

3.1 8 Kew Close, Belrose – Use of Part of an Existing Dwelling House as a Home Business

DEVELOPMENT ASSESSMENT REPORT

Assessment Officer: Ryan Cole
Address / Property Description: Lot 3 in DP 236931, No.8 Kew Close Belrose.
Proposal: Use of part of an existing dwelling house as a home business.

Development Application No: DA2010/0349
Application Lodged: 5 March 2010
Plans Reference: Drawing 1 – Proposed Home Business, Dated: 21 June 2010.
Amended Plans: Not applicable
Applicant: R C Neale, N Conlon
500A Warringah Road Frenchs Forest
Owner: (Please note, ownership transferred to the applicant on 28 April 2010) Jacob Sarkissian, Dana Louise Sarkissian
8 Kew Close Belrose

Locality: C1 Middle Harbour Suburbs
Category: Category – 2 (Other buildings, works, places or land uses that are not prohibited or in Category 1 or 3)
Variations to Controls (Cl.20/Cl.18(3)): No
Referred to ADP: YES – Four (4) submissions received
Referred to WDAP: No
Land and Environment Court Action: No

SUMMARY

Notification Period: 18 March 2010 – 2 April 2010
Submissions: Four (4) submissions were received during the notification period.
Submission Issues: Signage, Number of Clients, Parking, Dwelling used for a business only.
Assessment Issues: Nil
Recommendation: Approval

LOCALITY PLAN (not to scale)



Subject Site: Lot 3 in DP 236931, No. 8 Kew Close Belrose.

Public Exhibition: The subject application has been publicly exhibited in accordance with the EPA Regulation 2000, Warringah Local Environment Plan 2000 and Warringah Development Control Plan. As a result, the application was notified to 9 adjoining land owners and occupiers for a period of 14 calendar days commencing on 18 March 2010 and being finalised on 2 April 2010.

SITE DESCRIPTION

The subject site is legally known as Lot 3 in DP 236931 and commonly referred to as No. 8 Kew Close Belrose. The site is a corner allotment a frontage to Kew Close of approximately 32.5m and a secondary frontage to Pringle Avenue of approximately 20m with an overall area of 695.6m². The site features a fall of 3% from east to west and has a northwest aspect. The site is occupied by an existing single storey dwelling and a swimming pool with vehicular and pedestrian access from the Kew Close entrance. An investigation of Council records indicates that there are no easements or encumbrances on or across the subject site. The site is surrounded by residential properties occupied by detached dwellings.

It should be noted that the site is identified as being Flood Prone Land and therefore a Development Application is required for the proposed Home Business.

SITE HISTORY

A review of Council records indicates that the subject site has been used as a residential dwelling for some 40 years. The site has been consistently used as a residential dwelling and, aside from minor tree removal applications, has not been subject to additional proposals.

PROPOSED DEVELOPMENT

The applicant seeks approval for the use of a section of the existing dwelling as a home business being a chiropractic service.

Referring to the plans provided by the applicant, the proposal requires the conversion of the existing bedroom 3 to be a "Treatment Room" and the Living Room into a "Waiting Room". The "Home Business" will have two (2) employees being the Chiropractor whom resides at the address and a receptionist. The proposed hours of operation are:

- 9am – 12pm and 3pm - 6pm Monday to Friday,
- 9am -12pm Saturday.

This application is for a land use only, no building works are proposed as part of this application.

AMENDMENTS TO THE SUBJECT APPLICATION

No amendments were made to the application.

STATUTORY CONTROLS

- a) Environmental Planning and Assessment Act 1979 (EPA Act 1979); and
- b) Environmental Planning and Assessment Regulations 2000.
- c) State Environmental Planning Policy – Infrastructure
- d) State Environmental Planning Policy No 55 – Remediation of Land
- e) Warringah Local Environment Plan 2000
- f) Warringah Development Control Plan
- g) Draft Warringah Local Environmental Plan 2009

PUBLIC EXHIBITION

The subject application has been publicly exhibited in accordance with the EPA Regulation 2000, Warringah Local Environment Plan 2000 and Warringah Development Control Plan (adopted 24 June 2008). As a result, the application was notified to 9 adjoining land owners and occupiers for a period of 14 calendar days commencing on 18 March 2010 and being finalised on 2 April 2010. As a result of the public exhibition process submissions have been received from:

Name	Address
Robert and June White	110 Pringle Avenue Belrose
Stephen Creet	3 Kew Close Belrose
Ryan Jones	Kew Close Belrose
Kathryn Kennedy	2 Kew Close Belrose

The matters raised within the submissions are addressed hereunder:

Issue

The objectors assert that the proposed home business will reduce parking availability within the street.

Response

The WLEP 2000, specifically, Schedule 17 – Carparking, does not require provision for carparking for customers of a home occupation as defined. It is considered that a home occupation does not generate the need for parking. Additionally, there is no development control with regard to street parking and any issue of this nature is a parking and compliance issue, outside the scope of the assessment.

Notwithstanding, conditions of consent are to be imposed requiring the clientele of the home business to have all appointments staggered to begin 15mins after the prior appointment has ended, thereby ensuring that the home business will have one (1) client on site at any one time and subsequently minimising any adverse impacts that the development may cause. Conversely, it is considered that this condition of consent does not result in an adverse impact on the scale of a “Home Business”.

It is considered that the objection has been addressed via this condition of consent.

Issue

The objectors assert that the subject dwelling is used for a business use only, and that the “Home Business” is not ancillary to the dwelling.

Response

A review of the definition of the home business indicates that to be considered consistent with the definition:

“The use is ancillary to the residential use of the dwelling”

A review of the plans indicates that the proposal is consistent with this requirement.

With regard to the remaining identifiers of the definition, a condition of consent is to be imposed requiring that the “Home Business” being operated in accordance with the definition. It is considered that this condition of consent will ensure that the operation will be in accordance with the relevant plans and policies of Council.

With regard to the objectors assertions, there is no evidence to suggest that the owners of the dwelling are not living in the premises and therefore no evidence to suggest that the home occupation is not ancillary to the dwelling. This objection carries no determining weight.

Issue

The objectors raise concerns with regard to the potential for signage.

Response

Any signage associated with the home business must be as per the definition of a home business in that:

“the use does not involve the exhibition of any notice, advertisement or sign (other than a non-illuminated notice or sign which has an area of not more than 600cm² and indicates the name and occupation of the resident)”.

Any other signage associated with the site would be subject to separate application. A condition of consent is to be imposed requiring the signage to comply with the controls as per the definition for a home business and therefore, the objectors concerns are considered to be addressed via this condition.

MEDIATION

Mediation has not been requested

REFERRALS

External Referrals

No external referrals were required.

Internal Referrals

Building and Compliance

Councils Building and Compliance Officers have reviewed the proposal and have made no objections to the development, subject to the imposition of conditions of consent.

Natural Environment Unit

Councils Natural Environment Unit has reviewed the proposal and has made no objections to the development, and imposed no conditions of consent.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act, 1979, are:

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	Refer to the section of this report titled "Environmental Planning Instruments"
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	The application has been considered against Draft Warringah Local Environmental Plan 2010.
Section 79C (1) (a)(iii) – Provisions of any development control plan	The subject application has been notified in accordance with the EPA Regulation 2000, Warringah Local Environment Plan 2000 and Warringah Development Control Plan for a period of 14 calendar days. As a result of the public exhibition process four (4) submissions have been received and the issues raised responded to under the "Public Submissions" section of this report
Section 79C (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 79C (1) (a)(iv) – Provisions of the regulations	The EPA Regulations 2000 requires the consent authority to consider the provisions of the Building Code of Australia. This matter has been address via a condition of consent. In consideration of Clause 93 and Clause 94, of the EP and A Regulation 2000 for fire safety upgrades, consultation was undertaken with Councils Fire Safety officer whom indicated that the subject building is and will remain a Class 1a building and therefore the provisions of these Clauses do not apply to the proposed landuse.
Section 79C (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the General Principles of Development Control in this report. (ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” in this report.
Section 79C (1) (e) – the public interest	A review of the submissions and an assessment made with regard to the sectional public interest, indicates that the concerns relating to on street and off street parking have been addressed via conditions of consent. The condition relating to frequency of patient visits to the chiropractor will ameliorate any parking issues in terms of congestion within the public street, and the condition requiring the strict adherence of the Home Business to the definition contained within the WLEP 2000 will ensure that the operation will remain consistent with that which would be considered a home business. In terms of the wider public interest, the provision of this ancillary landuse is considered, subject to the above-mentioned conditions, to be consistent with the operation of a home business as defined and therefore, makes provision for required services within a community at an appropriate level of intensity for this residential locale. Therefore, it is considered that no matters have arisen that would justify the refusal of the application in the public interest.

State Environmental Planning Policy No 55 – Remediation of Land

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

State Environmental Planning Policy - Infrastructure

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

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists),
- immediately adjacent to an electricity substation,
- within 5m of an overhead power line
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5m of an overhead electricity power line

The proposal is not within or immediately adjacent to any of the above electricity infrastructure and does not include a proposal for a swimming pool; as such the development application is not required to be referred to the electricity supply authority. In this regard, the subject application is considered to satisfy the provisions of Clause 45 SEPP Infrastructure.

Regional Environmental Plans

None applicable



Local Environment Plans (LEPs)

Warringah Local Environment Plan 2000 (WLEP 2000)

Desired Future Character (DFC)

The subject site is located in the C1 – Middle Harbour Suburbs Locality under Warringah Local Environmental Plan 2000. The Desired Future Character Statement for this locality is as follows: *The Middle Harbour Suburbs locality will remain characterised by detached-style housing in landscaped settings interspersed by a range of complementary and compatible uses. The land adjacent to Middle Harbour and occupied by the Mosman Rowing Club will be retained for low-scale recreational use sympathetic to its natural setting.*

The land occupied by the Killarney Heights Tennis Centre at Lot 841 DP 210006 and land occupied by the Killarney Heights Swim Centre at Lot 854 DP 210006 on Tralee Avenue and the land occupied by Belrose Bowling Club at Lot 2 DP 851739 on Forest Way, will continue to be used only as recreation facilities.

The south-west section of the Killarney Heights High School grounds contains bushland and rock outcrops: this area may be developed for housing. Development in this section will recognise the bushland outlook, views and privacy enjoyed from residences adjoining the northern and western boundaries of the site and ensure development reasonably maintains these qualities. The retention of existing landscaping is encouraged, where practical.

Future development will maintain the visual pattern and predominant scale of existing detached style housing in the locality. The streets will be characterised by landscaped front gardens and consistent front building setbacks. Unless exemptions are made to the 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 relationship of the locality to the surrounding bushland will be reinforced by protecting and enhancing the spread of indigenous tree canopy and preserving the natural landscape, including rock outcrops, remnant bushland and natural watercourses. 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 ridge tops must integrate with the natural landscape and topography. Development on land which adjoins Middle Harbour shall have regard to the principles contained in Schedule 14.

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.

Future development of the environmentally sensitive land shown cross-hatched on the map will be limited to one dwelling per allotment. Such dwelling will be constructed having regard to the constraints, potential instability, visual sensitivity and impact on the water quality of Middle Harbour.

The proposed development is defined as “Home Business” under the WLEP 2000 dictionary which states:

home business means the use of a dwelling for the purpose of an office or business, including a bed and breakfast establishment, where:

- (a) The use is ancillary to the residential use of the dwelling, and
- (b) The use is undertaken by the permanent residents of the dwelling, and
- (c) The use does not involve the employment of more than one person in addition to those residents, and

- (d) *The use does not cause any unacceptable impact on the environment or interference with the amenity of the surrounding area, and*
- (e) *The use does not involve the exhibition of any notice, advertisement or sign (other than a non-illuminated notice or sign which has an area of not more than 600cm² and indicates the name and occupation of the resident), and*
- (f) *The use does not involve the selling of any items from the premises, but does not include use for a brothel.*

“Home Business” is identified as Category 2 (Other buildings, works, places or land uses that are not prohibited or in Category 1 or 3), development within the C1 Middle Harbour Suburbs Locality.

Clause 12(3)(b) of WLEP 2000 requires the consent authority to be satisfied that the proposed Category 2 development is consistent with the applicable parts of the Locality’s DFC statement. Accordingly, an assessment of consistency of the proposed development against the relevant requirements of the locality’s DFC is provided hereunder:

Requirement:

The Middle Harbour Suburbs locality will remain characterised by detached-style housing in landscaped settings interspersed by a range of complementary and compatible uses.

Comment:

The application is for the use of a section of the existing dwelling as a home business and does not include any building works. The detached dwelling character of the existing dwelling will not be altered by the proposal and is considered to remain consistent in this regard.

Requirement:

Future development will maintain the visual pattern and predominant scale of existing detached style housing in the locality. The relationship of the locality to the surrounding bushland will be reinforced by protecting and enhancing the spread of indigenous tree canopy and preserving the natural landscape, including rock outcrops, remnant bushland and natural watercourses. 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 ridge tops must integrate with the natural landscape and topography. Development on land which adjoins Middle Harbour shall have regard to the principles contained in Schedule 14.

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.

Future development of the environmentally sensitive land shown cross-hatched on the map will be limited to one dwelling per allotment. Such dwelling will be constructed having regard to the constraints, potential instability, visual sensitivity and impact on the water quality of Middle Harbour.

Comment:

As there are no building works proposed, the visual pattern and predominant scale of existing detached style housing in the locality will not be altered or impacted upon by the proposal.

It is considered that the remaining requirements of the desired future character statement are not impacted upon by or are not relevant to this subject proposal. Therefore as detailed above, the proposed development is considered to be consistent with the relevant sections of the Locality’s DFC statement.



Built Form Controls (Development Standards)

The subject proposal is for use only with no external works being proposed. The built form controls are therefore not applicable to the application.

General Principles of Development Control

The following General Principles of Development Control as contained in Part 4 of Warringah Local Environmental Plan 2000 are applicable to the proposed development:

General Principles	Applies	Comments	Complies
CL38 Glare & reflections	No	Not Applicable	N/A
CL39 Local retail centres	No	Not Applicable	N/A
CL40 Housing for Older People and People with Disabilities	No	Not Applicable	N/A
CL41 Brothels	No	Not Applicable	N/A
CL42 Construction Sites	No	Not Applicable	N/A
CL43 Noise	YES	As the proposal is for home business It is considered that the proposal will result in noise that would be commensurate with that of the existing dwelling and surrounding residential land uses. Conditions of consent are to be imposed with regards to the hours of operation of the home business to ensure that any noise impacts are not unreasonable and commensurate with that which is expected within a residential area.	YES – Subject to Conditions
CL44 Pollutants	No	Not Applicable	N/A
CL45 Hazardous Uses	No	Not Applicable	N/A
CL46 Radiation Emission Levels	No	Not Applicable	N/A
CL47 Flood Affected Land	YES	The site is identified as being within Flood Effected land. A referral was sent to Councils Natural Environment Unit for assessment with regard to flood affected land. The Natural Environment Unit made no objection to the proposal and did not impose any conditions of consent. It is therefore considered that the proposal in terms of Flood affected land is consistent with this General Principle.	YES
CL48 Potentially Contaminated Land	YES	The site has been used for residential development only. It is considered that the site has not been contaminated during that time. (Refer also to State Environmental Planning Policy No. 55 – Remediation of Contaminated Land for additional assessment)	YES
CL49 Remediation of Contaminated Land	No	Not Applicable	N/A
CL49a Acid Sulphate Soils	No	Not Applicable	N/A
CL50 Safety & Security	No	Not Applicable	N/A
CL51 Front Fences and Walls	No	Not Applicable	N/A

General Principles	Applies	Comments	Complies
CL52 Development Near Parks, Bushland Reserves & other public Open Spaces	No	Not Applicable	N/A
CL53 Signs	YES	Any signage associated with the home business must be as per the definition of a home business in that: <i>“the use does not involve the exhibition of any notice, advertisement or sign (other than a non-illuminated notice or sign which has an area of not more than 600cm² and indicates the name and occupation of the resident)”.</i> Any other signage associated with the site would be subject to separate application. A condition of consent is to be imposed requiring the signage to comply with the controls as per the definition for a home business and therefore, the objectors concerns are considered to be addressed via this condition.	YES – subject to condition
CL54 Provision and Location of Utility Services	YES	The site provides adequate utility services for the home occupation to function.	YES
CL55 Site Consolidation in ‘Medium Density Areas’	No	Not Applicable	N/A
CL56 Retaining Unique Environmental Features on Site	No	Not Applicable	N/A
CL57 Development on Sloping Land	No	Not Applicable	N/A
CL58 Protection of Existing Flora	No	Not Applicable	N/A
CL59 Koala Habitat Protection	No	Not Applicable	N/A
CL60 Watercourses & Aquatic Habitats	No	Not Applicable	N/A
CL61 Views	No	Not Applicable	N/A
CL62 Access to sunlight	No	Not Applicable	N/A
CL63 Landscaped Open Space	No	Not Applicable	N/A
CL63A Rear Building Setback	No	Not Applicable	N/A
CL64 Private open space	No	Not Applicable	N/A
CL65 Privacy	No	Not Applicable	N/A
CL66 Building bulk	No	Not Applicable	N/A
CL67 Roofs	No	Not Applicable	N/A
CL68 Conservation of Energy and Water	No	Not Applicable	N/A

General Principles	Applies	Comments	Complies
CL69 Accessibility – Public and Semi-Public Buildings	No	Not Applicable	N/A
CL70 Site facilities	No	Not Applicable	N/A
CL71 Parking facilities (visual impact)	No	Not Applicable	N/A
CL72 Traffic access & safety	YES	The conditions of consent imposed with regards to the frequency of clients and any loading and unloading to be on-site are considered to ameliorate any potential impacts with regards to : • traffic hazards, and • vehicles queuing on public roads, and • traffic and pedestrian conflict. Additionally, the proposal is within an established residential area and will not: • interference with public transport facilities, or Require the number of crossing places to a street from the site to be increased. The proposal is considered to be consistent with this General Principle.	YES – Subject to Condition
CL73 On-site Loading and Unloading	YES	It should be noted that there is no requirement for a “Home Business” to supply loading and unloading facilities. Notwithstanding, a condition of consent is to be imposed requiring any deliveries to be undertaken upon the subject site and any delivery vehicles are not to be parked in the street. It is considered that this condition will reduce any environmental impact caused by deliveries to the home business and allow the proposal to show consistency with part (d) of the definition for a “Home Business” as per WLEP 2000.	YES – Subject to Condition
CL74 Provision of Carparking	YES	The WLEP 2000, specifically, Schedule 17 – Carparking, does not require provision for carparking for customers. Additionally, there is no development control with regard to street parking and any issue of this nature is a compliance issue, outside the scope of the assessment. Notwithstanding, conditions of consent are to be imposed requiring the clientele of the home business to have all appointments staggered to begin 15mins after the prior appointment has ended, thereby ensuring that the home business will have one (1) client on site at any one time and subsequently minimising any adverse impacts that the development may cause. It is considered that the proposal is consistent with this General Principle, subject to condition.	YES – Subject to Condition
CL75 Design of Carparking Areas	No	Not Applicable	N/A
CL76 Management of Stormwater	No	Not Applicable	N/A
CL77 Landfill	No	Not Applicable	N/A
CL78 Erosion & Sedimentation	No	Not Applicable	N/A

General Principles	Applies	Comments	Complies
CL79 Heritage Control	No	Not Applicable	N/A
CL80 Notice to Metropolitan Aboriginal Land Council and the National Parks and Wildlife Service	No	Not Applicable	N/A
CL82 Development in the Vicinity of Heritage Items	No	Not Applicable	N/A
CL83 Development of Known or Potential Archaeological Sites	No	Not Applicable	N/A

SCHEDULES

Schedule 8 - Site Analysis

A site analysis has not been provided by the applicant. Notwithstanding the proposal is considered to contain an appropriate level of detail to comply with the Schedule.

Schedule 17 – Parking Provisions

The subject proposal, being for a “Home Business” does not require provision for carparking for customers. Notwithstanding, conditions with regards to frequency of patrons of the “*Home Business*”, are considered to adequately address any parking impacts associated with the ancillary landuse. (Refer also to General Principle Clauses 72, 73 and 74 for additional assessment).

DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS

Draft Warringah Local Environmental Plan 2009 (Draft WLEP 2009)

Definition:

“home occupation” means an occupation carried on in a dwelling, or in a building ancillary to a dwelling, by one or more permanent residents of the dwelling that does not involve:

- (1) the employment of persons other than those residents, or
- (2) interference with the amenity of the neighbourhood by reason of the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, traffic generation or otherwise, or
- (3) the display of goods, whether in a window or otherwise, or
- (4) the exhibition of any notice, advertisement or sign (other than a notice, advertisement or sign exhibited on that dwelling to indicate the name of the resident and the occupation carried on in the dwelling), or
- (5) the sale of items (whether goods or materials), or the exposure or offer for sale of items, by retail,

but does not include bed and breakfast accommodation, a brothel or home occupation (sex services).



Land Use Zone: R2 Low Density Residential

Permissible or Prohibited: Permissible with Development Consent

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

Principal Development Standards:

The subject proposal is for use only with no external works being proposed. The Principle Development Standards are therefore not applicable to the application.
The proposed development is consistent with the aims and objectives of the Draft WLEP 2009.

POLICY CONTROLS

Warringah Section 94A Development Contribution Plan

As the estimated cost of works is less than \$100,000.00 the policy is not applicable to the assessment of this application.

CONCLUSION

The site has been inspected and the application assessed having regard to the provisions of Section 79C of Environmental Planning and Assessment Act 1979 (EPA Act 1979), the Environmental Planning and Assessment Regulation 2000, State Environmental Planning Policy No. 55 – Remediation of Land, State Environmental Planning Policy – Infrastructure, Warringah Local Environment Plan 2000, Warringah Development Control Plan and the relevant codes and policies of Council.

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

The issues raised with regard to parking and signage by the objectors have been considered and appropriate conditions of consent requiring the control of the frequency of patrons to the “*Home Business*” and the requirement for any deliveries to be undertaken on site will ameliorate any issues with regard to vehicle parking within the public street. These measures also result in the proposals consistency with part (d) of the definition of the “*Home Business*” in terms of the reducing of any resultant unreasonable impacts on the environment within this established residential area, from the proposed ancillary land use. The proposal is considered to be consistent, subject to these conditions with the definition of a home business.

As a direct result of the application and the consideration of the matters detailed within this report it is considered that Council as the consent authority grant approval for the reasons detailed within the “Recommendation” section of this report.

RECOMMENDATION – APPROVAL

That Council as the consent authority grant Development Consent to DA2010/0349 for a “*Home Business*” on land at Lot 3 in DP 236931, No.8 Kew Close, Belrose, subject to the following conditions.

GENERAL CONDITIONS

CONDITIONS THAT IDENTIFY APPROVED PLANS

1. Approved Plans and Supporting Documentation

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

Drawing No.	Title	Revision	Date	Drawn By
Drawing 1	Proposed Home Business	N/A	21 June 2010	Not Stated

No construction works (including excavation) shall be undertaken prior to the release of the Construction Certificate.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans. (DACPLB01)

2. No Approval for any Signage

No approval is granted under this Development Consent for signs (as defined under Warringah Local Environment Plan 2000 and State Environmental Planning Policy No. 64) other than a non-illuminated notice or sign which has an area of not more than 600cm² and indicates the name and occupation of the resident, as specified within the Warringah Local Environment Plan 2000 Dictionary, "Home Business"

A separate Development Application for any signs (other than exempt and signs permitted under Complying Development) must be submitted for the approval prior to the erection or display of any such signs.

Reason: Control of signage. (DACPLB06)

3. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative Requirement. (DACPLB09)

4. General Requirements

- (a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:
7.00 am to 5.00 pm inclusive Monday to Friday
8.00 am to 1.00 pm inclusive on Saturday,
No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:
8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) Prior to the release of the Construction Certificate payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (f) Smoke alarms are to be installed throughout all new and existing portions of any Class 1a building in accordance with the Building Code of Australia prior to the occupation of the new works.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) All sound producing plant, equipment, machinery or fittings will not exceed more than 5dB(A) above the background level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy.)
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community. (DACPLB10)

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

5. Compliance with Standards

The development (where applicable) is to be carried out in accordance with all relevant Australian Standards.

(Note: At the time of determination the following (but not limited to) Australian Standards applied:

AS 1428.2 - 1992, Design for access and mobility - Enhanced and additional requirements - Buildings and facilities.

Note: The Australian Human Rights Commission provides useful information and a guide relating to building accessibility entitled

"the good the bad and the ugly: Design and construction for access". This information is available on the Australian Human Rights Commission website

www.hreoc.gov.au/disability_rights/buildings/good.htm. <www.hreoc.gov.au/disability%20rights%20/buildings/good.htm>

(Note: that the above list is not exhaustive and it is the responsibility of the applicant and the Certifying Authority to ensure compliance with this condition and that the relevant Australian Standards are adhered to.)

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards. (DACPLC02)

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

6. Hours of Operation

The hours of operation are to be restricted to:

Monday to Friday 9am -6pm (inclusive).

Upon expiration of the permitted hours, the operation shall immediately cease and all customers on the premises shall be required to leave within the following 15 minutes.

Reason: Information to ensure that amenity of the surrounding locality is maintained. (DACPLG08)

7. No Illumination

No consent is given or implied for any form of illumination or floodlighting to any sign or building or other external areas other than that approved.

Reason: To ensure appropriate forms of illumination that are consistent with Council's controls, and do not interfere with amenity of nearby properties. (DACPLG13)

8. Patronage of the Home Business

All appointments associated with the home business must not be within 15mins of the cessation of the prior appointment. No more than one (1) patron of the home business may be on – site at any one time.

Reason: To ensure that the proposal does not have an unreasonable impact upon the residential locality in terms of available parking. (DACPLG14)

9. Patron Numbers

Patron Numbers are limited to one (1) per hour

Reason: To ensure compliance with original consent and requirements under the Building Code of Australia. (DACPLG14)

10. Occupancy (Mixed Use and Category 3 Development)

Nothing in this consent shall authorise the use of the Home Business as detailed on the approved plans for any land use of the site beyond the definition of a “Home Business”

A “Home Business” is defined as:

“the use of a dwelling for the purpose of an office or business, including a bed and breakfast establishment, where:

- (a) The use is ancillary to the residential use of the dwelling, and*
- (b) The use is undertaken by the permanent residents of the dwelling, and*
- (c) The use does not involve the employment of more than one person in addition to those residents, and*
- (d) The use does not cause any unacceptable impact on the environment or interference with the amenity of the surrounding area, and*
- (e) The use does not involve the exhibition of any notice, advertisement or sign (other than a non-illuminated notice or sign which has an area of not more than 600cm² and indicates the name and occupation of the resident), and*
- (f) The use does not involve the selling of any items from the premises, but does not include use for a brothel.”*

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

Reason: To ensure compliance with the terms of this consent. (DACPLB03)

11. Ancillary Use

The use of the area shaded on the approved plans shall be ancillary to the use of the premises, as a “Home Business” at all times.

Reason: To ensure that the primary use of the premises is the approved use under this consent, and that the use of the office is ancillary to the approved use. (DACPLG06)

12. Loading Within Site

All loading and unloading operations shall be carried out wholly within the confines of the site at all times.

Reason: To ensure that deliveries can occur safely within the site and does not adversely affect traffic or pedestrian safety and amenity. (DACPLG20)

13. Delivery Hours

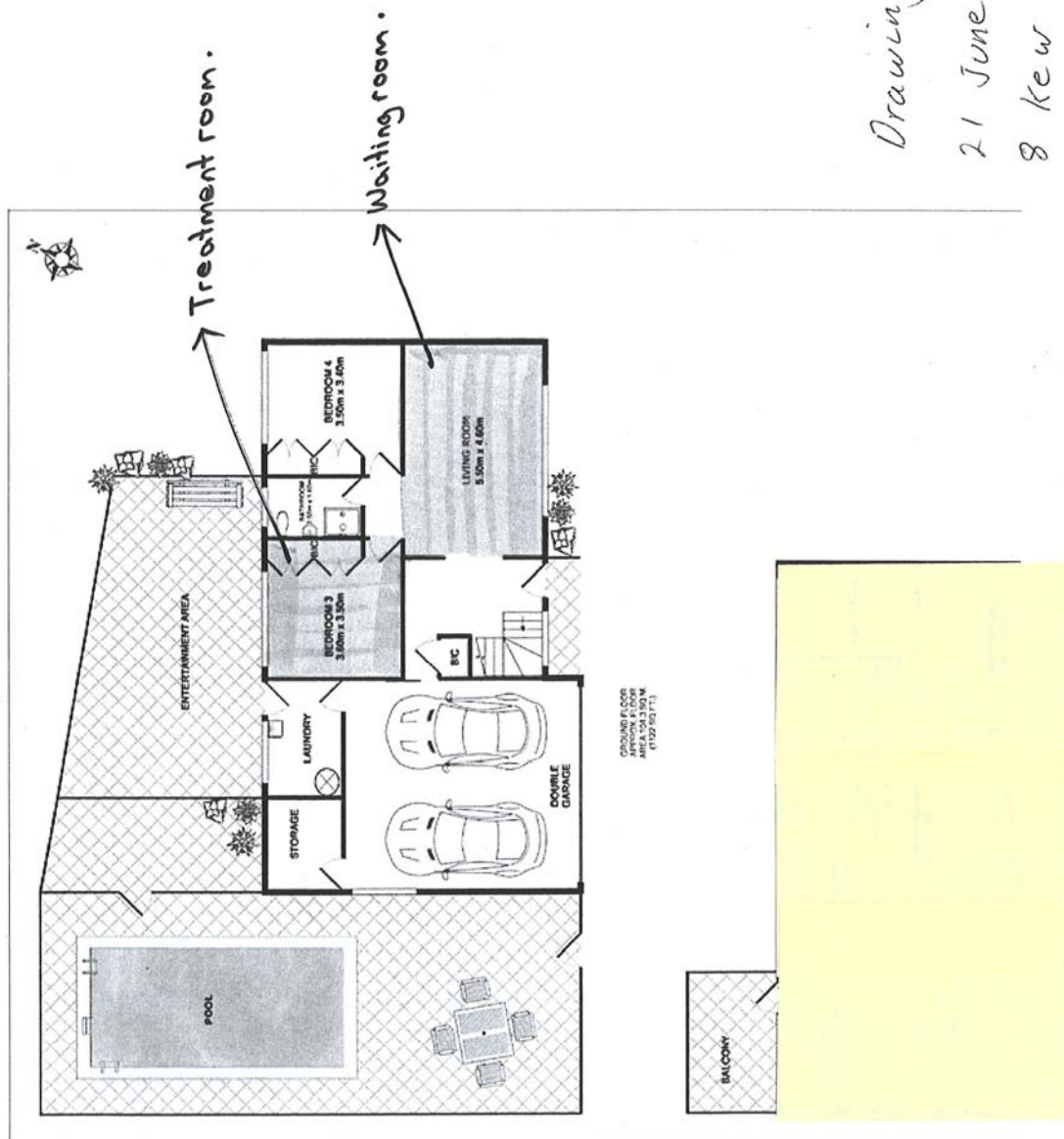
No deliveries, loading or unloading associated with the premises are to take place between the hours of 6pm and 9am on any day.

Reason: To protect ensure the acoustic amenity of surrounding properties.

Site Plan

<http://www.realestate.com.au/cgi-bin/rsearch?a=dep&t=sol&d=106249686&img=floorplan-1&s...>

NSW (New South Wales) Sold Properties - realestate.com.au



Drawing 1 - Proposed Home
Business

21 June 2010

8 Kew close Belrose

4/03/2010 6:04 PM

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