardous Uses	No		N/A
CL46 Radiation Emission Levels	No		N/A
CL47 Flood Affected Land	Yes	A flood analysis was undertaken by external consultant (Northern Beaches Consulting Engineers Pty. Ltd.) which stated: <i>“Given the localised nature of the increase in flood level, it is anticipated that the proposed stone garden will have negligible impacts on the surrounding properties and the subject property.</i> <i>Materials and method used for the construction of the stone garden are deemed suitable to withstand forces applied by predicted 100-year ARI flows. “</i> The application was referred to Council Natural Environmental Unit (NEU) and as such no objection was raised subject to conditions.	Yes, subject to conditions
CL48 Potentially Contaminated Land	No		N/A
CL49 Remediation of Contaminated Land	No		N/A
CL49a Acid Sulphate Soils	Yes	The site is affected by Type 3 & 5 Acid Sulphate Soils and given that the proposed works will not require the movement of more than one (1) tonne of soil it is deemed that the proposal satisfies this clause.	Yes
CL50 Safety & Security	Yes	Satisfactory	Yes
CL51 Front Fences and Walls	No		N/A
CL52 Development Near Parks, Bushland Reserves & other public Open Spaces	Yes	The subject site is adjacent to the drainage reserve located to the rear (west) and the proposed works are deemed to complement the character of this reserve and have minimal effect on the public use and enjoyment of this reserve.	Yes
CL53 Signs	No		N/A
CL54 Provision and Location of Utility Services	Yes	Satisfactory	Yes
CL55 Site Consolidation in ‘Medium Density Areas’	No		N/A
CL56 Retaining Unique Environmental Features on Site	Yes	Standard conditions will be imposed to ensure the protection of existing trees on the site.	Yes, subject to conditions
CL57 Development on Sloping Land	No		N/A



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General Principles	Applies	Comments	Complies
CL58 Protection of Existing Flora	Yes	Standard conditions will be imposed to ensure the protection of existing trees on the site.	Yes
CL59 Koala Habitat Protection	No		N/A
CL60 Watercourses & Aquatic Habitats	Yes	The proposed works are located within 40m of the existing creek located to the rear. It is considered that the proposed and already constructed works will maintain and enhance this natural watercourse.	Yes, subject to conditions
CL61 Views	Yes	Clause 61 stipulates 'Development is to allow for the reasonable sharing of views'. From the site inspection and the submitted plans the proposal has demonstrated a reasonable design that will ensure reasonable view sharing to adjoining properties will be maintained ensuring compliance with clause. The proposal is also consistent with the Planning Principle Tenacity versus Warringah Council.	Yes
CL62 Access to sunlight	Yes	Satisfactory	Yes
CL63 Landscaped Open Space	Yes	Satisfactory	Yes
CL63A Rear Building Setback	Yes	Satisfactory	Yes
CL64 Private open space	Yes	Satisfactory	Yes
CL65 Privacy	Yes	The existing deck and rock garden given the existing height of both structures are deemed to be acceptable in relation to privacy and maintain acceptable levels of amenity in particularly the southern neighbouring property (No. 2 Pinta Place) given the height of the existing fence (southern boundary).	Yes
CL66 Building bulk	Yes	Satisfactory	Yes
CL67 Roofs	Yes	Satisfactory	Yes
CL68 Conservation of Energy and Water	No		N/A
CL69 Accessibility – Public and Semi-Public Buildings	No		N/A
CL70 Site facilities	Yes	Satisfactory	Yes
CL71 Parking facilities (visual impact)	No		N/A
CL72 Traffic access & safety	No		N/A
CL73 On-site Loading and Unloading	No		N/A



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General Principles	Applies	Comments	Complies
CL74 Provision of Carparking	No		N/A
CL75 Design of Carparking Areas	No		N/A
CL76 Management of Stormwater	Yes	The existing stormwater is gravity feed to drainage reserve at the rear of the site.	Yes
CL77 Landfill	No		N/A
CL78 Erosion & Sedimentation	No		N/A
CL79 Heritage Control	No		N/A
CL80 Notice to Metropolitan Aboriginal Land Council and the National Parks and Wildlife Service	No		N/A
CL82 Development in the Vicinity of Heritage Items	No		N/A
CL83 Development of Known or Potential Archaeological Sites	No		N/A

SCHEDULES

Schedule	Applicable	Compliant
Schedule 5 State policies	No	N/A
Schedule 6 Preservation of bushland	No	N/A
Schedule 7 Matters for consideration in a subdivision of land	No	N/A
Schedule 8 Site analysis	Yes	Yes
Schedule 9 Notification requirements for remediation work	No	N/A
Schedule 10 Traffic generating development	No	N/A
Schedule 11 Koala feed tree species and plans of management	No	N/A
Schedule 12 Requirements for complying development	No	N/A
Schedule 13 Development guidelines for Collaroy/Narrabeen Beach	No	N/A
Schedule 14 Guiding principles for development near Middle Harbour	No	N/A
Schedule 15 Statement of environmental effects	No	N/A
Schedule 17 Carparking provision	No	N/A



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OTHER RELEVANT ENVIRONMENTAL PLANNING INSTRUMENTS:

STATE ENVIRONMENTAL PLANNING POLICIES, REGIONAL ENVIRONMENTAL PLANS

POLICY	ASSESSMENT	YES /NO /N/A	COMPLIES
SEPP - BASIX	BASIX Certificate supplied?	N/A	N/A
SEPP – 55	Based on the previous land uses if the site likely to be contaminated? Is the site suitable for the proposed land use?	No Yes	Yes
SEPP INFRASTRUCTURE	Is the proposal for a swimming pool, or Within 30m of an overhead line support structure? Within 5m of an overhead power line?	No	Yes
SREP-Sydney Regional Environmental Plan – Sydney Harbour Catchment (If applicable)		N/A	N/A

EPA REGULATION CONSIDERATIONS:

Regulation Clause	Applicable	Conditioned
Clause 54 & 109 (Stop the Clock)	No	N/A
Clause 92 (Demolition of Structures)	Yes	Yes
Clause 92 (Government Coastal Policy)	No	N/A
Clause 93 & 94 (Fire Safety)	N/A	N/A
Clause 94 (Upgrade of Building for Disability Access)	N/A	N/A
Clause 98 (BCA)	Yes	Yes

REFERRALS

Referral Body Internal	Comments	Consent Recommended
Natural Environment Unit (NEU)	No objections subject to conditions	Yes

Referral Body External	Comments	Consent Recommended
Ausgrid	<i>"Based on the information provided in your correspondence the proposed development will comply with statutory clearances from Ausgrid's electrical mains and accordingly there is no objection to this development."</i>	Yes , subject to conditions

APPLICABLE LEGISLATION/ EPI'S /POLICIES:

EPA Act 1979	Yes
EPA Regulations 2000	Yes



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APPLICABLE LEGISLATION/ EPI'S /POLICIES:	
Disability Discrimination Act 1992	N/A
Local Government Act 1993	N/A
Roads Act 1993	N/A
Rural Fires Act 1997	N/A
RFI Act 1948	N/A
Water Management Act 2000	N/A
Water Act 1912	N/A
Swimming Pools Act 1992	N/A
SEPP No. 55 – Remediation of Land	Yes
SEPP No. 64 – Advertising and Signage	N/A
SEPP No. 71 – Coastal Protection	N/A
SEPP BASIX	N/A
SEPP Infrastructure	Yes
WLEP 2000	Yes
WDCP	Yes
DWLEP 2009	Yes
S94 Development Contributions Plan	N/A
S94A Development Contributions Plan	N/A
NSW Coastal Policy (cl 92 EPA Regulation)	N/A

Section 79C “Matters for Consideration”	
Section 79C (1) (a) (i) – Have you considered all relevant provisions of any relevant environmental planning instrument?	Yes
Section 79C (1) (a)(ii) – Have you considered all relevant provisions of any provisions of any draft environmental planning instrument	Yes
Section 79C (1) (a)(iii) – Have you considered all relevant provisions of any provisions of any development control plan	Yes
Section 79C (1) (a)(iiia) - Have you considered all relevant provisions of any Planning Agreement or Draft Planning Agreement	Yes
Section 79C (1) (a) (iv) - Have you considered all relevant provisions of any Regulations?	Yes
Section 79C (1) (b) – Are the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality acceptable?	Yes
Section 79C (1) (c) – Is the site suitable for the development?	Yes
Section 79C (1) (d) – Have you considered any submissions made in accordance with the EPA Act	Yes



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Section 79C "Matters for Consideration"	
or EPA Regs?	
Section 79C (1) (e) – Is the proposal in the public interest?	Yes

DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS

Draft Warringah Local Environmental Plan 2009

Under the provisions of the Draft Warringah Local Environmental Plan 2009 the proposed development is defined as follows:

"Dwelling House" - a building containing only one dwelling,

Land Use Zone: R2 Low Density Residential.

Permissible or Prohibited: Permissible with consent.

Additional Permitted used for particular land – Refer to Schedule 1: N/A

Principal Development Standards:

Development Standard	Required	Proposed	Compliant	Clause 4.6 Exception to Development Standard
Building Height:	8.5m	3.1m	Yes	Not required

The proposed development is consistent with the aims and objectives of the Draft WLEP 2009.

SECTION 2 – ISSUES

PUBLIC EXHIBITION

The subject application was publicly exhibited in accordance with the EPA Regulation 2000 and the applicable Development Control Plan.

As a result of the public exhibition of the application Council received 1 submission from the following.

Name	Address
Mr & Mrs Boeck-Hopley	No. 26 Carcoola Road, Cromer

Issue: Works constructed without development consent/application

Response: The adjoining property owners have raised concerns in relation to works been undertaken without consent in relation to the outbuilding, deck, pergola (over the deck) and the elevated rock garden.

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On 7 April 2011 – *"A Notice of Intention was served on you on 04/02/2011 under Section 121H of the Environmental Planning and Assessment Act 1979 (NSW), advising that an Order was intended to be served. After consideration of the representations you made Council in light of the Notice of Intention, Council will assent to an extended period of time to comply with the Order."*

In light of the above a Development Application (DA2011/0714) was lodged 3 June 2011, which is the subject of this application. Additionally, a concurrent Building Certificate (BC2011/0068) was lodged on 2 June 2011. The development application shall be recommended for refusal as retrospective consent cannot be granted under S76A of the EP&A Act 1979.



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Issue: Landscape works may redirect flow on to No. 26 Carcoola Road and may affect or damage No. 26 Carcoola Road and the associated structures on that property.

Response: A flood analysis was undertaken by external consultant (Northern Beaches Consulting Engineers Pty. Ltd.) which stated:

“Given the localised nature of the increase in flood level, it is anticipated that the proposed stone garden will have negligible impacts on the surrounding properties and the subject property.

Materials and method used for the construction of the stone garden are deemed suitable to withstand forces applied by predicted 100-year ARI flows. “

The application was referred to Council Natural Environmental Unit (NEU) and as such no objection was raised subject to conditions.

This issue does not warrant refusal of the application.

BUILT FORM CONTROLS

As detailed within Section 1 (Code Assessment) the proposed development does not comply with the following Built Form Controls, accordingly, further assessment is provided hereunder.

NON-COMPLIANCE: Side setback

Required: *“The minimum setback from a building to a side boundary is 0.9 metre. Consent may be granted for development that, to a minor extent, does not comply with:*

- *The side setback, to allow a single storey outbuilding, carport, pergola or the like.”*

Proposed: The constructed elevated rock garden does not comply with the side setback with a 0.7m setback to the northern side boundary and the covered deck (pergola) does not comply with a 0.1m setback to the southern side boundary.

Ensure that development does not become visually dominant by virtue of its height and bulk.

Comment: Given that these structures are located at the rear of the site they are both not visible to the street-front, the covered deck (pergola) presents as single storey and sits comfortably with adjoining buildings and buildings within the vicinity. Additionally, the elevated rock garden given its low height (0.9m) and position within the rear yard is deemed not to dominate the adjoining and surrounding properties or public areas. The proposal is consistent with the visual pattern and therefore allows the development to integrate with the streetscape and the landscape.

Ensure that development responds to site topography.

Comment: The covered deck (pergola) presents as single storey and sits comfortably with adjoining buildings and buildings within the vicinity. Additionally, the elevated rock garden given its low height (0.9m) minimises the excavation to the natural landform. Notwithstanding it is considered to provide a consistent pattern of development and integration with the site topography.

Provide separation between buildings.

Comment: the covered deck (pergola) presents as single storey and sits comfortably with adjoining buildings and buildings within the vicinity. Additionally, the elevated rock garden given its low height (0.9m) demonstrates relief both to the adjoining buildings to the north and south of the subject site. Notwithstanding, the bulk of the open covered deck (pergola) has an articulated design with substantial front and rear setbacks providing an appropriate sense of building separation.

Provide opportunities for landscaping.

Comment: The subject site provides an adequate opportunity for landscaping and the non-compliance with the side setback do not restrict the provision of soft landscaping.

Create a sense of openness.

Comment: The proposal is considered to be of a similar architectural scale to adjoining structures and buildings of a similar visual bulk and is considered acceptable in terms of the General Principle for Building Bulk. Additionally, the



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proposal provides adequate separation between buildings creating a sense of openness and still allows for visual transparency from the front, rear and side boundaries.

Clause 20 Variation – Supported

Therefore, the variation to the Side Setback Built Form Control is supported under Clause 20 of WLEP 2000.

Clause 20(1) stipulates:

“Notwithstanding clause 12 (2) (b), consent may be granted to proposed development even if the development does not comply with one or more development standards, provided the resulting development is consistent with the general principles of development control, the desired future character of the locality and any relevant State environmental planning policy.”

In determining whether the proposal qualifies for a variation under Clause 20(1) of WLEP 2000, consideration must be given to the following:

(i) General Principles of Development Control

The proposal is generally consistent with Clause/s of the General Principles of Development Control and accordingly, qualifies to be considered for a variation to the development standards, under the provisions of Clause 20(1) (See discussion on “General Principles of Development Control” in this report for a detailed assessment of consistency).

(ii) Desired Future Character of the Locality

The proposal is consistent with the Locality’s Desired Future Character Statement and accordingly, qualifies to be considered for a variation to the development standards, under the provisions of Clause 20(1) (See discussion on “Desired Future Character” in this report for a detailed assessment of consistency).

(iii) Relevant State Environmental Planning Policies

The proposal has been considered consistent with all applicable State Environmental Planning Policies. (Refer to earlier discussion under ‘State Environmental Planning Policies’). Accordingly the proposal qualifies to be considered for a variation to the development standards, under the provisions of Clause 20(1).

As detailed above, the proposed development is considered to satisfy the requirements to qualify for consideration under Clause 20(1). It is for this reason that the variation to the Side Setback Built Form Control (Development Standard) pursuant to Clause 20(1) is Supported.



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SECTION 3 – SITE INSPECTION ANALYSIS



SITE AREA: 948.3sqm

Detail existing onsite structures:

- Single storey dwelling
- Studio (detached)
- Laundry with attached covered timber deck (detached)
- Raised rock garden
- Swimming pool

Site Features:

- Trees and shrubs

Site constraints and other considerations

Bushfire Prone?	No
Flood Prone?	Yes
Affected by Acid Sulphate Soils	Yes
Located within 40m of any natural watercourse?	Yes
Located within 1km landward of the open coast watermark or within 1km of any bay estuaries, coastal lake, lagoon, island, tidal waterway within the area mapped within the NSW	No



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Site constraints and other considerations

Coastal Policy?	
Located within 100m of the mean high watermark?	No
Located within an area identified as a Wave Impact Zone?	No
Any items of heritage significance located upon it?	No
Located within the vicinity of any items of heritage significance?	No
Located within an area identified as potential land slip?	No
Is the development Integrated?	No
Does the development require concurrence?	No
Is the site owned or is the DA made by the "Crown"?	No
Have you reviewed the DP and s88B instrument?	Yes
Does the proposal impact upon any easements / Rights of Way?	No

SITE INSPECTION / DESKTOP ASSESSMENT UNDERTAKEN BY:

Does the site inspection <Section 3> confirm the assessment undertaken against the relevant EPI's <Section's 1 & 2>?	Yes
Are there any additional matters that have arisen from your site inspection that would require any additional assessment to be undertaken?	No
Are there any existing unauthorised works on site?	Yes
If YES has the application been referred to compliance section for comments?	Yes

Signed

Date 30 September 2011

Phil Lane, Senior Development Assessment Officer



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SECTION 4 – APPLICATION DETERMINATION

Conclusion:

The site has been inspected and the application assessed having regard to the provisions of Section 79C of the Environmental Planning and Assessment Act, 1979, Warringah Local Environmental Plan 2000 and the relevant codes and policies of Council.

As the works have been undertaken without development consent or a construction certificate Council is unable to issue retrospective approval, however, can determine to refuse the application, accept the plans and take no legal action. This is considered satisfactory with the works to proceed subject to the following conditions:

- Plans being retained for Councils records.
- The applicant being advised that a Building Certificate under Section 149D of the Environmental Planning and Assessment Act 1979 must be lodged to determine the structural adequacy of the unauthorised works.
- The applicant being advised that no further breaches of the Consent will be tolerated and should such occur Council will refer the matter to it's Solicitors to take appropriate action.

RECOMMENDATION

- A. That Development Application 2011/0714 for works undertaken without development consent or a construction certificate at Lot 63, DP 578780, No.24 Carcoola Road, Cromer as detailed on plans:

Drawing No. Sheet 2 of 5, Sheet 3 of 5 & Sheet 4 of 5, dated May 2011, prepared by The Computer Crew be refused for the following reasons:

1. Pursuant to Section 76A of the Environmental Planning and Assessment Act 1979, retrospective approval of works completed without development consent or a construction certificate cannot be granted.
- B. The applicant be advised that Council will permit the retention of the works completed without the benefit of development consent or a construction certificate and take no further action in relation to this matter subject to:
 - i. The applicant being advised that a Building Certificate under Section 149D of the Environmental Planning and Assessment Act 1979 must be lodged to determine the structural adequacy of the unauthorised works.
 - ii. The applicant being advised that no further breaches of the Consent will be tolerated and should such occur Council will refer the matter to it's Solicitors to take appropriate action.

"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

Date 30 September 2011

Phil Lane, Senior Development Assessment Officer

The application is determined under the delegated authority of:

Signed

Date 30 September 2011

Rod Piggott, Team Leader, Development Assessments