

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2021/1140
----------------------------	-------------

<b>Responsible Officer:</b>	Adam Croft
<b>Land to be developed (Address):</b>	Lot 1 DP 366860, 72 Carrington Parade CURL CURL NSW 2096
<b>Proposed Development:</b>	Demolition works and construction of a dwelling house
<b>Zoning:</b>	Warringah LEP2011 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Nea Mary Der Sarkissian Berge Anthony Der Sarkissian
<b>Applicant:</b>	Toby James Breakspear

<b>Application Lodged:</b>	20/07/2021
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Single new detached dwelling
<b>Notified:</b>	29/07/2021 to 12/08/2021
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	5
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 1,481,700.00
---------------------------------	-----------------

### EXECUTIVE SUMMARY

The proposed development seeks consent for demolition works and the construction of a new dwelling.

The key planning issues addressed in this report are the numerical compliance of the development and the resulting visual, amenity and view loss impacts. The proposal does not include any variations to development standards, but does include breaches of the DCP wall height, side boundary envelope, front setback and landscaped open space controls. Each of the built form non-compliances are addressed in this report.

Five submissions were received in response to the notification of the application. The concerns raised

in the submissions generally relate to the numerical non-compliances of the proposal and the associated visual bulk, view loss, privacy and traffic safety impacts.

A previous application (DA2019/0380) for a similar development on the site was refused by Council on 11 September 2019. A subsequent Class 1 Appeal of Council's refusal of DA2019/0380 was dismissed by the NSW Land and Environment Court on 25 January 2021. The assessment of the subject application has given consideration to the NSW LEC judgement.

Based on the site history and the level of opposition to the proposal, the application is referred to the Development Determination Panel for determination at the discretion of the Executive Manager, Development Assessment.

No further assessment issues are raised and the proposal is recommended for approval based on the detailed assessment within this report.

## **PROPOSED DEVELOPMENT IN DETAIL**

The proposal seeks consent for demolition works and the construction of a new dwelling as follows:

### **Basement**

- Mechanical room
- Services

### **Ground floor**

- Double garage
- Entry, lift & stair
- Bedrooms 01 & 02
- Bathroom
- Bedroom 03 with ensuite & robe

### **First floor**

- Kitchen, living & dining
- Courtyard
- Laundry
- Tv room
- Terrace

### **Roof**

- Roof terrace

### **External**

- New driveway and crossing
- Landscaping works including new retaining walls and planting

## 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 the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

## SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 6.1 Acid sulfate soils  
Warringah Local Environmental Plan 2011 - 6.2 Earthworks  
Warringah Development Control Plan - B1 Wall Heights  
Warringah Development Control Plan - B3 Side Boundary Envelope  
Warringah Development Control Plan - B7 Front Boundary Setbacks  
Warringah Development Control Plan - C7 Excavation and Landfill  
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting  
Warringah Development Control Plan - D2 Private Open Space  
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  
Warringah Development Control Plan - E1 Preservation of Trees or Bushland Vegetation  
Warringah Development Control Plan - E10 Landslip Risk

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 1 DP 366860 , 72 Carrington Parade CURL CURL NSW 2096
<b>Detailed Site Description:</b>	<p>The subject site consists of one allotment located on the eastern side of Carrington Parade.</p> <p>The site is irregular in shape with a frontage of 5.398m along Carrington Parade, a corner splay of 5.172m and a secondary frontage of 25.918m to Gardere Avenue. The site has a surveyed area of 280.9m<sup>2</sup>.</p>

The site is located within the R2 Low Density Residential zone and accommodates an existing single-storey dwelling.

The site slopes approximately 2m from north-west to south-east.

The site does not contain any significant trees.

#### **Detailed Description of Adjoining/Surrounding Development**

Adjoining and surrounding development is characterised by residential development along Carrington Parade and Gardere Avenue. Curl Curl Beach is located across Carrington Parade to the east.

Map:



#### **SITE HISTORY**

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

- DA2019/0380 - Demolition works and construction of a dwelling house - Refused on 11 September 2019. The application was refused due to the proposed development's inconsistency with the provisions of the WDCP built form, views and building bulk controls.
- NSW LEC Class 1 Appeal of Council's refusal of DA2019/0380 in the matter of *Der Sarkissian v Northern Beaches Council [2021] NSWLEC 1041*. The Judgement stated "*the determinative issue in this case is view loss to 2 Gardere Avenue*", and indicated that a greater northern setback at level 1 would be required to improve the retention of views to the east from No. 2. The Judgement also found that with the provision of additional landscaped area and planting within the front setback to Gardere Avenue (by virtue of the required setback increase to

improve views), the building's streetscape presentation and building bulk would be satisfactory, and that strict compliance with the southern side building envelope is not necessary in this case. The appeal was dismissed by the Court on 25 January 2021.

- DA2021/1140 (subject application) - Demolition works and construction of a dwelling house. The assessment of the application was put on hold as Covid-19 restrictions delayed the completion of the required internal site inspections of the subject site and adjoining properties. The inspections were completed on 1 November 2021.

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

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (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 allow Council to request additional information. No additional information was requested in this case.</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</p>

Section 4.15 Matters for Consideration	Comments
	<p>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 4.15 (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) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> 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 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (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.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 29/07/2021 to 12/08/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 5 submission/s from:

Name:	Address:
Mr David Mayo Webb Mrs Anne Marie Webb	2 Gardere Avenue CURL CURL NSW 2096
Barry John Hodge Lynda Lillian Hodge	5 Gardere Avenue CURL CURL NSW 2096
Mr Ian Murray Sheppard	3 Gardere Avenue CURL CURL NSW 2096
Mr Cameron Graeme Inchley Nicole Louise Gemmell	4 Gardere Avenue CURL CURL NSW 2096
Carol Anne Callaghan	7 Gardere Avenue CURL CURL NSW 2096

The matters raised within the submissions are addressed as follows:

- **Non-compliance with WDCP built form controls**  
Comment: The various built form non-compliances are addressed in detail in this assessment. The non-compliances are not considered to result in any unreasonable visual or amenity impacts to surrounding properties or the streetscape. The assessment has given particular regard to the NSW LEC judgement in *Der Sarkissian v Northern Beaches Council*.
- **View loss impacts**  
Comment: The view impacts resulting from the development are discussed in detail under D7 Views. The affected views from the properties on the southern side of Gardere Avenue are generally the most vulnerable of the available views, while the affected views from the properties on the northern side of Gardere Avenue are generally the least valuable of those available. The overall level of impact is assessed as moderate-severe based on the varying levels of obstruction experienced from different properties and the areas within those properties. The assessment finds that the proposal is acceptable in relation to views and is supportable.
- **Landscaped area and proposed Banksia planting in view corridor**  
Comment: The proposal includes sufficient landscaped area to accommodate planting and mitigate the bulk of the dwelling. The Banksia trees proposed within the northern setback are considered likely to obstruct the view corridor from Nos. 2 and 4 Gardere Avenue, and conditions are imposed requiring planting of alternative species that will not impact views.
- **Visual bulk and streetscape impact, consistency with surrounding development**  
Comment: The proposal will not result in adverse visual bulk or streetscape impact, and is designed to maintain a suitable visual relationship with surrounding developments. An assessment against the relevant controls is completed in this report.
- **Traffic visibility and safety**  
Comment: The subject site includes a splayed frontage at the north-eastern corner of the site to ensure that adequate visibility is maintained at the intersection. The angular design of the dwelling adjacent to the corner splay also provides view lines through the intersection.
- **Privacy impacts and objects placed on roof terrace**

Comment: The proposed roof terrace is centrally located within the building footprint and will not allow unreasonable overlooking of adjoining properties. Further, the use of this area is not anticipated to give rise to acoustic privacy impacts beyond those of the elevated private open space areas of surrounding properties.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p><b>No objection with conditions, subject to Planning assessment of the proposed landscaped area non-compliance.</b></p> <p><u>Planning comments</u> The proposed landscaped area breach is supportable on merit, as assessed under DCP control D1.</p> <p><u>Landscape comments</u> The development application is for the demolition of existing structures and construction of a new dwelling and associated works. A Landscape Plan accompanies the application and is assessed as part of this Landscape Referral.</p> <p>The application is assessed by Landscape Referral against Warringah Local Environmental Plan 2011 and the following Warringah Development Control Plan 2011 controls (but not limited to):</p> <ul style="list-style-type: none"> <li>• D1 Landscaped Open Space and Bushland Setting</li> </ul> <p>The existing site does not contain any landscape features including no prescribed trees required for retention. One Exempt Species palm exists and this does not require Council consent for removal as proposed. The proposed landscape works include pavements, access paths, walling, and planting of native trees, shrubs and groundcovers.</p> <p>The Landscaped Open Space area is substantially less than the required percentage and as such the proposed landscape works will only provide sparse softening of the bulk and scale and the built form will be prominent along the streetscape, and this is to be considered by Planning based on merit assessment.</p> <p>The Landscape Plan includes canopy tree planting along the northern boundary at Gardere Avenue that conflicts with maintaining views to surrounding properties of the Curl Curl coast and ocean and an condition shall be imposed to either maintain the selected species at 3 metres height or preferably to substitute the proposed species with an alternative species to 3 metres height at maturity.</p> <p>Should the development be approved, conditions of consent shall be imposed.</p>
NECC (Bushland and Biodiversity)	<p><b>No objection with conditions.</b></p> <p>The application seeks approval for the demolition of existing dwelling</p>



Internal Referral Body	Comments
	<p>and construction of a new dwelling, new vehicular crossing and associated landscaping. Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including:</p> <p><b>Biodiversity Conservation Act 2016 (BC Act)</b>  <b>State Environmental Planning Policy (Coastal Management)</b></p> <ul style="list-style-type: none"> <li>Coastal Environment Area</li> </ul> <p><b>Warringah Development Control Plan (WDCP)</b></p> <ul style="list-style-type: none"> <li>Clause E2 Prescribed Vegetation</li> <li>Clause E4 Wildlife Corridors</li> <li>Clause E6 Retaining unique environmental features</li> </ul> <p>The application does not require the removal of prescribed trees or vegetation, nor is it likely to impact on nearby biodiversity values. NEU - Biodiversity have no objections to the species selection within the submitted Landscape Plan (Breakspear Architects 2021). Subject to conditions the Bushland and Biodiversity referral team find the application to be consistent against relevant environmental controls.</p>
NECC (Coast and Catchments)	<p><b>No objection without conditions.</b></p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> <li>Supplied plans and reports</li> <li>Coastal Management Act</li> <li>Coastal Management SEPP (Clauses, 13, 14 and 15)</li> <li>Relevant LEP and DCP clauses</li> </ul> <p>The application meets the requirements of the relevant Environmental Planning Instruments and policies.</p>
NECC (Development Engineering)	<p><b>No objection with conditions.</b></p> <p>Development Engineering has no objection to the application subject to the following conditions of consent.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>

## **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. 1204405S dated 3 June 2021).

The BASIX Certificate indicates that the development will achieve the following:

<b>Commitment</b>	<b>Required Target</b>	<b>Proposed</b>
<b>Water</b>	40	40
<b>Thermal Comfort</b>	Pass	Pass
<b>Energy</b>	50	50

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 with appropriate conditions recommended.

## **SEPP (Coastal Management) 2018**

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

### **13 Development on land within the coastal environment area**

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
  - (b) *coastal environmental values and natural coastal processes,*
  - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
  - (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
  - (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
  - (f) *Aboriginal cultural heritage, practices and places,*
  - (g) *the use of the surf zone.*

Comment:

The proposal is for the construction of a residential dwelling, and is unlikely to cause adverse impacts to the natural environment, coastal processes, water quality, vegetation and headlands, public open space, aboriginal heritage or the surf zone.

- (2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
- (a) *the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*
  - (b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
  - (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment:

The proposal is appropriately designed and sited to avoid unreasonable impacts in relation to the above matters.

**14 Development on land within the coastal use area**

(1)

- (a) *has considered whether the proposed development is likely to cause an adverse impact on the following:*
  - (i) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
  - (ii) *overshadowing, wind funnelling and the loss of views from public places to foreshores,*
  - (iii) *the visual amenity and scenic qualities of the coast, including coastal headlands,*
  - (iv) *Aboriginal cultural heritage, practices and places,*
  - (v) *cultural and built environment heritage, and*
- (b) *is satisfied that:*
  - (i) *the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*
  - (ii) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
  - (iii) *if that impact cannot be minimised—the development will be managed to mitigate that impact, and*
- (c) *has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*

Comment:

The proposed development is unlikely to cause adverse impacts to foreshore access and amenity, scenic qualities or aboriginal cultural built environment heritage.

**15 Development in coastal zone generally—development not to increase risk of coastal hazards**

*Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.*

Comment: The proposal is unlikely to cause increased risk of coastal hazards on the site and surrounding land.

As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

**Warringah Local Environmental 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	8.48m	N/A	Yes

### Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	No
6.4 Development on sloping land	Yes

### Detailed Assessment

#### **6.1 Acid sulfate soils**

The Acid Sulfate Soil Assessment undertaken for the site concludes that the proposed development will not intercept any acid sulfate soils and will not result in the lowering of any groundwater that may be present in the area.

#### **6.2 Earthworks**

The objectives of Clause 6.2 - 'Earthworks' require development:

- (a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, and*
- (b) to allow earthworks of a minor nature without requiring separate development consent.*

Comment: The proposal involves excavation across the majority of the building footprint to a maximum depth of approximately 3.7m to accommodate the basement level. The application does not provide adequate justification for an excavated basement of this size for a single dwelling house and provides minimal detail as to the use of this space, with the exception of a mechanical room and other services that occupy a relatively small proportion of the basement area.

The proposed earthworks are contrary to 3(a) and 3(b) of this control:

- (a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality*

Comment: The substantial footprint and depth of the proposed excavation across a large proportion of the site has the potential to unreasonably disrupt existing drainage patterns and soil stability in the locality.

- (b) the effect of the proposed development on the likely future use or redevelopment of the land*

Comment: The extent of the proposed excavation may adversely impact the future redevelopment of the land.

Given the extent of the required excavation, limited use of the basement area indicated on the plans, and the potential for adverse impacts to environmental processes and future use of the land, the proposal is considered to include excessive and unnecessary excavation. A condition is imposed to reduce the length of the proposed basement by a total of 10m to ensure consistency with the objectives of the control.

## Warringah Development Control Plan

### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	8.4m	16.7%	No
B3 Side Boundary Envelope	5m	S: Two encroachments: - FF length 12.44, up to 1.2m - Roof length 9.4m, up to 1.2m	20.3%	No
		W: Within envelope	N/A	Yes
B5 Side Boundary Setbacks	0.9m	S: 0.9m	N/A	Yes
		W: 0.9m	N/A	Yes
B7 Front Boundary Setbacks	E: 6.5m	2.33m - 3.88m	64.2%	No
	N: 3.5m	GF, FF Terrace: 0.5m - 2.67m	84.7%	No
		FF: 1m - 5.05m	71.4%	No
D1 Landscaped Open Space (LOS) and Bushland Setting	40% 112.36m <sup>2</sup>	11.2% 31.7m <sup>2</sup>	71.8%	No

**Note:** Whilst the extent of the proposed variations to the built form controls is noted, Commissioner Walsh found in *Der Sarkissian v Northern Beaches Council*, that "due to the narrowness of the site and its position on a corner allotment, there needs to be a kind of critical openness to variations from Council's numerical building envelope controls." The assessment of the proposed variations to the numerical controls has been guided by this consideration and given regard to the constraints of the site and the likely impacts of the development on surrounding properties.

### 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
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	No	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	No	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

### Detailed Assessment

#### **B1 Wall Heights**

##### Description of non-compliance

The control permits a maximum wall height of 7.2m, measured to the underside of the ceiling of the uppermost floor. The proposal includes a wall height of 7.7m as calculated in accordance with the control. However, based on the design of the dwelling and inclusion of the roof terrace, it is considered appropriate to calculate the maximum wall height to the roof terrace balustrade and associated eastern roof parapet structure (RL 18.55), resulting in a maximum wall height of 8.4m.

##### 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 proposed wall height breach will not result in unreasonable visual impact when viewed from adjoining properties, street frontages or nearby public spaces.

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

Comment:

The proposal maintains compliance with the building height control and is generally below the surrounding tree canopy level.

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

Comment:

The proposed non-compliant wall height will not result in an unreasonable level of view loss from surrounding properties. A full assessment of view impacts is completed under D7 Views.

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

Comment:

The proposal minimises impacts to surrounding properties, noting the scale of the existing single-storey dwelling and the development potential of the site.

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

Comment:

The proposed dwelling responds adequately to the site topography.

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

Comment:

The proposal provides an innovative roof design that will contribute to the visual interest of the development.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is supportable in this particular circumstance.

### **B3 Side Boundary Envelope**

Description of non-compliance

The proposed dwelling includes breaches of the building envelope control along the southern elevation. The first floor wall breaches the envelope by a maximum of 1.2m for a length of 12.44m, and the roof



terrace balustrade by a maximum of 1.2m for a length of 9.4m. The below merit assessment takes into account the LEC judgement that full compliance with the building envelope control is not necessary in this case.

#### 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 proposed envelope breaches do not result in a level of height or bulk that would cause the dwelling to become visually dominant.

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

#### Comment:

The proposal will maintain sufficient sunlight access and privacy to the adjoining property to the south.

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

#### Comment:

The proposal responds adequately to the topography.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is supportable in this particular circumstance.

### **B7 Front Boundary Setbacks**

#### Description of non-compliance

The control requires minimum front setbacks of 6.5m to the primary frontage (east) and 3.5m to the secondary frontage (north). The proposed primary front setback varies from 2.33m-3.88m. The proposed secondary front setback to the ground floor and first floor terrace varies from 0.5m-2.67m, and the first floor dwelling setback varies from 1m-5.05m.

Full compliance with the primary and secondary setback controls would severely restrict the development potential of the site (where the resulting dwelling would be unable to achieve a comparable level of accommodation and internal amenity to that of surrounding properties). Given the constraints caused by the limited dimensions and corner location of the site, it is more appropriate to undertake a merit assessment of the proposed setbacks to consider the reasonableness of the resulting visual and amenity impacts to the adjoining properties and the streetscape.

#### 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:

The angular design of the proposed dwelling will maintain a sense of openness as viewed from the adjoining street frontages. The corner splay of the site and the wider, curved road reserve at the corner of Carrington Parade also provide increased separation that contributes to the openness of the streetscape.

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

Comment:

The primary front setback is generally consistent with the prevailing building line of developments on the western side of Carrington Parade, and the increased secondary front setback at the western side of the site provides an appropriate transition to the developments on the southern side of Gardere Avenue.

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

Comment:

The proposed dwelling is an innovative design solution that will protect and enhance the visual quality of the streetscape and surrounding public spaces.

- *To achieve reasonable view sharing.*

Comment:

The proposal achieves reasonable view sharing between surrounding properties and the available views, as assessed in this report under D7 Views.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is supportable in this particular circumstance.

## **C7 Excavation and Landfill**

As discussed in further detail under 6.2 Earthworks, the extent of the proposed excavation of the site is considered likely to adversely impact the natural environment. As such, a condition is imposed to reduce the footprint of the excavated basement level to ensure consistency with the objectives of this control.

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

### Description of non-compliance

The proposed landscaped area of 11.2% is non-compliant with the 40% control, resulting in a shortfall of 80.66m<sup>2</sup>. Noting the constraints of this particular site, the proposal is considered to achieve the

objectives of the control despite the variation to the control, as discussed below. The judgement in the LEC case did not raise any concern with regard to the landscaped area breach or visual bulk.

#### 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 provides landscaped areas within the eastern and north-western front setbacks that are capable of accommodating effective screen planting that will reduce the visual bulk of the dwelling as viewed from the street frontages. The landscaped treatment of the site is commensurate with that of surrounding sites, and will result in a significant increase to the quality of plantings compared to that which currently exist.

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

#### Comment:

No high value vegetation or topographic features will be impacted. New native tree planting is proposed 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 proposal includes landscaped area of sufficient dimensions to accommodate the variety of vegetation types proposed to mitigate the bulk and scale of the dwelling.

- *To enhance privacy between buildings.*

#### Comment:

The proposal is appropriately designed for privacy and does not rely on vegetation for supplementary screening.

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

#### Comment:

The site contains suitable outdoor areas for recreational purposes to meet the needs of the occupants.

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

#### Comment:

The proposal includes adequate landscaped and impervious areas to accommodate service functions.

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

Comment:

The proposal includes appropriate water management measures, subject to conditions of consent.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is supportable in this particular circumstance.

## **D2 Private Open Space**

The proposed private open spaces of the development exceed the minimum required 60m<sup>2</sup>, but these areas generally do not meet the minimum 5m dimensions. Given the limited area and dimensions of the site, the private open spaces provided are considered to achieve the objectives of the control.

## **D6 Access to Sunlight**

### Compliance with control

The control requires that 30m<sup>2</sup> of the private open space of the adjoining dwelling to the south will receive a minimum of 3 hours of sunlight access. The proposal will result in substantial additional overshadowing of the rear yard of 70 Carrington Parade at 9am, with the extent of impact reducing throughout the day. It is also noted that No. 70 includes private open space areas orientated to the east towards the available water views that will remain unaffected by the development. The shadow diagrams supplied indicate that a minimum of 3 hours sunlight will be retained to 50% of the private open spaces of No. 70 throughout the day in accordance with the control.

## **D7 Views**

### Merit consideration

**Note:** The following view assessment takes into consideration the judgement of Commissioner Walsh in *Der Sarkissian v Northern Beaches Council*, and is to be read in conjunction with the appendix of view impact photos attached to this report.

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:

##### *2 Gardere Avenue*

The affected views from No. 2 include ocean views over and to the north of the existing dwelling on the subject site. The views to the north include land-water interface but are partially interrupted by vegetation to the north-east of the subject site. The views from the balcony are generally considered to be whole views, but those from the living room and kitchen are filtered and are partial views.

##### *4 Gardere Avenue*

The affected views from No. 4 include ocean views over and to the north of the existing dwelling on the subject site. The views to the north include land-water interface but are partially interrupted by vegetation to the north-east of the subject site, similar to the available views from No. 2. The views from the balcony are generally considered to be whole views, but those from the living room are filtered by vegetation and partially obstructed by the dwelling at No. 2, and are partial views.

##### *3 Gardere Avenue*

The affected views from No. 3 are primarily land-water interface at South Curl Curl rockpool and Freshwater Headland, as well as part of North Head. The affected views also include a small proportion of the available ocean views.

##### *5 Gardere Avenue*

The affected views from No. 5 include ocean views over the existing dwelling on the subject site. A partial view of North Head is available above the roof of the existing dwelling from the eastern side of the balcony and living room. The affected views are generally whole views, however they are somewhat obstructed by the existing dwellings on the subject site and No. 70 Carrington Parade.

##### *7 Gardere Avenue*

The affected views from No. 7 include ocean views over the existing dwelling on the subject site. The views from the upper level are whole views and those from the middle level are partial views.

## **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:

##### *2 Gardere Avenue*

The affected views are available from the first floor kitchen, living room and northern balcony. The views are obtained across a side boundary from a standing and sitting position.

#### 4 Gardere Avenue

The affected views are primarily available from the first floor northern balcony, while the views from the living room are largely unaffected. The views are obtained across a side boundary from a standing and sitting position.

#### 3 Gardere Avenue

The affected views are available from the first floor kitchen, living, dining & terrace, and the first floor rumpus/study and deck. The views are obtained across a front boundary from a standing and sitting position.

#### 5 Gardere Avenue

The affected views are available from the first floor kitchen, living room and southern balcony. The views are obtained across a front and side boundary from a standing and sitting position.

#### 7 Gardere Avenue

The affected views are available from the middle level study and balcony, and from the upper floor bedroom and balcony. The views are obtained across a front boundary from a standing and sitting position.

### 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:

#### 2 Gardere Avenue

The proposal will block the majority of the water views available over the subject site, with the exception of the corridor provided through the northern setback. The water views and available land-water interface to the north will be partially blocked from the living room and southern part of the balcony, but will be less affected from the centre and northern part of the balcony. The living room and kitchen views are vulnerable as they are obtained from a central position across a side boundary, and centrally through the subject site. As such, the expectation to retain the views from within the dwelling is somewhat unreasonable, despite the more significant level of impact. The overall impact to the balcony views is considered to be moderate and the impact to the living room views is severe.

#### 4 Gardere Avenue

The proposal will block the eastern portion of the available views over the subject site. While these views are generally the least filtered, they are also the most vulnerable - being obtained across the frontage of No. 2 and through the centre of the subject site - and would likely be still be lost as a result of a fully compliant development. Similar to the loss of views from No. 2, the affected views are the most vulnerable of the available views, while the views through the front setback and further to the north will remain unaffected. The impact to the balcony views is considered to be moderate and the impact to the living room views is minor.

#### 3 Gardere Avenue

The proposal will block the southern portion of the available land-water interface and the

western part of North Head, with the extent depending on the position within the property. The impact to water views is limited to the southern extent of South Curl Curl Beach and part of the rockpool. The substantial ocean views and land-water interface to the east of the subject site is retained. Despite the limited portion of the available views that are affected, the overall extent of impact is considered to be minor-moderate as the affected views include areas of land-water interface and part of North Head.

#### *5 Gardere Avenue*

The proposal will block the southern portion of the available views over the existing dwelling on the subject site. Despite containing a glimpse of North Head, the affected views are partially obstructed by the existing dwellings on the subject site and No. 70 Carrington Parade, while the more substantial views that are obtained to the east of the site are retained. The extent of the impact is considered to be minor-moderate.

#### *7 Gardere Avenue*

The proposal will block a small proportion of the available water views and land-water interface above the existing dwelling on the subject site. No. 7 benefits from greater elevation above the subject site, and the majority of the available water views, land-water interface and views to North Head will remain unaffected. The overall extent of the impact is considered to be minor.

### **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 proposal includes non-compliances with the DCP wall height, side boundary envelope, front setback and landscaped area controls. The front setback non-compliances to Carrington Parade and Gardere Avenue have the most relevance to views.

As the affected views from Nos. 2 and 4 are largely obtained through the centre of the subject site, the majority of the impact can be attributed to the complying elements of the proposal, particularly the western elevation wall and central bulk of the dwelling. It is unlikely that full compliance with the 3.5m secondary front setback control would result in substantial retention of additional views from Nos. 2 and 4. As such the angled setback to Gardere Avenue is considered to achieve reasonable retention of views.

The view impacts to Nos. 3, 5 and 7 largely relate to the non-compliant front setback to Carrington Parade. However, given the limited site area and prevailing front building lines to Carrington Parade being less than the 6.5m control, it would be unreasonable to require compliance with the front setback control in this case. The views from the properties on the northern side Carrington Parade that result from the non-compliant front setback are generally considered to be less valuable than the substantial water views that are retained to the east of the subject site. Further, an increased or fully compliant front setback would be unlikely to result in a significantly improved view outcome from Nos. 3, 5 and 7, and would still result in a loss of water views and land-water interface.

Based on the above consideration against the planning principle, the proposal is assessed as acceptable in relation to view loss.

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

Comment:

The proposed design incorporates suitable design solutions to minimise the extent of the resulting view loss.

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

Comment:

The proposal will not adversely impact any canopy trees.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is supportable in this particular circumstance.

## **D8 Privacy**

### Compliance with control

The proposal is appropriately designed to provide visual and acoustic privacy to the occupants of the subject site and adjoining properties. The primary openings and outdoor spaces are orientated to the eastern and northern street frontages, and limited openings are proposed to the southern and western elevations. The proposed roof terrace is centrally located within the building footprint and is not anticipated to give rise to adverse acoustic or visual privacy impacts, particularly given the limited usability of the space by virtue of its dimensions and lack of weather protection.

## **D9 Building Bulk**

### Compliance with control

The proposal incorporates suitable design measures to mitigate the visual bulk of the dwelling. The eastern and northern wall planes are appropriately modulated and the angled setback to Gardere Avenue reduces the bulk towards the western side of the frontage. The facade design incorporates vertical elements and the recessed ground floor setback provides sufficient landscaped area to accommodate planting.

## **E1 Preservation of Trees or Bushland Vegetation**

The proposal does not involve the removal of any prescribed vegetation.

## **E10 Landslip Risk**

The site is mapped as Landslip Risk Area A and a geotechnical investigation has been prepared for the development, the recommendations of which are incorporated into the conditions of consent.

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



The proposal will not significantly affect 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**

### **Northern Beaches Section 7.12 Contributions Plan 2021**

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2021.

A monetary contribution of \$14,817 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,481,700.

## **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

The application seeks consent for demolition works and the construction of a new dwelling.

The key planning issues considered within the assessment are the proposed built form non-compliances and likely amenity impacts of the proposal.

Five submissions were received in relation to the development and addressed within the report.

Assessment of the application against the Warringah LEP and DCP finds that the development is suitable in the context of the site, and is recommended for approval.

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 DA2021/1140 for Demolition works and construction of a dwelling house on land at Lot 1 DP 366860, 72 Carrington Parade, 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>
DA200 Roof Plan	Rev. D, 7 June 2021	Breakspear Architects
DA201 First Floor Plan	Rev. D, 7 June 2021	Breakspear Architects
DA202 Ground Floor Plan	Rev. D, 7 June 2021	Breakspear Architects
DA203 Basement Floor Plan	Rev. D, 3 May 2021	Breakspear Architects
DA300 North Elevation	Rev. D, 7 June 2021	Breakspear Architects
DA301 South Elevation	Rev. D, 7 June 2021	Breakspear Architects
DA302 East / West Elevation	Rev. D, 7 June 2021	Breakspear Architects
DA400 Sections	Rev. E, 7 June 2021	Breakspear Architects
DA500 Schedule of Colours and Materials	Rev. B, 7 June 2021	Breakspear Architects

<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>
BASIX Certificate No. 1204405S	3 June 2021	Breakspear Architects Pty Ltd
Geotechnical Investigation, Acid Sulfate Soils Assessment and Preliminary Landslip Assessment	December 2018	STS GeoEnvironmental

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

c) The development is to be undertaken generally in accordance with the following:

<b>Landscape Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
DA901 Landscape Plan	Rev. B, 7 June 2021	Breakspear Architects

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.

2. **Compliance with Other Department, Authority or Service Requirements**

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

<b>Other Department, Authority or Service</b>	<b>EDMS Reference</b>	<b>Dated</b>
Ausgrid	Response Ausgrid Referral	28 July 2021

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au))

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

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.

#### 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) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) 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.
- (d) 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.
- (e) 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.
- (f) 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.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) 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) 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.
- (k) 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.

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or

adjustments as those Authorities may deem necessary.

- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (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 2018
    - (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 sewered areas or managed on-site in unsewered 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.

## FEES / CHARGES / CONTRIBUTIONS

### 5. Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$14,817.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of \$1,481,700.00.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate where no Construction Certificate is required. If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash contribution payable for this development will be the total unpaid monetary contribution as adjusted.

The proponent shall provide to the Certifying Authority written evidence (receipt/s) from Council that the total monetary contribution has been paid.

The Northern Beaches Section 7.12 Contributions Plan 2021 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au)

This fee must be paid prior to the issue of the Construction Certificate. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

#### **6. Security Bond**

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required 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, and 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.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au)).

Reason: To ensure adequate protection of Council's infrastructure.

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

#### **7. Stormwater Disposal**

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent, prepared 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 Carrington Parade.

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

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

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

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

- The proposed basement length and associated excavation shall be reduced by a minimum of 5m at both the eastern and western ends of the dwelling. The layout, services locations and A/C Grille may be amended to suit the reduced basement footprint.

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

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

**9. Boundary Identification Survey**

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

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

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

**10. Structural Adequacy and Excavation Work**

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
- (b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: To provide public and private safety.

**11. Vehicle Crossings Application**

The Applicant is to submit an application for driveway levels with Council in accordance with Section 138 of the Roads Act 1993. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

**12. 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.

13. **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. Any roof with a metallic steel finish is 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.

14. **Geotechnical Recommendations**

The recommendations identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

15. **Waste Management Plan**

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

Details demonstrating compliance must be provided to the 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.

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

16. **Pre-Construction Dilapidation Report**

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifying Authority prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Properties:

- 70 Carrington Parade, Curl Curl
- 2 Gardere Avenue, Curl Curl

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifying Authority and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifying Authority must be satisfied that the requirements of this condition have been met prior to commencement of any works.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

**17. 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 \$20 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 Northern Beaches 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.

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

**18. Road Reserve**

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

Reason: Public safety.

**19. Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

**20. Survey Certificate**

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

- (a) Commencement of perimeter walls columns and or other structural elements to ensure the

wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

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

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

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

Prior to any works commencing on site, including demolition, sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site.

**22. Traffic Control During Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

**23. Vehicle Crossings**

The Applicant is to construct one vehicle crossing 5.5 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/1 N and the driveway levels application approval. 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.

A copy of the vehicle crossing inspection form is to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property.

**24. Implementation of Geotechnical Recommendations**

All recommendations included in the Geotechnical Report referenced in Condition 1 of this consent are to be complied with during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

## OCCUPATION CERTIFICATE

25. **Landscape Completion**

Landscaping is to be implemented in accordance with the approved Landscape Plan, inclusive of the following conditions:

i) the proposed *Banksia integrifolia* shown on the Landscape Plan shall not be planted, and shall be substituted with a native tall shrub capable of attaining 3 metres in height at maturity, and the following list is provided as suggestions: *Banksia spinulosa*, *Leptospermum laevigatum*, or *Melaleuca nodosa*, as contained in Council's Native Plant Species Guide - Curl Curl Ward.

Prior to the issue of any Occupation Certificate details (from a landscape architect or landscape designer) shall be submitted to the Principal Certifying Authority certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

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.

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

27. **Certification of Landscape Plan**

Landscaping is to be implemented in accordance with the approved Landscape Plans (Breakspear Architects 2021) and these conditions of consent.

Details demonstrating compliance are to be prepared by the landscape architect and provided to the Principal Certifying Authority prior to issue of the Occupation Certificate.

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

28. **No Weeds Imported On To The Site**

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan 2019 – 2023) are to be imported on to the site prior to or during construction works.

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

Reason: To reduce the risk of site works contributing to spread of Priority and environmental weeds.

29. **Post-Construction Dilapidation Report**

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

- Compare the post-construction report with the pre-construction report,
- Clearly identify any recent damage and whether or not it is likely to be the result of the development works,

- Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifying Authority prior to the issuing of any Occupation Certificate.

Reason: To maintain proper records in relation to the proposed development.

30. **Reinstatement of Kerb**

The Applicant shall reinstate all redundant laybacks and vehicular crossings to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant.

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

Reason: To facilitate the preservation of on street parking spaces.

31. **Certification of Geotechnical Recommendations**

Certification from a suitably qualified and practicing Geotechnical Engineer that all recommendations included in the Geotechnical Report referenced in Condition 1 of this consent have been incorporated into the development shall be provided to the Principal Certifying Authority prior to the issue of a Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

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

32. **Landscape Maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent.

All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: To maintain local environmental amenity.