

3.2**39 Austin Avenue, North Curl Curl – Construction of a Dwelling House Including Ancillary Site Works****DEVELOPMENT ASSESSMENT REPORT**

Assessment Officer:	Alex McDougall
Address / Property Description:	Lot 66 DP 6143, No. 39 Austin Avenue, North Curl Curl Demolition works and construction of a dwelling house including ancillary site works
Development Application No:	DA2010/1445
Application Lodged:	09/09/2010
Plans Reference:	A00-A15, dated 27/8/10, by Sanctum Design Pty Ltd
Amended Plans:	N/A
Applicant:	Sanctum Design Consultants Pty Ltd
Owner:	P N James, E K Fordham
Locality:	F5 Curl Curl
Category:	Category One ('Housing')
Draft WLEP 2009 Permissible or Prohibited Land use:	R2 – Low Density Residential Permissible
Variations to Controls (Cl.20/Cl.18(3)):	Rear Building Setback, Side Boundary Envelope
Referred to ADP:	YES (5 unresolved objections)
Referred to WDAP:	NO
Land and Environment Court Action:	NO
SUMMARY	
Submissions:	Five (5) Unresolved
Submission Issues:	Side Boundary Envelope, View Loss, Solar Access, Privacy, Trees, Building Bulk, Roofs, Building Height, Unclear Plans, Devaluation
Assessment Issues:	Rear Building Setback, Side Boundary Envelope, View Loss, Privacy, Building Bulk, Safety & Security
Recommendation:	Refusal
Attachments:	Site and Elevation Plans

LOCALITY PLAN (not to scale)



Subject Site: 39 Austin Avenue, North Curl Curl, NSW 2099
Lot 66 DP 6143
Objectors

Public Exhibition: The subject application has been publicly exhibited in accordance with the EPA Regulation 2000, Warringah Local Environment Plan 2000 and Warringah Development Control Plan. As a result, the application was notified to ten (10) adjoining land owners and occupiers for a period of fourteen (14) calendar days commencing on 17/09/2010 and being finalised on 1/10/10.

SITE DESCRIPTION

The subject site is identified as Lot 66 DP 6143, No. 39 Austin Avenue and is located on the southern side of Austin Avenue in the F5 Curl Curl locality. The subject site is rectangular in shape, has an area of 455.3m² and a street frontage of 10.06m. The site exhibits moderate slope, from a high point in the northeast corner of the site of 32.61m AHD to a low point in the southwest corner of the site of 27.29m AHD.

The site is currently occupied by a one storey weatherboard and metal roofed dwelling house towards the rear of the site (front setback 25m) and a separate brick and tile roof garage towards the front of the site (front setback 6.4m). The existing dwelling is setback 2.9m from the rear boundary (a deck to the rear of the site is 1m from the rear boundary).

There is a Sydney Water sewer pipe running through the middle of the site in an east-west direction.

The site is not a heritage item or within the vicinity of a heritage item.

The locality is typified by two storey detached residential dwellings in a variety of architectural styles.

PROPOSED DEVELOPMENT

The proposal consists of the following:

- Demolition of the existing dwelling and garage,
- Construction of new two (2) storey brick and rendered dwelling toward the rear of the site, in the following configuration:
 - o Lower Ground Floor: Three (3) bedrooms, two (2) bathrooms, rumpus room, study, store room, laundry room and outdoor terrace,
 - o Ground floor: Kitchen, living room, meals room, powder room, store room, pantry, sunroom, gallery, and summer terrace,
- Detached two car garage toward the front of the subject site,
- Landscaping, and
- Ancillary site works.

AMENDMENTS TO THE SUBJECT APPLICATION

No amended plans were received.

STATUTORY CONTROLS

- a) Environmental Planning and Assessment Act 1979 (EPA Act 1979);
- b) Environmental Planning and Assessment Regulations 2000;
- c) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2000;
- d) State Environmental Planning Policy (Infrastructure) 2007;
- e) Warringah Local Environmental Plan 2000;
- f) Warringah Development Control Plan;
- g) Warringah Section 94A Development Contributions Plan; and
- h) Warringah Draft Local Environmental Plan 2009;

PUBLIC EXHIBITION

The subject application has been publicly exhibited in accordance with the EPA Regulation 2000, Warringah Local Environment Plan 2000 and Warringah Development Control Plan. As a result, the application was notified to ten (10) adjoining land owners and occupiers for a period of fourteen (14) calendar days commencing on 17/09/2010 and being finalised on 1/10/10.

As a result of the public exhibition process submissions have been received from:

Submission Received	Address
Michelle Peters	38 Austin Avenue, North Curl Curl NSW 2099
Alison Hilton	37 Austin Avenue, North Curl Curl NSW 2099
Marcus Crow	40 Austin Avenue, North Curl Curl NSW 2099
Philip McAleer	42 Austin Avenue, North Curl Curl NSW 2099
Kathryn Gleeson	41 Austin Avenue, North Curl Curl NSW 2099

The matters raised within the submissions are addressed hereunder:

1. *The breaches of the Side Boundary Envelope are unacceptable*

Comment: The proposal does include breaches of the side boundary envelope built form control. Notwithstanding WLEP 2000 Clause 20 allows for variations to a built form control following merit consideration where it can be demonstrated that such a variation satisfies all relevant general principles of development control, is consistent with the desired future character of the locality, and satisfies applicable SEPPs. In summary, the proposal was deemed to not satisfy the requirements to be considered for a variation to the control. This issue is considered to have determinative weight. For further explanation see the "Built Form Controls" section of this report.

2. *A mock-up/framework is necessary to consider the impacts of the development*

Comment: It is considered unnecessary to request the applicant to construct a mock up frame of the proposed development because the application contained sufficient information to assess the proposal. This issue is not considered to have determining weight to warrant refusal of the application.

3. *The building height does not comply with the built form control*

Comment: An assessment of the submitted plans confirms that the dwelling complies with the building height built form control for the locality. The proposed dwelling will be under the required 8.5m overall height limit, with a maximum overall building height of 7.7m. Additionally, the proposal complies with the 7.2m ground floor to ceiling height limit, with a ceiling height of 7.2m.

4. *The impact on solar access is unacceptable (including the effect on solar panels, back yards and pools) to neighbouring land.*

Comment: The solar access resulting from the development is detailed in the Clause 62 assessment under the heading 'General Principles' later in this report. In summary, the proposal was found to comply with the solar access control. This issue is not considered to have determining weight.

5. *The removal of trees will adversely affect privacy*

Comment: While the proposal includes the removal of seven (7) trees the landscape plan included in the application provides for the planting of eight (8) trees along the side boundaries. While new trees cannot be relied on to totally protect privacy, over time they will assist to improve it. The proposal was assessed with regards to privacy and was found to be unacceptable regardless of the screen tree planting proposed. See discussion under the heading General Principles - Clause 65 later in this report for more information. This issue is considered to have determining weight.

6. *The tree to north of site is dangerous and should be removed*

Comment: Council's tree officer inspected the tree and determined that the tree was healthy with no visual defects. As such there is no safety reason for the tree to be removed.

7. *The proposal will result in unacceptable view loss as a result of non-compliances with the built form controls.*

Comment: The view loss has been assessed against the planning principle established in the Land and Environment Court Case *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*. See discussion detailed under the heading General Principle - Clause 61 later in this report. In summary, the proposal was found to reasonably share views. This issue is not considered to have determining weight.

8. *The proposal includes large areas of unarticulated continuous wall planes which do not provide visual relief.*

Comment: The building bulk of the proposal is detailed in the Clause 66 assessment under the heading 'General Principles' later in this report. In summary, the proposal was found to have an unacceptable building bulk. This issue is considered to have determining weight.

MEDIATION

Has mediation been requested by the objectors?	No
Has the applicant agreed to mediation?	No
Has mediation been conducted?	No

LAND AND ENVIRONMENT COURT ACTION

Nil

REFERRALS

External Referrals

Energy Australia

The development application was referred to Energy Australia on 16 September 2010 to address the requirements of SEPP Infrastructure 2005. Energy Australia advised that they had no issues with the proposed development subject to the standard conditions as per their advice letter dated 20 September 2010.

Internal Referrals

Landscape Officer

Council's Landscape Officer has no objection was raised to the proposed development, subject to condition of consent.

Development Engineers

Council's Development Engineers have no objection to the proposed development, subject to a deferred commencement condition requiring a stormwater drainage easement to be created through the downstream property at No. 40 Pitt Road. No stormwater designs/plans have been approved as part of this recommendation.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	See discussion on “Draft Environmental Planning Instruments” in this report.
Section 79C (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 79C (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 79C (1) (a)(iv) – Provisions of the regulations	<p>The EPA Regulations 2000 requires the consent authority to consider the provisions of the Building Code of Australia. This matter has been address via a condition of consent.</p> <p>Clause 92 of the EPA Regulations 2000 requires the consent authority to consider AS 2601 - 1991: <i>The Demolition of Structures</i>. This matter has been address via a condition of consent.</p>
Section 79C (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the General Principles of Development Control in this report. The proposal is not considered to be satisfactory due to its breaches of the applicable built form controls and unsatisfactory design in addressing building bulk, privacy and rear building setback under the general principles of development control.</p> <p>(ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 79C (1) (c) – the suitability of the site for the development	The site is considered suitable for a residential dwelling development. However, given the non-compliances with the built form controls and unsatisfactory design in responding to the General Principles of Development Control, the proposal is not suitable having regard to existing site constraints and impacts on the streetscape, surrounding neighbours and community.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” in this report.
Section 79C (1) (e) – the public interest	Five (5) submissions were received in objection to the proposal. The proposal is not considered to be in the public interest given the non-compliances with the built form controls and General Principles of Development Control under WLEP 2000.

DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS:

Draft Warringah Local Environmental Plan 2009 (Draft WLEP 2009)

Definition: "Dwelling House"

Land Use Zone: R2 Low Density Residential

Permissible or Prohibited: Permissible

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

Objectives of R2 Low Density Residential Zone:

- *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 harmonious with the natural environment of Warringah."*

Comment: The proposal meets the objectives of the R2 Low Density Residential zone by providing housing in a landscaped setting.

Principal Development Standards:

Development Standard	Required	Proposed	Complies	Clause 4.6 Exception to Development Standard
Minimum Subdivision Lot Size:	450m ²	455.3m ²	YES	N/A
Height of Buildings:	8.5m	7.7m	YES	N/A

The proposed development is consistent with the aims and objectives of the Draft WLEP 2009.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPI's)

State Environmental Planning Policies (SEPPs)

State Environmental Planning Policy No 55 – Remediation of Land

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



State Environmental Planning Policy - BASIX

A BASIX certificate has been submitted with the application. All required BASIX commitments have been noted on the application plans. Furthermore, a condition of consent will be imposed requiring compliance with the requirements of the applicable BASIX certificate with any recommendation for approval.

State Environmental Planning Policy - Infrastructure

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

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

The proposal is not within or immediately adjacent to any of the above electricity infrastructure and does not include a proposal for a swimming pool; as such the development application is not required to be referred to the electricity supply authority. However, the proposal was referred, as a matter of procedure. Energy Australia advise that they have no objection to the proposed development and as such the subject application is considered to satisfy the provisions of Clause 45 SEPP Infrastructure.

Local Environment Plans (LEPs)

Warringah Local Environment Plan 2000 (WLEP 2000)

Desired Future Character (DFC)

The subject site is located in the F5 Curl Curl Locality under Warringah Local Environmental Plan 2000.

The Desired Future Character Statement for this locality is as follows:

“The Curl Curl locality will remain characterised by detached style housing in landscaped settings interspersed by existing apartment style housing and a range of complementary and compatible uses. The land containing the existing Bowling Club at Lot 2682 DP 752038 on Abbott Road and the land containing the existing Harbord Bowling Club at Lot 4 DP 601758 on Stirgess Avenue will continue to be used only for recreation facilities.

Future development will maintain the visual pattern and predominant scale of detached style housing in the locality. The streets are to be characterised by landscaped front gardens and front building setbacks which are consistent with surrounding development. The exposed natural sandstone rock outcrops throughout the locality will be maintained. Development on prominent hillsides or hilltops must be designed to integrate with the landscape, topography and long distance views of the hill. Unless exemptions are made to the housing density standard in this locality statement, any subdivision of land is to be consistent with the predominant pattern, size and configuration of existing allotments in the locality.

The locality will continue to be served by the existing local retail centres in the areas shown on the map. Future development in these centres will be in accordance with the general principles of development control provided in clause 39."

The proposed development is defined as "housing" under the WLEP 2000 dictionary. "Housing" is identified as Category 1 development in this locality.

Clause 12(3)(a) of WLEP 2000 requires the consent authority to consider Category 1 development against the locality's DFC statement. Notwithstanding Clause 12(3)(a) only requires the consideration of the DFC statement, the proposed development results in non-compliances with the Rear Building Setback and Side Boundary Envelope Built Form Controls, as such pursuant to Clause 20(1) a higher test, i.e. a test of consistency against the Locality's DFC is required.

Accordingly, an assessment of consistency of the proposed development against the locality's DFC is provided hereunder:

Requirement: *"The Curl Curl locality will remain characterised by detached style housing in landscaped settings interspersed by existing apartment style housing and a range of complementary and compatible uses. The land containing the existing Bowling Club at Lot 2682 DP 752038 on Abbott Road and the land containing the existing Harbord Bowling Club at Lot 4 DP 601758 on Stirgess Avenue will continue to be used only for recreation facilities."*

Comment: The proposed dwelling will be setback significantly from Austin Avenue. Only the proposed double garage will be readily apparent from the street. The proposed dwelling house is of detached style and will have sufficient landscaping in the front yard to provide a landscaped setting to the street. The front setback will remain largely unchanged and as such the proposal can be said to maintain the landscaped setting and satisfy this aspect of the DFC.

Requirement: *"Future development will maintain the visual pattern and predominant scale of detached style housing in the locality. The streets are to be characterised by landscaped front gardens and front building setbacks which are consistent with surrounding development. The exposed natural sandstone rock outcrops throughout the locality will be maintained. Development on prominent hillsides or hilltops must be designed to integrate with the landscape, topography and long distance views of the hill. Unless exemptions are made to the housing density standard in this locality statement, any subdivision of land is to be consistent with the predominant pattern, size and configuration of existing allotments in the locality."*

Comment: The visual pattern and predominant scale of the locality is that of detached two storey housing in a variety of architectural styles setback varying distances from Austin Avenue. The proposed dwelling will result in a modern detached two storey dwelling. The breaches in regards to side boundary envelope are not of a magnitude likely to detract from the streetscape (in terms of visual bulk). Opportunities for landscaping in the front setback is constrained by the width of the site, however the setback of the garage is compliant with the built form control. Exposed natural rock outcrops to the rear of the site will be maintained. The building is designed to step down in height with the natural topography and will be compatible with the existing long distance view of the hill. No subdivision will take place. The proposal is considered to satisfy this aspect of the DFC.

Requirement: *"The locality will continue to be served by the existing local retail centres in the areas shown on the map. Future development in these centres will be in accordance with the general principles of development control provided in clause 39."*

Comment: The proposal does not affect the existing local retail centres and as such this part of the DFC is not applicable to the proposed development.

As detailed above the proposed development is considered to be consistent with the Locality's DFC statement.

Built Form Controls (Development Standards)

The following table outlines compliance with the Built form Control of the above locality statement:

Built Form Standard	Required	Proposed	Compliance
Housing Density	1 dwelling for 450m ² of site area.	1 dwelling on existing 455.3m ² allotment	YES
Building Height	8.5m (overall)	7.7m	YES
	7.2m (ground to ceiling)	7.2m	YES
Front Building Setback	6.5m	6.5m	YES
Rear Building Setback	6m	2.5m (to roof) 3.6m (to wall planes)	NO. See Clause 20
Side Boundary Envelope and Side Setback	45 degrees @ 5m	Non-compliant	NO. See Clause 20
	0.9m 0.9m	0.9m (Eastern Elevation) 0.9m (Western Elevation)	YES YES
Landscaped Open Space	40% of the site area	40.1% (182.5m ²)	YES

The proposed development fails to satisfy the Locality's Rear Building Setback and Side Boundary Envelope Built Form Controls, accordingly, further assessment is provided against the provisions of Clause 20(1) hereunder.

Clause 20(1) stipulates:

"Notwithstanding clause 12 (2) (b), consent may be granted to proposed development even if the development does not comply with one or more development standards, provided the resulting development is consistent with the general principles of development control, the desired future character of the locality and any relevant State environmental planning policy."

In determining whether the proposal qualifies for a variation under Clause 20(1) of WLEP 2000, consideration must be given to the following:

(i) General Principles of Development Control

The proposal is inconsistent with Clauses 63A, 65, & 66 of the General Principles of Development Control and accordingly, fails to qualify to be considered for a variation to the development standards, under the provisions of Clause 20(1) (See discussion on "General Principles of Development Control" in this report for a detailed assessment of consistency).

(ii) Desired Future Character of the Locality

The proposal is consistent with the Locality's Desired Future Character Statement and accordingly, qualifies to be considered for a variation to the development standards, under the provisions of Clause 20(1) (See discussion on "Desired Future Character" in this report for a detailed assessment of consistency).

(iii) Relevant State Environmental Planning Policies

The proposal has been considered consistent with all applicable State Environmental Planning Policies. (Refer to earlier discussion under 'State Environmental Planning Policies'). Accordingly the proposal qualifies to be considered for a variation to the development standards, under the provisions of Clause 20(1).

Notwithstanding, the proposal not qualifying to be considered for variations to the built form controls, for the sake of a full assessment, the requested variations to the built form controls will be assessed below.

Description of variations sought and reasons provided:

Rear Building Setback

Required: 6m

Proposed: 2.5m (to roofing), 3.6m (to wall planes)

Response:

In assessing this non-compliant element of the proposal, it is necessary to consider the intent of the Rear Building Setback Built Form Control against the following merit considerations below:

Create a sense of openness in rear yards.

Comment: The proposal, in being only 2.5m from the rear setback, and the rear façade being up to 7m in height, fails to maintain a sense of openness in the rear yard.

Preserve the amenity of adjacent land.

Comment: The breach of the rear building setback affects the amenity of the adjoining properties in the following ways:

Privacy: The breach of the rear setback results in a kitchen window looking down on the primary private open space of the adjoining property to the west.

View Loss: The breach of the rear setback results in minor district view loss across a side boundary and as such is not considered to unreasonably share views.

Solar Access: The adjoining properties will maintain sunlight to 50% of their principal private open space for at least 2 hours between 9am and 3pm on June 21st.

Visual Bulk: The proposal results in a reduction in amenity for the property to the west by creating a sense of enclosure and visual bulk on its rear yard.

Maintain the visual continuity and pattern of buildings, rear gardens and landscape elements

Comment: While the adjoining property to the east of the subject site at No. 37 Austin Avenue has a similar rear setback to the proposal the neighbouring dwelling was approved under previous planning legislation in 1995. Other than this example every dwelling fronting Austin Avenue has a compliant rear building setback. As such the proposal does not maintain the general visual continuity and pattern of buildings.

Provide opportunities to maintain privacy between dwellings

Comment: The proposal includes no planting in the rear yard. However, as the rear yard contains rock outcrop and this creates a natural site constraint.

The proposal is considered to be inconsistent with the merit considerations of this control.

Side Boundary Envelope Built Form Control

Required: 45 degrees from 5m above natural ground level at the side boundaries

Proposed: Side Boundary Envelope Breach Western elevation (Max Height of 1.0m, Total Length of 8.7m), Eastern elevation (Max Height of 0.7m, Length of 4.2m).

Response:

In assessing this non-compliant element of the proposal, it is necessary to consider the intent of the Side Boundary Envelope and Side Setback Built Form Built Form Control. Accordingly, compliance with the intent is addressed below:

Intent: Ensure that development does not become visually dominant by virtue of its height and bulk.

Comment: The proposal will not be visually dominant by virtue of its height and bulk when viewed from Austin Avenue as it is significantly setback from the front boundary. However, the breach in the side boundary envelope, especially to the rear western side of the site, is directly adjacent to the rear deck and yard of No. 41 Austin Avenue. As such these breaches serve to exacerbate the feeling of visual bulk and enclosure on this adjoining property and is considered to be unacceptable.

Intent: Preserve the amenity of the surrounding land.

Comment: The breaches of the side boundary envelope affect the amenity of the adjoining properties in the following ways:

Privacy: The area of the proposed dwelling that breaches the side boundary envelope does not include any windows and as such does not affect the privacy of adjoining properties.

View Loss: The breach of the side boundary envelope results in slightly increased view loss from the properties to the north of the dwelling (No. 38, 40, 42 Austin Avenue). Slightly reducing the angle of the roofing elements would reduce this view loss.

Solar Access: The adjoining properties will maintain sunlight to 50% of their principal private open space for at least 2 hours between 9am and 3pm on June 21st.

Visual Bulk: The proposal results in a reduction in amenity for the property to the west by creating a sense of enclosure and visual bulk on its rear yard.

Intent: Ensure the development responds to site topography.

Comment: The roofing elements of the proposal slopes down generally with the land and as such responds to site topography. However, if the proposed roofing were at a lower angle (parallel with the slope of the land) the breaches would be greatly reduced, if not entirely eliminated. A condition of consent recommending reduction in the slope of the roofing would be part of any approval.

Intent: Provide separation between the buildings.

Comment: This provision relates primarily to side setbacks. As the proposal has a compliant side setback the proposal is considered to satisfactorily achieve this intent.

Intent: Provide opportunities for landscaping.

Comment: This provision relates primarily to side setbacks. As the proposal has a compliant side setback the proposal is considered to satisfactorily achieve this intent.

Intent: Create a sense of openness

Comment: The side boundary envelope breach is most extensive to the rear western side of the proposed dwelling and results in a seven (7) metre wall plane directly adjacent to the rear private open space of the neighbouring dwelling to the west at No. 41 Austin Avenue. As such, the proposal fails to maintain a sense of openness.

The proposal is considered to be inconsistent with the merit considerations of the control.

As detailed above the proposed development fails to satisfy the requirements to qualify for consideration under Clause 20(1), in addition the proposal is considered to be inconsistent with the underlying objectives of the Rear Building Setback and Side Boundary Envelope Built Form Control. It is for these reasons that the variation to the Rear Building Setback and Side Boundary Envelope Built Form Control (Development Standard) pursuant to Clause 20(1) is not supported.

General Principles Of Development Control

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

General Principles	Applies	Comments	Complies
CL38 Glare & reflections	YES	To ensure that materials are used that will not result in excessive glare or reflection a condition of consent will require that all external glazing reflect no more than 20% of incoming light. As such the proposal is considered to satisfy Clause 38 subject to a condition of consent.	YES, subject to conditions
CL39 Local retail centres	NO	No Comment	N/A
CL40 Housing for Older People and People with Disabilities	NO	No Comment	N/A
CL41 Brothels	NO	No Comment	N/A
CL42 Construction Sites	YES	Construction on the subject site is subject to site conditions including an existing sewer pipe and its proximity to a cliff at the rear of the site. Standard conditions of consent will ensure that construction does not unreasonably impact on the amenity of surrounding properties.	YES, subject to conditions
CL43 Noise	NO	No Comment	N/A
CL44 Pollutants	NO	No Comment	N/A
CL45 Hazardous Uses	NO	No Comment	N/A
CL46 Radiation Emission Levels	NO	No Comment	N/A
CL47 Flood Affected Land	NO	No Comment	N/A
CL48 Potentially Contaminated Land	YES	The site has historically been used for residential purposes. Based on both a site inspection and investigation of records available to Council there is no evidence to suggest that the site is contaminated.	YES
CL49 Remediation of Contaminated Land	NO	No Comment	N/A

General Principles	Applies	Comments	Complies
CL49a Acid Sulfate Soils	NO	No Comment	N/A
CL50 Safety & Security	YES	It is considered that the proposal satisfies Clause 50 for the following reasons: <ul style="list-style-type: none"> The dwelling includes windows that overlook Austin Avenue. Access to the house will be secured via a front fence and gate. The entrance to the building is off of a public street. 	YES
CL51 Front Fences and Walls	NO	No Comment	N/A
CL52 Development Near Parks, Bushland Reserves & other public Open Spaces	NO	No Comment	N/A
CL53 Signs	NO	No Comment	N/A
CL54 Provision and Location of Utility Services	NO	No Comment	N/A
CL55 Site Consolidation in 'Medium Density Areas'	NO	No Comment	N/A
CL56 Retaining Unique Environmental Features on Site	YES	The subject site includes a large rock outcrop to the rear of the site. The area disturbed by the new development will be less than that disturbed by the existing development on the site. There is no continuity in the cliff face along the rear yards of the neighbouring dwellings as most have been filled in with soil and plantings. As such the proposal is considered to satisfy the requirements of Clause 56.	YES
CL57 Development on Sloping Land	YES	The site exhibits moderate slope, from a high point in the northeast corner of the site of 32.61m AHD to a low point in the southwest corner of the site of 27.29m AHD. The subject site is not identified as being subject to landslip in Council's associated risk hazard map. The proposal is considered to satisfy Clause 57 for the following reasons: <ul style="list-style-type: none"> The building is designed such that the roofing and building bulk slopes down with the land towards the rear, downhill side, of the site. The proposal does not include fill beyond 1m in depth The proposal requires only minimal excavation of the land form. 	YES
CL58 Protection of Existing Flora	YES	The proposal includes an arborist report that recommends the removal and replacement of seven (7) trees. The landscape plan attached to this application details the planting of eight (8) comparable trees. The proposal was referred to Council's landscape officer who found that the proposal was satisfactory subject to conditions of consent. As such the proposal is considered to satisfy Clause 58.	YES, subject to conditions.
CL59 Koala Habitat Protection	NO	No Comment	N/A
CL60 Watercourses & Aquatic Habitats	NO	No Comment	N/A

General Principles	Applies	Comments	Complies
CL61 Views	YES	<p>Clause 61 stipulates 'Development is to allow for the reasonable sharing of views'.</p> <p>Council has received two (2) objections from the owners of No. 41 and 42 Austin Avenue in regards to view loss. In particular the objectors have raised concern as to the loss of district, beach and ocean views from their southern facades. Additionally, the views enjoyed by the residents of No. 38 and 40 Austin Avenue may be affected by the proposed development.</p> <p>On 10 November 2010 Council's Development Assessment Officer conducted a site inspection from Austin Avenue including within the surrounding properties and the adjoining and nearby Council road reserve. The site inspection revealed that the neighbouring properties will experience view loss as a result of the proposed development, due to the location and height of the proposed dwelling at No. 39 Austin Avenue.</p> <p>In determining whether or not the view loss is significant the principles outlined within the Land and Environment Court Case <i>Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140</i>, have been used.</p> <p>In <i>Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140</i> the Land and Environment Court provided four (4) planning principles to be used in the assessment of view loss.</p> <p>These principles and an assessment of the proposed development against the principles are outlined as follows:</p> <p><i>Step 1: Assess the nature of the views to be affected, water views are valued more highly than land views, iconic views (such as of the Opera House, the Sydney Harbour Bridge or North Head) are valued more highly than views without those icons, and whole views are valued more highly than partial views. For example, a water view in which the interface between the water and the land is visible is more valuable than one in which it is obscured.</i></p> <p>Comment: While the perceived view loss may be of the iconic South Curl Curl Beach the actual view loss is more likely to be of the reserve to the north of it, being far less iconic (for No. 38, 40 & 42 Austin Avenue) and of district views to the east, also being less iconic (for No. 41 Austin Avenue).</p> <p><i>Step 2: Consider from what part of the property affected the views are obtained. In this regard it is more difficult to protect views obtained across side boundaries than the protection of views from front and rear boundaries. Also, whether the view is obtained from a standing or sitting position may also be relevant. Sitting views being more difficult to protect. The Senior Commissioner noted that the expectation to retain side or sitting views is often unrealistic.</i></p> <p>Comment: The view loss will be across the front southern boundaries of the dwellings at No. 38, 40 & 42. This view loss will be greater from a sitting position than standing.</p> <p>The view loss will be across the eastern side boundary of the dwelling at No. 41 Austin Avenue. This view loss will be from a standing and sitting position.</p>	YES

General Principles	Applies	Comments	Complies
		<p><i>Step 3: Assess the extent of the impact. This needs to be done for the whole of the property, and not just to that part of it from where the views are affected. The views from living areas (including kitchen areas) are more significant than from bedrooms or service areas. Whilst the impact could be assessed quantitatively, it is more useful to look at the issue in a qualitative sense and ask whether the view loss is negligible, minor, moderate, severe or devastating.</i></p> <p>Comment: The view loss will be from the front first floor front living room windows of the dwellings at No. 38, 40 & 42 and the rear living room windows and private open space of the dwelling at No. 41 and as such can be considered to be more significant. However, as the view loss is only of district/reserve views the view loss can be considered to be minor.</p> <p><i>Step 4: Assess the reasonableness of the proposal that is causing the impact. A development that complies with all relevant planning controls would be considered more reasonable than one that breaches them. Importantly, the Senior Commissioner said that "where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable". Where a development complies with the planning controls, the question is whether a more skilfully designed proposal could provide the same development potential whilst reducing the impact to neighbours. In that situation the view impact of a complying development would probably be considered acceptable, and the view sharing reasonable.</i></p> <p>Comment: The proposal does include breaches of the side boundary envelope and rear setback which both serve to increase the view loss from adjoining properties. However, the view lost is not iconic, or of a great extent. As such the breaches are not considered to impact on the development to such an extent as to warrant refusal of the application on this basis. However, a condition lowering the roof pitch from its current 15 degrees to 8 degrees would eliminate the side boundary envelope breach and thus reduce view loss.</p> <p>Based on an analysis of the view sharing principles established in the LEC the application is deemed to reasonably share views with all adjoining and nearby properties subject to conditions of consent.</p>	
CL62 Access to sunlight	YES	The proposed development will provide sunlight to at least 50% of the adjoining private open space for more than 2 hours between 9am and 3pm on June 21 st . Note: solar access for pools and solar panels is not a valid consideration under this clause of WLEP 2000.	YES
CL63 Landscaped Open Space	YES	<p>The proposed development is deemed to satisfy the requirements of Clause 63 for the following reasons:</p> <ul style="list-style-type: none"> • A detailed landscape plan has been submitted with the application detailing the planting of a significant array of trees and plants. • The proposed landscaping will increase privacy between adjoining properties to the east and west. • The proposed landscaping includes a grassed area that will provide for the outdoor recreational needs of occupants. 	YES

General Principles	Applies	Comments	Complies
		<ul style="list-style-type: none"> The proposed landscaping plan provides space for service functions such as clothes drying. The landscaping provides for the adequate infiltration of stormwater. 	
CL63A Rear Building Setback	YES	<p>It is considered that the proposed development fails to satisfy Clause 63A for the following reasons:</p> <ul style="list-style-type: none"> The proposal, in being only 2.5m from the rear setback, and the rear façade being up to 7m in height, fails to maintain a sense of openness in the rear yard. The proposal results in a reduction in amenity for the property to the west by creating a sense of enclosure on its rear yard. While the adjoining property to the east of the subject site at No. 37 Austin Avenue has a similar rear setback to the proposal the neighbouring dwelling was approved under previous planning legislation in 1995. Other than this example every dwelling fronting Austin Avenue has a compliant rear building setback. As such the proposal does not maintain the visual continuity and pattern of buildings. <p>This issue is considered to have determining weight.</p>	NO
CL64 Private open space	YES	<p>The proposal includes a grassed area between the proposed dwelling and garage with a total area of approximately 75m² and with dimensions greater than 5m x 5m. While the private open space is not directly off of a living area it will serve as an extension of the dwelling for recreation, children's play and the like. The area, being fenced from the street frontage, can be considered private. While it is preferred that private open space be directly accessible off of a living area the lack of this is not considered to carry determinative weight in the application. As such the proposed development is deemed to satisfy Clause 64.</p>	YES
CL65 Privacy	YES	<p>Council has received one (1) objection received from the owners of the property to the east of the subject site at No. 37 Austin Ave in regards to privacy. While there was no objection raised from the other adjoining property owners the proposal includes several windows and terraces that may result in overlooking of the neighbouring windows and private open space.</p> <p>Clause 65 states that "development is not to cause unreasonable direct overlooking of habitable rooms and principal private open space". As the meaning of "unreasonable" within this Clause may be slightly subjective, more objective assessment can be provided by assessing the development in regard to a Planning Principle of the NSW Land and Environment Court (LEC).</p> <p>The Planning Principle of General Privacy established in the LEC in the case of <i>Meriton v Sydney City Council</i> [2004] NSWLEC 313 sets the following relevant principle in regards to privacy:</p> <p><i>The ease with which privacy can be protected is inversely proportional to the density of development. At low-densities there is a reasonable expectation that a dwelling and some of its private open space will remain private. At high-densities it is more difficult to protect privacy.</i></p> <p>Comment: The subject site is in a low density area and as such there is a reasonable expectation that neighbouring dwellings and some of their private open space will remain private.</p>	NO

General Principles	Applies	Comments	Complies
		<p><i>Privacy can be achieved by separation. The required distance depends upon density and whether windows are at the same level and directly facing each other. Privacy is hardest to achieve in developments that face each other at the same level. Even in high-density development it is unacceptable to have windows at the same level close to each other. Conversely, in a low-density area, the objective should be to achieve separation between windows that exceed the numerical standards above. (Objectives are, of course, not always achievable.)</i></p> <p><u>Comment:</u> Several of the proposed windows are within 9m of adjoining windows and private open space. Of most concern, the ground floor kitchen window looks directly out onto the rear deck of the neighbouring property to the west. The windows off of the lower ground floor study face the side deck of the neighbouring dwelling to the east, however, the top of the window is in line with the deck and as such the intervening fence will provide sufficient privacy. The rear lower ground and first floor terraces of the proposal also have potential privacy impacts as they are within direct and close views of neighbouring windows and private open space.</p> <p><i>The use of a space determines the importance of its privacy. Within a dwelling, the privacy of living areas, including kitchens, is more important than that of bedrooms. Conversely, overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time.</i></p> <p><u>Comment:</u> The kitchen is a space where people tend to spend more waking time and overlooks the rear private open spaces where people tend to spend more waking time, especially in the summer months. The terraces look into the rear private open space and a living room window of the neighbouring dwelling to the east.</p> <p><i>Overlooking of neighbours that arises out of poor design is not acceptable. A poor design is demonstrated where an alternative design, that provides the same amenity to the applicant at no additional cost, has a reduced impact on privacy.</i></p> <p><u>Comment:</u> If the building as is were moved 3.5m further from the rear setback, thus complying with the rear setback built form control, the kitchen window would not overlook the neighbouring private open space, thus eliminating the privacy issue. As such it is considered that a similar design that would require little to no additional cost would reduce the privacy impact.</p> <p><i>Where the whole or most of a private open space cannot be protected from overlooking, the part adjoining the living area of a dwelling should be given the highest level of protection.</i></p> <p><u>Comment:</u> The kitchen window overlooks the part of the deck directly adjoining the dwellings living area and as such can be considered its primary private open space.</p> <p><i>Apart from adequate separation, the most effective way to protect privacy is by the skewed arrangement of windows and the use of devices such as fixed louvres, high and/or deep sills and planter boxes. The use of obscure glass and privacy screens, while sometimes being the only solution, is less desirable.</i></p> <p><u>Comment:</u> In this instance a high sill is not appropriate because the window is above the stove of the kitchen, an area where people usually stand. While fixed horizontal</p>	

General Principles	Applies	Comments	Complies
		<p>louvers may alleviate the problem it is merely a bandaid solution to a fundamental design problem. The terraces on the plans show "vertical timber screens to future detail" and as such it is not certain that they will be built with the dwelling. Again however, moving the dwelling back 3.5m would alleviate privacy issues associated with the dwelling to the east. If this were to be done a simple condition could include a privacy screen to the western elevation of the first floor terrace.</p> <p><i>Landscaping should not be relied on as the sole protection against overlooking. While existing dense vegetation within a development is valuable, planting proposed in a landscaping plan should be given little weight.</i></p> <p><u>Comment:</u> There is no existing or proposed landscaping to the side of the proposed dwelling.</p> <p>For the reasons listed above it is considered that the proposed dwelling fails to satisfy Clause 65. This issue is considered to have determining weight.</p>	
CL66 Building bulk	YES	<p>As the proposal is setback significantly from Austin Avenue and to the downhill side of the site it is not considered to be visually bulky when viewed from Austin Avenue. However, it is considered that the proposal will result in unreasonable bulk when viewed from the private open space of the adjoining property to the west at No. 41 Austin Avenue for the following reasons:</p> <ul style="list-style-type: none"> • The proposal will present as a 7m high unarticulated blank wall directly adjacent to private open space resulting in excessive visual bulkiness. • The proposals rear and side setbacks do not increase as wall height increases. • No landscaping is provided along the side setback to reduce the visual bulk of the development. <p>This issue is considered to have determining weight.</p>	NO
CL67 Roofs	YES	<p>The proposed dwelling incorporates multiple low pitched skillion roof elements and as such is considered to compliment the local skyline. However, a lower pitched roof, as discussed previously, would have less amenity impact on adjoining properties. As such the proposal is considered to satisfy Clause 67 subject to conditions of consent.</p>	YES, subject to conditions of consent
CL68 Conservation of Energy and Water	YES	<p>A BASIX Certificate has been provided with the application.</p>	YES
CL69 Accessibility – Public and Semi-Public Buildings	NO	<p>No Comment</p>	N/A
CL70 Site facilities	YES	<p>Adequate provision is made for the location of mailboxes, storage, garbage, and clothes drying facilities.</p>	YES
CL71 Parking facilities (visual impact)	YES	<p>Despite the garage blocking some passive surveillance the dwelling still maintains views of Austin Avenue from front windows. Given the narrow width of the site it is inevitable that a garage will have some visual bulk on the streetscape. However, as the garage is setback the required 6.5m and the landscaped plan includes new landscaping in the front setback the proposal is considered to satisfy Clause 71.</p>	YES
CL72 Traffic access & safety	YES	<p>The proposed traffic access arrangement is considered to satisfy Clause 72 for the following reasons:</p>	YES

General Principles	Applies	Comments	Complies
		<ul style="list-style-type: none"> The proposal does not create unreasonable traffic and pedestrian conflict or traffic hazards. The proposal includes one (1) crossing to a public street. 	
CL73 On-site Loading and Unloading	NO	No Comment	N/A
CL74 Provision of Carparking	YES	The proposed dwelling incorporates an area for two (2) off-street car parking spaces. As such, the proposal is deemed to satisfy Clause 74.	YES
CL75 Design of Carparking Areas	NO	No Comment	N/A
CL76 Management of Stormwater	YES	The site plan indicates that stormwater from the site will drain through No. 40 Pitt Road via a proposed easement at the rear of the property. The stormwater design plans, however contradict the site plan by proposing a level spreader. Given that the applicant has not provided any evidence that an exhaustive effort to acquire an easement has been unsuccessful. Council's stormwater drainage engineers do not support the attached plans for a level spreader. It is recommended that deferred commencement conditions require an easement be acquired or evidence submitted to demonstrate that one cannot be acquired. As such, the proposal is considered to satisfy Clause 76 subject to deferred commencement conditions of consent.	YES, subject to deferred commencement conditions.
CL77 Landfill	YES	<p>The proposal includes fill to a maximum height of 0.6m to the front of the proposed dwelling. The development is considered to satisfy Clause 77 for the following reasons:</p> <ul style="list-style-type: none"> The fill, being outside the building footprint, and not forming part of the building platform, is acceptable. The landscape plan shows that rehabilitation and revegetation of the fill will be performed to enhance its visual quality. The fill does not result in adverse impacts for adjoining property owners. 	N/A
CL78 Erosion & Sedimentation	NO	No Comment	N/A
CL79 Heritage Control	NO	No Comment	N/A
CL80 Notice to Metropolitan Aboriginal Land Council and the National Parks and Wildlife Service	NO	No Comment	N/A
CL82 Development in the Vicinity of Heritage Items	NO	No Comment	N/A
CL83 Development of Known or Potential Archaeological Sites	NO	No Comment	N/A



SCHEDULES

Schedule 8 - Site analysis

Site Analysis	The proposal includes a site analysis as per Schedule 8.
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Schedule 17 - Carparking Provision

Carparking Provision	The proposal includes provision for two (2) off-street car parking spaces in compliance with Schedule 17 for a dwelling house.
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POLICY CONTROLS

Warringah Section 94A Development Contribution Plan (adopted 14 November 2006)

The proposal is subject to the application of Council's Section 94A Development Contributions Plan adopted by Council on 13 June 2006 and became effective on 17 July 2006.

The following monetary contributions are applicable:

<i>Warringah Section 94A Development Contributions Plan</i>		
Contribution based on total development cost of	\$	820,500.00
Contribution - all parts Warringah	Levy Rate	Contribution Payable
Total S94A Levy	0.95%	7,794.75
S94A Planning and Administration	0.05%	410.25
Total	1.0%	\$8,205

CONCLUSION

The proposal has been considered against the relevant matters for consideration under Section 79C of the EP&A Act 1979. This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and results in unreasonable impacts on surrounding, adjoining, adjacent and nearby properties.

The site has been inspected and the application assessed having regard to the provisions of Section 79C of the Environmental Planning and Assessment Act, 1979, the provisions relevant Environmental Planning Instruments including Warringah Local Environment Plan 2000, Draft Warringah Local Environmental Plan 2009 and the relevant codes and policies of Council.

The proposed development significantly breaches the rear building setback of the locality creating unnecessary and avoidable amenity impacts on adjoining and nearby properties. The breach of the rear setback and side boundary envelope results in a sense of enclosure both on the rear yard of the subject site and adjoining properties. Additionally, the orientation of the proposal towards the rear of the site results in unreasonable privacy impacts. While the breach of the rear setback does not significantly affect the view of adjoining properties, the subject site would enjoy the same views were it to be setback the required six (6) metres.

The rock outcrop to the rear of the site is on the adjoining property to the south, and like adjoining properties to the east and west it is possible to include a rear fence to protect the safety of the dwellings occupants. In regards to the Sydney Water pipe running through the middle of the site, it is possible to encase the pipe or raise the dwelling to avoid affecting it, as demonstrated by the adjacent property at No 37 Austin Ave. Thus the pipe is not considered a site constraint worthy of allowing such a breach in rear building setback.

Allowing the breach would unnecessarily compromise the locality's rear setback built form control, setting an undesirable precedent for future development, and would not be in the public interest.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

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

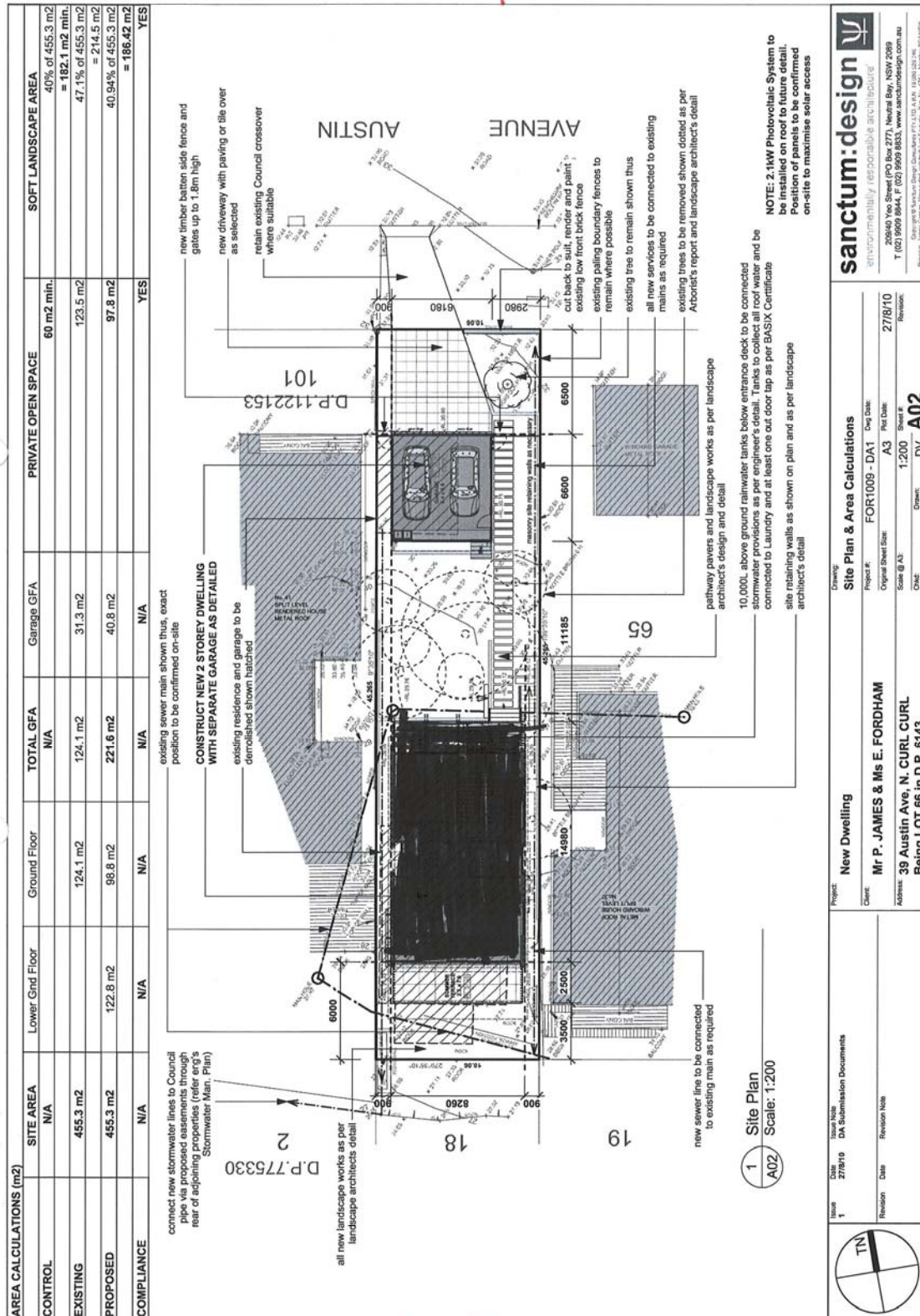
RECOMMENDATION - REFUSAL

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2010/1445 for Demolition works and construction of a dwelling house including ancillary site works on Lot 66 DP 6143 at No. 39 Austin Avenue North Curl Curl subject to the reasons outlined as follows:

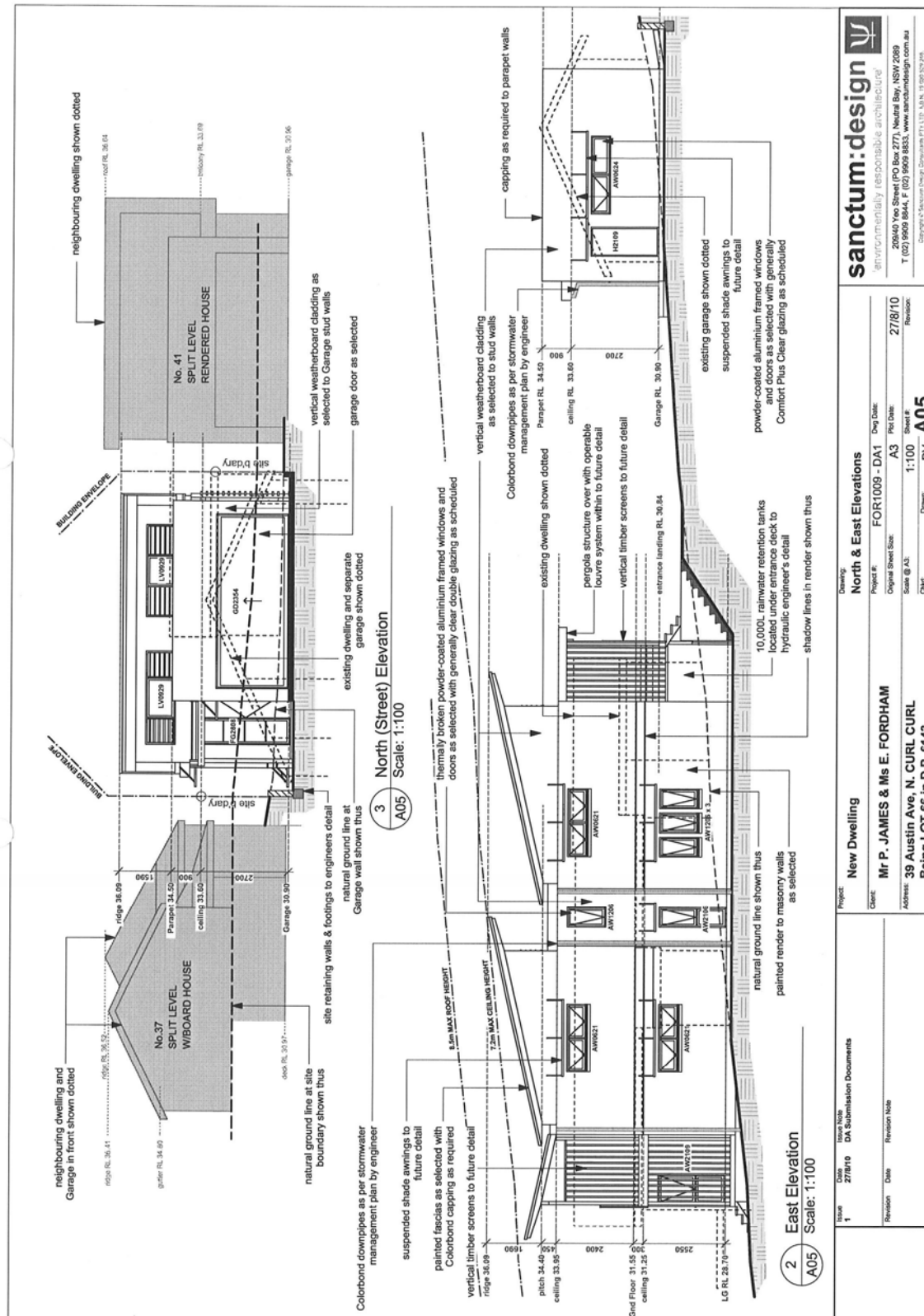
1. Pursuant to Section 79C(1)(a) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with Clause 12(2)(b) and fails Clause 20(1) of Warringah Local Environment Plan 2000 (as amended) in that the proposed development is inconsistent with the rear building setback and side boundary envelope development standards detailed under the applicable Built Form Controls for the F5 Curl Curl Locality. In this regard it is considered that the failure to comply with the development standard will:
 - Not conform with the predominant rear building setback in the street,
 - Result in visual bulk when viewed from adjoining properties,
 - Sets an undesirable precedent for development,
2. Pursuant to Section 79C(1)(a) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with Clause 12(1)(a) and Clause 18(1) of Warringah Local Environment Plan 2000 (as amended) in that portions of the proposed development are inconsistent with the General Principles outlined under Part 4 of WLEP 2000 as follows:
 - Clause 63A – Rear Building Setback
 - Clause 65 – Privacy
 - Clause 66 – Building Bulk
3. Pursuant to Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979 the proposed development is not in the public interest in that:
 - It does not satisfy the requirements of the WLEP 2000.



Site and Elevation Plans



Site and Elevation Plans



sanctum:design environmentally responsible architecture 200/400 Yoo Street (PO Box 377) Neutral Bay, NSW 2009 T (02) 9600 8844, F (02) 9600 8833, www.sanctumdesign.com.au Copyright © Sanctum Design Pty Ltd. All Rights Reserved. No part of this publication may be reproduced without written permission from Sanctum Design Pty Ltd.		Project: New Dwelling Client: Mr P. JAMES & Ms E. FORDHAM Address: 39 Austin Ave, N. CURL CURL Being LOT 66 in D.P. 6143	
Issue 1 Date: 27/8/10 Issued Note: DA Submission Documents	Revision Date: _____ Revision Note: _____	Project #: FOR1009 - DA1 Original Sheet Size: A3 Scale @ A3: 1:100 Sheet #: DV Drawn: A05	Design Date: 27/8/10 Plot Date: _____ Revision: _____

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