

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2014/1321
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<b>Responsible Officer:</b>	David Auster
<b>Land to be developed (Address):</b>	Lot 867 DP 595584 , 11 Farnell Street CURL CURL NSW 2096
<b>Proposed Development:</b>	Alterations and additions to an existing dwelling
<b>Zoning:</b>	LEP - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Warringah Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Maria Quinn David Andrew Quinn
<b>Applicant:</b>	David Andrew Quinn

<b>Application lodged:</b>	15/12/2014
<b>Application Type:</b>	Local
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	08/01/2015 to 23/01/2015
<b>Advertised:</b>	Not Advertised in accordance with A.7 of WDCP
<b>Submissions:</b>	4
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 592,000
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### ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (upto the time of determination) by the applicant, persons who have made submissions regarding the application and any advice provided by relevant Council /

Government / Authority Officers on the proposal.

## SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings  
 Warringah Development Control Plan - B1 Wall Heights  
 Warringah Development Control Plan - B3 Side Boundary Envelope  
 Warringah Development Control Plan - B5 Side Boundary Setbacks  
 Warringah Development Control Plan - B7 Front Boundary Setbacks  
 Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting  
 Warringah Development Control Plan - D6 Access to Sunlight  
 Warringah Development Control Plan - D7 Views  
 Warringah Development Control Plan - D8 Privacy  
 Warringah Development Control Plan - D9 Building Bulk

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 867 DP 595584 , 11 Farnell Street CURL CURL NSW 2096
<b>Detailed Site Description:</b>	<p>The site is located on the western side of Farnell Street. It is irregularly shaped, and adjoins Gardere Avenue at the south western corner, where there is an existing driveway entry.</p> <p>The land slopes down from west to east, getting significantly steeper towards the eastern end of the site.</p> <p>The site presently accommodates a detached dwelling, with a separate two storey garage/outbuilding to the west of the dwelling. Surrounding development also consists of detached dwellings, with a mix of single, double and three storey dwellings. The properties to the west have views across the subject site towards Curl Curl Beach.</p>

Map:



## SITE HISTORY

The land has been used for residential purposes for an extended period of time.

DA2000/4524 relating to the garage/studio at the western end of the property was approved by Council on 16 August 2000.

The existing dwelling was approved under consent number 1676/11-D on 14 January 1986.

## PROPOSED DEVELOPMENT IN DETAIL

The proposal involves the following alterations and additions to the existing dwelling.

### Garage level

- New driveway and double garage / storeroom to the Farnell Street frontage.
- New elevator from rear of garage to upper levels
- New pedestrian entry and stairs
- Garden terracing above new garage

### Ground level

- Internal reconfiguration with new external windows as required
- Extension to west by approximately 2m
- Extension of existing front balcony by approximately 1.3m
- Level will be comprised of rumpus, study, storeroom, 2 bedrooms, laundry and bathroom

### First floor level

- Internal reconfiguration with new external windows as required

- Extension to west by approximately 2m
- Extension of existing front balcony up to 1.47m deep.
- Level will be comprised of primary living area, including dining and kitchen, bedroom and bathroom

#### Second floor level

- New upper floor level comprised of 3 bedrooms and two bathrooms

#### Other works

- Existing two level garage building to be converted to Cabana on bottom level, and billiards room on upper level.
- New swimming pool and terrace between dwelling and cabana/billiards building
- New single carport to the Gardere Avenue frontage.

Amended plans were received during the assessment process which included lowering the height of the development, changes to the glazing of windows on the southern elevation, and increased the side setback of the new upper level in the south western corner of the dwelling.

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

### **ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)**

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

<b>Section 79C 'Matters for Consideration'</b>	<b>Comments</b>
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 79C (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 79C (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 79C (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000, Council requested additional information and has therefore</p>

Section 79C 'Matters for Consideration'	Comments
	<p>considered the number of days taken in this assessment in light of this clause within the Regulations.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
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	<p>(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the Warrangah Development Control Plan section in this report.</p> <p>(ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
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	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 4 submission/s from:

Name:	Address:
Mr Simon John Cox	15 Gardere Avenue CURL CURL NSW 2096
Boston Blyth Fleming Pty Ltd	Suite 1/9 Narabang Way BELROSE NSW 2085
Ms Mary Yvonne Perebzak	17 Gardere Avenue CURL CURL NSW 2096
Sally Jean Hopkins John James Hopkins	9 A Gardere Avenue CURL CURL NSW 2096

\*Note: The submission received from Boston Blyth Fleming Pty Ltd was on behalf of the owners of number 9A Gardere Avenue. Note also that 9A Gardere Avenue is also known as 9 Farnell Street in some Council records.

The following issues were raised in the submissions and each have been addressed below:

- View loss
- Alterations and Additions or New Dwelling
- Building Height - including insufficient justification
- Building envelope and wall height
- Overshadowing / Shadow diagrams insufficient
- Privacy
- Structural impacts
- Location of Pool plant and fencing not shown
- Works shown on No.9 and road reserve
- Height of wall and finished floor level of pool area
- BBQ situated beneath flammable screen

The matters raised within the submissions are addressed as follows:

- **View loss**

Comment:

Concerns were raised regarding view loss from 15 and 17 Gardere Avenue. View loss is discussed in detail under Clause D7 Views in this report. In summary, the proposal is considered to result in a reasonable sharing of views as required by the control.

The objection is not considered to result in the need for further amendment or refusal of the application.



- **Alterations and Additions or New Dwelling**

Comment:

Concerns were raised that the proposal should be characterised as a 'new dwelling' as opposed to 'alterations and additions', with reference made to the planning principles established by the NSW Land and Environment Court under *Coorey v Municipality of Hunters Hill*. An assessment against the planning principles is carried out below:

**Qualitative issues**

*How is the appearance of the existing building to be changed when viewed from public places?*

Comment: The existing buildings on site, being the dwelling and garage building, will remain in the same location on site, with relatively minor extensions, and a new upper level to the dwelling. A new garage and carport structures are also proposed which will be visible from the public domain. The appearance of the development will certainly change somewhat, particularly due to the addition of another level above the existing dwelling, however it will not change so much as to be obviously a whole new development.

*To what extent, if any, will existing landscaping be removed and how will that affect the setting of the building when viewed from public places?*

Comment: Some existing landscaping will be removed and subsequently replaced above the new garage on the Farnell Street frontage. The development will maintain the rock outcrops to the east of the site, and this will help to maintain the setting of the building. To the Gardere Avenue frontage landscaping will be increased behind the new carport.

*To what extent, if any, will the proposal impact on a heritage item, the curtilage of a heritage item or a heritage conservation area?*

Comment: There are no heritage items nearby.

*What additional structures, if any, in the curtilage of the existing building will be demolished or altered if the proposal is approved?*

Comment: As mentioned above, the existing two storey garage building will be altered slightly, including a new roof, internal alterations, and other minor external alterations. A new swimming pool will be added to the area between dwelling and garage/cabana building. However, no existing buildings are to be demolished.

*What is the extent, if any, of any proposed change to the use of the building?*

Comment: The dwelling will remain a dwelling. The existing garage building will become a pool cabana room, with billiard room upstairs.

*To what extent, if any, will the proposed development result in any change to the streetscape in which the building is located?*

Comment: The development will have some impact on both streetscapes (Gardere Avenue and Farnell Street) given the proposed new garage and carport. However, these impacts are not considered to be unreasonable, or out of character with the respective streetscapes, as discussed within this report. The impact caused by changes to the dwelling will be relatively minimal. The new upper level is set well back from the eastern facade, which will minimise impacts on the streetscape.

*To what extent, if any, are the existing access arrangements for the building proposed to be*

*altered?*

Comment: The proposal will maintain the existing access from Gardere Avenue, but will also include a new access from Farnell Street.

*To what extent, if any, will the outlook from within the existing building be altered as a consequence the proposed development?*

Comment: The outlook from within the existing building will be altered very little. The existing levels will continue to face out directly to the east towards the views. The proposed new upper level will also be orientated mainly in an easterly direction in terms of outlook.

*Is the proposed demolition so extensive to cause that which remains to lose the characteristics of the form of the existing structure?*

Comment: The proposed demolition will not cause the development to lose the characteristics of the form of the existing structure. The existing structures will largely be maintained unchanged in terms of setbacks and form. A new upper level will be added to the dwelling, and relatively minor additions to the front and rear (east and west) of the building. The garage/cabana building will have a new roof form, but otherwise the external alterations are also relatively minor.

## **Quantitative issues**

*To what extent is the site coverage proposed to be changed?*

Comment: Site coverage is not an applicable control under the under the planning controls relating to the site. Notwithstanding, site coverage will remain similar to the existing site coverage. The exception to this is the new garage proposed on the Farnell Street frontage. However this garage is to be covered by a roof top garden. Further to this, site coverage will be reduced slightly in the north western corner of the site.

*To what extent are any existing non-compliances with numerical controls either increased or diminished by the proposal?*

Comment: The proposal will increase existing non-compliances with the building height, wall height and envelope controls to a significant degree. These increases are generally caused by the addition of the new upper level.

*To what extent is the building envelope proposed to be changed?*

Comment: The building envelope will be increased, mainly by the addition of the new upper level. However the overall increase in bulk and scale of the development will not be so much larger than the existing development on site that it is considered unreasonable.

*To what extent are boundary setbacks proposed to be changed?*

Comment: Boundary setbacks for the most part will remain unaltered. The exception to this is for the new garage which will be on nil front and side setbacks to the Farnell Street frontage. However, the main buildings on site will remain generally unchanged.

*To what extent will the present numerical degree of landscaping on the site be changed?*

Comment: The numerical amount of landscaping will be slightly increased on site, as discussed under Clause D1 Landscaped Open Space and Bushland Setting in this report.

*To what extent will the existing floor space ratio be altered?*

Comment: Floor space ratio is not an applicable control under the planning controls relevant to the site. Notwithstanding, the floor space ratio will be increased by the addition of the new upper



level. The existing lower levels will have minimal changes to the floor space ratio.

*To what extent will there be changes in the roof form?*

Comment: The addition of the new upper level will necessitate a new roof. The proposed new roof has been made almost flat, to minimise noncompliance with the building height control and to minimise view loss for neighbours.

*To what extent will there be alterations to car parking/garaging on the site and/or within the building?*

Comment: As discussed, the proposal will include a new garage to the Farnell Street frontage. The existing parking area and garage to Gardere Avenue will be removed/reduced and replaced by a single carport.

*To what extent is the existing landform proposed to be changed by cut and/or fill to give effect to the proposed development?*

Comment: The proposed new garage to the Farnell Street frontage will necessitate some cut and fill, however the development involves reinstating landscaping above the new garage, and the changes to the landform in this regard will be relatively minimal. Otherwise the development will not significantly alter the landform.

*What relationship does the proportion of the retained building bear to the proposed new development?*

Comment: The existing buildings on site will be largely retained. The proposal essentially involves minor extensions to the east and west of the existing dwelling, and a new upper level. There will also be relatively minor alterations made to the garage/cabana building to the west. The application also includes the additions of a new pool and parking structures.

The development does not result in a massive or unreasonable departure from the existing position, and given the considerations above, the development is rightly considered as alterations and additions.

The objection is not considered to result in the need for further amendment or refusal of the application.

- **Building Height - including insufficient justification**

Comment:

Concerns were raised regarding the proposed height of the building, and that the justification provided by the applicant was inadequate. This issue is discussed in detail under Clause 4.6 in this report. In summary, the proposal is considered acceptable despite the breach of the height limit. The written justification provided by the applicant as part of the Statement of Environmental Effects is considered to be adequate, and provides adequate justification on planning grounds to approve the height non-compliance.

The objection is not considered to result in the need for further amendment or refusal of the application.

- **Building envelope and Wall height**

Comment:

Concerns were raised that the development does not comply with the building envelope and wall

height controls. Particular concern was raised that the development does not qualify for the variations permitted by these controls, as it does not meet the applicable criteria. The controls do allow variations under certain criteria, which the current development does not achieve. However, the fact that the development does not qualify for the specific variations listed under the controls does not preclude approval of the proposed variations based on a merit assessment.

The non-compliances are discussed in detail under Clause B1 Wall Heights and B3 Side Boundary Envelope in this report. In summary, the proposal is considered to be acceptable despite the proposed breaches of the built form controls.

The objection is not considered to result in the need for further amendment or refusal of the application.

- **Overshadowing / Shadow diagrams insufficient**

Comment:

This issue is discussed in detail under clause D6 Access to Sunlight in this report. In summary, the proposal is not considered to create unreasonable overshadowing of the southern neighbour. The applicants have provided updated shadow diagrams to demonstrate that the proposal will not overshadow the neighbour's solar panels, and to provide hourly intervals, and the architect has confirmed that the diagrams are correct in this regard.

The southern neighbour has submitted photos taken of their site. These photos demonstrate that the existing overshadowing caused by the existing side boundary fencing is slightly less than what is shown on the plans. The photos have been taken into account in assessing the amount of sunlight provided, and it is considered that a reasonably accurate assessment of solar access has been possible in this regard.

The objection is not considered to result in the need for further amendment or refusal of the application.

- **Privacy**

Comment:

Concerns were raised by the southern neighbour regarding privacy impacts. The applicant amended the plans during the assessment process to provide for obscure glazing to the south facing kitchen and master bedroom windows. This issue is discussed in detail under Clause D8 Privacy in this report. In summary, subject to conditions of consent to ensure 1.5m sill heights to certain windows, the proposal is considered to maintain a reasonable level of privacy to neighbours.

The objection is not considered to result in the need for further amendment or refusal of the application.

- **Structural impacts**

Comment:

Concerns were raised by the southern neighbour regarding possible structural impacts of the excavation and construction of the new garage on the Farnell Street frontage. A preliminary geotechnical report was provided with the application, which states that the the proposed works will not adversely affect the geotechnical stability of the site, subject to the recommendations of the report. It also states that the development will not cause detrimental impacts because of stormwater discharge from the land and will not cause detrimental impacts on the existing subsurface flow conditions including those to other properties.

A condition of consent will ensure that the recommendations of the geotechnical report are implemented during construction. The objector has requested that a dilapidation report be required prior to construction. Given the proposed nil setbacks and excavation required on the boundary, this is considered a reasonable request. A condition of consent will require a dilapidation report to be carried out prior to issue of a Construction Certificate. A further condition will be imposed requiring owners consent from adjoining property owners should any shoring be required of the adjoining property.

Further to this Council's Development Engineers have recommended conditions of consent requiring geotechnical assessment on the road reserve to ensure the road area remains stable during construction.

Subject to the conditions discussed above, the application is considered acceptable in this regard.

- **Location of Pool plant and fencing not shown**

Comment:

Concerns were raised that the plans do not show the location of the pool plant and fencing. Conditions will be included in the consent requiring that all sound producing plant, equipment, machinery or fittings and the use will not exceed more than 5dB (A) above the background level when measured from any property boundary and/or habitable room(s) consistent with the Environment Protection Authority's NSW Industrial Noise Policy and/or Protection of the Environment Operations Act 1997.

A further condition of consent will ensure that the pool fencing is constructed in accordance with the Swimming Pools Act and Regulations, and Australian Standards.

Subject to these conditions, the objections are considered to be reasonably satisfied.

- **Works shown on No.9 and road reserve**

Comment:

Concerns were raised that the plans appear to show front fencing over the front and side boundaries of the Gardere Avenue frontage. This structure appears to be the existing fencing shown on the survey, partially removed on the road reserve. The plans indicate a gate and fence setback from the front boundary. A condition of consent is recommended to ensure that no works take place on the neighbouring property or Council road reserve other than driveway works, and that the existing front fencing on the road reserve and Gardere Avenue is to be demolished.

Subject to this condition, the objection is considered to be satisfied in this regard.

- **Height of wall and finished floor level of pool area**

Comment:

Concerns were raised that the proposed pool terrace is at a floor level of RL29.235, higher than the pool terrace area of the neighbouring dwelling at number 9A Gardere Avenue.

This is a drafting error, and the other plans including the section and elevation plans indicate the correct proposed height of the terrace as RL 26.830. A condition of consent will ensure that the error is not constructed.

The submission also raised concerns that a masonry wall exceeding the current fence height

was shown on the plans as being on the boundary, which would further block solar access.

This wall is adjacent to the proposed stair access to the western end of the dwelling, and not on the southern boundary. It is approximately 6m from the southern side boundary, and will have no impacts on solar access or the general amenity of the southern neighbour.

Subject to the condition to correct the drafting error of the height of the terrace, the objection is considered to be satisfied in this regard.

- **BBQ situated beneath flammable screen**

Comment:

Concerns were raised with the location of the BBQ area directly below the existing flammable fencing structure on the southern boundary. The side setback control requires that development maintain a 900mm side boundary setback. The side setback of the pool and terrace is addressed under Clause B5 Side Boundary Setbacks in this report, and a condition has been recommended requiring the pool and decking to be setback a minimum of 900mm from the southern side boundary.

The existing fence is a canvas material, and the objection to the location of the BBQ is considered valid in this respect. The condition of consent regarding the side setback will also require the BBQ to be relocated a minimum of 900mm from the side boundary.

Subject to this condition of consent the objection is considered to be reasonably satisfied.

## MEDIATION

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

## REFERRALS

Internal Referral Body	Comments
Development Engineers	Development Engineer has no objection subject to the following conditions of consent.
Landscape Officer	<p>The plans indicate that the rock outcrops in the road reserve on the Farnell St. frontage are to be retained, with the driveway located between the visible rocks. The rock outcrops along Farnell St are a significant feature in the local landscape and should be retained.</p> <p>If vehicular access is to be granted from Farnell St, no objections are raised subject to conditions as recommended.</p>

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

## **ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)\***

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

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

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

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

#### **SEPP 55 - Remediation of Land**

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

#### **SEPP (Building Sustainability Index: BASIX) 2004**

A BASIX certificate has been submitted with the application (see Certificate No. A206606). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

#### **SEPP (Infrastructure) 2007**

##### Ausgrid

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

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

##### Comment:

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

## Warringah Local Environment Plan 2011

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	10m	20%	No

### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

### Detailed Assessment

#### 4.6 Exceptions to development standards

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard and is assessed taking into consideration the questions established in Winten Property Group Limited v North Sydney Council (2001) NSW LEC 46.

Requirement:	8.5m
Proposed:	10m
Is the planning control in question a development standard?	YES
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical and Performance
If numerical enter a % variation to requirement	20%

The proposal must satisfy the objectives of Clause 4.3 – Height of Buildings, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the WLEP 2011. The assessment is detailed as follows:

#### Is the planning control in question a development standard?

The prescribed Height of buildings limitation pursuant to Clause 4.3 of the WLEP 2011 is a development



standard.

### **What are the underlying objectives of the development standard?**

The underlying objectives of the standard, pursuant to Clause 4.3 – ‘Height of buildings’ of the WLEP 2011 are:

(1) The objectives of this clause are as follows:

*a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*

Comment:

The proposal is generally compatible with the height and scale of development in the area, and is of similar height to the existing dwelling at number 9A Gardere Avenue, adjacent to the south. The dwelling will comply with the 8.5m height limit at the western end, and will be stepped down the site to the east. When viewed from Farnell Street it will be largely screened by the dwelling at number 9A when approaching from the south, and partly screened by the northern neighbour at number 11A when approaching from the north. The neighbouring northern dwelling is currently under developed, and is likely to increase in height at some point in the future, which would further screen the current proposal.

*b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*

Comment:

The proposal will have some impacts on views, privacy and solar access as discussed in this report. However, these impacts are generally caused by the compliant part of the dwelling, at the western end, and are considered to be adequately minimised as discussed in this report. The eastern end of the proposal, where the height non-compliance it at its worst, will have minimal impacts on views, solar access and privacy of neighbours. The visual impact of the development is considered to be adequately minimised.

*c) to minimise adverse impact of development on the scenic quality of Warringah’s coastal and bush environments,*

Comment:

The proposal is compliant with the height limit at the western end of the dwelling, and will not comply as the land slopes down to the east. As discussed above, the overall impact of the development will be generally compatible with development in the surrounding area, and will not create any unreasonable visual impacts. The proposal will maintain the existing rock outcrop features at the eastern end of the site, and is generally considered to minimise any adverse impact on the scenic quality of Warringah’s coastal and bush environments.

*d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities,*

Comment:

The proposal will be of a similar height and scale to surrounding development. It is similar in height to the dwelling to the south at number 9A Gardere Avenue, and will be lower overall than existing dwellings to the rear, further up the hill to the west. It will not have any unreasonable visual impacts when viewed from any public places, including parks, reserves, roads and community facilities. As discussed above, When viewed from Farnell Street it will be largely screened by the dwelling at number 9A when approaching from the south, and partly screened by the northern neighbour at number 11A when approaching from the north. The neighbouring northern dwelling is currently under developed, and is likely to increase in height at some point in the future, which would further screen the current proposal.

**What are the underlying objectives of the zone?**

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the R2 zone.

The underlying objectives of the R2 Low Density Residential zone:

- *To provide for the housing needs of the community within a low density residential environment.*

Comment:

The proposal provides for a detached dwelling in accordance with the low density zoning.

It is considered that the development satisfies this objective.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment:

The proposal will not prevent other land uses from being carried out in the area to meet the needs of residents.

It is considered that the development satisfies this objective.

- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Comment:

The proposal will increase landscaped open space on site. The landscaping provided above the new garage and to the rear of the new carport shown on the plans, as well as the retention of significant rock outcrops to the east will help to maintain a landscaped setting.

It is considered that the development satisfies this objective.

**Is the variation to the development standard consistent with the objectives of Clause 4.6 of the**

## WLEP 2011?

(1) The objectives of this clause are as follows:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development.*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

### Comment:

The proposal does not comply with the control and requires a degree of flexibility to the control. As discussed within this report, the proposal is not considered to result in unreasonable impacts, and the proposed height non-compliance is acceptable in the particular circumstances.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

### Comment:

A written request from the applicant relating to Clauses 4.3 and 4.6 is provided as part of the Statement of Environmental Effects, and has sought to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard. Reasons provided include:

- *"The location, setback from the front facade of the dwelling and the angle of viewing from Farnell Street results in the upper level being a recessive element when viewed from outside the property.*
- *The visual compatibility of the development with adjoining development.*
- *No unreasonable impacts on views or other amenity of neighbours caused by height."*

(4) Development consent must not be granted for development that contravenes a development standard unless:

- (a) the consent authority is satisfied that:*

*(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

Comment:

The applicant's written request is considered to adequately address the matters required to be demonstrated by subclause (3).

*(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.*

Comment:

For reasons detailed above, the proposal is considered to be consistent with the objectives of Clause 4.3 and the R2 zone in the WLEP 2011.

*(b) the concurrence of the Director-General has been obtained*

Comment:

Planning Circular PS 08-003 dated 9 May 2008, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Director-General for the variation to the Height of buildings Development Standard is assumed.

## Warringah Development Control Plan

### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	9.7m	25.77%	No
B3 Side Boundary Envelope	5m	Breaches both sides	N/A	No
B5 Side Boundary Setbacks	North 0.9m	Dwelling 910mm Garage Nil	N/A 100%	Yes No
	South 0.9m	Dwelling 910mm Pool Building Nil (existing and unchanged) Garage Nil Pool and decking nil	N/A N/A 100% 100%	Yes Yes No No
	West 0.9m	Carport 600mm	33.33%	No
B7 Front Boundary Setbacks	Primary (Farnell St) 6.5m	Garage Nil Dwelling 6.5m	100% N/A	No Yes
	Secondary (Gardere	Carport 1m	71.43%	No

	Ave) 3.5m			
B9 Rear Boundary Setbacks	6m	The site is not considered to have a rear boundary.	N/A	N/A
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	20.7%	48.25%	No

**\*Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example:  $38/40 \times 100 = 95$  then  $100 - 95 = 5\%$  variation)

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
R2 Side Boundary Envelope Exceptions	No	Yes
B5 Side Boundary Setbacks	No	Yes
Side Setbacks - R2	No	Yes
Side Setback Exceptions - R2	No	Yes
B7 Front Boundary Setbacks	No	Yes
R2 - All other land in R2 Zone	No	Yes
Front Boundary Exceptions - R2	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
Residential accommodation - one or two dwellings	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	No	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	No	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D12 Glare and Reflection	Yes	Yes
D13 Front Fences and Front Walls	Yes	Yes
D14 Site Facilities	Yes	Yes
D15 Side and Rear Fences	Yes	Yes
D16 Swimming Pools and Spa Pools	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
E1 Private Property Tree Management	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

## Detailed Assessment

### **B1 Wall Heights**

#### Description of non-compliance

The proposed wall height is up to 9.7m high at the highest point, in the south eastern corner of the new upper level.

#### Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

#### Comment:

The proposal will be of a similar height to other development in the area, particularly the neighbour to the south at number 9A Gardere Avenue. The building at number 9A will provide a significant level of screening when approaching the site along Farnell Street from the south. The neighbour to the north is significantly lower, but will still somewhat screen the development from the north. The dwelling on that site is currently underdeveloped in the context of the applicable built form, and is likely to increase in height at some point in the future, providing further screening of the current proposal. The non-compliance with the wall height control will not cause the development to have unreasonable visual impacts given the scale of development in the area. Additionally, the amended plans have setback the upper level from the side boundary in the south western corner, which will provide visual relief to the southern neighbour.

- To ensure development is generally beneath the existing tree canopy level*

#### Comment:



There are no canopy trees on site or in the immediate surrounds. However, the development is generally of a similar scale to other development in the area, and is considered to be consistent with this objective.

- *To provide a reasonable sharing of views to and from public and private properties.*

Comment:

The development is considered to generally maintain a reasonable sharing of views as discussed under clause D7 Views in this report.

- *To minimise the impact of development on adjoining or nearby properties.*

Comment:

As assessed throughout this report, the development is not considered to result in unreasonable impacts to surrounding neighbours. The proposal will generally maintain a reasonable level of amenity to neighbours.

- *To ensure that development responds to site topography and to discourage excavation of the natural landform.*

Comment:

The development involves some excavation for the garage portion of the development, but the area related to the wall height non-compliance is generally as a result of adding a new upper level to the existing dwelling. Minimal excavation is required in this regard.

- *To provide sufficient scope for innovative roof pitch and variation in roof design.*

Comment:

The amended plans have lowered the height of the roof to provide an almost flat roof design, to comply with the 8.5m height limit at the western end of the dwelling to minimise view loss. The height of the walls is dictated by the retention of the existing dwelling, and adding another storey above. The flat roof provides the best outcome in terms of maintaining views, and is considered compatible with surrounding roof forms in the area.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

### **B3 Side Boundary Envelope**

Description of non-compliance

The existing dwelling does not comply with the building envelope on both sides. The addition of the new upper level will create new breaches to both the east and west of the ridge of the existing dwelling on both

sides.

#### Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To ensure that development does not become visually dominant by virtue of its height and bulk.*

#### Comment:

The proposal will be of a similar height and scale to other development in the area, and will not visually dominate the area. The new upper level is setback from the eastern end of the dwelling, to step down the site, and the amended plans have included a greater setback in the south western corner to provide visual relief to the southern neighbour. Given the height of existing development in the area, the proposed height and bulk is not unreasonable.

- *To ensure adequate light, solar access and privacy by providing spatial separation between buildings.*

#### Comment:

As discussed under the relevant sections of this report, the proposal is considered to maintain a reasonable level of light, solar access and privacy. The amended plans have increased the side setback of the new upper level in the south western corner to reduce impacts on the private open space of the southern neighbour. The building separation is considered adequate in this regard.

- *To ensure that development responds to the topography of the site.*

#### Comment:

The proposed new upper level is setback from the eastern end of the dwelling, and will cause the overall development to step down the site from west to east, in accordance with the topography. The upper level being setback from the eastern end of the dwelling will help to reduce the visual impacts from the lower side of the site on Farnell Street.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## **B5 Side Boundary Setbacks**

#### Description of non-compliance

The proposed garage will have a nil setback to the north and south side boundaries. The proposed carport will have a 600mm side setback to the western side boundary. The proposed pool and deck area will have a nil setback to the southern boundary.

### Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To provide opportunities for deep soil landscape areas.*

#### Comment:

The overall proposal will increase landscaped open space on site, although this increase is in part as a result of the swimming pool. Some landscaped area will be provided above the garage, and deep soil area will be increased in the north west corner of the site. The proposal is considered to result in sufficient opportunities for deep soil landscape areas, and will allow for sufficient planting to mitigate the built form. To increase deep soil area, a condition is recommended requiring the pool and deck area to be setback from the southern boundary by at least 900mm, and planting to take place.

- *To ensure that development does not become visually dominant.*

#### Comment:

The proposed nil side setbacks of the garage are generally in keeping with the pattern of development. The garage will be partially screened by the existing rock outcrops in the road reserve which are to be maintained, and the proposal will not unreasonably visually dominate the area. The proposed carport to the western end of the property is a single space sized structure, and will not cause any unreasonable visual dominance given the surrounding development. The pool and decking area is lower than the existing similar area to the south, and will not be visually dominant.

- *To ensure that the scale and bulk of buildings is minimised.*

#### Comment:

The proposed garage will be partially screened by the existing rock outcrops in the road reserve to be maintained. It is single storey with landscaping above, and will not result in an unreasonable bulk and scale, particularly given the existing surrounding development. The proposed carport is a single space, and also will not create an unreasonable bulk and scale. The pool and decking are low open structures which will not have any significant bulk.

- *To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.*

#### Comment:

The proposed side setbacks of the garage and carport will not have any significant or unreasonable impacts on the privacy, amenity or solar access of neighbouring properties, given their locations in relation to the living areas of neighbouring properties. The pool and decking area is very similar to the pool and decking area of the adjacent southern neighbour, but will be

lower than this neighbouring area. However, given its proximity and that the site falls short of the 40% landscaped open space requirement, a condition is recommended to ensure that a minimum 900mm strip of landscaping is maintained along the southern boundary adjacent to the pool and deck. Subject to this condition, a reasonable level of privacy, amenity and solar access will be maintained.

- *To provide reasonable sharing of views to and from public and private properties.*

Comment:

The proposed side setback non-compliances caused by the garage, carport and pool, decking area will not contribute to any view loss. As discussed within this report, the overall proposal is considered to maintain a reasonable sharing of views.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## **B7 Front Boundary Setbacks**

Description of non-compliance

The proposal includes a nil setback to the Farnell Street front boundary, caused by the proposed new garage. The proposed carport will be 1m from the Gardere Avenue front boundary.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To create a sense of openness.*

Comment:

To Farnell Street, the proposed garage will have a nil setback. Landscaping is proposed above the garage however, and this may be expected to contribute to a sense of openness, while maintaining the existing pattern of development along the western side of the street. To Gardere Avenue, the proposed carport is a single space sized structure, and will not unreasonably detract from the sense of openness in the area.

- *To maintain the visual continuity and pattern of buildings and landscape elements.*

Comment:

The proposed new garage is similar in scope and design to the one at the adjoining 9A Gardere Avenue, and to one recently approved at 5 Farnell Street. Number 14 Farnell Street, directly across from the subject site also has a large double garage on a nil setback. The proposal is considered to maintain the visual continuity and pattern of development in this regard.

The front setbacks along Gardere Avenue are varied and in numerous cases are close to nil, for instance at numbers 9A, 17, 22, 24 and 26 Gardere Ave, and 3 Farnell St. The 1m proposed setback of the single carport will be generally in accordance with the general pattern of development.

- *To protect and enhance the visual quality of streetscapes and public spaces.*

Comment:

The proposal will not unreasonably detract from the streetscape. The proposed carport will be a relatively minor, open structure in the streetscape on Gardere Avenue. The proposed garage on Farnell Street will be in keeping with the character of other improved development in close proximity, and the landscaping above will help to contribute to the visual quality of the streetscape.

- *To achieve reasonable view sharing.*

Comment:

The development is considered to result in a reasonable sharing of views as discussed in this report. The proposed non-compliant elements within the front setback, being the new garage and carport, will not have any impacts on the views from neighbouring properties.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## **D1 Landscaped Open Space and Bushland Setting**

### Description of non-compliance

The proposal provides for approximately 20.7% of the site to be landscaped open space. This is an increase on the current situation from approximately 18.4%. An additional 13.4sqm of landscaped area (over and above the 20.7% proposed) is provided above the new garage which is less than 1m in soil depth, and does not therefore technically qualify as landscaped open space. If this area was increased to a full metre in depth, the landscaped area would rise to 23.3%.

### Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To enable planting to maintain and enhance the streetscape.*

Comment:

The proposal will increase landscaped area visible from the Gardere Street frontage, behind the

new carport structure. Landscaped area will be somewhat decreased in the Farnell Street frontage to accommodate the new pedestrian entry and garage. However, the garage design, with rooftop garden, is consistent with other approved development along the street. Additionally, the rock outcrops are to be largely retained to the Farnell Street frontage. The streetscape will not be unreasonably impacted upon.

- *To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.*

Comment:

The development will largely retain the existing rock outcrops at the Farnell Street frontage. There are no other significant topographical features, indigenous vegetation or wildlife habitats identified on the site.

- *To provide for landscaped 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, bulk and scale of the building.*

Comment:

The development will increase the landscaped open space on site, and will enable various levels of planting to screen and mitigate the built form. Landscaping is generally kept to a low height in this area to retain views, however the new roof top garage at the Farnell Street frontage will allow for planting to adequately screen the built form, similar to the levels of planting that currently exist on site.

- *To enhance privacy between buildings.*

Comment:

The proposal will not alter the existing positions of the landscaped areas on site, but will increase the size of the area in the north western corner of the site. Given that the development is for alterations and additions to the existing dwelling, there is no opportunity for landscaping to provide any significant privacy benefit. However, as discussed in this report, privacy will be adequately maintained by the proposal, subject to conditions of consent.

- *To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.*

Comment:

The proposal will provide ample outdoor recreational opportunities for the residents, including the proposed new pool.

- *To provide space for service functions, including clothes drying.*

Comment:

Ample space will remain on site for necessary facilities, including clothes drying.



- *To facilitate water management, including on-site detention and infiltration of stormwater.*

Comment:

Council's Engineers have assessed the proposal and raised no concerns with the development. Conditions have been provided to ensure that all stormwater is disposed of to Farnell Street.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## D6 Access to Sunlight

Description of Non-compliance

The shadow diagrams submitted do not indicate that the proposal will maintain a minimum of at least 50% of the required area of private open space of the southern neighbour (9A Gardere Avenue) for a minimum of 3 hours of sunlight between 9am and 3pm on June 21. The control requires that 30sqm of of the neighbouring private open space be in sunlight for 3 hours.

The existing private open space of 9A Gardere Avenue is approximately 77sqm in area. There is further private open space provided by the eastern balconies of 9A Gardere Avenue, although these areas do not meet the definition of private open space, having dimensions of less than 5m. The neighbour has raised objections that the impact on these balconies is not shown on the shadow diagrams. Given that these areas do not technically qualify as private open space, they do not need to be shown on the shadow diagrams. However, the photos submitted give a good indication of the potential impacts on the balcony on the living level of number 9A.

The impact on the private open space of number 9A Gardere Avenue (pool area) is set out in the following table, including the areas demonstrated in the photos submitted by the southern neighbour:

<b>Time on 21 June</b>	<b>Approximate existing area in sunlight - pool area only, eastern decks not included</b>	<b>Approximate proposed area in sunlight - pool area only, eastern decks not included</b>
9am	14.5sqm	Nil
10am	25.7sqm	7.9sqm
11am	35.5sqm	20.7sqm
12pm	39sqm	30.8sqm
1pm	36.7sqm	36.7sqm
2pm	26.4sqm	26.4sqm
3pm	8.9sqm	5.2sqm

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To ensure that reasonable access to sunlight is maintained.*

Comment:

As indicated by the table above, the proposal will reduce sunlight to the neighbouring private open space, and will not achieve the 30sqm requirement for 3 hours on June 21. The reduction to the solar access caused by the development is mainly in the morning. By 1pm the development will have no impact on the existing overshadowing, until a small amount of extra overshadowing is caused by 3pm by the alterations to the pool cabana building. The amended plans have slightly reduced the impacts in the morning by reducing the height of the development at the western end to comply with the 8.5m height limit.

The biggest impact on the private open space occurs between 9am and 11am. It is noted that the eastern decks off the main living area and upper level bedrooms will receive full sunlight until around 11.30am. These decks do not technically qualify as 'private open space' under Clause D2 Private Open Space, as they have dimensions less than 5m. However, they each provide approximately 6sqm-9sqm of outdoor area in full sunlight in the morning until around 11.30am, when the balcony at the living level of number 9A will begin to be partially overshadowed by the development. Although they do not technically qualify as private open space, they are considered to be usable areas, directly accessible from the main living area of the dwelling.

At 11am and 12pm the deck area between pool and dwelling is the area most impacted upon. The proposal does not comply with the building envelope in the south west corner, causing some of this impact, however the amended plans have ensured that it complies with the height limit. If the development was set in from the southern boundary a further approximately 1.2m to comply with the envelope, the impact on this area of private open space would not be significantly reduced. The main area directly adjacent to the indoor living area would still be mostly overshadowed, and only a small additional area under or near the southern awning of 9A would be in sunlight.

Between 12pm and 2pm the proposal will have little impact on the private open space of 9A. At 3pm only a small area of additional overshadowing will be caused by the addition to the pool cabana building.

It is also noted that a significant part of the existing and future shading of the pool area is caused by the existing high screen/fence located on the common side boundary. The height of this screen is above the more normal height of side boundary fences, being 1.8m above ground level. If this screen was lower or not in place the pool area would receive more sunlight to the private open space area.

The amount of sunlight maintained to the private open space falls only a small way short of the requirements. Given the orientation of the sites (making southern neighbours very vulnerable to overshadowing), the existing high fence/screen on the common side boundary, and the extra space available in full sunlight for most of the morning provided by the eastern decks, a reasonable level of solar access is considered to be maintained.

The development is not considered to have an unreasonable impact on the use and enjoyment of the neighbouring private open space area. A fully compliant application would not create significant improvements to the proposed overshadowing, and in particular would not greatly reduce the impacts to the main private open space.

- *To encourage innovative design solutions to improve the urban environment.*

Comment:

The proposal is considered to be generally acceptable in the context of the site and surrounding development, and will provide alterations and additions that may be expected to improve the urban environment. The design is considered to be sufficiently innovative, and will not have unreasonable impacts on the solar access of neighbours, as discussed above.

- *To maximise the penetration of mid winter sunlight to windows, living rooms, and high use indoor and outdoor areas.*

Comment:

The proposal will have no unreasonable impacts on the penetration of mid winter sunlight into high use indoor areas of the southern neighbour. There are no north facing windows. The main east facing living room windows will not be impacted upon. There is a thin east facing window from the living/dining area that may be impacted upon by the new works, but given the large main east facing windows will not be impacted, and the proximity of this smaller window to the northern boundary, the overshadowing of this window is not considered unreasonable. The southern neighbour has submitted photos indicating they currently get some solar access into their west facing living room windows through a crack between the northern privacy/shade screen and the wall above, and this crack will be overshadowed. However, this is not considered to be a significant form of solar access, and it is not reasonable to protect this crack.

Other photos submitted indicate that the east facing upper level walk-in-wardrobe window will be impacted upon by overshadowing. However this room is not considered a high use living area. As discussed above, the proposal is not considered to reduce the solar access to outdoor areas by an unreasonable amount. The development is considered to maximise the penetration of mid winter sunlight to windows, living rooms, and high use indoor and outdoor areas as required.

- *To promote passive solar design and the use of solar energy.*

Comment:

The southern neighbour has installed solar panels on their roofs, including along the southern awning above the walkway to the Gardere Avenue frontage. The applicant has provided updated shadow diagrams that confirm the development will not overshadow the solar panels.

The main indoor living areas of the proposal are orientated to the east and will be warmed by the sun in the morning in mid winter. The development is considered to adequately promote passive solar design and the use of solar energy.

- *To minimise the need for artificial lighting.*

Comment:

The development does not create any unreasonable overshadowing, and there is no reason to suspect any unusual need for artificial lighting will be created.

The control also states that The planning principle established in the *Benevolent Society v Waverley Council* (2010) NSWLEC 1082 will be used in the assessment of sunlight. The following assessment is therefore set out below:

- *The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. (However, even at low densities there are sites and buildings that are highly vulnerable to being overshadowed.) At higher densities sunlight is harder to protect and the claim to retain it is not as strong.*

Comment:

The development is in a low density residential area. However, the site is on an east/west orientation, and as such the adjacent southern neighbour is vulnerable to overshadowing. As discussed above, the area of the southern neighbour that is most affected, being the pool area, is significantly self shaded already, and the development will not have an unreasonable impact given the orientation of the sites and existing scale of development in the area.

- *The amount of sunlight lost should be taken into account, as well as the amount of sunlight retained.*

Comment:

This has been discussed in detail above. In summary, the amount of sunlight lost is considered to be reasonable. The biggest impact on the pool area will be in the morning as discussed, however the east facing decks and full length windows/doors will retain full morning sun up until around 11.30am. Even a development fully compliant with the built form controls would not significantly reduce the shadowing impact to the pool area in the morning hours.

- *Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.*

Comment:

As discussed throughout this report, the proposal does not comply with a number of the applicable built form controls. However, it is considered to be generally acceptable given the scale of existing development in the area, and will be appropriate in its context. The area which impacts on the solar access of the southern neighbour complies with the height limit, and the extent of envelope breach in the south western corner has been reduced by the amended plans. To further reduce the height and increase the side setback of the development from the south

side boundary would not significantly improve the solar access to the southern neighbour.

- *For a window, door or glass wall to be assessed as being in sunlight, regard should be had not only to the proportion of the glazed area in sunlight but also to the size of the glazed area itself. Strict mathematical formulae are not always an appropriate measure of solar amenity. For larger glazed areas, adequate solar amenity in the built space behind may be achieved by the sun falling on comparatively modest portions of the glazed area.*

Comment:

The development will have very little impact on windows of the southern neighbour. The main east facing living room windows of 9A Gardere Avenue will retain full morning sun. The west facing living room windows are almost entirely self shaded.

- *For private open space to be assessed as receiving adequate sunlight, regard should be had of the size of the open space and the amount of it receiving sunlight. Self-evidently, the smaller the open space, the greater the proportion of it requiring sunlight for it to have adequate solar amenity. A useable strip adjoining the living area in sunlight usually provides better solar amenity, depending on the size of the space. The amount of sunlight on private open space should ordinarily be measured at ground level but regard should be had to the size of the space as, in a smaller private open space, sunlight falling on seated residents may be adequate.*

Comment:

This is discussed in detail above. The area to be overshadowed by the proposal is mainly confined to the morning hours. The pool area is not considered to be a high use area in the morning hours of mid winter. The deck area of private open space directly adjacent to the indoor living area of the southern neighbour (between pool and dwelling), which serves as an outdoor extension of the living area, will be largely overshadowed. However this area is almost directly to the south of the dwelling on the subject site, and is very vulnerable to overshadowing. As discussed above, even a fully compliant design would not significantly improve the overshadowing. Additionally, the east facing balconies will be unaffected, and will retain full morning sunlight up until around 11.30am.

- *Overshadowing by fences, roof overhangs and changes in level should be taken into consideration. Overshadowing by vegetation should be ignored, except that vegetation may be taken into account in a qualitative way, in particular dense hedges that appear like a solid fence.*

Comment:

There is no vegetation affecting overshadowing. However the southern neighbour's private open space is significantly overshadowed already, by the existing development on both 9A Gardere Avenue and 11 Farnell Street, and by the high side boundary fencing. This shading is shown on the shadow diagrams, and has been considered as part of the assessment.

- *In areas undergoing change, the impact on what is likely to be built on adjoining sites should be considered as well as the existing development.*

Comment:

The area is a low density area, and as such it is unlikely that the southern neighbour will be impacted upon by any development on sites other than the subject site. As discussed above, 9A Gardere Avenue is directly to the south of the subject site, and the location of the pool area is vulnerable to impacts of shading by any development up to the height limit at 11 Farnell Street. The proposal is considered to be of a size and scale generally consistent with development in the area, and full compliance with the applicable built form controls would not significantly reduce solar impacts on the southern neighbour.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## D7 Views

Two objections were received in relation to view loss from numbers 15 and 17 Gardere Avenue, to the west of the subject site.

### Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To allow for the reasonable sharing of views.*

#### Comment:

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, are applied to the proposal.

### **1. Nature of the views affected**

*"The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured".*

#### Comment to Principle 1:

15 Gardere Ave: The views available from number 15 are extensive ocean views. The view includes the northern Curl Curl headland, and the interface between land and water. The view is partially obscured and broken up by the existing development on both the subject site and 9A Gardere Avenue, so that the view is not considered to be a 'whole view'. Notwithstanding, the view is considered to be highly valuable.

17 Gardere Ave: The view available from number 17 is somewhat similar to number 15, however



the view is obscured to a greater extent by the development at numbers 9A and 11 Farnell Street, and the development at number 15 Gardere Avenue. The headland is only partially visible, and much less land/sea interface is observable. The view is still considered to be highly valuable, being extensive ocean views, but is not a 'whole view', and is not as valuable as the one from number 15.

## 2. What part of the affected property are the views obtained

*"The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic".*

### Comment to Principle 2:

15 Gardere Ave: The view from number 15 is available from standing and sitting positions in the primary living areas of number 15, including kitchen, dining, living room and living room deck. They are also available to a lesser extent from the lower level bedrooms. The views are entirely across the side boundaries of 15 and 13 Gardere Avenue.

17 Gardere Ave: The view from number 17 is primarily available from the upper level master bedroom and attached balcony. The view is across the side boundaries of 17, 15 and 13 Gardere Avenue. There are small and partial ocean views available from the lower level living area, but these living room views are already almost entirely obscured in the direction of the subject site, and will not be significantly impacted upon by the proposal.

## 3. Extent of impact

*"The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating".*

### Comment to Principle 3:

15 Gardere Ave: The development will obscure a relatively small portion of the overall view from all vantage points on the upper living level of number 15. The objector has noted that the part obscured will be one of the primary 'surf zones' where people surf most often at Curl Curl beach. Notwithstanding, given the proportion of the view that will be lost, the overall impact on the entire view from the whole of the property can only be considered 'minor'.

17 Gardere Ave: Because of the angle of the view towards the headland from number 17, the development will have a slightly greater impact on the view than number 15, as it may just obscure the reef area off the eastern end of the headland. However, the great majority of the ocean views, and most of the already partially obscured headland, will remain unaffected. The

view loss is assessed to be 'minor' in this case also.

#### 4. Reasonableness of the proposal that is causing the impact

*“The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.”*

##### Comment to Principle 4:

The amended plans have lowered the height of the development so that the western end of the roof of the dwelling will be 8.5m above the ground level, compliant with the height limit. The roof is almost flat, with a very slight slope down from west to east. The view loss will therefore be caused primarily by the western elevation of the dwelling, which complies with the height limit. The proposal does not however comply with the building envelope on both sides, and this will contribute to the view loss from both objecting properties.

Due to the relatively narrow width of the site (10.06m), to make the development comply with the building envelope would significantly reduce the amenity of the development, as it would require the new upper level to be reduced to almost half the size proposed. Given the shape and height of the existing roof at number 11 Farnell Street, the proposed alterations and additions, while raising the height of the development, will only contribute a relatively minor amount of extra view loss to what is currently caused. i.e. the new ridge level is 430mm higher than the existing pop-up section of roof on the subject site, and 1.15m - 1.24m higher than the lower ridge of the existing roof, which extends all the way to 900mm from the boundary on both sides.

The proposed non-compliant elements therefore contribute to view loss that is considered to be minor in the context of the tenacity principles, is across side boundaries, and in the case of number 17 Gardere Avenue is from a bedroom area. Further to this, the existing dwelling at number 13 Gardere Avenue is currently single storey in height, and when it is developed it is likely that it completely wipe out the view currently available from number 15 Gardere Avenue across the subject site, and wipe out the view of the headland from number 17 Gardere Avenue.

Given these considerations, to severely reduce the amenity of the proposal by severely reducing the floor space of the upper level to comply with the envelope is not reasonable. The development will result in a minor view loss from both properties, across side boundaries, and the view is likely to be severely affected in future when number 13 Gardere Avenue develops, which is currently a single storey dwelling. The proposal is therefore considered to result in a reasonable sharing of views.

- *To encourage innovative design solutions to improve the urban environment.*

##### Comment:

Given that the development is considered to maintain a reasonable sharing of views as discussed above, the proposal is considered to be sufficiently innovative.

- *To ensure existing canopy trees have priority over views.*

Comment:

No canopy trees are to be affected by the proposal.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## **D8 Privacy**

The proposal will not generally cause any unreasonable privacy impacts. The amended plans have provided obscured glazing to the south facing kitchen window, and upper level master bedroom to ensure no unreasonable impacts are caused in that direction. A large new upper level north facing window is also proposed for the master bedroom. However this window will only overlook the roof of the northern neighbour, and will not cause any unreasonable impacts.

The new upper level will have two windows facing over the pool area, and the upper level billiard room on the upper level of the cabana building will also have new windows facing onto the pool area. These windows may cause some overlooking impacts towards both the southern and northern neighbour's private open space.

The bedrooms are considered to be low use rooms, with a relatively minor impact. A condition to ensure they have sill heights of 1.5m will generally limit most overlooking of neighbours properties.

The billiard room may have slightly higher privacy impacts than bedrooms, but it is a mezzanine level with a void between the floor area and the eastern window which could overlook into the southern neighbour's living areas. Given that the void will prevent anyone from standing right in front of the window, a condition to ensure a minimum 1.5m sill height on this window will also sufficiently limit any overlooking and prevent any unreasonable privacy impacts.

The extensions to the existing eastern balconies are relatively minor, and are not considered to cause any unreasonable privacy concerns between neighbours.

Conditions of consent relating to the windows of Bedrooms 2, 3 and the billiard room are recommended as discussed above. Subject to these conditions, the proposal will maintain a reasonable level of privacy.

## **D9 Building Bulk**

Area of non-compliance

The development is generally consistent with the requirements of this control. However there are some areas of the walls in which the side setbacks will not progressively increase as the wall height increases.

### Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To encourage good design and innovative architecture to improve the urban environment.*

#### Comment:

The amended plans have varied the side setback of the upper level on the southern side by increasing the side setback in the south western corner. The setback is also increased at the south eastern corner of the upper level. On the northern side the side setbacks are marginally increased along the north eastern length of the wall, but the north western corner of the building will not progressively increase the side setback.

The proposed upper level will step back from the eastern front boundary, minimising the visual impacts of the development on Farnell Street. The wall planes are considered to be sufficiently broken up on each side. The development is generally considered to be of good design and innovative architecture, and will not cause any unreasonable visual impacts by virtue of its bulk. The visual impacts of the development are not considered to be unreasonable, and will not have unreasonable impacts on the surrounding neighbours as discussed below. The proposal will provide modern additions to the existing dwelling and may be expected to improve the urban environment.

- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

#### Comment:

When viewed from the south from either Farnell Street or Gardere Avenue the bulk of the southern wall will be largely screened from view by the existing dwelling at 9A Gardere Avenue. Similarly on the northern side, when approaching from the north along Farnell Street, the development will be generally screened by the existing dwelling at 11A Farnell Street. Any future upwards development of number 11A will further screen the current development.

The increased setback in the south western corner of the upper level provided in the amended plans will provide visual relief to the southern neighbour, and to the north, the northern neighbour's private open space is much further to the west than the dwelling on the subject site, and will not be unreasonably impacted upon.

The development is of a similar bulk and scale to existing surrounding development, and will not unreasonably impact on any waterways or land zoned for public recreation purposes.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

The proposal will not significantly effect threatened species, populations or ecological communities, or their habitats.

## CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

## POLICY CONTROLS

### Warringah Section 94A Development Contribution Plan

The proposal is subject to the application of Council's Section 94A Development Contributions Plan.

The following monetary contributions are applicable:

Warringah Section 94 Development Contributions Plan		
Contribution based on a total development cost of \$ 592,000		
Contributions	Levy Rate	Payable
Total Section 94A Levy	0.95%	\$ 5,624
Section 94A Planning and Administration	0.05%	\$ 296
Total	1%	\$ 5,920

## CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

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

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs

- Consistent with the objects of the Environmental Planning and Assessment Act 1979

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

## RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2014/1321 for Alterations and additions to an existing dwelling on land at Lot 867 DP 595584, 11 Farnell Street, CURL CURL, subject to the conditions printed below:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

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:

a) Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
DA-01 Issue B	30 April 2015	Howard K Smith & Associates
DA-02 Issue A	5 December 2014	Howard K Smith & Associates
DA-03 Issue A	5 December 2014	Howard K Smith & Associates
DA-04 Issue A	5 December 2014	Howard K Smith & Associates
DA-05 Issue B	30 April 2015	Howard K Smith & Associates
DA-06 Issue B	30 April 2015	Howard K Smith & Associates
DA-07 Issue B	30 April 2015	Howard K Smith & Associates
DA-08 Issue B	30 April 2015	Howard K Smith & Associates
DA-09 Issue B	30 April 2015	Howard K Smith & Associates
DA-10 Issue B	30 April 2015	Howard K Smith & Associates
DA-11 Issue B	30 April 2015	Howard K Smith & Associates

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Preliminary Geotechnical Assessment Q-11-263149	17 November 2014	Civil & Structural Engineering Design Services

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

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

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

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

## 2. **Amendments to the approved plans**

The following amendments are to be made to the approved plans:

- No approval is given to any works on number 9A Gardere Avenue. No works are permitted on the Council Road reserve other than the approved driveway works. Specifically the plans must be amended to remove the fence/gate structure shown on the road reserve and 9A Farnell St at the Gardere Avenue frontage. The existing front fencing to the Gardere Street frontage to the east of the driveway is to be demolished.
- The proposed pool terrace area shown on the approved Roof/Site Plan as "Terrace FFL 29 235" is to be no higher than RL 26 830, as shown on the approved Longitudinal Section Plan.
- The BBQ shown on the approved plans is to be either deleted or relocated a minimum of 900mm from the southern side boundary.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the construction certificate.

Reason: To correct drafting errors and ensure development minimises unreasonable impacts in accordance with WLEP2011 and WDCP. (DACPLB02)

## 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) Where works are to be carried out to a Class 1a building, smoke alarms are to be installed throughout all new and existing portions of that 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) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(j) All sound producing plant, equipment, machinery or fittings and the use will not exceed more than 5dB (A) above the background level when measured from any property boundary and/or

habitable room(s) consistent with the Environment Protection Authority's NSW Industrial Noise Policy and/or Protection of the Environment Operations Act 1997.

(k) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed 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.

(l) Prior to the commencement of any development onsite for:

- i) Building/s that are to be erected
- ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
- iii) Building/s that are to be demolished
- iv) For any work/s that is to be carried out
- v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

(m) Any Regulated System (e.g. air-handling system, hot water system, a humidifying system, warm-water system, water-cooling system, cooling towers) as defined under the provisions of the Public Health Act 2010 installed onsite is required to be registered with Council prior to operating.

Note: Systems can be registered at [www.warringah.nsw.gov.au](http://www.warringah.nsw.gov.au)

(n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

(1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

(2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

(3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewerred areas or managed on-site in unsewerred areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

(4) Swimming pools and spas must be registered with the Division of Local Government.

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

## FEES / CHARGES / CONTRIBUTIONS

### 5. Policy Controls

Warringah Section 94A Development Contribution Plan

The proposal is subject to the application of Council's Section 94A Development Contributions Plan.

The following monetary contributions are applicable:

Warringah Section 94 Development Contributions Plan		
Contribution based on a total development cost of \$ 592,000		
Contributions	Levy Rate	Payable
Total Section 94A Levy	0.95%	\$ 5,624
Section 94A Planning and Administration	0.05%	\$ 296
Total	1%	\$ 5,920

The amount will be adjusted at the time of payment according to the quarterly CPI (Sydney - All Groups Index). Please ensure that you provide details of this Consent when paying contributions so that they can be easily recalculated.

Reason: To provide for contributions in accordance with the Warringah Section 94A Development Contributions Plan 2012.

### 6. Security Bond

A bond (determined from cost of works) of \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at [www.warringah.nsw.gov.au/your-council/forms](http://www.warringah.nsw.gov.au/your-council/forms)).

Reason: To ensure adequate protection of Councils infrastructure.

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

### 7. **Stormwater Disposal**

Engineering Plans certified by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to Farnell Street.

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

Reason: To ensure appropriate provision for disposal and stormwater management arising from the development. (DACENC06)

### 8. **Submission of Geotechnical Assessment and Design**

Geotechnical assessment on road reserve is to be submitted to the Certifying Authority for approval. The submission is to include a Civil Engineering plan for the stabilisation of road reserve subject to the installation of driveway in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1 and or Council's Minor Works Policy.

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

Reason: To ensure compliance with Council's specification for engineering works. (DACENC08)

### 9. **Vehicle Crossings Application Formwork Inspection**

An application for street levels shall be made with Council subject to the payment of fee applicable at the time of payment. The fee includes all Council inspections relating to the driveway construction and must be paid.

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

Reason: To facilitate suitable vehicular access to private property. (DACENC12)

### 10. **Waterproofing/Tanking of Basement Level**

The basement area is to be permanently tanked or waterproofed. Details of the waterproofing/tanking are to be prepared by a suitably qualified Engineer.

Where dewatering works are required on the development site during construction, the developer/applicant must apply for and obtain a bore license from the Department of Water and Energy. The bore license must be obtained prior to commencement of dewatering works. All requirements of the Department of Water and Energy are to be complied with and a copy of the

approval must be submitted to the Certifying Authority.

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

Reason: To prevent ingress of sub-surface flows into the basement area and to comply with State Government Requirements. (DACENC14)

#### 11. **Waste Management Plan**

A waste management plan that addresses Clauses C8 and C9 in the Warringah DCP must be prepared for this development.

Details of the method of transportation and location of the waste/recycling centres are to be included in the plan

Details demonstrating compliance must be provided to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.(DACHPC03)

#### 12. **Trees and / or Landscaping**

In order to protect and enhance onsite vegetation and trees the following applies to the development site:

##### **(a) Existing trees which must be retained**

All trees not indicated for removal on the approved plans.

##### **(b) Tree protection**

i) No tree roots greater than 50mm diameter are to be cut unless authorised by a qualified Arborist on site.

ii) All structures are to bridge tree roots greater than 50mm diameter unless directed otherwise by a qualified Arborist on site.

iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites.

iv) All tree protection measures are to be in place prior to commencement of works

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site. (DACLAC01)

#### 13. **Compliance with Standards**

The development is required to be carried out in accordance with all relevant Australian Standards.

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)

Advice to Applicants: At the time of determination in the opinion of Council, the following (but not

limited to) Australian Standards are considered to be appropriate:

- (a) AS2601.2001 - Demolition of Structures\*\*
- (b) AS4361.2 - Guide to lead paint management - Residential and commercial buildings\*\*
- (c) AS4282:1997 Control of the Obtrusive Effects of Outdoor Lighting\*\*
- (d) AS 4373 - 2007 'Pruning of amenity trees' (Note: if approval is granted) \*\*
- (e) AS 4970 - 2009 'Protection of trees on development sites'\*\*\*
- (f) AS/NZS 2890.1:2004 Parking facilities - Off-street car parking\*\*

\*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 [http://www.humanrights.gov.au/disability\\_rights/buildings/good.htm](http://www.humanrights.gov.au/disability_rights/buildings/good.htm)

\*\*Note: the listed Australian Standards 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. (DACPLC02)

#### 14. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Light colours such as off white, cream, silver or light grey colours are not permitted.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development. (DACPLC03)

#### 15. **Window modifications**

Windows S5 (Bedroom 3), S6 (Bedroom 2), and S11 (Billiard Room) as shown on the approved plans are to either have a minimum sill height of 1.5m above the finished floor level, or be obscure glazing to a minimum height of 1.5m above the finished floor level.

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

Reason: In order to maintain privacy to the adjoining properties. (DACPLC06)

#### 16. **Sewer / Water Quickcheck**

The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre prior to works commencing to determine whether the development will affect any Sydney Water asset's sewer and water mains, stormwater drains and/or easement, and if further requirements need to be met. Plans will be appropriately stamped.

Please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

- Quick Check agents details - see Building Developing and Plumbing then Quick Check; and
- Guidelines for Building Over/Adjacent to Sydney Water Assets - see Building Developing and Plumbing then Building and Renovating.
- Or telephone 13 20 92.

Reason: To ensure compliance with the statutory requirements of Sydney Water. (DACPLC12)



17. **Dilapidation Survey**

A dilapidation report including photographic survey of adjoining properties Nos. 9A Gardere Avenue (Lot 6 DP 5539) and 11A Gardere Avenue (Lot 868 DP 595584), detailing the physical condition of those properties, both internally and externally as appropriate, including such items as fencing, retaining walls, landscaping infrastructure, walls, ceilings, roof, structural members and other similar items that would be affected, shall be submitted to Council/Accredited Certifier prior to the issue of a Construction Certificate. The lateral extent of the survey must cover the likely “zone of influence” of any excavation or construction induced vibration.

(Note: This documentation is for record keeping purposes only, and may be used by an applicant or affected property owner to assist in any action required to resolve any dispute over damage to adjoining properties arising from the works. It is in the applicant’s and adjoining owner’s interest for it to be as full and detailed as possible)

Reason: Proper management of records. (DACPLCPCC1)

18. **Shoring of Adjoining Property**

Should the proposal require shoring to support an adjoining property or Council land, owner’s consent for the encroachment onto the affected property owner shall be provided with the engineering drawings. Council approval is required if temporary rock anchors are to be used within Council land.

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

Reason: To ensure that owners consent is obtained for ancillary works, and to ensure the protection of adjoining properties and Council land. (DACPLCPCC2)

19. **Side Setback**

The proposed Pool and Pool Terrace and BBQ shown on the approved plans are to be located a minimum of 900mm from the southern side boundary. The side setback area is to be landscaped or the existing Planters shown on the survey (Benchmark Surveys Pty Ltd dated 13/9/2012) are to be maintained.

Reason: To maintain reasonable privacy and amenity to neighbours, and to ensure adequate deep soil landscaped areas on site. (DACPLCPCC3)

**CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**

20. **Public Liability Insurance - Works on Public Land**

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$10 million in relation to the occupation of, and approved works within Council’s road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Warringah Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land. (DACEND01)

**CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**

21. **Vehicle Crossings**

The provision of one vehicle crossing 5.5 metres wide in accordance with Warringah Council

Drawing No A4-3330/1 N and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property. (DACENE05)

**22. Layback Construction**

A layback 5.5 metres wide (excluding the wings) is to be constructed in accordance with Warringah Council Drawing No A4-2276 and specifications.

Reason: To ensure suitable vehicular access to private property. (DACENE08)

**23. Maintenance of Road Reserve**

The public footways and roadways adjacent to the site shall be maintained in a safe condition at all times during the course of the work.

Reason: Public Safety. (DACENE09)

**24. Protection of rock**

All rock outcrops outside of the area of approved works, including those in the road reserve, are to be preserved and protected at all times during demolition and construction works.

Reason: Preservation of significant environmental features (DACLAEDW1)

**25. Installation and Maintenance of Sediment Control**

Measures used for erosion and sediment control on building sites are to be adequately maintained at all times and must be installed in accordance with Warringah Council Specifications for Erosion and Sediment Control. All measures shall remain in proper operation until all development activities have been completed and the site fully stabilised.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites. (DACPLE02)

## CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE

**26. Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

**Note:** The following Standards and Codes applied at the time of determination:

- (a) Australian/New Zealand Standard **AS/NZS 3500.3** - 2003 - Plumbing and drainage - Stormwater drainage
- (b) Australian/New Zealand Standard **AS/NZS 3500.3** - 2003/Amdt 1 - 2006 - Plumbing and drainage - Stormwater drainage
- (c) National Plumbing and Drainage Code.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development. (DACENF05)

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

**Signed**

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**David Auster, Planner**

The application is determined under the delegated authority of:

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**Phil Lane, Development Assessment Manager**

**ATTACHMENT A**

No notification plan recorded.

**ATTACHMENT B**

No notification map.

## ATTACHMENT C

Reference Number	Document	Date
 2014/388811	Plan - Survey from CD	16/06/2014
 2014/388889	Report - Preliminary Geotechnical Assessment with Plans from CD	29/11/2014
 2014/388871	Report BASIX Certificate from CD	03/12/2014
 2014/388884	Plan -Erosion and Sediment Control from CD	04/12/2014
 2014/388818	Report Statement of Environmental Effects from CD	09/12/2014
 2014/388587	Cost Summary Report from CD	09/12/2014
 2014/388873	On-site Stormwater Detention Checklist from CD	09/12/2014
 DA2014/1321	11 Farnell Street CURL CURL NSW 2096 - Development Application - Alterations and Additions	15/12/2014
 2014/382864	invoice for ram applications - David Andrew Quinn	15/12/2014
 2014/382868	DA Acknowledgement Letter - David Andrew Quinn	15/12/2014
 2014/388583	Development Application Form	18/12/2014
 2014/388584	Applicant Details	18/12/2014
 2014/388813	Plans - Notification from CD	19/12/2014
 2014/388828	Plans - External from CD	19/12/2014
 2014/388834	Plans - Internal from CD	19/12/2014
 2014/388855	Plans - Landscape from CD	19/12/2014
 2014/388867	Certification of Shadow Diagrams with Plans from CD	19/12/2014
 2014/388903	Plans - Master Set from CD	19/12/2014
 2014/395014	File Cover	30/12/2014
 2014/395042	Referral to AUSGRID - SEPP - Infrastructure 2007	30/12/2014
 2015/003906	Sea Map Notification	07/01/2015
 2015/003954	Notification letters & plans - posted 8/1/2015	07/01/2015
 2015/061820	Submission - Hopkins	12/01/2015
 2015/020275	Engineering Referral Response	24/01/2015
 2015/024456	Landscape Referral Response	29/01/2015
 2015/031297	Submission - DA2014/1321 - Alterations and additions to an existing dwelling	05/02/2015
 2015/061828	Submission - Hopkins	06/02/2015
 2015/035710	Submission - Perebzak	06/02/2015
 2015/037180	Concerns about notification - DA2014/1321 - 11 Farnell Street Curl Curl - Simon Cox	10/02/2015
 2015/038443	Submission Acknowledgement Letter - Boston Blyth Fleming Pty Ltd - SA2015/031297	12/02/2015
 2015/054078	Working plans	25/02/2015

	2015/061671	Site Photos including view objector's sites	04/03/2015
	2015/069038	Request for Withdrawal of Development Application - David Andrew Quinn	11/03/2015
	2015/128410	Amended plans	30/04/2015
	2015/128416	Amended plans	06/05/2015
	2015/129299	Amended plans working plans	07/05/2015
	2015/134499	E-mail to Perebzik regarding amended plans	07/05/2015
	2015/134496	E-mail to Cox regarding amended plans	07/05/2015
	2015/134488	Submission - Hopkins	11/05/2015
	2015/134483	Submission response	12/05/2015
	2015/134469	Queries and replies to Hopkins	12/05/2015
	2015/134494	Submission - Hopkins	12/05/2015
	2015/134767	View loss photos from number 17 Gardere	12/05/2015
	2015/152354	Fwd: FarnellSt ShadowStudy	24/05/2015
	2015/152356	Farnell_DA_Shadows_AMENDED_24May15	29/05/2015
	2015/158510	Shadow working plans	04/06/2015
	2015/169405	Submission Hopkins	10/06/2015
	2015/169420	Submission Hopkins	10/06/2015
	2015/169422	Submission Hopkins	10/06/2015
	2015/169425	Submission Hopkins	10/06/2015
	2015/169428	Amended shadow diagrams	14/06/2015
	2015/169431	Amended Hourly Shadow diagrams	16/06/2015
	2015/171051	Submission Hopkins	16/06/2015
	2015/171423	21 Idaline St 2 GJ Modified 13	17/06/2015
	2015/179901	submission - Hopkins	23/06/2015
	2015/182176	Submission Acknowledgement Letter - John James Hopkins & Sally Jean Hopkins - SA2015/179901	24/06/2015
	2015/182354	Applicant submission	25/06/2015
	2015/185118	Submission - Hopkins	26/06/2015
	2015/187155	Plans - Amended Shadow Diagrams	29/06/2015
	2015/187648	Applicant submission	30/06/2015
	2015/187650	Applicant submission	30/06/2015
	2015/188582	Shadow working plans	30/06/2015
	2015/188909	Submission - Hopkins	30/06/2015