

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

|                            |             |
|----------------------------|-------------|
| <b>Application Number:</b> | DA2021/1780 |
|----------------------------|-------------|

|   |   |
|---|---|
| <b>Responsible Officer:</b>               | Stephanie Gelder  |
| <b>Land to be developed (Address):</b>    | Lot 101 DP 1224100, 16 Ellen Street CURL CURL NSW 2096<br>Lot 10 DP 14040, 14 Ellen Street CURL CURL NSW 2096 |
| <b>Proposed Development:</b>              | Demolition works and construction of a new boundary wall and landscaping                                      |
| <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>Land and Environment Court Action:</b> | No  |
| <b>Owner:</b>                             | Terence William Jones<br>Lynne Ellen Jones<br>Mark Robert Aubrey  |
| <b>Applicant:</b>                         | Mark Robert Aubrey  |

|                                  |                                |
|----------------------------------|--------------------------------|
| <b>Application Lodged:</b>       | 05/10/2021                     |
| <b>Integrated Development:</b>   | No                             |
| <b>Designated Development:</b>   | No                             |
| <b>State Reporting Category:</b> | Residential - Other            |
| <b>Notified:</b>                 | 18/10/2021 to 01/11/2021       |
| <b>Advertised:</b>               | Not Advertised                 |
| <b>Submissions Received:</b>     | 0                              |
| <b>Clause 4.6 Variation:</b>     | Nil                            |
| <b>Recommendation:</b>           | Deferred Commencement Approval |

|                                 |              |
|---------------------------------|--------------|
| <b>Estimated Cost of Works:</b> | \$ 96,000.00 |
|---------------------------------|--------------|

### PROPOSED DEVELOPMENT IN DETAIL

The proposed development comprises of the following works:

- Demolish the existing boundary retaining wall and fence between No.14 Ellen Street & No.16 Ellen Street;
- Replace with a new retaining wall and fence on the new boundary approved under DA2020/0147; and
- Associated landscaping works at No.14 Ellen Street.

## 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 Development Control Plan - D13 Front Fences and Front Walls  
Warringah Development Control Plan - D15 Side and Rear Fences

## SITE DESCRIPTION

|                                   |   |
|-----------------------------------|---|
| <b>Property Description:</b>      | <p>Lot 101 DP 1224100 , 16 Ellen Street CURL CURL NSW 2096</p> <p>Lot 10 DP 14040 , 14 Ellen Street CURL CURL NSW 2096</p>  |
| <b>Detailed Site Description:</b> | <p>The subject sites consist of two (2) currently unregistered allotments, approved under DA2020/0147.</p> <p>Currently the subject sites are known as the following:<br/>Lot 10, Deposited Plan No. 14040, 14 Ellen Street Curl Curl;<br/>and<br/>Lot 101, Deposited Plan No. 1224100, 16 Ellen Street, Curl Curl.</p> <p>Under the proposed subdivision approved under DA2020/0147, No.14 Ellen Street is regular in shape with a frontage of 13.915m along Ellen Street and a maximum depth of 38.535m. The site has a survey area of 450m<sup>2</sup>.</p> <p>Under the proposed subdivision approved under DA2020/0147, No.16 Ellen Street is regular in shape with a frontage of 17.33m along Ellen Street and a maximum depth of 29.77m. The site has a survey area of 493m<sup>2</sup>.</p> |

Both sites are located within the R2 Low Density Residential zone from WLEP 2011 and accommodate a dwelling house on each site.

Both sites slope from the front eastern boundary upwards to the rear western boundary over approximately 10 metres.

Both sites contains shrubs, rock outcrops and trees. There are no details of any threatened species on the site.

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

Adjoining and surrounding development is characterised by single and double storey dwelling houses varying in architectural character and design.

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:

##### **DA2020/0147**

Development Application for Consolidation of 3 lots into one lot and resubdivision into 3 Torrens Title lots.

Approved on 18 November 2020.

##### **Mod2021/0194**

Modification Application 4.55(1) for Modification of Development Consent DA2020/0147 granted for consolidation of 3 lots into one lot and re sub-division into 3 Torrens Title lots.

The Modification was in relation to the Condition 14 of DA2020/0147 was incorrectly worded as "88E

instrument". It should have been "88B instrument".  
Approved on 23 April 2021.

#### **Mod2021/0349**

Modification Application 4.55(1) for Modification of Development Consent DA2020/0147 granted for consolidation of 3 lots into one lot and re sub-division into 3 Torrens Title lots.  
The Modification was in relation to deleting conditions No. 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14.  
Approved on 26 June 2021.

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

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

| <b>Section 4.15 Matters for Consideration</b>   | <b>Comments</b>  |
|---|--|
| 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 2011 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><br/>The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 2011 section in this report.</p> <p>(ii) <b>Social Impact</b><br/>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><br/>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 18/10/2021 to 01/11/2021 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 of the application Council received no submissions.

## REFERRALS

| Internal Referral Body                             | Comments   |
|--|--|
| Landscape Officer                                  | <p>The development application is for the replacement of the existing wall and fence involving: demolish the existing boundary retaining wall and fence between 14 &amp; 16 Ellen St; replace with a new retaining wall and fence on the new boundary as per drawings attached to this application; restore and construct landscaping.</p> <p>A subdivision approved under development consent DA2020/0147 is currently under construction to adjust the boundaries of the following three properties: 2 Wyadra Avenue, Freshwater, 14 Ellen St, Curl Curl, and 16 Ellen St, Curl Curl.</p> <p>The application is assessed by Landscape Referral against Warringah Development Control Plan 2011, and the following Warringah Development Control Plan 2011 controls (but not limited to): C1 Subdivision; D1 Landscaped open space and bushland setting; D13 Front Fences and Front Walls; E1 Preservation of Trees or Bushland Vegetation. and E6 Retaining unique environmental features.</p> <p>A Landscape Plan for the boundary wall treatment is submitted with the development application and no concerns are raised by Landscape Referral.</p> |
| Strategic and Place Planning<br>(Heritage Officer) | HERITAGE COMMENTS  |
|  | Discussion of reason for referral  |
|  | <p>This application has been referred as the site is within the vicinity of a heritage item, being <b>Item I128 - Building known as "Stewart House"</b>, listed in Schedule 5 of Warringah LEP 2011. The subject site is located approximately 18 metres from the Stewart House site, but 50 metres from the listed building on the site.</p>  |
|  | Details of heritage items affected   |
|  | <p>Details of this heritage item in the vicinity, as contained in the Warringah Heritage Inventory, are:</p> <p><b>Item I128 - Building known as "Stewart House"</b></p> <p><u>Statement of Significance</u></p> <p>A representative example of the institutional buildings which were erected in the area to provide health &amp; welfare services associated with the sea. Socially important due to the role that it has played in public health &amp; child welfare since 1930.</p> <p><u>Physical Description</u></p> <p>Elevated face brick building of symmetrical design &amp; central entrance. Tiled hipped roof with stepped parapet centrally located above entrance pavillion. Projecting bays at either end. Flat roofed (enclosed) verandahs with terracotta shingle skirts. Circular driveway at front. Central stairway to entrance. Flagpole.</p>  |

| Internal Referral Body | Comments  |    |                       |
|------------------------|---|----|-----------------------|
|                        | Other relevant heritage listings  |    |                       |
|                        | Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005  | No | Comment if applicable |
|                        | Australian Heritage Register  | No |                       |
|                        | NSW State Heritage Register   | No |                       |
|                        | National Trust of Aust (NSW) Register   | No |                       |
|                        | RAIA Register of 20th Century Buildings of Significance   | No |                       |
|                        | Other   | No |                       |
|                        | Consideration of Application  |    |                       |
|                        | <p>This application is for a new boundary retaining wall and fence between 14 and 16 Ellen Street, along with associated landscaping on 14 Ellen Street. The new fence is located on the current 16 Ellen Street site, however it is located to comply with an approved new boundary subdivision between 14 and 16.</p> <p>As these works are approximately 50 metres from the heritage listed building on the Stewart House site, there will be no impact upon the physical or visual significance of this heritage item.</p> <p><b>Therefore, no objection are raised on heritage grounds and no conditions required.</b></p> <p><u>Consider against the provisions of CL5.10 of WLEP 2011:</u><br/>           Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? N/A<br/>           Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No</p> |    |                       |
|                        | Further Comments  |    |                       |
|                        | COMPLETED BY: Janine Formica, Heritage Planner<br>DATE: 4 November 2021   |    |                       |

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

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

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

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

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

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

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

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

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

##### Ausgrid

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

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

##### Comment:

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

#### **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:

#### ***10 Development on certain land within coastal wetlands and littoral rainforests area***

- (1) *The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:*



- (a) *the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,*
- (b) *the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,*
- (c) *the carrying out of any of the following:*
  - (i) *earthworks (including the depositing of material on land),*
  - (ii) *constructing a levee,*
  - (iii) *draining the land,*
  - (iv) *environmental protection works,*
- (d) *any other development.*

Comment:

This clause has been assessed against the subject site and the proposed development. The proposed development is not located on land identified as "coastal wetlands" or "littoral rainforest".

## **11 Development on land in proximity to coastal wetlands or littoral rainforest**

- (1) *Development consent must not be granted to development on land identified as "proximity area for coastal wetlands" or "proximity area for littoral rainforest" on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:*
  - (a) *the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*
  - (b) *the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.*

Comment:

This clause has been assessed against the subject site and the proposed development. The proposed development is not located on land identified as "proximity area for coastal wetlands" or "proximity area for littoral rainforest".

## **12 Development on land within the coastal vulnerability area**

*Development consent must not be granted to development on land that is within the area identified as "coastal vulnerability area" on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:*

- (a) *if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and*
- (b) *the proposed development:*
  - (i) *is not likely to alter coastal processes to the detriment of the natural environment or other land, and*
  - (ii) *is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and*
  - (iii) *incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and*
- (c) *measures are in place to*

ensure  
that  
there  
are  
appropriate  
responses  
to, and  
management  
of,  
anticipated  
coastal  
processes  
and  
current  
and  
future  
coastal  
hazards.

Comment:

This clause has been assessed against the subject site and the proposed development.  
The proposed development is not located on land identified as “coastal vulnerability area”.

### **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:

This clause has been assessed against the subject site and the proposed development.  
The proposed development is not located on land identified as “coastal environment area”.

- (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:

This clause has been assessed against the subject site and the proposed development. The proposed development is not located on land identified as “coastal environment area”.

#### **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 works are not considered to impact on the visual amenity of the scenic coast as the proposal is well designed and sited.

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

#### **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:

This clause has been assessed against the subject site and it is determined the proposed development will not result in an increased risk to coastal hazards.

|  |     |
|--|-----|
| 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        | 4.7m (Retaining Wall) | -           | Yes      |

#### Compliance Assessment

| Clause                          | Compliance with Requirements |
|---------------------------------|------------------------------|
| 2.7 Demolition requires consent | Yes                          |
| 4.3 Height of buildings         | Yes                          |
| 6.2 Earthworks                  | Yes                          |
| 6.4 Development on sloping land | Yes                          |

#### Warringah Development Control Plan

##### Built Form Controls

| Built Form Control                                  | Requirement              | Proposed                     | % Variation* | Complies |
|---|--------------------------|------------------------------|--------------|----------|
| D1 Landscaped Open Space (LOS) and Bushland Setting | 40% (180m <sup>2</sup> ) | 41.82 (188.2m <sup>2</sup> ) | -            | Yes      |

#### Compliance Assessment

| Clause   | Compliance with Requirements | Consistency Aims/Objectives |
|--|------------------------------|-----------------------------|
| A.5 Objectives                                 | Yes                          | Yes                         |
| C4 Stormwater                                  | Yes                          | Yes                         |
| C7 Excavation and Landfill                     | Yes                          | Yes                         |
| C8 Demolition and Construction                 | Yes                          | Yes                         |
| C9 Waste Management                            | Yes                          | Yes                         |
| D1 Landscaped Open Space and Bushland Setting  | Yes                          | Yes                         |
| D2 Private Open Space                          | Yes                          | Yes                         |
| D10 Building Colours and Materials             | Yes                          | Yes                         |
| D13 Front Fences and Front Walls               | Yes                          | Yes                         |
| D14 Site Facilities                            | Yes                          | Yes                         |
| D15 Side and Rear Fences                       | Yes                          | Yes                         |
| D20 Safety and Security                        | Yes                          | Yes                         |
| D21 Provision and Location of Utility Services | Yes                          | Yes                         |

| Clause  | Compliance with Requirements | Consistency Aims/Objectives |
|---|------------------------------|-----------------------------|
| D22 Conservation of Energy and Water            | Yes                          | Yes                         |
| E1 Preservation of Trees or Bushland Vegetation | Yes                          | Yes                         |
| E2 Prescribed Vegetation                        | Yes                          | Yes                         |
| E6 Retaining unique environmental features      | Yes                          | Yes                         |
| E10 Landslip Risk                               | Yes                          | Yes                         |

#### Detailed Assessment

### **D13 Front Fences and Front Walls**

#### Description of front fence

No.16 Ellen Street proposes a front fence along the eastern boundary for a length of 1.6 metres at a height of 1.6 metres. The proposed fencing is to screen the bins of No.16 Ellen Street from the street.

In this instance, as the front fence is for a minimal length along the front boundary and is utilised to screen the bins, the proposed front fencing is supportable.

#### 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 fencing, terracing and retaining walls are compatible with the existing streetscape character while creating visual interest in the public domain.***

#### Comment:

The proposed fencing is compatible with the existing streetscape and creates visual interest using weathered timber that is compatible with the local character.

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

#### Comment:

The proposed front fence uses weathered timber to complement the urban environment.

- ***To avoid a 'walled in' streetscape.***

#### Comment:

The proposed front fence is along the front eastern boundary and accommodates a small portion of the frontage, being 1.6 metres in length. Additionally, the front boundary has an existing masonry retaining wall for a length of 6 metres. As the proposed front fencing is for a portion of the streetscape only this avoids a 'walled in' streetscape.

### **D15 Side and Rear Fences**

#### Description of non-compliance

The proposed side boundary fence between No.14 & No.16 Ellen Street varies in height from approximately 1600mm to 1980mm.

The proposed block retaining wall between No.14 & No.16 Ellen Street varies in height from approximately 1800mm to 4700mm.

Under Part D15 of Warringah Development Control Plan 2011, the requirements for side boundary fences for sloping sites may be averaged and fences and walls may be regularly stepped. Additionally, all fencing materials are to complement the existing neighbourhood. The use of corrugated metal, barbed wire or broken glass is not permitted.

The proposed side boundary fence and block retaining walls are both regularly stepped as the site slopes steeply from the front eastern boundary to the rear western boundary.

In this instance, the side boundary fence and side block retaining wall is the reconstruction of an existing side boundary fence and side block wall that is being moved due to the consolidation and resubdivision of lots approved under DA2020/0147.

The side boundary retaining wall and fence is considered to be supportable, due to the nature of the steep topography to provide privacy and security to adjoining owners of No.14 and No.16 Ellen Street.

#### Merit consideration

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

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

#### Comment:

The proposed side block retaining wall and side boundary fence is a regularly stepped to adequately provide separation between the adjoining sites. The innovate design uses concrete blocks and weathered timber fencing to improve the urban environment.

## **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**

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this application.

## **CONCLUSION**

The site has been inspected and the application assessed having regard to all documentation



submitted by the applicant and the provisions of:

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

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

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

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

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

## **RECOMMENDATION**

### **DEFERRED COMMENCEMENT APPROVAL**

A. THAT Council as the consent authority grant a Deferred Commencement Development Consent being subject to a two (2) year time frame for Deferred Commencement Consents detailed within Section 95 of the EP&A Regulation 2000 to DA2021/1780 for Demolition works and construction of a new boundary wall and landscaping on land at Lot 101 DP 1224100, 16 Ellen Street, CURL CURL, Lot 10 DP 14040, 14 Ellen Street, CURL CURL, subject to the conditions printed below:

B. THAT once the matters detailed within the Deferred Commencement Development Consent conditions are satisfactorily addressed then an operational development consent be issued subject to the time frames detailed within Part A of this recommendation.

## **DEFERRED COMMENCEMENT CONDITIONS**

### **1. Deferred Commencement**

The previously approved consolidation of 3 lots into one lot and resubdivision into 3 Torrens Title lots under consent DA2020/0147 between No.14 Ellen Street (Lot 10 DP 14040), No.16 Ellen Street (Lot 101 DP 1224100) and 2 Wyadra Avenue (Lot 102 DP 1224100) is to be registered with Land Titles (NSW Lands and Property Information Office).

Evidence that the lot has been registered with Land Titles is to be provided to Council.

Evidence required to satisfy the deferred commencement condition/s must be submitted to Council within two (2) years of the date of this consent, or the consent will lapse in accordance with Section 95 of the Environmental Planning and Assessment Regulation 2000. This evidence is to be submitted along with a completed 'Deferred Commencement Document Review Form' (available on Council's website) and the application fee, as per Council's Schedule of Fees and Charges.

Upon satisfaction of the deferred commencement condition/s, the following conditions apply:

## DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

### 2. **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>            |
| Site Plan, Erosion & Sediment, Waste Management - DA3-100, Issue 1 | 31 August 2021 | Peter Stutchbury Architecture |
| Boundary Wall - Plans - DA3-200, Issue 1                           | 31 August 2021 | Peter Stutchbury Architecture |
| Boundary Wall - Long Sections - DA3-400, Issue 1                   | 31 August 2021 | Peter Stutchbury Architecture |
| Boundary Wall - East Elevation - DA3-401, Issue 1                  | 31 August 2021 | Peter Stutchbury Architecture |

| <b>Reports / Documentation – All recommendations and requirements contained within:</b> |               |                                  |
|---|---------------|----------------------------------|
| <b>Report No. / Page No. / Section No.</b>  | <b>Dated</b>  | <b>Prepared By</b>               |
| Preliminary Landslip Assessment   | 19 April 2021 | Crozier Geotechnical Consultants |

b) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

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

d) 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>            |
| Boundary Wall - Landscape Plan - DA3-201 | 31 August 2021 | Peter Stutchbury Architecture |
| Plant Selection - DA3-202                | 31 August 2021 | Peter Stutchbury Architecture |

| <b>Waste Management Plan</b> |                  |                    |
|------------------------------|------------------|--------------------|
| <b>Drawing No/Title.</b>     | <b>Dated</b>     | <b>Prepared By</b> |
| Waste Management Plan        | 1 September 2021 | Mark Aubrey        |

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.

### 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. Security Bond**

A bond (determined from cost of works) of \$1,500 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**

### **6. 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.

### **7. Sydney Water "Tap In"**

The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or



easements. The appropriately stamped plans must then be submitted to the Certifying Authority demonstrating the works are in compliance with Sydney Water requirements.

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

- “Tap in” details - see <http://www.sydneywater.com.au/tapin>
- Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

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

#### **8. 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 TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**

#### **9. Survey Certificate**

A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements, floor levels and the finished roof/ridge height are in accordance with the approved plans.

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

Reason: To demonstrate the proposal complies with the approved plans.

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

#### **10. Landscape Completion**

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

- i) all tree planting shall be a minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees.

Prior to the issue of an Occupation Certificate, details shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

Note: Please consider registering your new tree through the link below to be counted as part of the NSW State Governments 5 Million trees initiative.  
<https://5milliontrees.nsw.gov.au/>

#### **11. Waste Management Confirmation**

Prior to the issue of a Final Occupation Certificate, evidence / documentation must be submitted to the Principal Certifying Authority that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

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

### 12. 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.

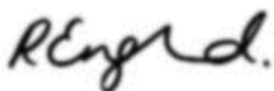
In signing this report, I declare that I do not have a Conflict of Interest.

**Signed**



**Stephanie Gelder, Planner**

The application is determined on 10/11/2021, under the delegated authority of:



**Rebecca Englund, Manager Development Assessments**