



Warringah Council

RESIDENTIAL DEVELOPMENT - DEVELOPMENT APPLICATION ASSESSMENT REPORT

Development Application No. DA2008/1551

Assessment Officer: Kevin Short

Property Address: Lot 37, DP 30670, No.15 Biralee Crescent, Beacon Hill

Proposal Description: Alterations and additions to an existing dwelling house, demolition of a carport and construction of a new garage, driveway and front fence.

Plan Reference: Architectural drawings (Revision A) A1, A2, A3, A5, A6, A7, A8 and S2 prepared by Sally Gardner Design and Draft dated 18/03/2009.

Development Details: The proposed development involves the demolition of the existing carport and driveway and construction of a garage, driveway and cross over. Alterations to the ground floor include the demolition of an existing covered deck area off the western elevation and conversion to a new entry area and stairway. The eastern elevation of the existing single garage is being demolished and converted to a laundry and courtyard area and the carport near the front north-east corner of the site is being demolished and replaced with a garage. In addition, the internal walls of the existing bedroom are being demolished to enable the existing living room to be extended in area.

The existing upper level covered balcony area, located off the eastern elevation, is being enclosed and a deck and pergola is proposed to adjoin the southern elevation of the existing dwelling.

The proposed development also includes minor landscaping works in relation to the existing dwelling including the conversion of hard surface areas adjoining the mid-western section of the site to landscaped open space. A 1.8m masonry and timber fence is also proposed to adjoin the front boundary.

The proposed external materials and finishes will match those of the existing dwelling which consists of rendered brickwork and timber cladding external walls, aluminium framed glass doors and windows, metal roofing and timber decking.

Report Section	Applicable	Complete & Attached
Section 1 – Code Assessment	☒ Yes ☐ No	☐ Yes ☐ No
Section 2 – Issues Assessment	☒ Yes ☐ No	☐ Yes ☐ No
Section 3 – Site Inspection Analysis	☒ Yes ☐ No	☐ Yes ☐ No
Section 4 – Application Determination	☒ Yes ☐ No	☐ Yes ☐ No

Estimated Cost of Works: \$224, 950.00

Are S94A Contributions Applicable? \$2249.00

☒ Yes ☐ No

<i>Warringah Section 94A Development Contributions Plan</i>			
Contribution based on total development cost of		\$	224, 950.00
Contribution - all parts Warringah	Levy Rate	Contribution Payable	Council Code
Total S94A Levy	0.95%	\$2137.00	6923
S94A Planning and Administration	0.05%	\$112.00	6924
Total	0.5%	\$2249.00	



Notification Required?

☒ Yes ☐ No

Period of Public Exhibition?

☒ 14 days ☐ 21 days ☐ 30 days ☐ N/A

Submissions Received?

☒ Yes ☐ No

No. of Submissions: One (1)

One (1) submission was received from the adjoining property owner at No.14 Biralee Crescent, Beacon Hill. The submission is discussed in section 2 of this report.

Amended Plans: Amended plans were received by Council on 24 March 2008 to address the unacceptable impacts on the streetscape of Biralee Crescent resulting from the substantial breach of the front and side building setbacks which was raised after the preliminary assessment of the application. These plans were not re-notified given that the amendments to the plans related specifically to front and side boundary issues and represent a "lesser environmental impact".

Are any trees impacted upon by the proposed development? ☐ Yes ☒ No

SECTION 1 – CODE ASSESSMENT REPORT

ENVIRONMENTAL PLANNING INSTRUMENTS

WLEP 2000

Locality: E2 Dee Why Lagoon Suburbs

Development Definition: ☒ Housing ☐ Ancillary Development to Housing ☐ Other

Category of Development: ☒ Category 1 ☐ Category 2 ☐ Category 3

Desired Future Character: E2 Dee Why Lagoon Suburbs

☐ Category 1 Development with no variations to BFC's (Section 2 Assessment not required)

Is the development considered to be consistent with the Locality's Desired Future Character Statement?

☒ Yes ☐ No

☒ Category 1 Development with variations to BFC's (Section 2 Assessment Required)

☐ Category 2 Development Consistency Test (Section 2 Assessment Required)

☐ Category 3 Development Consistency Test (Section 2 Assessment Required)

Built Form Controls: E2 Dee Why Lagoon Suburbs

Building Height (overall): Applicable: ☒ Yes ☐ No Requirement: ☒ 8.5m ☐ 11.0m	☒ Existing and unchanged Proposed: 7.89m Complies: ☒ Yes ☐ No (garage)
Building Height (underside of upper most ceiling): Applicable: ☒ Yes ☐ No	☒ Existing and unchanged Proposed: 6.1m



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Requirement: ☒ 7.2m	Complies: ☒ Yes ☐ No
Front Setback: The site has its primary street frontage to Biralee Street. Applicable: ☒ Yes ☐ No Requirement: ☒ 6.5m Is the Corner Allotment / Secondary Street Frontage control applicable?: The site has its secondary street frontage to Warringah Road. ☒ Yes ☐ No Requirement: ☒ 3.5m ☐ Other	Proposed: 3.79m to Garage 10.8m to primary dwelling Complies: ☐ Yes ☒ No Note: This non-compliance is discussed in Section 2 of this report. Secondary Street Frontage: ☒ Existing and unchanged Proposed: 8.7m to existing primary dwelling. 4.3m to proposed upper level balcony. Complies: ☒ Yes ☐ No
Landscape Open Space: Applicable: ☒ Yes ☐ No ☒ 40% (222.88m²) ☐ 50% (.....sqm) ☐ Other	☒ Existing and unchanged Proposed: 36.8% (205m²) Complies: ☐ Yes ☒ No Note: The proposed development will not decrease the existing landscaped open space which is calculated at 36.8%. Notwithstanding, a condition has been imposed on the consent requiring an indigenous canopy tree to be planted within the rear building setback of the property. This condition will provide a net increase to the landscaping elements of the site, and on this basis, the proposed development satisfies the requirements of the control.
Side Boundary Envelope: Applicable: ☒ Yes ☐ No Requirement: ☒ 4m / 45 degrees ☐ 5m / 45 degrees ☐ Other	Boundary: ☐ Nth ☐ Sth ☐ Est ☒ Wst ☒ Existing and unchanged Note: No works to the western upper level floor are proposed along the western elevation. Boundary: ☐ Nth ☐ Sth ☒ Est ☐ Wst Fully within Envelope: ☐ Yes ☒ No Minor Breach: ☒ Yes ☐ No Complies: ☐ Yes ☒ No Note: The non-compliance along the upper level eastern



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	elevation is specifically confined to a maximum height of 0.80m at the south-east corner of the pergola, and tapers down for a distance of 7.4m, where the extent of the breach is 0.7m at the northern end of the enclosed verandah. This non-compliance is discussed in Section 2 of this report.
Side Setbacks: Applicable: ☒ Yes ☐ No ☒ 900mm ☐ 4.5m	Boundary ☐ Nth ☐ Sth ☐ Est ☒ Wst Proposed: 0.9m to primary dwelling Complies: ☒ Yes ☐ No Boundary ☐ Nth ☐ Sth ☒ Est ☐ Wst Proposed: 0.9m to the garage and part 0.9m and part 1.3m to primary dwelling. Complies: ☒ Yes ☐ No Note: An objection was received by Council from the owner of the adjoining property, No.14 Biralee Crescent, with respect to the side setback of the proposed garage. This concern is discussed in detail in Section 2 of this report.

General Principles of Development Control:

CL38 Glare & reflections Applicable: ☒ Yes ☐ No	Complies: ☐ Yes ☒ Yes, subject to condition ☐ No Note: The submitted architectural drawings note that the external finishes and materials of the proposed additions will match those of the existing dwelling which consist of rendered brick and timber cladding external walls, aluminium framed glass doors and windows, metal roofing, metal garage door and timber decking. Notwithstanding the above, a schedule of external finishes and tones was not submitted with the application, and therefore, a condition has been imposed on the consent requiring the external finishes and materials to be of earthy and natural tones to complement the existing dwelling and to harmonise with the surrounding landscape settings.
CL39 Local retail centres Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
CL40 Housing for Older People and People with Disabilities Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
CL41 Brothels Applicable:	Complies:



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☐ Yes ☒ No	☐ Yes ☐ Yes , subject to condition ☐ No
CL42 Construction Sites Applicable: ☒ Yes ☐ No	Complies: ☒ Yes ☐ Yes , subject to condition ☐ No
CL43 Noise Applicable: ☒ Yes ☐ No	Complies: ☒ Yes ☐ Yes , subject to condition ☐ No
CL44 Pollutants Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
CL45 Hazardous Uses Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
CL46 Radiation Emission Levels Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
CL47 Flood Affected Land Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
CL48 Potentially Contaminated Land Applicable: ☒ Yes ☐ No	Complies: Based on the previous land uses is the site likely to be contaminated? ☐ Yes ☒ No Is the site suitable for the proposed land use? ☒ Yes ☐ No
CL49 Remediation of Contaminated Land Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
CL49a Acid Sulfate Soils Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
	Complies:



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CL50 Safety & Security Applicable: ☐ Yes ☒ No	☐ Yes ☐ Yes , subject to condition ☐ No
CL51 Front Fences and Walls Applicable: ☒ Yes ☐ No	Complies: ☒ Yes ☐ Yes , subject to condition ☐ No Note: The proposed development includes a 1.8m high front fence constructed of rendered brick and stained timber slats. These building materials and finishes are of a high standard which will contribute to the aesthetic quality of the streetscape. In addition, the existing landscaping within the front building setback will be able to be viewed through the timber slat component of the proposed front fence which will assist to soften the visual bulk of the structure. Given the above, the proposed front fence will have an acceptable impact on the streetscape.
CL52 Development Near Parks, Bushland Reserves & other public Open Spaces Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
CL53 Signs Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
CL54 Provision and Location of Utility Services Applicable: ☒ Yes ☐ No	Complies: ☐ Yes ☒ Yes , subject to condition ☐ No
CL55 Site Consolidation in 'Medium Density Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
CL56 Retaining Unique Environmental Features on Site Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
CL57 Development on Sloping Land Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
CL58 Protection of Existing Flora Applicable:	Complies: ☒ Yes ☐ Yes , subject to condition ☐ No



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☒ Yes ☐ No	
CL59 Koala Habitat Protection Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
CL60 Watercourses & Aquatic Habitats Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
CL61 Views Applicable: ☒ Yes ☐ No	Complies: ☒ Yes ☐ Yes , subject to condition ☐ No
CL62 Access to Sunlight Applicable: ☒ Yes ☐ No	Complies: ☒ Yes ☐ Yes , subject to condition ☐ No
CL63 Landscaped Open Space Applicable: ☒ Yes ☐ No	Complies: ☒ Yes ☐ Yes , subject to condition ☐ No
CL63A Rear Building Setback Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
CL64 Private open space Applicable: ☒ Yes ☐ No	Complies: ☒ Yes ☐ Yes , subject to condition ☐ No
CL65 Privacy Applicable: ☒ Yes ☐ No	Complies: ☐ Yes ☒ Yes , subject to condition ☐ No Note: The proposed development will not result in any direct and unreasonable overlooking of the habitable rooms and private open spaces of adjoining dwellings, including No.14 Biralee Crescent. Concern has been raised in a submission by the owner of No.14 Biralee Crescent regarding privacy issues as a result of the existing single garage being demolished. This is discussed in Section 2 of this report.
CL66 Building bulk Applicable: ☒ Yes ☐ No	Complies: ☒ Yes ☐ Yes , subject to condition ☐ No Note: A small portion of the southern elevation is within the building envelope, however, the non-compliance is minor



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	and the visual bulk and architectural scale of the resultant built form is acceptable in that it will remain consistent with the dwellings on adjoining properties.
CL67 Roofs Applicable: ☒ Yes ☐ No	Complies: ☒ Yes ☐ Yes , subject to condition ☐ No
CL68 Conservation of Energy and Water Applicable: ☒ Yes ☐ No	Complies: ☒ Yes ☐ Yes , subject to condition ☐ No
CL69 Accessibility – Public and Semi-Public Buildings Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
CL70 Site facilities Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
CL71 Parking facilities (visual impact) Applicable: ☒ Yes ☐ No	Complies: ☒ Yes ☐ Yes , subject to condition ☐ No Note: Following the preliminary assessment of the application, the applicant was requested to submit amended plans to address the unacceptable impacts on the streetscape of Biralee Crescent resulting from the garage structure being substantially within the front and side building setbacks. Amended plans were received by Council on 24 March 2008 and depict that the front building setback of the garage was increased from 1.66m to 3.79m and the side setback increased from nil to 0.9m. This was achieved by removing the storage area component of the garage, which in turn, resulted in the length of the walls to be reduced from 8.63m to 6.47m. Given the above, the amendments have reduced the overall bulk of the garage and increased the spatial separation to the adjoining dwelling at No.14 Biralee Crescent, and therefore, its impact on the streetscape and adjoining property is acceptable.
CL72 Traffic access & safety Applicable: ☐ Yes ☒ No	Complies: ☒ Yes ☐ Yes , subject to condition ☐ No
CL73 On-site Loading and Unloading Applicable:	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No



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☐ Yes ☒ No	
CL74 Provision of Carparking Applicable: ☒ Yes ☐ No	Complies: ☒ Yes ☐ Yes , subject to condition ☐ No
CL75 Design of Carparking Areas Applicable: ☒ Yes ☐ No	Complies: ☒ Yes ☐ Yes , subject to condition ☐ No Note: Part of the development seeks to demolish the existing single carport and garage and replace it with a double garage of dimensions, 6.47m in length and 6.46m in width. In this regard, the dimensions of the proposed carport satisfy the numerical standards of this Clause.
CL76 Management of Stormwater Applicable: ☒ Yes ☐ No	Complies: ☐ Yes ☒ Yes , subject to condition ☐ No
CL77 Landfill Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
CL78 Erosion & Sedimentation Applicable: ☒ Yes ☐ No	Complies: ☐ Yes ☒ Yes , subject to condition ☐ No
CL79 Heritage Control Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
CL80 Notice to Metropolitan Aboriginal Land Council and the National Parks and Wildlife Service Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
CL81 Notice to Heritage Council Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
CL82 Development in the Vicinity of Heritage Items Applicable:	Complies:



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☐ Yes ☒ No	☐ Yes ☐ Yes , subject to condition ☐ No
CL83 Development of Known or Potential Archaeological Sites Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No

Schedules:

Schedule 5 State policies Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
Schedule 6 Preservation of bushland Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
Schedule 7 Matters for consideration in a subdivision of land Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
Schedule 8 Site analysis Applicable: ☒ Yes ☐ No	Complies: ☒ Yes ☐ Yes , subject to condition ☐ No
Schedule 9 Notification requirements for remediation work Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
Schedule 10 Traffic generating development Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
Schedule 11 Koala feed tree species and plans of management Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
Schedule 12 Requirements for complying development Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
Schedule 13 Development guidelines for Collaroy/Narrabeen Beach Applicable:	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No



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☐ Yes ☒ No	
Schedule 14 Guiding principles for development near Middle Harbour Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
Schedule 15 Statement of environmental effects Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
Schedule 17 Carparking provision Applicable: ☒ Yes ☐ No	Complies: ☒ Yes ☐ Yes , subject to condition ☐ No

Other Relevant Environmental Planning Instruments:

SEPPs: Applicable? ☒ Yes ☐ No

SEPP Basix: Applicable?

☒ Yes ☐ No

If yes: Has the applicant provided Basix Certification?

☒ Yes ☐ No

BASIX Certificate No. A46060

SEPP 55 Applicable?

☒ Yes ☐ No

Based on the previous land uses if the site likely to be contaminated?

☐ Yes ☒ No

Is the site suitable for the proposed land use?

☒ Yes ☐ No

SEPP Infrastructure Applicable?

☒ Yes ☐ No

Is the proposal for a swimming pool: No.

Within 30m of an overhead line support structure?

☐ Yes ☒ No

Within 5m of an overhead power line ?

☐ Yes ☒ No

Does the proposal comply with the SEPP?

☒ Yes ☐ No

REPs: Applicable?: ☐ Yes ☒ No

EPA Regulation Considerations:

Clause 54 & 109 (Stop the Clock) Applicable: ☐ Yes ☒ No	
Clause 92 (Demolition of Structures) Applicable: ☒ Yes ☐ No	Addressed via condition? ☒ Yes ☐ No
Clause 92 (Government Coastal Policy) Applicable: ☐ Yes ☒ No	Is the proposal consistent with the Goal and Objectives of the Government Coastal Policy ? ☐ Yes ☐ No
Clause 93 & 94 (Fire Safety) Applicable: ☐ Yes ☒ No	Addressed via condition? ☐ Yes ☐ No
Clause 94 (Upgrade of Building for Disability Access) Applicable: ☐ Yes ☒ No	Addressed via condition? ☐ Yes ☐ No
Clause 98 (BCA) Applicable: ☒ Yes ☐ No	Addressed via condition? ☒ Yes ☐ No

REFERRALS

Referral Body/Officer	Required	Response
Development Engineering	☒ Yes ☐ No	☐ Satisfactory ☒ Satisfactory, subject to condition ☐ Unsatisfactory
Landscape Assessment	☐ Yes ☒ No	☐ Satisfactory ☐ Satisfactory, subject to condition ☐ Unsatisfactory

Applicable Legislation/ EPI's /Policies:

- ☒ EPA Act 1979
☒ EPA Regulations 2000



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- | | |
|---|---|
| ☐ Disability Discrimination Act 1992 | ☐ SEPP No. 71 – Coastal Protection |
| ☐ Local Government Act 1993 | ☒ SEPP BASIX |
| ☐ Roads Act 1993 | ☒ SEPP Infrastructure |
| ☐ Rural Fires Act 1997 | ☒ WLEP 2000 |
| ☐ RFI Act 1948 | ☒ WDCP |
| ☐ Water Management Act 2000 | ☐ S94 Development Contributions Plan |
| ☐ Water Act 1912 | ☒ S94A Development Contributions Plan |
| ☐ Swimming Pools Act 1992; | ☐ NSW Coastal Policy (cl 92 EPA Regulation) |
| | ☐ Other |
- ☐ SEPP No. 55 – Remediation of Land

SECTION 79C EPA ACT 1979

Section 79C (1) (a)(i) – Have you considered all relevant provisions of any relevant environmental planning instrument?	☒ Yes ☐ No
Section 79C (1) (a)(ii) – Have you considered all relevant provisions of any provisions of any draft environmental planning instrument	☒ Yes ☐ No
Section 79C (1) (a)(iii) – Have you considered all relevant provisions of any provisions of any development control plan	☒ Yes ☐ No
Section 79C (1) (a)(iiiia) - Have you considered all relevant provisions of any Planning Agreement or Draft Planning Agreement	☐ Yes ☐ No ☒ N/A
Section 79C (1) (a)(iv) - Have you considered all relevant provisions of any Regulations?	☒ Yes ☐ No
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 ☐ No
Section 79C (1) (c) – Is the site suitable for the development?	☒ Yes ☐ No
Section 79C (1) (d) – Have you considered any submissions made in accordance with the EPA Act or EPA Regs?	☒ Yes ☐ No
Section 79C (1) (e) – Is the proposal in the public interest?	☒ Yes ☐ No

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 a submission from:

Name	Address
Jack Zylmans	14 Biralee Crescent, Beacon Hill.

The following issues were raised in the submission:

- Privacy
- Side Building Setback

The matters raised within the submissions are addressed as follows:

1. Privacy

Comment: Concern has been raised in a submission from the owner of No.14 Biralee Crescent with respect to privacy and the potential for occupants of the proposed ground floor deck area and laundry room to overlook the kitchen area of the dwelling.

CI.65 WLEP states that “*development is not to cause unreasonable direct overlooking of habitable rooms and principal open space areas of adjoining dwellings.*” The proposed ground floor deck area has been designed so that it is not aligned with any ground floor windows on the western elevation of the adjoining dwelling at No.14 Biralee Crescent, and therefore, direct views into the kitchen area are not possible. In addition, a 1.5m high timber fence is adjacent to the common boundary to No.14 Biralee Crescent, and extends past the proposed deck area and adjoins the southern elevation of the existing single carport. As the fence is being retained as part of the proposed development it would prevent direct overlooking into the kitchen area at No.14 Biralee Crescent.

The existing single garage adjoins the eastern boundary and is to be demolished as part of the proposed development, and therefore, a 6.4m ‘gap’ in the fence will result. This is a concern to the owner of No.14 Biralee Crescent as it may allow the users of the proposed ground floor laundry to overlook their kitchen.

Notwithstanding the above, it is noted that the proposed development intends to construct a laundry, with a 0.9m side setback and one (1) window, over the area of the existing single garage. The laundry is a non-habitable room and would not be excessively used, and on this basis, it is expected that its use would not result in any unreasonable direct overlooking of the kitchen at No.14 Biralee Crescent.

The submission also questions who will be responsible to ‘replace’ the gap left in the side fence should the garage be demolished. The applicant and adjoining property owner have been advised that this is a civil issue and is to be resolved using the Dividing Fences Act as a guide. This has been conveyed to the objector.

Given the above, the objection does not carry a determining weight and does not warrant refusal or redesign of the application.

2. Side Building Setback

Comment: Concern has been raised in the submission from the owner of No.14 Biralee Crescent with respect to the nil side building setback proposed for the garage in the original proposal. As noted previously in the report, the applicant has submitted amended plans to address the side setback non-compliance, and has increased the setback to 0.9m which satisfies the requirements of the control. This has been conveyed to the objector.

Given the above, the objection has been addressed through a redesign of the application.

MEDIATION

Has mediation been requested by the objectors?

☐ Yes / ☒ No



WARRINGAH LOCAL ENVIRONMENTAL PLAN 2000

LOCALITY G2 DEE WHY LAGOON SUBURBS - E2 DEE WHY LAGOON SUBURBS

This locality will remain characterised by detached style housing and a small pocket of apartment style housing in landscaped settings interspersed by a range of complementary and compatible uses. The development of further apartment style housing within the locality will be confined to the "medium density areas" shown on the map. The land occupied by the Dee Why Bowling Club at Lot 32 DP 868310, land occupied by the Manly Warringah Soccer Club at Lot 9 DP 793604 and land occupied by the Evergreen Tennis Centre at Lot 61 DP 611195 will continue to be used only as recreation facilities.

Outside the "medium density areas", future development will maintain the visual pattern and predominant scale of existing detached style housing in the locality. The streets will continue to be characterised by landscaped front gardens and consistent front 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.

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

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 provided in clause 39.

The proposed development is defined as 'Housing' which is Category 1 development within the E2 – Dee Why Lagoon Suburbs locality.

Clauses 12(3)(a) of WLEP 2000 requires the consent authority to consider the Locality's DFC statement with respect to consistency. Accordingly, an assessment of consistency of the development against the relevant components of the locality's DFC Statement is provided hereunder:

This locality will remain characterised by detached style housing and a small pocket of apartment style housing in landscaped settings interspersed by a range of complementary and compatible uses.

The proposal is for alterations and additions to an existing dwelling house and garage. The resultant built form will remain as a detached-style of housing in landscaped settings, which is in keeping with residential development within the locality. Therefore, the proposal is consistent with this component of the DFC.

Outside the "medium density areas", future development will maintain the visual pattern and predominant scale of existing detached style housing in the locality. The streets will continue to be characterised by landscaped front gardens and consistent front building setbacks.

Amended plans were received by Council on 24 March 2008 to address the garage structure's unacceptable impacts on the streetscape of Biralee Street resulting from the substantial front and side building setback non-compliance which was raised after the preliminary assessment of the application. The amended plans depict that these setbacks were increased and the length of the garage walls substantially reduced. As such, the amendments have reduced the bulk of the built form, and therefore, its impact on the streetscape is now considered acceptable.

Further, the additions to the existing dwelling will result in a two storey dwelling house which is consistent with the scale of detached style housing in the locality. The existing front setback to the primary dwelling and garage is 10.8m and 3.79m which are significantly greater than the front building setbacks of adjoining properties to that street. In addition, the amended front setback will retain existing landscaped open space, including several palm tree species, and in this regard, will assist to minimise the bulk of the built form when viewed from the street.



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Given the above, the proposed development will provide a positive contribution on the streetscape and complement the visual pattern and predominant scale of residential development in the locality.

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

The proposed development will not adversely affect the surrounding bushland assets of the locality as existing landscaping elements are to be protected from the development. Further, conditions have been imposed on the consent requiring an indigenous canopy tree to be planted within the secondary front setback and that natural external finishes be used to match the existing dwelling, which in turn, will complement the colours and textures of the natural landscape. Given the above, the proposal is consistent with this component of the DFC.

Conclusions on consistency with the DFC

Based on the above assessment, the proposal is considered to be consistent with the DFC.

BUILT FORM CONTROLS FOR LOCALITY E2 DEE WHY LAGOON SUBURBS

As discussed in Section 1 of this report, the proposed development is compliant with the Built Form Controls for the locality with the exception of the following:

- Front Building Setback
- Side Boundary Envelope

The above non-compliances are addressed below.

Clause 20 Variation (Front Setback and Side Boundary Envelope)

Consent may be granted to proposed development even if the development does not comply with one or more development standards, providing 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.

Council's Assessment

In assessing the non-complying element of this proposal, consideration must be given to its consistency with the following, as the primary test under Clause 20 of WLEP 2000:

Desired Future Character of the Locality

As discussed in the preceding section of this report, the proposal is consistent with the Desired Future Character of the Locality.

General Principles of Development Control

As discussed in the preceding section of this report, the proposal is assessed as being consistent with the General Principles of Development Control.

Relevant State Environmental Planning Policies

As discussed in this report, the proposal is assessed as being consistent with SEPP BASIX and SEPP (Infrastructure) 2007.

Based on the above assessment, the proposed development can be considered for a variation to the front building setback and side building envelope control.

Applicants Position on the Front Setback

The development application was accompanied by a Clause 20 Statement which seeks a variation to the control as the proposed front setback will not be inconsistent with neighbouring and surrounding



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properties. In addition, the resulting development will remain consistent with the General Principles of Development Control and the DFC.

Council's Position on the Front Setback

The subject site falls within the E2 – Dee Why Lagoon Suburbs and is subject to the Front Building Setback control of 6.5m. The proposed garage has a 3.79m front secondary setback to Biralee Street which is non-compliant with the Front Building Setback control, and therefore, it is necessary to undertake an assessment of the proposed garage to ascertain whether the objectives of the Front Building Setback control can be satisfied.

The assessment of the development is discussed in relation to the following principles:

(a) Create a sense of openness.

Comment: The existing primary dwelling and proposed garage have a 10.8m and 3.79m front setback respectively, which is substantially greater than the setbacks of adjoining properties. Notwithstanding, the proposed garage is replacing an existing structure, which is dilapidated, and its dimensions are largely a consequence of the location of the existing dwelling. In addition, the design of the proposed garage, including the tiled roof, will better integrate with the design of the resultant dwelling more so than the existing carport, and given its amended and now compliant side setback, as well as substantial landscaping within the front setback, spatial separation to the adjoining dwellings will remain satisfactory.

(b) Provide opportunities for landscaping.

Comment: The development will not impact on the existing canopy trees and understorey vegetation within the front building setback. In addition, a condition has been imposed on the consent requiring an additional canopy tree to be planted within the secondary street frontage. Accordingly, landscape plantings are of a scale and density commensurate with the bulk and scale of the proposed building works.

(c) Minimise the impact of development on the streetscape.

Comment: The garage is articulated with various building elements and materials, including a sloping roof form, metal garage door and rendered brick work which will integrate into the design of the existing dwelling better than that of the existing carport and single garage. In addition, the garage is detached from the primary dwelling which will provide adequate spatial separation between the built forms, which in turn, will minimise the bulk of the structure when viewed from street.

Given the above and that amended plans have increased the front setback to the garage, the built form will address, rather than dominate, the streetscape of Biralee Crescent.

(d) Maintain the visual continuity and pattern of buildings, front gardens and landscape element.

Comment: The proposed setback to the garage will not be inconsistent with adjoining and surrounding properties, which are characterised by buildings being substantially within the front building setback. In addition, landscaping is being retained within the front setback to Biralee Crescent, and in this regard, the proposal will remain landscaped, and unlike adjoining properties, will provide a positive contribution to the streetscape.

Having regard to the above, the proposed development will not detract from the visual continuity and pattern of landscaping elements that characterise the locality.

Clause 20 Variation Assessment – Supported

Given the above, the proposed development is supported under Clause 20 as the objectives of the Front Building Setback control are satisfied in that the amended design of the garage is an acceptable response to the existing site constraints which include the location of the existing dwelling and carparking areas.

Applicant's Position on the Side Boundary Envelope

The development application was not accompanied by a Clause 20 Variation Statement to the Side Boundary Envelope control.

Council's Position on the Side Boundary Envelope

The Side Boundary Envelope control in this locality is "4.0m/45 degrees". The non-compliance along the upper level eastern elevation is specifically confined to a maximum height of 0.80m at the south-east corner of the pergola, and tapers down for a distance of 7.4m, where the extent of the breach is 0.7m at the northern end of the enclosed verandah.

The variation to the side boundary envelope has been assessed as follows:

(a) The development is to be not visually dominant by virtue of its height and bulk.

Comment: The non-compliance is minor and relates to the enclosure of an existing balcony and a pergola structure constructed above a proposed timber balcony. Notwithstanding, the eastern elevation is articulated with various building elements and materials, including an open balcony structure and pergola above, metal roofing, stepped in ground floor level, timber cladding and aluminium framed glass windows. In addition, the external finishes are of natural tones.

Given the above, the eastern elevation will not become visually dominant by virtue of its height and bulk when viewed from the street or neighbouring property at No.14 Biralee Crescent.

(b) The development shall preserve the amenity of the surrounding land.

Comment: The building envelope non-compliance along the eastern elevation will not result in significant impacts for the occupants of No.14 Biralee Crescent in terms of overshadowing, privacy, visual outlook and view loss.

(c) The development must respond to site topography.

Comment: The site is relatively flat and the proposed works to the eastern elevation are minimal and will not cause it to have excessive bulk. In addition, the proposed works will provide an increased level of internal amenity for the existing dwelling.

Given the above, the design of the proposed dwelling is considered to be site responsive.

(d) Adequate separation must be provided between buildings.

Comment: The proposed works involve the enclosure of an existing verandah and an open deck structure with a pergola above. The upper level is setback from the eastern boundary a distance of 1.3m, which exceeds the minimum 0.9m standard contained within the within the control, and setback 5.0m from the dwelling at No.14 Biralee Crescent. Therefore, adequate separation will be maintained between the resultant built form and the dwelling at No.14 Biralee Crescent.

(e) Provision is to be made for adequate landscaping opportunities.

Comment: The proposed development will not decrease the site's existing landscaped open space area, which is calculated at 36.8%. Notwithstanding, a condition has been imposed on the consent requiring an indigenous canopy tree to be planted within the rear building setback of the property. This condition will provide a net increase to the landscaping elements of the site, and on this basis, the proposed development satisfies the requirements of the control.

(f) A sense of openness is to be maintained between adjoining properties.

Comment: The development provides sufficient landscaped and private open space and will maintain adequate spatial separation to the adjoining dwelling to the south (No.14 Biralee Crescent) and therefore a sense of openness to the subject site would be maintained.

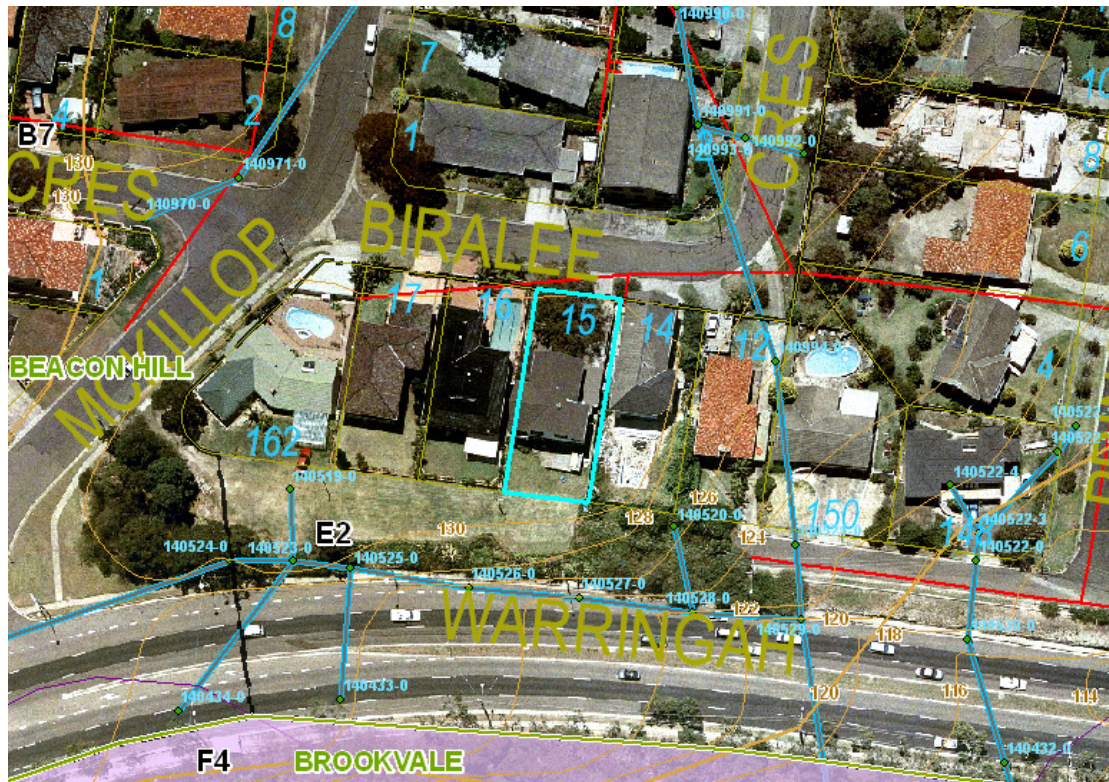
Clause 20 Variation to the Side Boundary envelope - Supported



Notwithstanding the numerical variation to the Side Boundary Envelope control for the locality, the proposal for the reasons noted above is still consistent with the DFC statement for the E2 – Dee Why Lagoon Suburbs locality and the General Principles of Development Control.

OTHER MATTERS FOR FURTHER CONSIDERATION: N/A.

SECTION 3 – SITE INSPECTION ANALYSIS



Site area 557.2m²

Detail existing onsite structures:

- ☐ None
- ☒ Dwelling
- ☒ Detached Garage
- ☐ Detached shed
- ☐ Swimming pool
- ☐ Tennis Court
- ☐ Cabana
- ☐ Other

Site Features:

- ☐ None
- ☒ Trees
- ☐ Under Storey Vegetation
- ☐ Rock Outcrops
- ☐ Caves
- ☐ Overhangs
- ☐ Waterfalls
- ☐ Creeks / Watercourse
- ☐ Aboriginal Art / Carvings
- ☐ Any Item of / or any potential item of heritage significance

Potential View Loss as a result of development

- ☐ Yes ☒ No



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Bushfire Prone?

☐ Yes ☒ No

Flood Prone?

☐ Yes ☒ No

Affected by Acid Sulfate Soils

☐ Yes ☒ No

Located within 40m of any natural watercourse?

☐ Yes ☒ No

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 Coastal Policy?

☐ Yes ☒ No

Located within 100m of the mean high watermark?

☐ Yes ☒ No

Located within an area identified as a Wave Impact Zone?

☐ Yes ☒ No

Any items of heritage significance located upon it?

☐ Yes ☒ No

Located within the vicinity of any items of heritage significance?

☐ Yes ☒ No

Located within an area identified as potential land slip?

☐ Yes ☒ No

Is the development Integrated?

☐ Yes ☒ No

Does the development require concurrence?

☐ Yes ☒ No

Is the site owned or is the DA made by the "Crown"?

☐ Yes ☒ No

Have you reviewed the DP and s88B instrument?

☒ Yes ☐ No

Does the proposal impact upon any easements / Rights of Way?

☐ Yes ☒ No



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Site Inspection / Desktop Assessment Undertaken by: Kevin Short, Development Assessment Officer, on 1 April, 2009.

Does the site inspection confirm the assessment undertaken against the relevant EPI's?	☐ Yes ☒ No
Are there any additional matters that have arisen from your site inspection that would require any additional assessment to be undertaken?	☐ Yes ☒ No

Signed

Date

Kevin Short, Development Assessment Officer

SECTION 4 – APPLICATION DETERMINATION

Conclusion:

The proposal has been considered against the relevant heads of consideration under S79C of the EPA Act 1979 and the proposed development is considered to be:

- ☒ Satisfactory
☐ Unsatisfactory

Recommendation: APPROVAL

That Council as the consent authority

- ☒ **GRANT DEVELOPMENT CONSENT** to the development application subject to:
- (a) the conditions detailed within the associated notice of determination; and
 - (b) the consent lapsing within three (3) from operation
- ☐ **GRANT DEFERRED COMMENCEMENT CONSENT** to the development application subject to:
- (a) the conditions detailed within the associated notice of determination;
 - (b) limit the deferred commencement condition time frame to 3 years;
 - (c) one the deferred commencement matter have been satisfactorily addressed issue an operational consent subject to the time frames detailed within part (d); and
 - (d) the consent lapsing within three (3) from operation
- ☐ **REFUSE development consent** to the development application subject to:
- (a) the reasons detailed within the associated notice of determination.



Signed _____ Date _____

Kevin Short, Development Assessment Officer

The application is determined under the delegated authority of:

Signed _____ Date _____

Steven Findlay, Team Leader, Development Assessment