

# **STATEMENT OF ENVIRONMENTAL EFFECTS**

**Demolition and  
construction of a new  
dwelling**

**72 Carrington Parade,  
Curl Curl**

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# 1 Introduction

## 1.1 Description of the Proposed Development

This report is a Statement of Environmental Effects (SEE), pursuant to Section 4.15 of the Environmental Planning and Assessment Act 1979.

The development application seeks consent for demolition and construction of a new dwelling at 72 Carrington Parade, Curl Curl.

The proposal is depicted in the accompanying architectural plans by Breakspear Architects. A summary of the key aspects of the proposal are noted as follows:

### Demolition of existing structures

#### Basement level

- mechanical plant/equipment, services and storage spaces

#### Ground floor level -

- Garage
- Entry and lift
- 2 bedrooms and bathroom
- Master bedroom and ensuite bathroom

#### First floor level -

- Open plan living, kitchen and dining room
- Lightwell, small courtyard and garden
- TV room
- Laundry
- Balcony to north and west edged by 1350mm balustrade / privacy screen

#### Roof terrace level -

- Roof terrace of approx. 28m<sup>2</sup>

#### Garden areas

- Retaining walls as shown
- Landscape planting as shown

In summary the architectural design that comprises this DA is a modified version of the DA that was subject of the Appeal and then further adjusted in response to Pre-lodgement meeting/liaison with Council in March/April 2012<sup>1</sup> and takes into account all the suggestions and recommendations of both the Appeal Judgement and Council staff.

## 1.2 Judgement and DA2019/0380

Council's refusal of DA2019/0380 was appealed in the New South Wales Land and Environment Court in the matter of Der Sarkissian v Northern Beaches Council [2021] NSWLEC 1041. The matter was heard in December 2020.

The appeal was dismissed based on the view impact from the property known as 2 Gardere Ave, however, the Commissioner in his judgment recommended design changes that, based on the various circumstances of the site and merits of the design, that would satisfy the view sharing planning principle and be a reasonable environmental planning outcome for the site.

A detailed response to the assessment contained in the judgement is provided within Section 3 of this report.

The key finding of the LEC judgement is noted as follows from [64]:

*"...my tentative conclusion would suggest, considering the photographic and other evidence but using drawing DA SK00 as a reference; reasonable view sharing would retain a sightline from the centre of deck at 2 Gardere Avenue to a point between the arrowed view lines marked as "7" and "8" as shown in that drawing (DA SK00)."*

### 1.3 Summary of key changes to previous DA

A Pre-DA lodgement meeting was held with Council officers on 10 March 2021 in relation to the court's judgement and the design modifications proposed for the site. The application has been prepared in response to the findings of the court judgement and feedback received from Council staff discussed at the meeting. The following design changes and information responses are noted:

- Modifications to the ground floor
  - Setback increased from 0m to 500mm to the garage and dwelling from Gardere Avenue.
  - Setback ranges from 2.670m (western end) to 0.5m (at garage) and 2.07m (eastern end)
- Modifications to level 1 including:
  - Increased setbacks from Gardere Avenue. The north setback has been significantly increased from a minimum of 0m to a minimum of 1m. The setbacks range from 5.05m (western end) to 1.0m and 2.07m (eastern end).
  - Reduction of the level 1 floor plate extent by approximately 23% (excluding the northern terrace which is below the view sightline).
  - The modification also includes an outdoor terrace adjacent the northern edge that has a 1.35 metre high brick balustrade for privacy but which is below the view sight-line obtained from the front deck on 2 Gardere Ave.
- Modifications to upper-level roof terrace – the width of the roof terrace at the western end has been narrowed from approx. 4.2m to 2.4m and the area (including access) reduced from approx. 40m<sup>2</sup> to 28m<sup>2</sup>.
- Landscaped area increased from 10% to 12.1%. More landscaped area to street perimeter visible from adjoining roadways due to increased northern setback.

In these ways the subject application has addressed the issues raised by Council during the Pre-DA lodgement discussions.

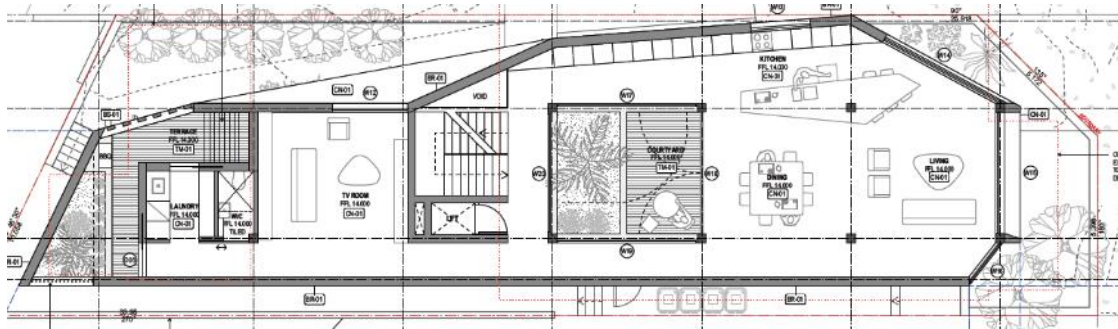


Figure 1 – the previous extent of 1st floor level had a northern setbacks ranging from 3.5m to 0m

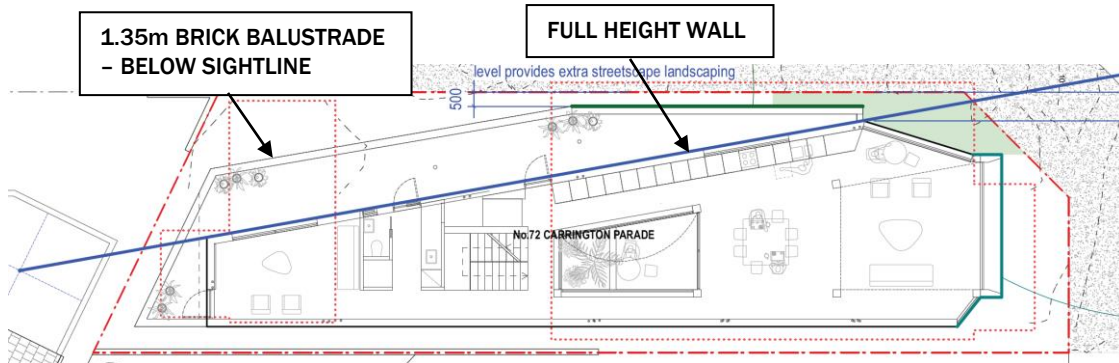


Figure 2 – the proposed extent of 1st floor level has northern setbacks ranging from 5.05m to 1.0m to provide an improved view sight-line (as shown below and explained on plan sheets - DA 002, 003, and 004)

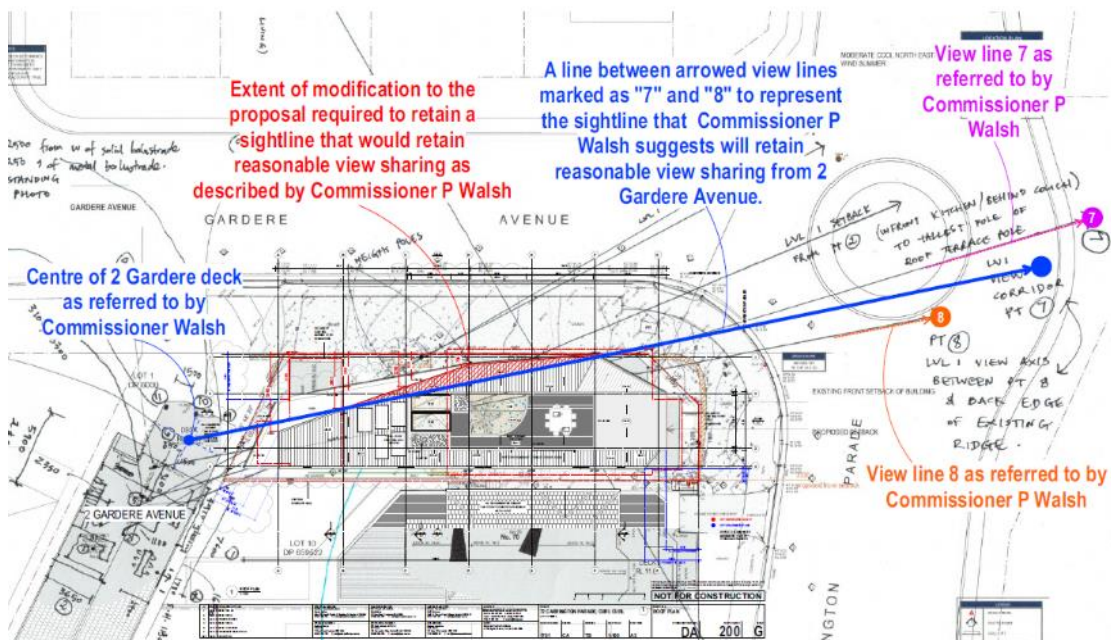


Figure 3 – sketch plan DA SK-00. This is the key view sharing assessment plan considered in the court hearing

## **1.4 Statement of Environmental Effects**

This Statement of Environmental Effects (SEE) is prepared in response to Section 4.15 of the Environmental Planning and Assessment Act 1979. The proposal has been considered under the relevant provisions of Section 4.15 of the Environmental Planning and Assessment Act 1979.

In preparation of this document, consideration has been given to the following:

- Environmental Planning and Assessment Act, 1979
- Local Environmental Plan
- Relevant State Environmental Planning Policies
- Development Control Plan

The proposal is permissible and generally in conformity with the relevant provisions of the above planning considerations.

Overall, it is assessed that the proposed development is satisfactory, and the development application may be approved by Council.



## 2 Site Analysis

### 2.1 Site and location description

The site is located at 72 Carrington Parade, Curl Curl and legally described as Lot 1 in Deposited Plan 366860. The site has an area of 280.9 m<sup>2</sup>.

The site is irregular in shape with an eastern frontage of 5.398m to Carrington Parade and a secondary frontage (northern boundary) of 25.918m to Gardere Avenue. The southern and western boundaries form the side boundaries of the allotment and measure 33.9m and 10.06m respectively.

The site is occupied by a single storey clad dwelling with tiled roof and detached clad garage with sheet roofing.

The existing dwelling is predominantly orientated towards Carrington Parade and provided with a setback of approximately 1.4m to this frontage. The dwelling provides a nil setback to the Gardere Avenue frontage and in fact encroaches over this boundary.

The detached garage is located to the rear (western) portion of the site and is orientated towards Gardere Avenue. This structure is setback approximately 0.6m to the Gardere Avenue frontage.

The site has a gradual slope from the west towards Carrington Parade with a total fall of approximately 1.6m.

There is minimal vegetation and modest extent of landscaped area upon the site.

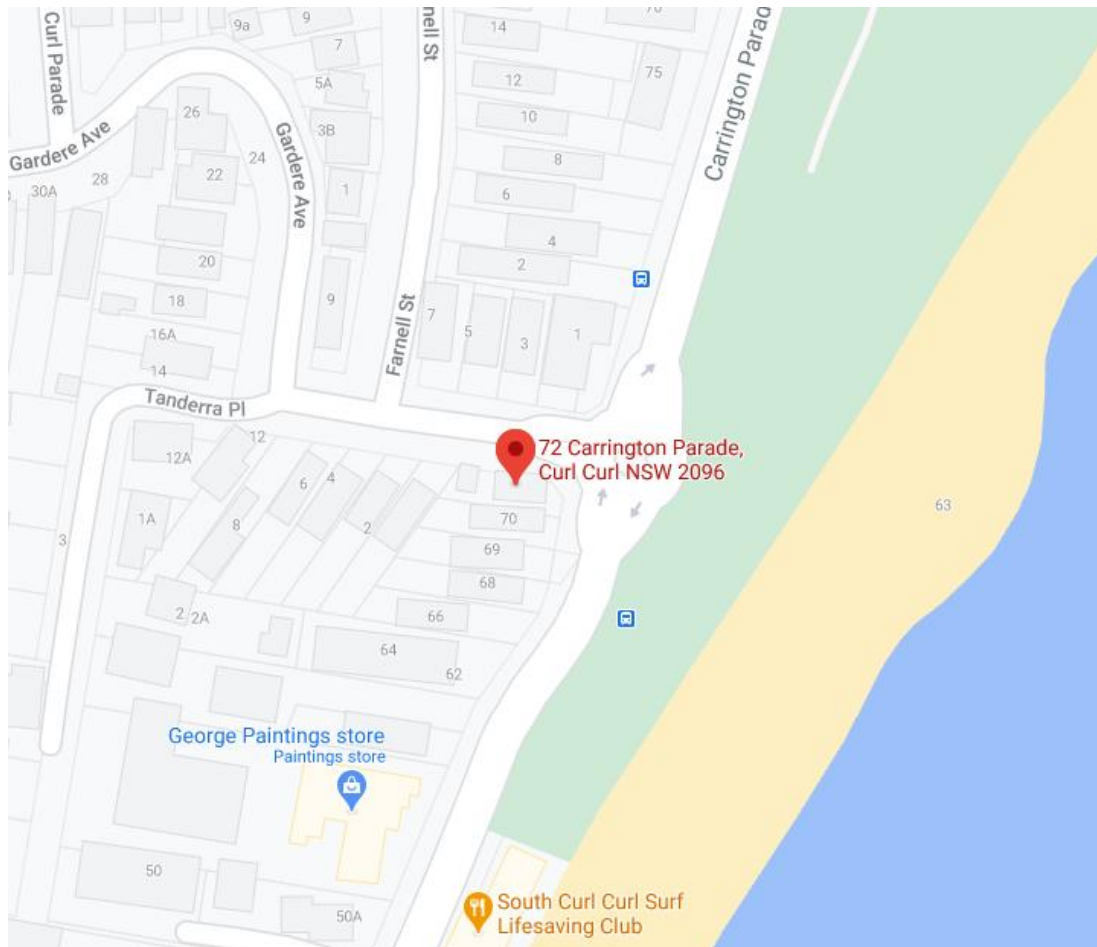
The streetscape character is varied with a mix of building types and scales and variable front setbacks.

Surrounding development comprises a mix of one, two and three storey detached residential dwellings on varied sized allotments. There are also several multi-storey residential flat buildings within the visual catchment.

The site is located opposite public open space and benefits from views towards the east of Curl Curl Beach, the ocean and surrounds.

The figures on the following pages depict the character of the property and its existing development.





**Figure 4 – Location of the site within its wider context (courtesy Google Maps)**



**Figure 5 – Alignment, orientation and configuration of the subject site and adjoining properties (courtesy Northern Beaches Council)**



**Figure 6 – existing dwelling character and location on the corner of Carrington Pde and Gardere Ave**



**Figure 7 – existing dwelling character as viewed from the Gardere Ave streetscape**





**Figure 8 – the northern side of the existing dwelling aligns with the site's secondary street frontage boundary to Gardere Ave**



**Figure 9 – existing dwelling character as it presents to Gardere Ave**



**Figure 10 – existing dwelling character and location – minimal street setbacks are established and characteristic of the street corner**

## 3 Environmental Assessment

### 3.1 Section 4.15 of the Environmental Planning & Assessment Act, 1979

The following section of the report assesses the proposed development having regard to the statutory planning framework and matters for consideration pursuant to Section 4.15 of the Environmental Planning & Assessment Act, 1979 as amended.

Under the provisions of the Environmental Planning and Assessment Act 1979 (the Act), the key applicable planning considerations, relevant to the assessment of the application are:

- Warringah Local Environmental Plan 2011
- State Environmental Planning Policies – as relevant
- Warringah Development Control Plan

The application of the above plans and policies is discussed in the following section of this report.

The application has been assessed against the relevant heads of consideration under Section 4.15 of the Act; a summary of these matters are addressed within Section 7 of this report, and the town planning justifications are discussed below.

### 3.2 Review of Judgement *Der Sarkissian v Northern Beaches Council* [2021] NSWLEC 1041

As previously noted, the Commissioner in his judgment was helpful by recommending design changes that, based on the various circumstances of the site and merits of the design, would satisfy the view sharing planning principle and be a reasonable environmental planning outcome for the site.

A detailed response to the analysis and assessment contained in the judgement is provided below.

Judgement excerpt	Response
<i>12 The major issue in this matter is the potential for obstruction of existing ocean views enjoyed from nearby properties and the reasonableness of this, considering Council's building envelope controls and view sharing principles. A secondary issue is in regard to the building bulk in the streetscape, within which I include landscape considerations.</i>	<p>Despite a range of exceedances with DCP controls the Commissioner found that the material considerations in assessing the proposal are view sharing and streetscape.</p> <p>In brief the judgement found that:</p> <ul style="list-style-type: none"> <li>▪ View sharing from the front deck of 2 Gardere Ave is an issue</li> <li>▪ View sharing from 5 Gardere Ave is satisfactory</li> <li>▪ Streetscape and bulk considerations are</li> </ul>

Judgement excerpt	Response
	satisfactory
<p>33 To explain, it is a particular aspect of the local setting that the quality of view from the northern deck to 2 Gardere Avenue is very high along a certain portion of the view arc from the northern deck area. This higher quality portion of the view arc is generally over the existing building, give or take a certain angle. But then the north-eastern portion of the view arc from the deck is of somewhat lower quality because of the filtering effect of ocean views by tall trees. This is the portion of the view arc that would remain, generally, from the deck were the proposal to be approved. This is illustrated (noting photographs have limitations in their representation of the visual experience) in Annexure E</p>	<p>The design amendments have increased the extent of the set back of level 1 Gardere Ave, and in doing so, increased the extent of the high-quality portion of the view available from 2 Gardere Ave (figure 2). The extent of the increase is in accordance with what the Commissioner recommended at 64 of the judgement.</p>
<p>45 What is clear to me, mindful of reasonable development prospects for the site and the plans before me which in my view have scope for considerable further refinement, is that the extent of view loss at the northern deck at 2 Gardere Avenue does not involve adequate view sharing and is unreasonable. In this case, there would both be a loss of an open (ie wider angled) ocean view, and a loss of the best part of that open ocean view.</p>	<p>The plans have undergone further refinement as reflected in the subject development application. The extent of view loss from the northern deck at 2 Gardere Avenue has been reduced as per the recommendation within 63 and 64 of the judgement.</p> <p>Furthermore, rather than the building line being in the middle of 'Line 7 and Line 8' this DA has recast a conservative level 1 building to match approximately the alignment with point 8 (as shown and explained on plan sheet - DA 002).</p>
<b>5 Gardere Avenue</b>	
<p>46 Again, partly as a consequence of the quality of the analytical material provided with the application and in Ex 3 itself, there was quite good clarity in regard to the first and second Tenacity steps for 5 Gardere Avenue. The experts agree, and it is apparent from the evidence, that there are ocean views from the front of the residence, from the internal living area (kitchen and living room) and a south-facing deck (Ex 3 Tab D). The best views are eastwards, but the openness of the view extends to the south-east over the existing building, until taller existing buildings further south interrupt it. From eastern parts of the residence this view includes north-head in the distance.</p>	<p>The judgement found that a reasonable view sharing outcome would be achieved for 5 Gardere Avenue.</p> <p>There are no modifications to the design within the subject DA that will significantly impact upon this outcome.</p>
<p>47 In regard to Tenacity step 3, Mr Prosser believes (Ex 3, par 157): "The proposal would have an impact on views from a living and</p>	



Judgement excerpt	Response
<p>kitchen area toward the front of 5 Gardere Avenue. The impact from this area involves interrupting water views and view of North Head from both standing and sitting position. Depending on the view angle and window viewed from, there is a range of view impact from almost obliteration of the water views and North Head to reasonable of retention of the water view (kitchen section). Overall, the impact on the whole of the property is moderate-severe."</p>	
<p>48 Mr Prosser believes that as a "moderate-severe" impact arises as a result of non-compliance with the front setback and wall height controls then the view sharing outcome is unreasonable (ibid).</p>	
<p>49 I am not convinced of Mr Prosser's arguments with respect to 5 Gardere Avenue and prefer the arguments and submissions of the applicant.</p>	
<p>50 In a kind of counterpoint to the 2 Gardere Avenue situation, the highest quality views (down Gardere Road to the east) would not be affected by the proposal. It is the "lesser quality part of the view" currently obtained across the roadway, then over the site, that would be affected (AOS, par 45).</p>	<p>The revised design (the subject DA) would maintain a similar outcome to that of the previous design and DA noting that the proposed building envelope at the eastern end is retained except for increased northern setbacks and a reduced building envelope (as described herein).</p>
<p>51 The design does have some comparatively positive features with respect to view loss to 5 Gardere Avenue, including:</p> <p>(1) the building setback non-compliance to Gardere Avenue is not of particular significance of itself to views from 5 Gardere Avenue;</p> <p>(2) the wall height non-compliance is also not of great significance;</p> <p>(3) some of the blocking of the view by the existing building would be reduced (it is notable that it would be reduced even further if the building were setback from Gardere Avenue in accordance with what I suggest is needed in regard to reasonable view sharing for 2 Gardere Avenue).</p>	<p>The design's numerical non compliances in relation to building setback to Gardere Ave and wall height are not significant in assessing view sharing to 5 Gardere Avenue.</p> <p>Some modest view gains would result from the demolition of the existing dwelling.</p> <p>The design's non compliances in relation to the building setback to Carrington Parade at the upper storey is relevant to assessing the view availability, however its non compliance is not determinative on the sharing grounds in relation to 5 Gardere Avenue.</p>
<p>52 The non-compliance with the front setback control to Carrington Parade at the upper storey does have significance in regard to view availability. But, while it is a negative aspect of the proposal in regard to view loss, given the quality of the remaining views from both inside</p>	

Judgement excerpt	Response
<i>and outside, I would not see the upper storey setback non-compliance as determinative on view loss grounds on view sharing principles.</i>	
<b>Streetscape presentation and building bulk</b>	
<i>53 Council is concerned with the proposal's presentation to both Carrington Parade and Gardere Avenue. The concerns are in regard to visual impact and, in particular, visual dominance. They relate to both the positioning of the building (street setbacks) and overall presentation.</i>	<p>Various DCP control exceedances were cited by council as contributing to an unacceptable streetscape, visual dominance and building bulk outcome including:</p> <p>B1 - wall height</p> <p>B3 - side boundary envelope</p> <p>B7 - front setbacks, primary and secondary</p> <p>D9 - building bulk</p> <p>D1 - landscaped area</p> <p>Notwithstanding, the judgement found that the design would:</p> <ul style="list-style-type: none"><li>▪ be appropriate for a street corner</li><li>▪ be a positive feature of the street corner</li><li>▪ be visually interesting</li><li>▪ be positive in architectural terms (59)</li><li>▪ have a building bulk and streetscape presentation that is satisfactory.</li></ul>
<i>54 Mr Prosser believes the building footprint, including non-compliant setbacks, provides an unreasonable visual impact on adjoining properties and the street. The architectural form, providing for "continuous walls" along Carrington Parade and then along Gardere Avenue frontages, provides inadequate articulation and response to the site topography. There is insufficient landscaping to reduce perceived building massing.</i>	
<i>55 Mr Haynes analysed the local visual context, noting the mixed character of building forms in the streetscape. He indicated that the proposal would sit at a lower height and be narrower than its immediate neighbours to the south in Carrington Parade. In regard to Gardere Avenue, Mr Haynes observed the extent to which the proposal would be under the maximum building height control in WLEP and that a complying envelope would result in a much higher building with more bulk when viewed from surrounding land. He indicated his opinion that continuous wall planes are offset by the angularity employed as the building wall alignment turns the corner and adjusts its setback to Gardere Avenue. Mr Haynes saw the proposal as a visual interesting building with appropriate architectural and design techniques in regard to bulk and scale. He indicated support for the proposed landscape areas and planting which would "blend in" (Ex 3, par 63).</i>	
<b>Consideration</b>	
<i>56 I have already indicated that the building, as setback to Gardere Avenue, is inappropriate on view loss grounds. This in part aligns with Council's "visual dominance" concerns in regard to the proposed two story building massing at</i>	As previously noted, the design amendments have increased the extent of the secondary setback of the proposed dwelling house to Gardere Ave and in doing so addressed the

Judgement excerpt	Response
<i>the road reserve boundary for a portion of the proposal.</i>	massing issues.  The design no longer abuts the road reserve boundary; and is setback 0.5m at its closest point.
<i>57 Setting that aside, it seems to me that the building as proposed would indeed stand out in the streetscape on this corner site, but this cannot always be seen as a bad thing. While the built form is unusual, I agree with Mr Haynes that the architectural treatment, including the angular treatment of wall planes on the corner site, is visually interesting. Having reviewed the architectural design statement (Ex 3, Tab C, eg p 6) it can be understood how the proposal could present as a positive feature in Gardere Avenue and on the corner.</i>	The Commissioner found that the architectural design, including the angular treatment of wall planes on a corner site, is visually interesting and that the proposal could present as a positive feature in Gardere Avenue and on the corner.
<i>58 The proposal's non-compliance with the Carrington Parade setback control, at the upper level, warrants direct attention here. The DCP would provide for a 6.5m setback, but Mr Prosser believes a setback in the region of 5m – 5.7m would be reasonable in the circumstances. The plans indicate a primary setback to Carrington Parade of 2.33m with the glass line set in a further 0.525m apparently. There is landscaping proposed within the setback area to Carrington Parade and around the corner into a little into an angled setback area to Gardere Avenue.</i>	It is noted that any planting of a height more than 3 metres would have the potential to obstruct views from the nearby properties and be counterproductive to the view sharing issues in the matter.  Except for the changes suggested to the Gardere Avenue setback, the building's streetscape presentation and building bulk would otherwise be able to be satisfactory. Other observations noted by the Commissioner include: <ul style="list-style-type: none"> <li>▪ the positive features of the proposal in architectural terms</li> </ul>
<i>59 A combination of factors draw me to the conclusion that, with the exception of required rearrangements consequential to required changes to the setback to Gardere Avenue (which could provide for enhanced opportunity for street-side landscaping of a reasonable height), the building's streetscape presentation and building bulk would otherwise be able to be satisfactory. These factors are: the positive features of the proposal in architectural terms, the fact of the curvilinear nature of Carrington Parade road reserve boundary near the roundabout and the fact that the existing building is setback even closer to Carrington Parade than is now proposed. There is a further factor concerned with balance in providing for reasonable development prospects for the subject site, which I will return to in my conclusions.</i>	<ul style="list-style-type: none"> <li>▪ the curvilinear nature of Carrington Parade road reserve boundary is a consideration with regards to the front set back</li> <li>▪ that the existing building is setback even closer to Carrington Parade than is proposed.</li> <li>▪ further setbacks to Carrington Parade.</li> </ul>

Judgement excerpt	Response
<b>Other matters</b>	
60 In regard to the question of non-compliance with side building envelope controls to the south, and the prospects of this having an unreasonable effect on 70 Carrington Parade, I generally agree with the evidence of Mr Haynes and the submissions of the applicant that strict compliance is not necessary in the circumstances and to require it would be inconsistent with s 4.15(3A) of the EPA Act.	The subject DA exhibits the same non-compliance with the side building envelope control to the south side boundary which the Commissioner found to be appropriate in the circumstances.
<b>Conclusion</b>	
61 It is necessary to have regard to WDCP controls as a focal point of the decision making process ( <i>Zhang v Canterbury City Council</i> (2001) 115 LGERA 373; [2001] NSWCA 167 at [75]), this mindful of the need for flexibility under s 4.15(3A) of the EPA Act. I generally agree with the applicant that in this case, 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.	Due to the narrowness of the site and its position on a corner allotment, the circumstances are appropriate to be flexible in the application of the DCP's numerical built form controls ('there needs to be a critical openness to variations from Council's building envelope controls').
62 However, the determinative issue in this case is view loss to 2 Gardere Avenue. In considering this question of the impact on a neighbouring property, I am mindful of the applicant's reference to the court's planning principle in <i>Davies v Penrith City Council</i> [2013] NSWLEC 1141 at [121]. Overall, I am of the opinion that the proposal would significantly change the amenity enjoyed from 2 Gardere Avenue for the worse. While there is some vulnerability to this view loss impact, both policy controls and view sharing principles suggest the proposal goes too far. I note the impact on 5 Gardere Avenue would be significantly less. While the proposal enjoys considerable architectural design qualities, in this instance it attempts to achieve too much on a constrained site.	<p>View sharing is the determinative issue in the assessment of the proposed new dwelling house on the property.</p> <p>The property at 2 Gardere Avenue is vulnerable to view impacts given its location to the west of the subject site and the views that it seeks to enjoy over the site to the East.</p> <p>On balance the Commissioner found that the proposal went too far in relation to 2 Gardere Ave but was satisfactory in relation to 5 Gardere Ave. The subject DA has responded to these findings by modifying the design in a manner recommended by the Commissioner.</p> <p>The proposal enjoys considerable architectural design qualities.</p>
63 A reasonable development at the upper level in regard to view sharing and setback policy, would widen the view available from a central position in the northern deck of 2 Gardere Avenue, extending the view arc further to the south. This would mean some of the better views would be retained more widely in this property. This finding means that view sharing principles would require something other than minor	<p>The subject DA has responded to these comments by increasing the set back at the upper level to widen the view available from the central position in the northern deck of 2 Gardere Avenue.</p> <p>The floor area at level 1 of the proposal has been reduced by approx. 15%/21m<sup>2</sup>.</p> <p>A reasonable floor space has been achieved on</p>

Judgement excerpt	Response
<i>reduction of floor area at level 1 of the proposal. With good design, there is scope for this to occur while also providing for reasonable floor space on this level.</i>	this level with provision for the dwelling's principal living spaces.
<i>64 Here I recognise that there are variations in the value returned, really in regard to both the neighbour impact/benefit and design opportunity for the subject site, as adjustments to view/building lines are considered, and that further examination would be needed. However, should it happen to assist, my tentative conclusion would suggest, considering the photographic and other evidence but using drawing DA SK00 as a reference; reasonable view sharing would retain a sightline from the centre of deck at 2 Gardere Avenue to a point between the arrowed view lines marked as "7" and "8" as shown in that drawing (DA SK00).</i>	<p>The Commissioner found that a reasonable view sharing outcome would retain a sightline from the centre of the front deck at 2 Gardere Avenue to a point between the arrowed view lines marked as "7" and "8" as shown in the drawing (DA SK00) reproduced at figure 3.</p> <p>The design of level 1 has been modified by increasing the setback to Gardere Avenue, in an angular alignment that close to the arrowed view line marked as "8" as shown in drawing DA SK00 copied at figure 3 and on plan sheets - DA 002, 003 and 004.</p> <p>By aligning the building close to point 8, the proposal provides an improved view outcome being retention of the majority of the view between points 7 and 8.</p>

## 4 Section 4.15 (1)(i) the provisions of any environmental planning instrument

### 4.1 Warringah Local Environmental Plan 2011 – Zoning

The property is zoned R2 Low Density Residential under the Warringah Local Environmental Plan 2011 (LEP) as is most of the surrounding land.



**Figure 11 – zone excerpt (Council's website)**

The proposal constitutes demolition and construction of a new dwelling. The proposal is permitted within this zone with Development Consent.

Clause 2.3(2) of the LEP requires the consent authority to 'have regard to the objectives for development in a zone' in relation to the proposal. The objectives of the zone are stated as follows:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*



It is assessed that the proposed development is consistent with the zone objectives as it will provide for the housing needs of the community within a low density residential environment, within a landscaped setting, compatible with the surrounding development.

Accordingly, the proposal has had sufficient regard to the zone objectives and there is no statutory impediment to the granting of consent.

## 4.2 Other relevant provisions of the LEP

Other provisions of the LEP that are relevant to the assessment of the proposal are noted and responded to as follows:

LEP Provision	Response	Complies
<b>Part 4 of LEP – Principal Development Standards</b>		
LEP Clause 4.1 Minimum subdivision lot size 450m <sup>2</sup>	280.9m <sup>2</sup>	NA
LEP Clause 4.3 – Height of Buildings	The proposal exceeds 8.5m. Addressed below.	Yes
LEP Clause 4.4 – Floor space ratio	NA	NA
LEP Clause 4.6 – Exceptions to development standards	NA	NA
<b>Part 5 of LEP – Miscellaneous Provisions</b>		
LEP Clause 5.4 Controls relating to miscellaneous permissible uses	NA	NA
LEP Clause 5.4 Controls relating to miscellaneous permissible uses	NA	NA
LEP Clause 5.10 Heritage Conservation	NA	NA
<b>Part 6 of LEP – Additional Local Provisions</b>		
LEP Clause 6.1 Acid sulfate soils	<p>The land is identified on the LEP Maps as being affected by class 5 acid sulfate soils. Excavation is proposed below the existing site levels (being at approx. RL 7 AHD) which is above AHD RL 5.00.</p> <p>In response, the proposal is accompanied by a geotechnical assessment that finds the following in relation to acid sulfate soils:</p> <p><i>‘The property is at an elevation of about RL10 m AHD and is underlain by aeolian windblown sands. This is not consistent with the geomorphic criteria necessary for the presence of ASS. Based on our onsite observations and the subsurface conditions exposed in the boreholes, it is</i></p>	Yes



LEP Provision	Response	Complies
	<p><i>our opinion that the proposed construction will not intercept any ASS. Based on the observations undertaken in the piezometers, it appears that any seepage into the basement would be minor and as a consequence, construction will not result in the lowering of any groundwater that may be present in the area.</i></p> <p><i>Our assessment is the proposed construction will not require the preparation of an Acid Sulfate Soil Management Plan'.</i></p> <p>Based on the above the proposed development satisfies the considerations within clause 6.2 and the site is suitable for the development proposed.</p>	
LEP Clause 6.2 Earthworks	<p>Excavation is proposed below the existing site levels.</p> <p>The proposal is accompanied by a geotechnical assessment that concludes that the proposal is appropriate for the site.</p> <p>The siting and design of the proposed development has considered the matters within clause 6.2(3) of the LEP and results in appropriate outcomes against these criteria.</p> <p>Based on the above the proposed development satisfies the considerations within clause 6.2 and the site is suitable for the development proposed.</p>	Yes
LEP Clause 6.3 Flood planning	Council's maps do not identify the site as being flood affected.	Yes
LEP Clause 6.4 Development on sloping land	The land is identified on the LEP Maps as being within area a on the Landslip Risk Maps, and therefore no further assessment of this issue is warranted.	Yes

## **4.3 State Environmental Planning Policy**

### **4.3.1 State Environmental Planning Policy - BASIX**

The proposal is BASIX affected development as prescribed. A BASIX assessment report accompanies the application and satisfies the SEPP in terms of the DA assessment.

### **4.3.2 SEPP (Vegetation in Non-Rural Areas) 2017**

Vegetation is prescribed under Part E1 of WDCP for the purposes of SEPP (Vegetation in Non-Rural Areas) 2017. The proposal does not result in the removal of any designated trees and therefore the provisions of this policy are satisfied by the proposal.

### **4.3.3 State Environmental Planning Policy No 55 – Remediation of Land**

State Environmental Planning Policy No. 55 - Remediation of Land applies to all land and aims to provide for a State-wide planning approach to the remediation of contaminated land.

Clause 7 of SEPP 55 requires Council to consider whether land is contaminated prior to granting consent to carrying out of any development on that land. In this regard, the likelihood of encountering contaminated soils on the subject site is low given the following:

- Council's records indicate that site has only been used for residential uses.
- The subject site and surrounding land are not currently zoned to allow for any uses or activities listed in Table 1 of the contaminated land planning guidelines of SEPP 55.
- The subject site does not constitute land declared to be an investigation area by a declaration of force under Division 2 of Part 3 of the Contaminated Land Management Act 1997.

Given the above factors no further investigation of land contamination is warranted. The site is suitable in its present state for the proposed residential development. Therefore, pursuant to the provisions of SEPP 55, Council can consent to the carrying out of development on the land.

### **4.3.4 State Environmental Planning Policy (Coastal Management) 2018**

The Coastal Management Act 2016 establishes a strategic planning framework and objectives for land use planning in relation to designated coastal areas within NSW. The Act is supported by the State Environmental Planning Policy (Coastal Management) 2018. It is applicable because the site is within the designated:

- Clause 13 coastal environment area
- Clause 14 coastal use area

As relevant to these affectations, the aims of the SEPP within clauses 13 and 14 addressed below. In summary, the proposal is assessed as being consistent with the aims and objectives of the SEPP.

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

The provisions of clause 13 *Development on land within the coastal environment area* are addressed as follows:

13 Development on land within the coastal environment area	Response
<b>(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:</b>	
(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,	<ul style="list-style-type: none"> <li>The land and its development for residential purposes is established on the site. The extent of proposed works is supported by the appropriate range of technical studies. The proposal is assessed as satisfactory in relation to this consideration.</li> </ul>
(b) coastal environmental values and natural coastal processes,	<ul style="list-style-type: none"> <li>The land and its development for residential purposes is established on the site. The extent of proposed works is supported by the appropriate range of technical studies. The proposal is assessed as satisfactory in relation to this consideration.</li> </ul>
(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,	<ul style="list-style-type: none"> <li>The subject site is established for residential purposes. Development is established on the site.</li> <li>Provision of appropriate stormwater management has been made for the site.</li> <li>The proposal does not relate to <i>sensitive coastal lakes identified in Schedule 1</i></li> <li>The proposal is assessed as satisfactory in relation to this consideration.</li> </ul>
(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,	<ul style="list-style-type: none"> <li>The subject site is established for residential purposes. The proposal is assessed as satisfactory in relation to this consideration.</li> </ul>
(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,	<ul style="list-style-type: none"> <li>The proposal will not adversely impact upon existing access provisions. The proposal is assessed as satisfactory in relation to this consideration.</li> </ul>
(f) Aboriginal cultural heritage, practices and places,	<ul style="list-style-type: none"> <li>The proposal is not known to be located in a place of Aboriginal cultural heritage significance. The proposal is assessed as satisfactory in relation to this consideration.</li> </ul>
(g) the use of the surf zone	<ul style="list-style-type: none"> <li>Not relevant to the assessment of the proposal.</li> </ul>
<b>(2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:</b>	
(a) to the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or	<ul style="list-style-type: none"> <li>Responses have been made above in relation to the considerations within subclause (1).</li> <li>The proposal is assessed as satisfactory in relation to these considerations.</li> </ul>

13 Development on land within the coastal environment area	Response
<i>(b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or</i>	<ul style="list-style-type: none"> <li>▪ The proposal is assessed as satisfactory in relation to this consideration.</li> </ul>
<i>(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.</i>	<ul style="list-style-type: none"> <li>▪ Aside from compliance with relevant codes, standard conditions of consent, and Australian Standards there are no other mitigation measures foreseen to be needed to address coastal impacts.</li> <li>▪ The proposal is assessed as satisfactory in relation to this consideration.</li> </ul>
<i>(3) This clause does not apply to land within the Foreshores and Waterways Area within the meaning of <u>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</u>.</i>	<ul style="list-style-type: none"> <li>▪ Noted; not applicable.</li> </ul>

#### Clause 14 Development on land within the coastal use area

The provisions of clause 14 *Development on land within the coastal environment area* are addressed as follows:

14 Development on land within the coastal use area	Response
<i>(1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:</i>	
<i>(a) has considered whether the proposed development is likely to cause an adverse impact on the following:</i>	
<i>(i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,</i>	<ul style="list-style-type: none"> <li>▪ The proposal will not adversely impact upon existing access provisions.</li> <li>▪ The proposal is assessed as satisfactory in relation to this consideration.</li> </ul>
<i>(ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,</i>	<ul style="list-style-type: none"> <li>▪ The proposal will not result in any significant or excessive overshadowing of the coastal foreshore. Nor will result in significant loss of views from a public place to the coastal foreshore.</li> </ul>
<i>(iii) the visual amenity and scenic qualities of the coast, including coastal headlands,</i>	<ul style="list-style-type: none"> <li>▪ The proposal will not result in any significant additional visual impact on the coastal foreshore. Nor will result in significant loss of views from a public place to the coastal foreshore.</li> <li>▪ The proposal is assessed as satisfactory in relation to this consideration.</li> </ul>
<i>(iv) Aboriginal cultural heritage, practices and places, cultural and built environment</i>	<ul style="list-style-type: none"> <li>▪ The proposal will not impact this matter for consideration. The proposal is assessed as</li> </ul>

14 Development on land within the coastal use area	Response
<i>heritage, and is satisfied that:</i>	satisfactory in relation to this consideration.
<i>(i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or</i>	<ul style="list-style-type: none"> <li>▪ The proposal is not known to be located in a place of Aboriginal cultural heritage significance</li> <li>▪ The proposal is assessed as satisfactory in relation to this consideration.</li> </ul>
<i>(ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or</i>	<ul style="list-style-type: none"> <li>▪ See above response.</li> </ul>
<i>(iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and</i>	<ul style="list-style-type: none"> <li>▪ See above response.</li> </ul>
<i>(c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.</i>	<ul style="list-style-type: none"> <li>▪ The subject site is established for residential purposes. Development is established on the site. Relatively modest alterations and additions are the subject of this DA.</li> <li>▪ The proposal will not result in any significant additional visual impact on the coastal foreshore. Nor will result in significant loss of views from a public place to the coastal foreshore.</li> <li>▪ The proposal is assessed as satisfactory in relation to this consideration.</li> </ul>
<i>(2) This clause does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.</i>	<ul style="list-style-type: none"> <li>▪ Noted; not applicable.</li> </ul>

## 5 Development Control Plan

### 5.1 Overview

In response to Section 4.15 (1)(iii) of the Act, the Warringah Development Control Plan (DCP) is applicable to the property. Relevant provisions of the Warringah DCP are addressed below.

#### 5.1.1 D7 Views

In accordance with D7, of the DCP, development is to allow for the reasonable sharing of views, encourage innovative design solutions and ensure existing canopy trees have priority over views.

As previously identified within Section 3.2 of this report, the assessment of view sharing has been established as the principal assessment issue with regards to the design of and assessment of the previous dwelling house/DA.

The subject day has been designed to address the assessment findings of the court judgement. The following points are made in summary with regards to satisfying this aspect of the DCP:

- The Commissioner found that the secondary street setback needed to be increased. The key reason being to address the 4<sup>th</sup> objective of the DCP secondary front setback control, which is to achieve a reasonable view sharing outcome, in this case, in relation to the view enjoyed from the centre of the front deck of 2 Gardere Ave.
- The judgement found that a reasonable impact on the views obtained from 5 Gardere Avenue would be achieved and view sharing satisfied if the design retained a sightline somewhere between Point 7 and Point 8 on the plan labelled SK001.
- The extent of view loss from the northern deck at 2 Gardere Avenue has been reduced as per the recommendation within 63 and 64 of the judgement with the revised design of level 1 aligning close to Point 8 as documented on plan numbers DA 002, 003, and 004.
- The design amendments have increased the extent of the secondary setback at level 1 (figures 1 and 2) to Gardere Ave and reduced level one's gross floor area. In doing so the subject DA addresses the fourth objective of control B7 which is to achieve reasonable view sharing, and the Commissioner's key recommendation.
- A terrace has been added to the first-floor level. It has a 1.35 metre high brick balustrade to facilitate privacy but is below the view sight-line obtained from the front deck on 2 Gardere Ave
- The design amendments have resulted in a reduction of the level 1 floor plate extent by approximately 23% (excluding the northern terrace).
- The subject DA will not achieve view retention, and as the Commissioner observed, this is not required nor appropriate in achieving a balanced outcome for the proponent and the neighbour.
- The observations within the judgment about the positive characteristics of the original design remain. The key changes involve a reduction in the floorplate extents on each

level and overall a lesser development than what was originally proposed in DA2019/0380.

- The satisfactory view sharing outcome in relation to the property at number 5 Gardere Ave is retained by the revised design.

For these reasons it is concluded the proposed development satisfies D7 of the DCP.

### 5.1.2 Principal Built Form Controls

A table demonstrating compliance with the relevant provisions of the DCP is detailed as follows. Where a numerical non-compliance is identified, this is addressed separately below the table.

Clause	Requirement	Proposed	Complies?
B1 Wall Height	7.2m	Exceedance up to approx. 860mm (figure 12)	Objectives satisfied as addressed below table.
B3 Side Boundary Envelope	5m at 45 degrees required	West side - significantly under the maximum numerical requirement  South side - some exceedance to south side displayed (figures 13 and 14)	Yes  Objectives satisfied as addressed below table
B5 Side Setback	900mm	West: 900mm  South side: 900mm	Yes  Yes
B7 Front Setbacks	Primary 6.5m	<u>Existing</u> front setback:  # NE corner of roof encroaches boundary by approx. 360mm  # 0m to 2.0m to dwelling from NE corner splay  # 1.4m to 'lean-to' section of dwelling  <u>Proposed</u> 2.33m to eastern boundary - which is compatible with the street alignment character of nearby dwelling houses	Objectives satisfied as addressed below table.       Objectives satisfied as addressed below table.
	Secondary	<u>Existing</u> : 0m to dwelling for 14.7m length. 600mm to garage for 3.3m	Objectives satisfied as addressed below



Clause	Requirement	Proposed	Complies?
	3.5m	length. Non-compliant for 18m length.  <u>Proposed:</u>  Ground floor - varies from 2.670m (western end) to 0.5m (at garage) and 2.07m (eastern end)  First floor - varies from 5.05m (western end) to 1.0m and 2.07m (eastern end)	table.  Objectives satisfied as addressed below table.
B9 Rear Setback	Not applicable to corner site	NA	NA
D1 Landscaped Open Space	Site area:  280.9m <sup>2</sup>  40% /112.4 m <sup>2</sup>	<u>Existing:</u> 47m <sup>2</sup> /16.7 %  <u>Proposed:</u> 33.94m <sup>2</sup> /12.1 %	Objectives satisfied as addressed below table.

### 5.1.3 Overview - variations to numerical aspects of the DCP

As identified within the above table, variations are exhibited by the proposal with the following numerical aspects of the DCP:

- B1 Wall height
- B3 Side Boundary Envelope
- B7 Front setbacks – primary and secondary
- D1 Landscaped area

These are addressed below.

In a review the circumstances of the property and the site specific design proposed the following relevant observations are made as drawn from the court judgement addressed within section 3.2 of this report:

The local visual context is of mixed character of building forms in the streetscape.

The proposal will sit at a lower height and be narrower than its immediate neighbours to the south in Carrington Parade.

In regard to Gardere Avenue, the extent to which the proposal would be under the maximum building height control in WLEP and that a complying envelope would result in a much higher building with more bulk when viewed from surrounding land.

The continuous wall planes are offset by the angularity employed as the building wall alignment turns the corner and adjusts its setback to Gardere Avenue.

The proposal as a visual interesting building with appropriate architectural and design techniques in regard to bulk and scale.

The proposed landscape areas and planting are appropriate to the site's street corner location and in the absence of traditional boundary fencing will "blend in" with the adjacent grassed curtilage of the road reserve.

The Commissioner found that the architectural design, including the angular treatment of wall planes on a corner site, is visually interesting and could present as a positive feature in Gardere Avenue and on the corner.

Due to the narrowness of the site and its position on a corner allotment, the circumstances are appropriate to be flexible in the application of the DCP's numerical built form controls and stated by the Commissioner at 61 'there needs to be a critical openness to variations from Council's building envelope controls'.

#### **5.1.4 B1 Wall Height**

The proposal displays a wall height exceedance towards the eastern, front section of the building as marked within Figure 12 below. This variation is acknowledged, and justification is provided below, having regard to the circumstances of the case, merits of the design, and in response to the objectives of the planning control.

The objectives of DCP control B1 are repeated and responded to below.

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

Response:

When viewed from Gardere Ave, the following design characteristics minimise the visual impact of the proposed design and result in an appropriate bulk in scale:

- Height of the perimeter walls - The height of the proposed dwelling's perimeter walls range from approximately 4.6m to 5.0m for the western section of the design (grid lines A to C), then approximately 5.34 to 6.22 metres at the eastern end (grid lines D to G), as scaled along the northern / Gardere Ave elevation. It is evident that these heights are significantly under the numerical wall height control.
- Exceedances are inset - The proposed wall height exceedances between Grid lines A to G are inset from the perimeter walls of the dwelling design. Its location and distance from the adjoining properties is appropriate to avoid adverse amenity impacts.
- The recessing of the building elements that exceed the wall height control visually ameliorate the relatively modest proportion of the design that exceeds the numerical control.
- The sections of the design that exceed the wall height control are offset by a lower roof height and results in a superior outcome to that of a compliant building envelope. A compliant building envelope would have greater overall height and building volume with regards to the provisions of the control.
- In relation to the adjoining properties and the potential impacts on the southern adjoining property at 70 Carrington Pde, the wall height exceedance:

- is setback 2.2m from the southern side boundary
- is greater than the side setbacks on the nearby properties to the south (at 70, 69 Carrington Pde) that are observed to be narrow
- will not result in inappropriate amenity impacts in terms of shadowing, privacy, views, or visual impact to sensitive locations within 70 Carrington Pde.

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

Response: There are no tall canopy trees upon the subject site or either of the two adjoining properties (to the south and west). It is anticipated that a canopy tree (e.g. red gum tree) at mature growth would be between approx. 15 – 20m high). The proposal will be significantly beneath the anticipated height of a native tree canopy should they be planted in the area of the site.

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

Response: the reasonable sharing of views is addressed under Section 5.2 of this report Views.

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

Response: for the reasons provided above, it is assessed the proposal minimises its impact on adjoining and nearby properties.

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

Response: there are no significant natural landforms identified on the property. The design is 'cut-in' to the slope of the property by 1.180m at the west to minimise amenity impacts like visual impact, shadowing, and view sharing on the adjacent property at 2 Gardere Ave.

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

In response to this objective, it is assessed that the roof design represents a contemporary roof form which is not out of context with the character of roofs within the site's visual catchment and the wider local context (e.g. properties fronting Carrington Pde, Farnell St, and Gardere Ave). The local area comprises a beachside setting of mixed character (comprising residential and public open space zoned land), that has gradually been transforming from smaller single storey weatherboard and fibro cottages to larger multi-level dwellings. The roof form is compatible with the contemporary architectural style of the dwelling, that will provide a slim-line profile when viewed from the adjacent streets, which minimises the volume of the roof form and the potential amenity impacts in relation to overshadowing view sharing and visual impact. The roof design, in and of itself, does not result in bulk or amenity impacts and is compatible with the contemporary style of the proposed dwelling house.

It is assessed the proposal wall height exceedances:

- will not result in an inappropriate visual impact when viewed from either Gardere Ave or Carrington Pde visual impact
- are minor in extent, and do not add significant bulk or scale to the proposed building.
- will not result in an inappropriate physical impacts on 70 Carrington Pde
- the proposed roof design is acceptable and appropriate.

- the manner in which the proposed roof and walls provide for view sharing outcome to neighbouring properties is addressed within elsewhere this report.



**Figure 12 - building compliance lines demonstrating the extent to which the design exceeds and is significantly below the maximum extents**

### 5.1.5 B3 - Side boundary envelope exceedance

The proposal displays a side boundary envelope exceedance towards the south eastern, front section of the proposed dwelling house by approx. 560mm to 710mm (figure .

This variation is acknowledged, and justification is provided below, having regard to the circumstances of the case, merits of the design, and in response to the objectives of the planning control. The control objectives are repeated and responded to below.

- To ensure that development does not become visually dominant by virtue of its height and bulk.*
- To ensure adequate light, solar access and privacy by providing spatial separation between buildings.*
- To ensure that development responds to the topography of the site.*

The numerical exceedance is well distanced from the western adjoining property at 2 Gardere Ave.

The south side setback proposed is compatible with the adjoining dwelling at number 70 Carrington Pde. This property (as well as no. 69 Carrington Pde) is also of constrained area and width. The dwellings on these properties display minimal side setbacks which appears to reflect their constrained widths of approximately 8m and 10m.

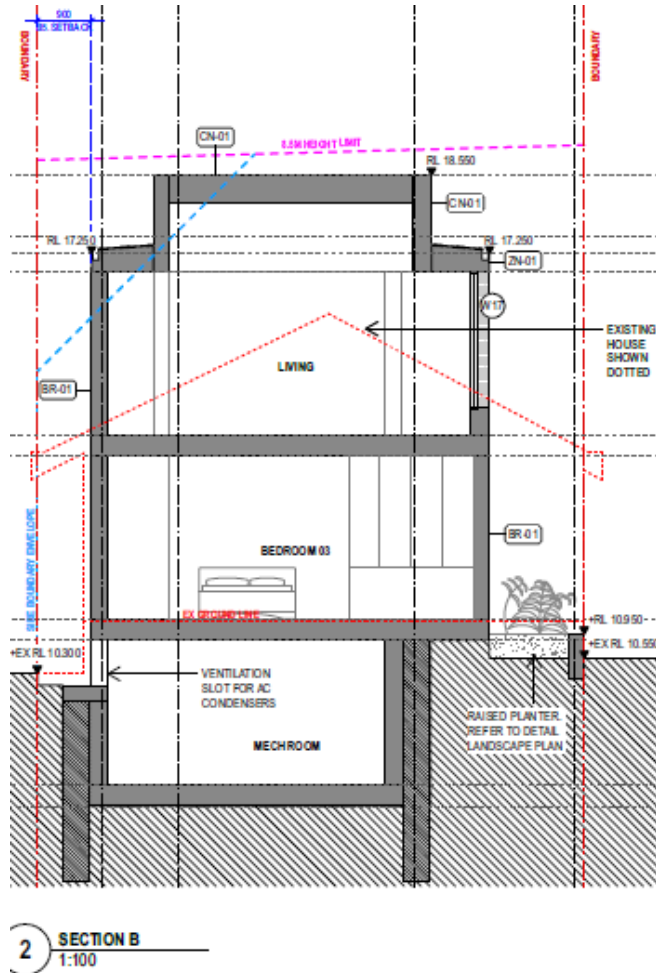
The dwelling design provides an appropriate response to the topography, compatible with the height and alignment of the adjoining dwellings to the south, with a lower building height displayed to the western boundary interface to minimise the impact (visual and view obstruction) on the adjoining dwellings to the west.

For the ground level, the proposal involves a 1.18m (approx.) excavation at its western end and a modest elevation of approx. 1m at its eastern end and therefore a balanced approach in responding to the topography of the site.

Being located along the southern side of the property, the modest non-compliance with the side boundary envelope does not unreasonably obstruct coastal views from properties to the north and west of the site (view sharing is addressed separately in this report).

In conclusion, the design results in building form that has appropriate interfaces to its southern and western neighbouring properties to which the control applies.

Based on the above, it is concluded that the proposed Side Boundary Envelope variation is modest, appropriate in the circumstances, and meets the objectives of the planning control.



**Figure 13 – the extent of the proposed boundary envelope exceedance as measured at Section B (excerpt from architectural plans)**

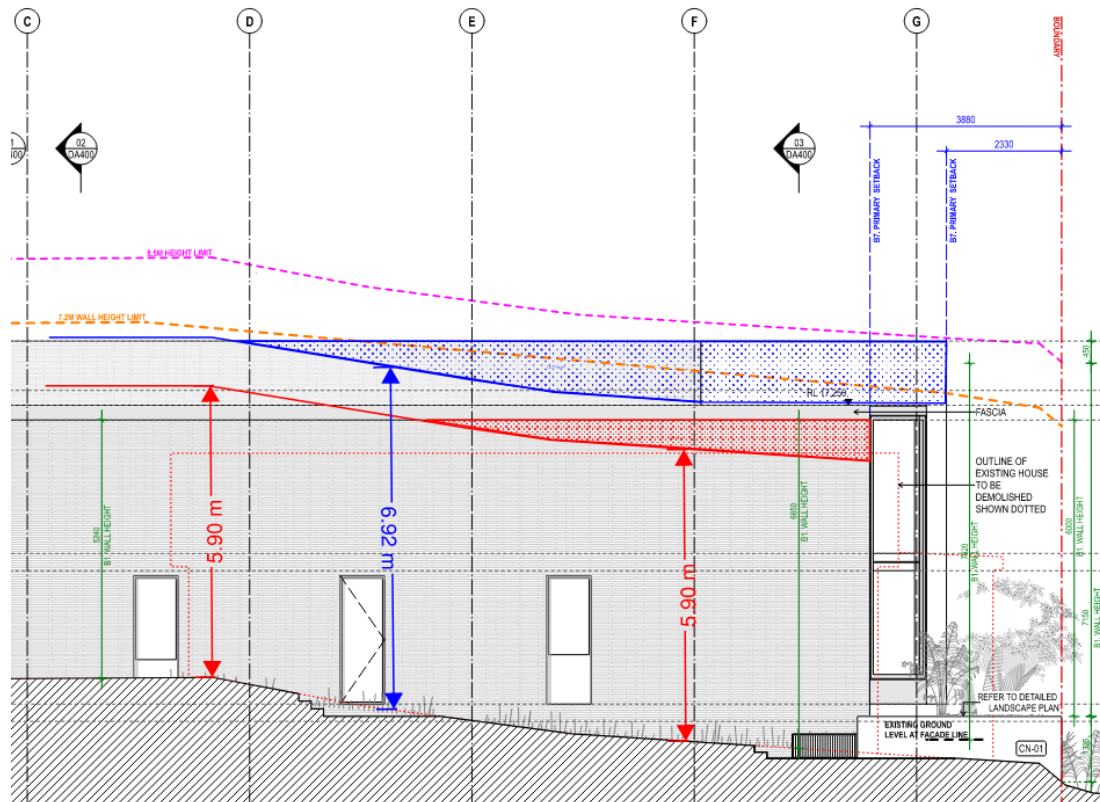


Figure 14 - the extent of the proposed boundary envelope exceedance (excerpt from architectural plans)

### 5.1.6 B7 Front setbacks – primary and secondary

The proposal displays exceedances in relation to its primary and secondary front setbacks. These variations are acknowledged, and justification is provided below, having regard to the circumstances of the case, merits of the design, and in response to the objectives of the planning control which are reported below.

#### Objectives

*To create a sense of openness.*

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

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

*To achieve reasonable view sharing.*

#### Requirements

*Development is to maintain a minimum setback to road frontages.*

*The front boundary setback area is to be landscaped and generally free of any structures, basements, carparking or site facilities other than driveways, letter boxes, garbage storage areas and fences.*

*Where primary and secondary setbacks are specified, buildings and structures (such as carparks) are not to occupy more than 50% of the area between the primary and secondary setbacks. The area between*



*the primary setback and the road boundary is only to be used for landscaping and driveways.*

*For land zoned E3 and not having frontage to Kamber Road or Kimbriki Road the minimum front building setback area is to be densely landscaped using locally occurring species of canopy trees and shrubs and free of any structures, carparking or site facilities other than driveways, letterboxes and fences.*

### **Secondary street frontage**

In relation to the secondary street frontage, DCP Control B7 Front Boundary Setbacks relevantly states:

*‘Exceptions*

*Land Zoned R2 or R3*

*On corner allotments or sites with a double street frontage, where the minimum front building setback is 6.5 metres to both frontages, the front building setback may be reduced to a minimum of 3.5 metres for the secondary frontage, but secondary street variations must consider the character of the secondary street and the predominant setbacks existing to that street’.*

Strict compliance with the secondary front setback control is difficult in the circumstances of the site's angled street frontage and physically constrained size. A 3.5m secondary street frontage setback, in strict numerical compliance with the numerical control, would have minimal planning benefits and add further physical constraints upon an already constrained site, with the potential to result in a redistribution of, and additional building volume towards the central and western parts of the allotment. Given the efforts made by the design to minimise its height and building bulk within the western section of the site, this has the potential to result in negative amenity impacts on the adjoining residential dwellings.

In response to the control, the proposal has considered the character of the Gardere Ave and the predominant setbacks existing to that street. Features of the secondary streets existing character are noted as follows:

- In relation to the subject site – the existing dwelling house adjoins / encroaches the northern boundary; there is no setback, no perimeter fencing. A single car garage with pitched roof at zero setback is adjacent to the northern Gardere Ave boundary.
- Properties to the west are observed to be narrow in width; several properties have front first floor terraces above driveways and garages at the dwelling frontages; the allotments are angled in a north easterly direction; the street boundary is angled creating a zig-zag (rather than parallel) street alignment (Figure 15).
- It is assessed that the proposal responds with an appropriate site-specific design. The following aspects of the design are noted in response to the character of the secondary street and minimising its impact on this street:
- The proposed landscaped areas are located along the northern and eastern side of the proposed dwelling with areas optimised at the allotment's street frontages to enable planting to enhance its streetscape interfaces.





**Figure 15 – the existing secondary front setback character along Gardere Ave. The existing garage on the subject site interrupts the angled alignment of buildings and front yards whereas the proposal is more compatible with this through its angular alignment.**

- No boundary fencing is proposed to the allotment's Gardere Ave street frontage aimed at optimising the view corridor along Gardere Ave and increasing the visibility of the landscaped areas.
- The proposed dwelling design is excavated into the site topography to minimise its height, bulk and scale when viewed from Gardere Ave. For example, the ground floor level at the western end is 850mm below existing ground level. The wall height adjacent to the western side boundary is approx. 5.16m (RL 17 AHD) being a significant 2.040m under the maximum wall height.
- The materials, finishes, and articulation of the northern wall adjacent to the street has been previously addressed.
- The western section of the secondary front setback is angled specific to the view corridor angle from the front deck of the property at 2 Gardere Ave and facilitates the maintenance of a view corridor. The northern setback is progressively increased as the building approaches the property's western boundary where it reaches 3.5m. The intention of this design feature is to optimise the view corridor to the beach and ocean across the north western corner of the subject site and along the adjacent road reserve from the property at 2 Gardere Avenue.
- The proposal results in a redistribution of wall heights on the site. The majority of the building is significantly under the 7.2m maximum wall height, notably these sections include the walls adjacent to the site's Gardere Ave street frontage and western boundary interface with 2 Gardere Ave. This minimises the bulk and scale of the buildings longest visible elevation to the Gardere Ave.
- A low-profile flat roof is proposed in place of a more traditional, pitched, or higher profile roof that will result in a reduced bulk and scale when viewed from Gardere Ave.
- The design outcome is assessed as providing an aesthetically pleasing, site specific design that is orientated to address both adjoining streets and provides an appropriate and appealing streetscape outcome.

Based on the above, the design's front setback is acceptable given that it achieves compatibility with the pattern of buildings in the streetscape.

The merits of the design are appropriate in responding to the circumstances the site and the objectives of the DCP control. The objectives are repeated and responded to below.

- ***To create a sense of openness.***

Response: the design will achieve a sense of openness given that no perimeter fences are proposed. This creates an opportunity for the garden areas within the site to blend with the soft landscape (turf) areas within the adjacent verge. This will enhance the visibility of the building setback areas from the adjacent streets.

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

Response: there are no notable landscape areas or elements upon the adjacent site's that establish a pattern to be reflected by the proposal. the proposal

As previously addressed, a compatible primary front setback alignment is proposed at Carrington Pde and Gardere Ave.

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

Response: as previously addressed, a compatible primary front setback alignment is proposed at Carrington Pde and Gardere Ave.

- ***To achieve reasonable view sharing.***

Response: a reasonable sharing of views is provided, and this is addressed under Sections 3.2 and 5.1.1 of this report.

Based on the above it is assessed that strict numerical compliance with the numerical aspect of the control would be unreasonable, not beneficial in achieving a more desirable and balanced planning outcome, and inconsistent with 4.15 3A(b) of the Environmental Planning and Assessment Act 1979 (the Act) Where there are appropriate circumstances for the consent authority to be flexible in applying the DCP's numerical control.

### **Primary street setback**

In response to the provisions of the planning control and the characteristics of the site the following aspects of the design are noted:

- The design provides a lower height and is narrower in its building frontage (width) than 70 and 69 Carrington Pde.
- The proposed front setback is compatible with the front dwelling house setbacks of 70 and 69 Carrington Pde noting that the street curves; that nearby dwelling houses are generally close to the street front and the allotments from 62 to 72 Carrington Pde diminish in length (see aerial image figure 5).
- The design provides a 'angled' section to the north eastern corner of the proposed dwelling in response to the allotment's corner-splayed configuration, with the design's front setback ranging from approximately 2.330m to 3.880m.
- As evident on the accompanying architectural plans and survey plan, the proposal addresses the predominant front building line character that is established by the dwelling on the adjoining site to the south at 70 Carrington Pde. Also, the two properties further to the south at 69 and 68 Carrington Pde have dwellings that are close to the street frontage. It is assessed the design achieves compatibility with the general setback (front and sides) pattern of buildings and the mixed character of building forms in the streetscape.

- A landscaped curtilage is proposed to the site's Carrington Pde frontage. It is not interrupted by a driveway or garage which are notable features of the southern adjacent properties. A garden is proposed at the front with a modest height retaining wall that, without perimeter fencing, will facilitate the landscape area within the site visually and physically blending with the turfed verge of the road reserve.
- In relation to the front setback character, 70 Carrington Pde incorporates a front terrace at the upper floor level. 69 Carrington Pde has a sheer 3 storey frontage to Carrington Pde which includes a garage and two levels above.
- The proposal provides a landscaped frontage that will be effective in reducing the visual scale of the building when viewed from the east.
- The proposed design is considered to have an appropriate front set back that will be compatible with the built form and landscape character within the visual catchment of the site.
- The proposed design provides an interesting building form that is narrower at the street frontage with angular sections at the side that increase the side setbacks at the street frontage.

For these reasons, it is assessed, the upper level of the proposed dwelling does not need to be further setback to have a compatible streetscapes relationship.

The proposal complies with the height of buildings development standard. The building elements that exceed the numerical wall height control have been depicted previously. These elements are recessed from the sides and rear of the building. The extent to which the proposal exceeds the wall height control does not contribute significantly or inappropriately to the bulk and scale of the proposed dwelling house.

Based on the above, it is assessed, the circumstances are such that the proposed design's setback and presentation to Carrington Pde is reasonable in terms of its bulk and will not visually 'overwhelm' the other nearby dwelling houses within the streetscape.

### **5.1.7 D1 – Landscaped area**

The proposal displays an exceedance with the minimum landscaped area control as marked within sheet 900 of the architectural plans. This variation is acknowledged, and justification is provided below, having regard to the circumstances of the case, merits of the design, and in response to the objectives of the planning control.

The objectives of control D1 are repeated and responded to below.

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

Response:

There is a single palm tree on the site currently (shown on the survey) therefore there is currently minimal vegetation or habitat for wildlife.

The architectural plans make provision for planting at the east and north western sections of the site.

The proposal involves a net increase in landscape planting, located to the northwest and east of the proposed dwelling house, that will be visible from the adjoining streets and enhance the existing quality of the streetscape.

The landscape areas and plantings along the northern side of the site will be visible from the adjoining roads (both Gardere Ave and Carrington Pde), noting that this frontage will be visible from the adjacent T-junction intersection) and a compatible primary front setback to Carrington Pde is provided.

It is assessed that the proposal involves a reasonable enhancement of the property for vegetation or habitat for wildlife, having regard to the site's R2 zone and the mixed and built-up development character within the local context.

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

Response: The proposal involves a net increase in landscape planting. A condition of consent may reasonably be imposed regarding what proportion of this is indigenous vegetation in order to provide habitat for wildlife.

**• 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.**

Response: The proposal involves a net increase in landscape planting that will be sufficient to enable the establishment of a garden setting to the proposed dwelling house. the height bulk and scale of the building is considered appropriate, for the reasons previously outlined, and It is assessed, landscaping is not needed to mitigate the visual appearance of the building.

The proposed dwelling house has been designed so that fencing to the street frontages on this relatively exposed corner is not needed to achieve privacy and screening. As stated in the Architectural Design Statement, in response to the climatic conditions and the exposed corner location of the site, the external walls of the dwelling house effectively contain the private open spaces, for example clothes drying area and BBQ area at rear, central light / ventilation well and garden (level 1), private open space at the roof top. As a result, boundary fencing not needed to screen clotheslines and provide privacy to screen private open spaces.

The building design uses no boundary fencing to each of the allotment's street frontages, aimed at optimising the visibility of the proposed eastern and northern landscaped areas when viewed from the adjacent streets, and minimising the visual impact of the built form on the adjacent streetscapes.

The visibility of the proposed landscape areas and plantings are optimised by there being no perimeter fencing to the primary and secondary street frontages (a condition of consent may reasonably be imposed to ensure this outcome). The design enables the proposed landscape areas to physically and visually blend with landscape verge meaning that

Whilst smaller than the DCP's 2m minimum dimensions for landscape area and being less than 3.5 metres for the northern setback, the areas will read as part of a larger landscape curtilage.

Perimeter boundary fencing would result such areas being visually interrupted, partially or wholly obscured. In the absence of perimeter fences there is an opportunity for the garden areas within the site to blend with the soft landscape (turf) areas within the adjacent road verge. To a casual observer, without perimeter fencing, the proposed land will read visually as one soft landscaped space providing an appropriate garden setting to the design.

- ***To enhance privacy between buildings.***

Response: There are no inappropriate privacy impacts associated with the proposal.

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

Response: appropriate outdoor recreational opportunities are provided in the form of: roof level terrace, light well, garden and central courtyard space within level 1, terrace along the northern edge of level 1. These are appropriate to the site's corner location, constrained proportions, and climatic conditions.

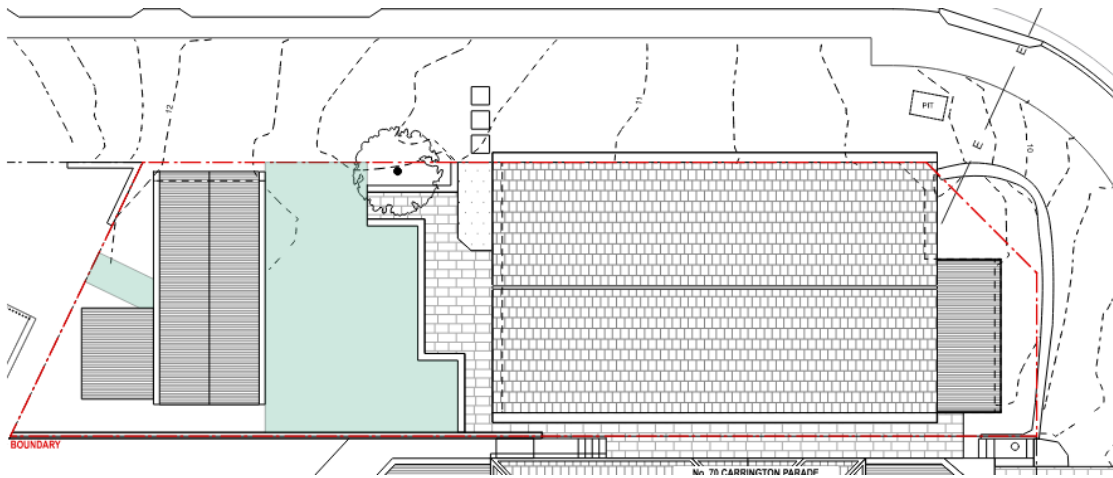
- ***To provide space for service functions, including clothes drying.***

Response: appropriate space is provided for service functions within the design, including clothes drying, driveway, letter box, and bin storage.

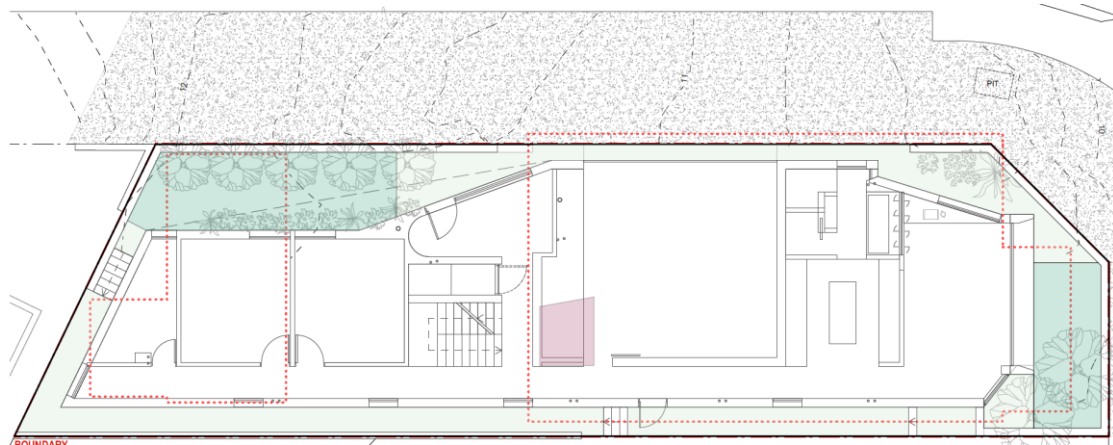
- ***To facilitate water management, including on-site detention and infiltration of stormwater.***

Response: appropriate water management measures are available to the site and may be conditioned as part of a consent. Stormwater reuse will occur through water storage tanks under the BASIX requirements.

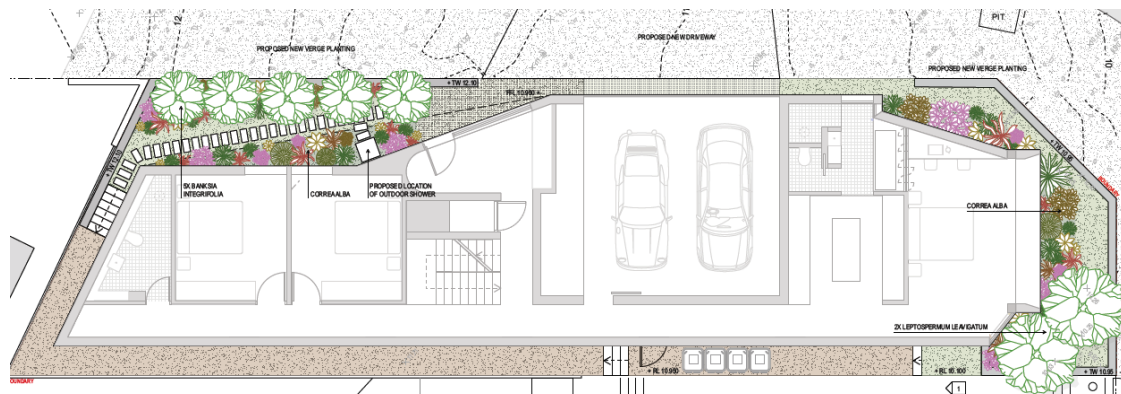




**Figure 16 – the existing extent of landscape area (as measured in accordance with the DCP – min dimension 2m)**



**Figure 17 – the proposed extent of landscape area (as measured in accordance with the DCP – min dimension 2m) is increased to the site's street frontages**



**Figure 18 – the proposed landscaping treatments**



### 5.1.8 Conclusion - variations to numerical aspects of the DCP

Based on the above, it is concluded that the proposed variations are contextually appropriate, noting the merits of the design, and satisfy the objectives of the planning controls.

Under clause (3A)(b) of Section 4.15 of the Act, it is appropriate for the consent authority to be flexible in applying the controls where the objectives of those controls have been satisfied.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of DCP. Accordingly, our assessment finds that these aspects of the proposal are worthy of support, in this particular circumstance.

### 5.1.9 Broader DCP Compliance Assessment

Clause	Compliance with Requirement	Consistent with aims and objectives
<b>Part C - Siting Factors</b>		
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	2 car spaces - Yes	Yes
C4 Stormwater	Drain via gravity to the street system - Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to constructed Council drainage easements		
C7 Excavation and landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
<b>Part D - Design</b>		
D6 Access to Sunlight  Shadow diagrams showing the existing and proposed shadows accompany and support the proposal. They demonstrate that compliance with the DCP is achieved. The following key aspects are noted.  The site and the adjoining properties have an east / west orientation to 70 Carrington Parade. As a result, shadow diagrams demonstrate that shade will be relatively evenly shared between the front yard (morning) and rear yard (afternoon) of the	Yes	Yes

Clause	Compliance with Requirement	Consistent with aims and objectives
<p>adjacent property at 70 Carrington Parade.</p> <p>This reflects the existing development &amp; shading pattern for properties along the western side of 70 Carrington Parade, and provides a relatively even distribution of shade, consistent with the development pattern along the street.</p> <p>The DCP requires:</p> <p><i>'1. Development should avoid unreasonable overshadowing any public open space.</i></p> <p><i>2. At least 50% of the required area of private open space of each dwelling and at least 50% of the required area of private open space of adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21'.</i></p> <p>In accordance with Clause D6 of the DCP, the sunlight available to the private open space of adjoining the dwelling will not be impacted by more than 3 hours between 9am and 3pm on 22 June.</p> <p>It is assessed that, whilst shade onto the adjoining property will be moderately increased above the current levels, the extent of the increase is within reasonable limits, and satisfies the DCP. Therefore, it is concluded that the provisions of the control are satisfied.</p>		
D7 Views – addressed separately within section 5.1.5 of this report	Yes	Yes
<p>D8 Privacy –</p> <p>Privacy has been considered in the proposed design and satisfies the DCP's objectives. The following aspects of the proposal are noted:</p> <ul style="list-style-type: none"> <li>Side boundary facing window openings are limited and appropriate in terms of their function (the rooms that they serve), location, sill height, and extent. The proposed upper level south side facing windows have a minimum high internal sill height and will provide appropriate privacy.</li> <li>Privacy screens are proposed to the balconies and terraces, on each side. In relation to the west facing balconies, being located at the site's street frontage, there is generally a lower expectation for complete privacy in these locations.</li> </ul>	Yes	Yes

Clause	Compliance with Requirement	Consistent with aims and objectives
Considering these matters, it is concluded that the proposal will not significantly or unreasonably affect the visual privacy of the neighbouring properties.		
<b>D9 Building Bulk</b> The proposal is appropriately designed and articulated noting that: <ul style="list-style-type: none"> <li>▪ The building design modulates its building form and steps from the southern side boundary responsive to the slope of the land.</li> <li>▪ The building form is appropriately articulated, ensuring that the bulk, and scale of the proposed building is appropriate.</li> <li>▪ Overall, the proposal will renew and improve the site's existing built form quality.</li> </ul>	Yes	Yes
<b>D10 Building Colours and Materials</b> The proposal will employ appropriate materials and finishes to be compatible with the location, setting and mixed dwelling house character.	Yes	Yes
<b>D11 Roofs</b>	Yes	Yes
<b>D12 Glare and Reflection</b>	Yes	Yes
<b>D13 Front fences and front walls</b>	NA	NA
<b>D14 Site facilities</b>	Yes	Yes
<b>D15 Side and rear fences</b>		
<b>D16 Swimming Pools and Spa Pools</b>	NA	NA
<b>D17 Tennis courts</b>	NA	NA
<b>D18 Accessibility</b>	Yes	Yes
<b>D19 Site consolidation in the R3 and IN1 zone</b>	NA	NA
<b>D20 Safety and security</b>	Yes	Yes
<b>D21 Provision and location of utility services</b>	Yes	Yes
<b>D22 Conservation of Energy and Water</b>	Yes	Yes
<b>Part E - The Natural Environment</b>		
<b>E1 Preservation of Trees or Bushland Vegetation</b>	Yes	Yes

Clause	Compliance with Requirement	Consistent with aims and objectives
E2 Prescribed Vegetation	NA	NA
E3 Threatened species, populations, ecological communities listed under State or Commonwealth legislation, or High Conservation Habitat	NA	NA
E4 Wildlife Corridors	Yes	Yes
E5 Native Vegetation	Yes	Yes
E6 Retaining unique environmental features	NA	NA
<p>E7 Development on land adjoining public open space</p> <p>The site is located opposite land zoned for public recreation (Curl Curl Beach). Part E7 of the DCP 'Development on Land Adjoining Public Open Space' is therefore applicable.</p> <p>When viewed from Carrington Pde and land zoned for public recreation to the east, the two dwelling houses to the south at 69 and 70 Carrington Pde will be viewed within the immediate visual context of the proposed development and these properties contain 2-3 level dwelling houses. They include a partially excavated driveway and parking level within their street frontage which contributes to the visual scale (by lowering the existing ground level) of these developments when viewed from the areas to the east (figures 4 &amp; 5). The proposal incorporates a landscaped eastern frontage with no excavated garage or driveway and that this will enhance the property's streetscape presentation and reduce the apparent bulk and scale of the building when viewed from areas to the east.</p> <p>The overall building height will be compatible with the adjoining dwelling houses to the south noting: the upper-level roof access is a recessive element set back 14m from the eastern edge of the building; the proposed design is narrower than the dwelling houses to the south, the height of the proposal is less than the ridge heights of the adjoining dwelling houses. For these reasons, and the other streetscape attributes, explained within this report the proposal is assessed as having inappropriate presentation to the beach reserve to the east of the site.</p>	Yes	Yes
E8 Waterways and Riparian Lands	NA	NA
E9 Coastline Hazard	NA	NA

Clause	Compliance with Requirement	Consistent with aims and objectives
E10 Landslip Risk – report accompanying	Yes	Yes
E11 Flood Prone Land	NA	NA

## **6 Section 4.15 the Environmental Planning and Assessment Act 1979 – Summary**

The proposal has been assessed having regard to the matters for consideration pursuant to S.4.15 of the Act and to that extent Council can be satisfied of the following:

- There will be no unreasonable adverse built environment impacts arising from the proposed physical works on the site.
- The site is appropriate for accommodating the proposed development. The proposal has sufficiently addressed environmental considerations. There will be no unreasonable adverse environmental Impacts arising from the proposal.
- The proposal will result in positive social and economic impacts, noting:
  - Employment during the construction phase of the works;
  - Economic benefits, arising from the investment in improvements to the land;
  - Social (and environmental) benefits arising from the renewal of existing housing stock.
- The proposal is permissible and consistent with the objectives of the zone, pursuant to the LEP. The proposal satisfies the provisions of the relevant provisions of the council's DCP.
- It is compatible with the current and likely future character of development within the local context.
- It will not result in any significant unacceptable offsite impacts that limit the use or enjoyment of nearby or adjoining land.
- The proposal will have an acceptable impact when considering key amenity issues such as visual impact, views, overshadowing, noise and privacy.
- Given the site's location and established function, the site is assessed as being entirely suitable for the proposed development.
- The public interest is best served through the approval of the application.



## 7 Conclusion

The application seeks development consent for demolition and construction of a new dwelling house at 72 Carrington Parade, Curl Curl.

The proposal is permissible and consistent with the intent of the built form controls as they are reasonably applied to the site and its circumstances.

The variations proposed to the built form controls within the DCP have been appropriately acknowledged and their acceptability assessed and considered, having regard to the objectives of the relevant controls.

The design (as amended in this DA) has responded to the findings of the Commissioner of the NSW Land and Environment Court as documented herein.

This report demonstrates that the proposal is appropriately located and configured to complement the property's established neighbourhood character. This report demonstrates that the variations will not give rise to any unacceptable residential amenity or streetscape consequences. Accordingly, the variations proposed are considered acceptable under the circumstances.

The proposal will not give rise to any significant or unreasonable adverse environmental consequences. The proposal succeeds when assessed against the Heads of Consideration pursuant to section 4.15 of the Environmental Planning and Assessment Act, 1979 and should be granted development consent.

**BBF Town Planners**



**Michael Haynes**  
Director