

58 Lagoon street Narrabeen 2101

Applicant Justin Sinfield

Owner Justin Sinfield

1) Proposed deck

To be of slatted decking supported by timber posts and brick piers / footings as per Building Code Australia.

Open timber posts and hand railings of either metal or timber where required to be minimalistic and keep as open as possible – no glass – no solid infilled balustrades.

Photos will be attached to show extensive screening by trees for privacy of neighbours.

2) Carport / Covered area.

Timber frame cantilevered off existing house and approved addition with one post at boundary.

Timber frame.

Colour bond roof to match approved additions.

Weather board façade to match approved addition (minimal infill as per plan)

- 3) Propose that existing lower covered deck be same level as approved lower deck and approved full glass windows on western elevation be sliding doors now that Council suggested attaching deck to house. Also that approved seating in front of western existing lower deck change height slightly to create a step for proposed attached deck.

An application for a deck was previously submitted with a DA mod that was otherwise approved.

It was suggested during and after DA that a deck attached to the house rather than at the boundary would be more chance of being successful due to

- 1) Privacy of southern neighbour (even though no complaint)
- 2) Keeps in line with landscape of adjacent lots with hard patio and raised landscaping to south and raised deck to north .
- 3) Keeps it further away from the lake.
- 4) Complies with rear setback

Not taken into account last application was that in front of the property is an old raised concrete levee / retaining wall that forms a distinct demarcation to the lake.

There is also an elevated solid pathway between the lake and property.

In the assessment under SEPP (Coastal Management) –

10 Development on certain land within coastal wetlands and littoral rainforest area

Council Comment ; Not applicable to site

11 Development on land in proximity to coastal wetlands or littoral rainforest

Council Comment ; Not applicable to site

12 Development on land within the coastal vulnerability area

Council comment ; At the commencement of this Policy , no Coastal Vulnerability Area Map was adopted and therefore no coastal vulnerability area has been identified. Not applicable.

13 Development on land within the coastal environment area.

Council Comment part 1 ; The proposed works are unlikely to cause and adverse impact upon the matters identified in this clause. The proposal is wholly located within the subject site and does not discourage public access or amenity along the foreshore area nor impact on natural foreshore process

Council Comment part 2 ; The proposal has been designed in such a way that it satisfies the relevant matters identified in this clause.

14 Development on land within the coastal use area.

Council comment ; The proposal does not impact upon the existing and safe access to and along the foreshore. The visual amenity from private and public space is not adversely effected and the surrounding area consists of examples of similar developments.

The foreshore area is heavily modified and no aboriginal heritage sites have been identified within the vicinity of the proposed development . The location of the works are not likely to cause an adverse impact upon matters identified in this clause. A condition of consent has been placed to stop works if any aboriginal Engravings or Relics are unearthed.

The next line seems to be out of context and may have a typo where it says not comply after saying it complies.

15 Development in coastal zone generally – development not to increase risk of coastal hazards.

Council comment ; The proposal is not likely to cause increased risk of coastal hazards on that land or other land.

Development control plan and Local Environmental Plan 2011

Council Comment ; The proposed deck at the rear of the site has a setback of 1.5m from the rear boundary

The control requires a 6.5m setback to the rear boundary

The Warringah DCP 2011 under heading B9 Rear Boundary setbacks allows 50% encroachment on larger lots. Additionally using the Councils own DCP rear setback overlay map the figure is 6m not 6.5m that is stated. The proposed new position for deck complies with this without need for use of encroachment allowance.

Given that the rear setback now complies the consideration of merits of the objectives of the Rear setback do not apply , however will be replied to for sake of merit consideration.

The concrete level at the front of the block creates a clear demarcation to the Riparian Water way.

Being set back further it is also now much further away from the Riparian Waterway.

The Council has constructed a huge raised structure directly through the riparian water way for 1000's of metres. The proposed deck is of similar design in that it is raised and not sitting in on the ground. The Council walkway through the Riparian Land of immense proportion and right in the middle of the interface of lake and land is in a far more sensitive area and must have had approval for such design to be sympathetic.

The proposed deck is set well behind a concrete levee demarcating the Riparian Waterway and set further away than previously proposed AND within the setback area. The area it is proposed in is lawn, rather than Riparian vegetation and also set back a lot further so as to minimize any effect.

In the merit assessment the writer says

"To ensure opportunity for deep soil landscape areas are maintained"

The writer incorrectly then talks about open landscape.. This merit assessment objective is to do with Rear Boundary and as such has been incorrectly addressed. Rear Boundary set back is now complied with.

"To create a sense of openness in rear yards"

Since this is an objective / merit assessment of rear setback this has now been satisfied by being compliant.

To preserve the amenity of adjacent land particularly relating to privacy between buildings
Since this is an objective / merit assessment of rear setback this has now been satisfied by being compliant.

The deck now sits further back and has large trees between it and the neighbouring property and thus satisfies privacy.

The argument on privacy for the previous deck closer to the rear boundary was that there was a public pathway and the neighbouring lots are totally open to the pathway with no sense of privacy by way of fence or vegetation screen.

I would disagree with the assessment saying this pathway in front is not council maintained as there are council lights along the path and directly at the neighbours rear boundaries.

To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape.

Since this is an objective / merit assessment of rear setback this has now been satisfied by being compliant.

The neighbour to the north property extends further to the rear of the yard and has a higher attached deck than that proposed. The neighbor to the south property extends much further to the rear and also has a hard patio area that extends further than the proposed deck.

To provide opportunities to maintain privacy between dwellings

Since this is an objective / merit assessment of rear setback this has now been satisfied by being compliant.

However the new proposed deck has tall trees to the south creating privacy and is positioned further from the north neighbor had has a screen of palms within the lot of the proposed deck.

The landscaping does not comply with required 40 % , however it will be addressed later that it complies with objectives and merit assessment. It is also noted that the manager signing off suggested the consideration to move the deck to attach to the house. Although this was no guarantee the suggestion would only have been made to go through the DA process gain if there was sufficient consideration that this had likelihood of being successful. The manager was aware that the modification that was approved had to be reapplied for because a review had expired its time period due to error by council to make a decision in time. The manager was helpful given this and kept me informed throughout and I would not think given the circumstances the suggestion would be given without good chance of success , although said couldn't guarantee it. However I was also told that the review had been approved but time ran out due to Council error , and that I would have to make a new application of the same thing that should be approved but couldn't guarantee that either. So in context I understand that nothing is 100% guaranteed but advice shouldn't be given for poor success.

Additionally I went into council and spoke with the duty planner prior to lodging this. They were very helpful.

I asked about a pre lodgment meeting. They advised in this case being it wasn't a big development that for a deck it wasn't worth having a meeting and didn't necessarily go to that person any way.

I have made all attempts prior for advice and due process prior to lodgment.

I request that there be communication in this process if any problems in passing.

In regards to comparables given to the previous assessor. I am in disagreement with some of the comments dismissing all of them.

The assessor states that

"The applicant refers to a 2015 approval at 159 Ocean street. The relevant assessment report states that the application is compliant with the 40% requirement"

I do not know where the assessor got this from. I can see on the Council site that a response was received internally with regard to Landscape and nothing was flagged HOWEVER. If time was taken to correctly assess this they would see that the submitted landscape and landscape calculation plan CLEARLY states that

Existing Hard surface 227.3m² 59%

Proposed Hard surface 246.4m² 64%

Proposed Soft surface 141.3m² 36%

Required Soft Surface 155.1m² 40%

This is very clear and simple to see that the assessor was incorrect in stating in the assessment that the DA complied with 40%

Additionally if the assessor checked the plans of 204 they would see that the breach is in the form of a 2 storey brick addition that is roofed and not satisfying any of the objectives or merit assessment.

In regards to 58a Lagoon street. Regardless of the suggestion from the assessor that virtually went as far to say about 58a Lagoon and 204 Ocean "It different because it has been subdivision" (they can do anything they want forever going forward without having to have ANY consideration of landscaping even to the point of ZERO.)

204 Ocean street may be a subdivision. Although small there is opportunity for it to have some landscaping in the rear. However it has been fully allowed to be passed with ZERO landscaping and the rear area is completely paved in order to park their G60 Mercedes 4WD despite garaging and hardstand at the front.

Just because it can have reduced landscaping doesn't mean it should be allowed to be ZERO when there is absolute opportunity to have some at least token effort. There is also completely no effort to even compromise or be creative in the form of vertical gardens or roof top gardens to even give a hint of trying to comply , yet the council completely exonerates them as does the assessor in response to using them as a comparable.

58 a Lagoon street . The assessor SAYS the foot print is unchanged , however looking at the DA application it is completely clear that the footprint is bigger as the existing lower sliding door on the north side is closer to the new addition than it was to the existing structure. Look at the existing north elevation and then look at the proposed north elevation and it is clear that the proposed development is closer to the existing windows and sliding doors to the west of the north facing wall.

The plans stated 26% landscaping while the ACTUAL landscaping was 10% . Just because the plans state NO increase in footprint does not mean this is the case. It clearly shows on plans of north elevation that the proposed area extends further west than the existing deck and was easily visible for me to see even if the assessor could not see it or did not want to see it. In addition the existing structure was a very elevated deck , that later became covered, and now natural ground infilled below. The elevated deck provided for more open area and more area that provided soil for the ecosystem and area for run off of water to be absorbed into the soil. By creating a fully enclosed area and a bigger footprint (even if minimal) is still not in line with the objectives or merits of a property that already had very minimal landscaping of only 10% to begin with. The encroachment has been in the form of a hard 3 storey roofed structure that is impervious to water and larger footprint.

58a Lagoon submitted plans which stated that Landscaping was 70.19m² or 26%

Where as Council agrees that the actual landscaping is as little 10%

As such just because a DA submission states a high percentage does not mean it is true, as clearly acknowledged by Council the claimed 26% vs the real 10%.

The assessor states that the property 21 Malcom Street has improved from 30% to 31% and as such even though still grossly under requirement is approved.

However from calculations off the Application on the council website the following are the calculated figures

Front garden on the application states 18.6m². Rear Garden states 88.6m². Total area is 107m² on a lot size of 410m²

This is a REAL landscaping of 26%

The documentation also refers to the application as “the foot print of the development is not significantly bigger” in regard to riparian land.

This clearly suggests that the development is BIGGER . The development is in the form of hard elevated 2 storey roofed area that is in breach. As such it does not even meet objectives or merit for landscaping.

Additionally even some of the “landscaped area” included in the DA application shows it on “Landscaping drawings to be in the form of pavers and pebbles around the covered deck and fire pit area, rather than native vegetation or even grass. The front area is also garden beds less than 2 metres wide and pebbles as a pathway.

However there doesn't seem to be any discussion on merit and landscape referral simply passes it with not a single mention.

As such all the provided comparatives are of a far greater breach than the proposed deck.

The Objectives and Merit assessment for landscaping as per Councils own Warringah DCP are as follows

- 1) To enable planting to maintain and enhance the streetscape.
As per council comment, the lot is a battle axe and this does not apply
- 2) To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife
The council comment is a rather basic and poorly thought out response cherry picking the parts to support their argument.
The wording says CONSERVE indigenous vegetation. The deck is proposed to be over existing lawn / grass which is not of indigenous nature. As such it is CONSERVING.
Additionally it is not taking into account what is already existing. Many applications are a blank slate which means it is easy to enhance the vegetation if none exists.
Currently there is a mature gumtree over 12 metres in height
There are 8 three plus metre high trees on the north boundary that are native to Australia
There are 14 two plus metre high trees on the western boundary that are native to Australia
There are 7 five meter high trees on the southern boundary that are native to Australia
Additionally the deck is raised rather than covering the ground AND allows water to flow through.
The assessor has thought only of trees AND hasn't considered that the proposed area for deck is on grass.
The elevated status of the deck ALLOWS for wildlife which is half the objective besides trees. Full variety of insect life , frogs , lizards and animals like bandicoots, native rats and other small marsupials and possums will still have access to this area.
As such it completely complies in regard to wildlife.

Compare this to ALL the other comparables mentioned , even if given the excuse “They are subdivisions” they can have further decrease or zero without having to even try to look like they are conforming and then given approval no matter what without question. The others breach all with roofed 2 or 3 storey hard structures.

- 3) To provide for the landscape 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 and scale of the building (proposed)
The response from council is a simplistic , basic response that gain cherry picks without due consideration to the wording.

The proposed development is very low. As such the vegetation to mitigate this is of low reciprocal requirement. There is already substantial and numerous trees all BIGGER than the proposed low set deck.

There is already a high level of canopy trees and tall to medium trees. The proposed deck is NOT proposing removal of any of these canopy trees or medium to tall trees. The proposed deck is taking up non indigenous lawn , it is maintaining all the tall to medium trees and canopy and STILL leaving SUFFICIENT space for more. SUFFICIENT is the key word in this and thus it is satisfied.

Even if it was as low as 30% remaining landscaping AFTER a very low development which allows water to penetrate as per is open landscaping and is raised above the surface of the ground to leave it basically open to wildlife and the ecosystem and even planting under the deck this is MORE than SUFFICIENT area given that it was all non indigenous lawn area for the proposed site.

At 30% this represent STILL a remaining area of 183m² of landscaping.

It DOES NOT MATTER WHAT EXCUSES the assessor gave for all the other properties , they still have a equal community responsibility to contribute to the open landscaping in the spirit and merit of this.

159 Ocean street as stated in DA 36% and 141m² – INCREASE IN HARD FOOTPRINT and DECREASE in landscaping.

204 Ocean street contribution of open landscape ZERO m² ALL HARD FOOTPRINT and INCREASED footprint and DECREASED landscaping

21 Malcolm street contribution of open landscaping is 107m² and 26% all HARD FOOTPRINT and INCREASED ie DECREASED landscaping

58a Lagoon street contribution of open landscape (claimed 26m²) really 10% all HARD FOOTPRINT and INCREASED FOOTPRINT (regardless of what plans say as being same footprint size) and DECREASED landscaping. The roof foot print may have stayed the same but the wall footprint has become bigger . It is the walls that determine footprint not the roof.

ALL the comparable have INCREASED the footprint and DECREASED the landscaping and therefore should be subject to scrutiny of landscaping regardless of what special conditions they have already been afforded prior to have a much lower landscaping. It should not be a everlasting waiver of this condition going forward.

Just because 58a Lagoon and 204 Ocean have subdivision may mean they get special dispensation from the ORIGINAL subdivision BUT should not have special dispensation to FURTHER reduce their already special treatment to have low levels and make them even lower again or ZERO.

159 and 204 clearly state in the DA that the foot print is bigger AND the landscaping does NOT comply.

ADDITIONALLY ALL of the above properties are breaching by way of 2 or 3 storey hard structure , walled , roofed and destroy ground ecosystem , YET did not even have a mention of concern.

In comparison. The proposed deck is elevated meaning wildlife and ground ecosystem still remains. The deck is pervious to water and thus allows normal water penetration and run off. The deck is extremely low level compared to these monstrous walled and roofed hard developments.

The TOTAL remaining available landscape available , at 183 m2 is far greater than any of the others , plus the number of existing canopy trees and tall and medium trees adds up to more than the other 4 comparable all added together.

There seems to be a massive discrimination that this deck of minor impact that meets objectives is put under such huge scrutiny compared to the other 4 developments of major impact that are given a free card and not even a mention in assessment of the reduced or hugely reduced landscape requirement.

However this was the assessment prior to recifying the rear setback and I was advised to reapply after that was done.

Of all these proposals , if only one was to be passed , this deck by far stands out as the MOST complaint on merit and overall m2 of available landscaping and softest , lowest impact that allows wildlife and ecosystem, water penetration and still have the MOST available open space for FURTHER landscaping.

The way the assessment appears biased.

It is not like any of these other properties are cheap low socio economic properties that deserve special "low economic consideration because they have been labelled and acted as cheaper land lots with special allowances to be breach landscaping for the reason of being allowed to be of a minimum size to support minimum space requirements of a family. These are large luxurious developments on small blocks being given special permission to further over develop by the way of 2 or 3 storey structures that cover the ground , are of huge bulk and are roofed.

21 Malcolm is lakefront but is allowed 26% landscaping without a single mention in the assessment, when the block is already smaller and the landscaped area is thus tiny in m2.

204 Ocean is on a beachfront road but allowed to have zero landscaping to park their G60 Mercedes in the back yard area that is paved despite having parking at the front.

When it comes to merit this should be taken into consideration.

When a property is smaller it is one thing to say "its not fair that say every property has to contribute a minimum of 150m2 in landscaping no matter what size,

HOWEVER on a merit basis it is perfectly reasonable to ask for same percentage, because a smaller block will have a smaller m2 for the same percentage.

As it stands lots like 204 Ocean , 58a Lagoon , 19 Malcolm and 159 Ocean not only would have a smaller m2 but don't even have to comply with having same % . Yet in their assessment there is NO mention of this and in the previous assessment of my deck , the assessor gave them complete immunity that they were not the same and therefore had ZERO requirement and zero comparable, even stating that 159 Ocean St was 40% when its own DA said different. .

As such these owners are allowed to pay a cheaper price for a smaller parcel of land BUT are allowed to massively over develop and therefore utilise far more of the land.

This is inherently unfair that the smaller the block you pay for, can build a bigger house than on a larger block. Not only do you not have to set aside the SAME landscaping raw area , you don't even have to set aside the same , smaller area , by percentage , in fact you can be given FAR more leniency and even be required to provide ZERO landscaping.

As such when it comes to Objectives and merit the ACTUAL m2 of landscaped area should be given MORE merit as that is providing MORE of what the whole objective is.

Additionally in this case the breach is a raised deck that has minimal effect of the ground below , allows wild life and micro-ecosystem to fully function , allows water to penetrate and absorb and is low height as opposed to 2 – 3 storey high impact developments.

It is proposed that more low lying shrubs and trees are to be planted.

HOWEVER given the only complaint from neighbours regarding the deck was concerns that MORE trees will be planted and asked that existing trees to the south be cut down it is a delicate situation to balance. Council wants MORE vegetation , yet also listens to views of neighbours , who in this case is asking for less vegetation.

On the plans provided it is shown that more Australian Native trees be planted on the southern fenceline. However to keep neighbours happy it is offered that low lying plants such as Australian Natives and non indigenous , non invasive plants be planted.

4) To enhance privacy between neighbours

The assessor argued that although there was a public path that compromised privacy of the neighbours , the path was NOT maintained by council and therefore not recognized as a path EVEN THOUGH it was acknowledged as a path. Additionally there are council installed and maintained lighting on the path even though the assessor argues that Council does not maintain the path.

Additionally the neighbour to the south have actively increased the height of the rear area by infill and developed a hard patio in the rear area. As such THEY have caused privacy issues towards this lot.

HOWEVER the advice of the manager has been taken and the deck has been set back considerably from the rear setback. It is not close to the north neighbour and has a canopy of trees and palms creating privacy.

On the south side the proposed deck is not far past the actual building line of the southern property and BEHIND the line of the hard patio area of the neighbouring property.

Additionally privacy is afforded by the row of 7 five meter high Australian trees. .

5) To accommodate APPROPRIATE outdoor recreational opportunities that meet the NEEDS OF THE OCCUPANTS

The assessor has written a simplistic biased view of the situation.

The objective is actually heavily biased in wording to the occupant, as it is the OCCUPANTS NEEDS that are to be satisfied.

Due to the existence of flood levels the property is forced to comply with minimum levels. This creates a big level difference to the levels of the internal of the house to the external levels of the outdoor area and a thus physical barrier to appropriate outdoor recreational opportunities.

The older neighbouring property to the south do not have this same compliances which means house level and outside level is a flat continuation from house to garden living, as well as in the time I have lived there seen them build it up and install and hard patio at house level.

The proposed deck provides a transition into the rear yard to provide recreational opportunities. It also allows more use of the garden area by allowing this transition AND encourages more gardening and planting opportunities as an indoor outdoor living becomes more appropriate and enhances the desire to do gardening and enhance the landscaping as well as enhancing use of the outdoor area by easily drawing the inside out to nature. The occupant actually wants to create more of an outdoor area to not only enjoy the views of the lake but to be able to create a more enjoyable garden and plant area. Currently it seems very distinct and the back lawn is uninviting and hardly used. As such the deck provides the perfect transition to perfectly satisfy this objective. .

By having this transition it creates MORE OUTDOOR RECREATIONAL OPPORTUNITY that meets the needs of the occupant which is exactly what the objective says.

It is unreasonable for the assessor to make an unsupported subjective assessment on behalf of the occupant with little consideration to the flow and allowing the owner to enjoy indoor outdoor living and ENCOURAGE gardening and outside living. It is also unreasonable given that all the comparable properties should have been done on merit given they breached all the way to ZERO landscaping of 204 Ocean and had ability to have the rear paved parking area as landscaped given the garaging and hardstand at the front of the property.

The tenacity of making exceptions and special circumstances for all the other properties and even going as far as saying that the burden of landscaping fell on me because "we" the council want to maintain your backyard as it is (while allowing the smaller lots special everlasting exemption to over develop their smaller properties)

- 6) To provide sufficient space for service functions.
There is sufficient space
- 7) To facilitate water management including onsite detention and infiltration of storm water. Compared to all the comparables given, this proposal is the ONLY one that provides infiltration of storm water to be maintained.

In regard to covered hardstand / tall carport

The neighbours that share the driveway have proposed, had approved and recently built a third storey balcony that overlooks straight down over my property in the area where the carport is proposed.

I did not wish to complain about this as they are new neighbours and I don't want to get offside and additionally I didn't want them complaining about my DA despite them being aware of an approved complying development at the time they bought that was factored into the purchase price.

However, the balcony is not just any balcony, but a balcony off the main bedroom. As such creates privacy issues.

The balcony looks down into the open space in the area proposed for the car port.

The carport would then be a solution for both properties.

It would mean that privacy would be created to stop vision up to the balcony off the main bedroom area ...a balcony that one would want more privacy for.

Additionally would provide privacy from them looking down, as this is the direction that they will be viewing to see the lake over my property.

The carport would simply be a roofed structure with no walls.

It would have NO impact on privacy to the neighbor to the north and would increase privacy in both directions to the 2 dwelling to the north closer to the street. (the adjoining lot has two dwellings)

In order to maintain maximum access it is proposed that the carport is attached to the south to the approved new development.

To attach to the existing dwelling to the south.

The north east corner is proposed to be on the boundary. A fence may be 3 metres in height. As such no change would be made to any access or maneuvering of cars.

The survey shows that in the area of the proposed carport that the fence actually encroaches the boundary on the side of the proposed boundary. As such even if the support post was at the fence line it would be on the lot of the proposed development.

The post would simply be a cantilever point and the rest of the structure of the balcony be set back as required.

The fence may be 3 metres. The proposed post is 3m and as such is in compliance with a fence post height.

The reason to be on the fence line (and within the lot) is to maximize access.

The proposed carport would compliment and enhance the street appeal.

It also creates privacy from the street as the property is down a battleaxe drive and passers by look straight down into the property.

The roof would be sloped and made of colourbond to match the sloped colourbond roof of the approved development that it would be attached to.

Having 2 similar styled and same colour material sloped roofs it would assist in blending it into the existing property.

The southern attachment to the existing house would be at the level of the divider of the sliding windows. It would maintain solar access and ventilation above the attachment point , while reducing solar heat absorption and heat damage to the timber flooring below the attachment point.

Additionally it would provide increased privacy to the property by covering the lower half of the full length floor to ceiling windows in the two bedrooms.

It would decrease solar heating and thus improved energy efficiency in summer by covering glass to the north, while in winter create insulation and also encourage keeping solar heat transmission during the day as blinds can be left open with increased privacy during the day to allow winter sun heating inside the house.

The proposed carport is an open structure. It is over existing concrete hardstand area and would make not further increase on hard surface and would soften the look.

Water would be drained off via a gutter and join proposed downpipes for the already approved development.

Dr Justin Sinfield
58 Lagoon Street
Narrabeen 2101

0407 997 050