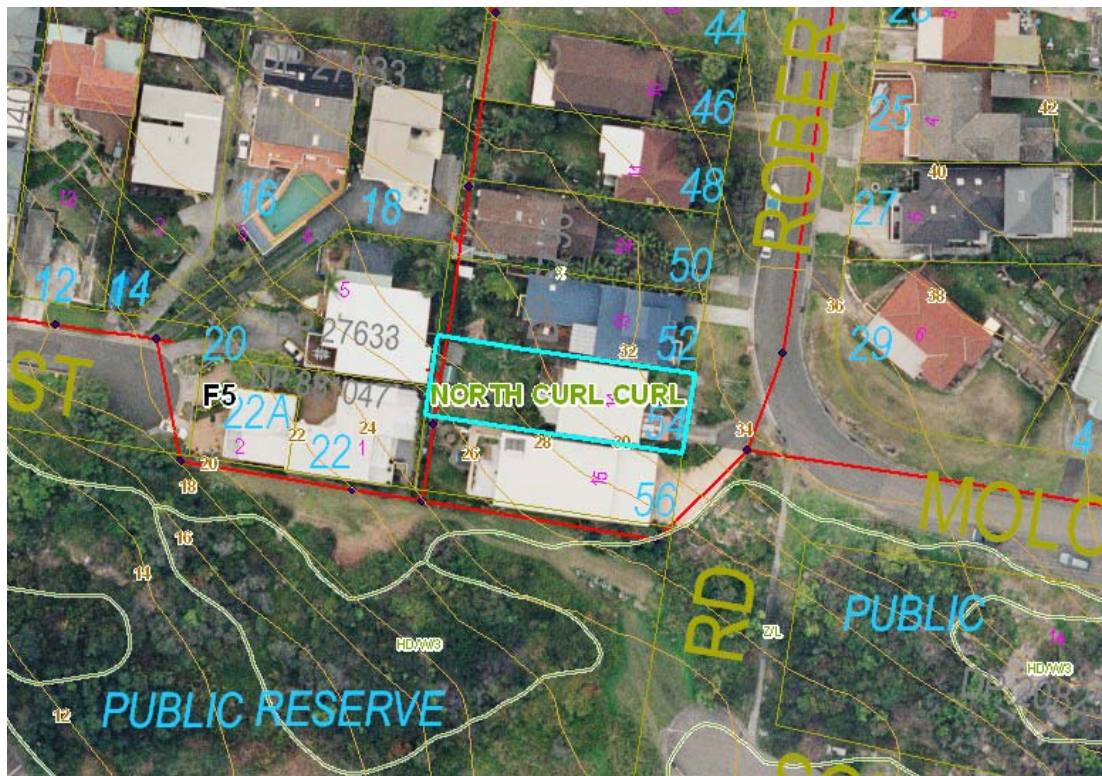


3.3 54 Robertson Road North Curl Curl – Demolition of Existing Dwelling and Construction of a New Dwelling and Swimming Pool

DEVELOPMENT ASSESSMENT REPORT

Assessment Officer:	Adrian Melo
Address / Property Description:	Lot 14, DP 5796, No.54 Robertson Road, North Curl Curl
Proposal:	Demolition of existing dwelling and construction of a new dwelling and swimming pool.
Development Application No:	DA2009/0324
Application Lodged:	23/03/2009
Plans Reference:	Drawing Number DA-01/A, DA-02/A, DA-03/B, DA-04/B and DA-05/B prepared by AJA dated 17/03/09, Sheets 1-4 prepared by Paul Scriver Landscape Architect dated 12/03/09
Amended Plans:	No
Applicant:	Alan James Pictor
Owner:	Alan James Pictor and Karen Lynette Towle
Locality:	F5 Curl Curl
Category:	Category 1 (Housing)
Draft WLEP 2009 Permissible or Prohibited Land use:	Permissible
Clause 20 Variations:	YES (Side building envelope and front building setback)
Referred to ADP:	YES (More than 2 unresolved objections)
Referred to WDAP:	NO
Land and Environment Court Action:	NO
SUMMARY	
Submissions:	Seven (7) submissions from five (5) adjoining and adjacent property owners were received with regards to the subject application.
Submission Issues:	View Loss, Non-compliance with Built Form Controls, Natural Ground Level, Building Bulk, Pool House, Previous Application Rejected by Council, Privacy, Solar Access, and Stability of retaining wall
Assessment Issues:	View Loss
Recommendation:	Refusal
Attachments:	Site and Elevation Plans

LOCALITY PLAN (not to scale)



Subject Site:

Lot 14, DP 5796, No.54 Robertson Road, North Curl Curl

Public Exhibition:

The application was notified in accordance with the Warringah Development Control Plan. Six (6) adjoining property owners were notified of the application by letter dated 30 March 2009. The notification period was from 30 March 2009 to 14 April 2009.

Seven (7) submissions from five (5) adjoining and adjacent property owners were received with regards to the subject application.

SITE DESCRIPTION

The site is 483.1m² in area, rectangular in shape and located on the western side of Robertson Road. The site contains a significant slope across the site in a northeast to southwest direction, achieving a gradient of approximately 10.5%, including a rock embankment/ledge within the front setback to Robertson Road. Access to the site is provided by Robertson Road.

The site is occupied by an existing two storey brick and clad dwelling within the eastern portion of the site. Landscaping on site consists primarily of lawn areas with sparse tree cover.

The site is located within an urbanised and landscaped residential streetscape having coastal, lagoon and distant views to the south, south east and south west, including Curl Curl Beach, Curl Curl Lagoon, Manly, Ocean and North Head. The site is surrounded by detached style housing of a variety of architectural styles.

RELEVANT BACKGROUND

DA2008/0275

Development Application DA2008/0275 was received by Council on the 20 February 2008 for demolition of the existing dwelling and construction of a new dwelling, swimming pool, and pool house. This application was withdrawn by the applicant on 31 October 2008, due to concerns raised by Council regarding view loss. It should be noted that the proposal is similar to the dwelling and ancillary features proposed under DA2008/0275 with minor amendments.

DA2009/0324

The subject Development Application was the subject of a pre-lodgement meeting held on 27 January 2009. The pre-lodgement notes do not raise any significant concerns or objections to the proposed development. The advice given out during the pre-lodgement meeting generally supported the application.

Given the substantial amount of excavation previously taken place on the subject site and concerns raised regarding compliance of the proposed development with regards to the Building Height Built Form Control, additional information was requested from the applicant on 20 May 2009 clarifying the location of Natural Ground Level. This information was provided by the applicant on 13 July 2009 in the form of a site survey and extrapolated levels obtained from adjoining and adjacent properties.

PROPOSED DEVELOPMENT

The proposal seeks consent for the demolition of the existing dwelling and construction of a new dwelling and swimming pool as detailed in the architectural plans accompanying the Development Application DA2009/0324.

STATUTORY CONTROLS

- a) Environmental Planning and Assessment Act 1979
- b) Environmental Planning and Assessment Regulations 2000
- c) Local Government Act 1993
- d) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- e) State Environmental Planning Policy (Infrastructure) 2007
- f) State Environmental Planning Policy No 55—Remediation of Land
- g) Warringah Local Environment Plan 2000
- h) Draft Warringah Local Environment Plan 2009
- i) Warringah Development Control Plan
- j) Section 94A Contributions Plan 2008

REFERRALS

Development Engineering

Council's Development Engineers have reviewed the submitted drawings and raise no objections to the proposal subject to conditions.

NOTIFICATION & SUBMISSIONS RECEIVED

The application was notified in accordance with the Warringah Development Control Plan. Six (6) adjoining property owners were notified of the application by letter dated 30 March 2009. The notification period was from 30 March 2009 to 14 April 2009.

A total of seven (7) individual submissions were received regarding the application. It must be noted that three of these submissions originated from one property, being 52 Robertson Road. It is noted that given these submissions originate from a single property, they are not given independent weight rather, they are considered as one submission. It must also be noted that one submission was withdrawn as it dealt with aspects in relation to a previous development application that have been deleted from the current proposal.

The total submissions received are identified below.

Submission	Address
S. Nettleton	46 Robertson Road, North Curl Curl
M. & Q. Olde	5 Pitt Road, North Curl Curl
L. & M. McIlvain (This objection was later withdrawn by letter dated 13 th April 2009)	50 Robertson Road, North Curl Curl
M. Arnott (inhabitant of 52 Robertson Rd)	52 Robertson Road, North Curl Curl
R. MacDonald (property owner of 52 Robertson Rd)	52 Robertson Road, North Curl Curl
Planning Collaborative on behalf of owners of 52 Robertson Road	52 Robertson Road, North Curl Curl
M. Goff	22 Taylor Street, North Curl Curl

The submissions have raised the following issues with regard to the proposed development.

- View Loss;
- Building Height Non-Compliance;
- Side Boundary Envelope Non-Compliance;
- Natural Ground Level;
- Building Bulk;
- Pool House;
- Previous Application Rejected by Council;
- Front Building Setback Non-Compliance;
- Privacy;
- Solar Access;
- Stability of retaining wall;

An analysis of the issues identified above is undertaken hereunder:

View Loss

Comment: Various submissions received raised concerns regarding potential impacts of the proposal upon views obtained from adjoining and adjacent properties. In this regard, a detailed assessment of the proposal against General Principle 61 – Views of the WLEP 2000 has determined that the proposal will not result in satisfactory or reasonable view sharing. It is noted that the residents concerns regarding view loss are concurred with and have been incorporated into the planning concerns in relation to the proposed dwelling, including associated landscape planting along the side boundaries of the subject site.

Accordingly, this issue is considered to have determining weight.

Building Height Non-Compliance

Comment: Various submissions received raised concerns regarding the proposed non-compliance with the maximum allowable building height. A detailed assessment of the proposal in regards to the Building Height Built Form Control, found that the proposal resulted in a non-compliance with this control. Although this proposed non-compliance did not result in significant adverse impacts upon adjoining and adjacent property owners, given that the proposal is not consistent with

General Principle 61 – Views of the WLEP 2000, a variation to this Built Form Control cannot be granted under Clause 20 of the WLEP 2000.

Accordingly, this issue is considered to have determining weight.

Side Boundary Envelope Non-Compliance

Comment: Various submissions received raised concerns regarding the proposed non-compliance with the Side Boundary Envelope Built Form Control. A detailed assessment of the proposal in regards to the Side Boundary Envelope Built Form Control, found that the proposal resulted in a non-compliance with this control. Although this proposed non-compliance did not result in significant adverse impacts upon adjoining and adjacent property owners, given that the proposal is not consistent with General Principle 61 – Views of the WLEP 2000, a variation to this Built Form Control cannot be granted under Clause 20 of the WLEP 2000..

Accordingly, this issue is considered to have determining weight.

Natural Ground Level

Comment: Several submissions received raised concerns regarding whether the application accurately identified the Natural Ground Level (NGL) as defined by the WLEP 2000. Specific reference was made to the existing rock outcrop located in the eastern area of the site and whether this should be used to define the NGL.

In this regard, additional documentation was requested from the applicant detailing NGL and a survey was submitted extrapolating 'best fit' NGL from property levels of adjoining and adjacent properties. This additional information is considered to adequately demonstrate NGL. It should be noted that this form of determining NGL has been used by the Land and Environment Court of NSW and is a current accepted practice.

Accordingly, this issue is not considered to have determining weight.

Building Bulk

Comment: Various submissions received raised concerns regarding the excessive bulk and scale of the proposed development. In this regard, it is noted that the proposal, were it approved, would result in a dwelling that is of a similar bulk and scale to existing dwellings found within the locality.

Accordingly, although the proposed development is not of a scale identical to adjoining properties it is not considered that this issue has determining weight

Pool House

Comment: Various submissions mention concerns regarding a pool house. It must be noted that although this was initially included on a previous application, it has been deleted from the proposal and as such, any objections made in this regard do not have determining weight.

Previous Application Rejected by Council

Comment: Various submissions received state that, given that the previous application for a similar dwelling has been refused by Council, no approval can be granted for a similar application. In this regard, it must be noted that the previous application was withdrawn and not refused as detailed within the Relevant Background section of this report.

Notwithstanding the above, each application is assessed on its individual merits regardless of previous applications.

Accordingly, this issue is not considered to have determining weight.

Front Building Setback Non-Compliance

Comment: Various submissions received raised concerns regarding the proposed non-compliance with the Front Building Setback Built Form Control. A detailed assessment of the proposal in regards to the Front Building Setback Built Form Control, found that the proposal resulted in a non-compliance with this control. Although this proposed non-compliance did not result in significant adverse impacts upon adjoining and adjacent property owners, given that the proposal is not consistent with General Principle 61 – Views of the WLEP 2000, a variation to this Built Form Control cannot be granted under Clause 20 of the WLEP 2000.

Accordingly, this issue is considered to have determining weight.

Privacy

Comment: Submissions received raised concerns regarding potential privacy impacts from the proposed development. A detailed assessment of the proposal against the requirements of General Principle 65 – Privacy of WLEP 2000 has indicated that the proposal is acceptable in this regard, as detailed within the General Principles section of this report.

Accordingly, this issue is not considered to have determining weight.

Solar Access

Comment: Various submissions received in this regard raise concerns regarding overshadowing and impacts on sunlight access as a result of the proposed development. It is noted that the submitted certified shadow diagrams demonstrate that the development is consistent with the requirements of General Principle 51 – Access to Sunlight in that at least 50% the principal private open space areas of adjoining properties will receive a minimum of 2 hours sunlight.

Accordingly this issue is not considered to have any determining weight.

Stability of retaining wall

Comment: A submission received raised concerns regarding the stability of a retaining wall located at the rear of the subject site and its ability to withstand the impacts of construction. In this regard, should the application be approved, suitable conditions of consent can be imposed effectively addressing this concern.

Accordingly this issue is not considered to have any determining weight.

Conclusions on Submission Issues

It is noted that, as identified above, various submissions raised valid concerns relating to View Loss and non-compliances with Built Form Controls under WLEP 2000. Accordingly, given that the proposal is recommended for refusal as detailed elsewhere in this report, this has been incorporated into the reasons for refusal.

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 State Environmental Planning Policies and WLEP 2000 in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	See discussion on Draft Warringah Local Environmental Plan 2009.

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(iii) – Provisions of any development control plan	The application was notified in accordance with Warringah Development Control Plan.
Section 79C (1) (a)(iia) – Provisions of any planning agreement or any draft planning agreement	No planning agreements or draft planning agreements apply to this application.
Section 79C (1) (a)(iv) – Provisions of the regulations	<p>Clause 98 of the EP&A Regulation 2000 requires that the development is to comply with the Building Code of Australia (BCA). It is considered that the proposal can be constructed in accordance with the BCA. Accordingly, should the proposal be deemed worthy of approval, a condition can be imposed to ensure that the proposal complies with the BCA.</p> <p>In addition, should the application be approved, suitable conditions can be to ensure the building satisfies the requirements of Environmental Planning and Assessment Regulation 2000 Clause 92 Demolition of Structures.</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 in detail under the General Principles of Development Control in this report and are found to be unacceptable and unreasonable in relation to the impacts on the views obtained from properties located to the north of the subject site.</p> <p>(ii) The proposed development will not have a detrimental social impact in the locality considering the residential character of the proposal.</p> <p>(iii) The proposed development will not have a detrimental economic impact on the locality considering the residential nature of the land use.</p>
Section 79C (1) (c) – the suitability of the site for the development	<p>Given that the proposal results in unreasonable impacts upon adjoining and adjacent properties, it is not considered that it has been adequately demonstrated that the proposed development is suitable for the subject site.</p> <p>Accordingly, the application is recommended for refusal on this basis.</p>
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	A total of seven (7) submissions originating from five (5) properties were received during the notification of the application. One (1) submission was withdrawn. The concerns raised in the submissions are discussed in detail in <i>the Notification and Submissions Received</i> section of the report.
Section 79C (1) (e) – the public interest	<p>The public interest is served by development of the site in accordance with the planning controls under WLEP 2000 and related legislation.</p> <p>In this regard, the proposed development is not consistent with Clause 61- Views in the General Principles of Development Control of WLEP 2000 as it will cause an unreasonable view impact on the adjoining properties located to the north of the subject site.</p> <p>Given the above, the benefits of the proposal do not outweigh the dis-benefits, and therefore, the proposed development will not have an overall public benefit and is recommended for refusal on this basis.</p>

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 use for particular land – Refer to Schedule 1: Nil, as none identified in Schedule 1 of Draft WLEP 2009

Principal Development Standards:

Development Standard	Required	Proposed	Complies	Clause 4.6 Exception to Development Standard
Minimum Subdivision Lot Size:	N/A as the proposal does not seek consent for subdivision	N/A	N/A	N/A
Rural Subdivision:	N/A as the proposal does not seek consent for subdivision	N/A	N/A	N/A
No Strata Plan or Community Title Subdivisions in certain rural and environmental zones:	N/A as the proposal does not seek consent for subdivision	N/A	N/A	N/A
Height of Buildings:	8.5m	8.56m	No	The application is recommended for refusal as result of significant impacts upon views, so no further assessment is required in relation to this non-compliance.

The proposed development is not consistent with the aims and objectives of the Draft WLEP 2009 in that the proposal does not protect and enhance the residential use and amenity of existing residential environments, as required by 1.2(2)(d)(i) of the Draft WLEP 2009 and does not comply with the maximum allowable Height of Buildings.

State Environmental Planning Policies (SEPP)

State Environmental Planning Policy (Infrastructure) 2007

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 therefore the development application is not required to be referred to the electricity supply authority. In this regard, the subject application is considered to satisfy the provisions of Clause 45 SEPP Infrastructure.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

SEPP BASIX applies to the development and a BASIX Certificate has been submitted with the application. The certificate confirms that the proposed development meets the NSW Government's requirements for sustainability. The development meets the water and energy performance targets and achieves a pass for thermal comfort. Should the application be deemed worthy of consent, a condition can be imposed to ensure compliance with the commitments listed in the BASIX certificate.

State Environmental Planning Policy No 55—Remediation of Land

Clause 7(1)(a) of State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55) and Clause 48 of WLEP 2000 state that a consent authority must not consent to the carrying out of any development on land unless;

- It has considered whether the land is contaminated, and
- If the land is contaminated, it is satisfied that the land is suitable in its contaminated state for the purpose for which the development is proposed to be carried out, and
- If the land requires remediation to be made suitable for the development proposed to be carried out, it is satisfied that the land will be remediated before the development is carried out.

The site has a long history of being used for residential purposes, it is therefore considered that the site poses no risk of contamination and as such no further consideration is required under Clause 7(1)(b) and (c) of SEPP 55.

WARRINGAH LOCAL ENVIRONMENTAL PLAN 2000

LOCALITY F5 – Curl Curl

Desired Future Character: F5 – Curl Curl

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:

LOCALITY F5 – Curl Curl

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' which is Category 1 development within the F5 – Curl Curl Locality.

Clauses 12(3) (a) of WLEP 2000 requires the consent authority to consider the Locality's DFC statement with respect to consistency. However, as the proposal involves non-compliances with the Side Boundary Envelope, Front Building Setback and Building Height, a higher test against the DFC is required pursuant to Clause 20 of WLEP 2000. In this regard, the proposed development must be consistent with the Desired Future Character Statement in order for the variation to be supported. Accordingly, an assessment of consistency of the development against the relevant components of the locality's Desired Future Character Statement is provided hereunder:

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.

Comment: The proposal seeks consent for the construction of a detached style dwelling in landscaped settings. Accordingly the proposal is considered to satisfy the requirements of this component of the Desired Future Character Statement.

Future development will maintain the visual pattern and predominant scale of detached style housing in the locality.

Comment: The proposed dwelling is of a scale, size, and bulk commensurate with other detached style houses in the locality, ensuring consistency with the existing 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.

Comment: The proposal provides a landscaped front garden that will ensure the street will continue to be characterised by landscaped front gardens.

With regards to front building setbacks, it is noted that the proposal includes a reduced front setback to the proposed walkway to be used to access the dwelling and a balcony. However, given the lightweight and open nature of these structures and that the setback to the dwelling is compatible with structures and dwellings on adjoining land, the proposal maintains a consistent front building setback. This ensures that the proposal will result in 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.

Comment: The proposal does not result in any additional excavation. It is noted that the proposed dwelling is located on a hillside. Due to the modulation of the proposal and its variety of finishes, it is considered that the development will integrate effectively with the landscape, topography, and long distance views of the hill.

Conclusions to Desired Future Character Statement

Based on the above assessment, the proposal is considered to be consistent with the Desired Future Character Statement.

The following table outlines compliance with the relevant Built Form Controls of the above locality statement:

Built Form Controls: F5 – Curl Curl Locality

Built Form Standard	Required	Proposed	Compliance
Building Height (Metres)	8.5m ground – roof ridge	Max 8.56m	NO*
	7.2m ground – uppermost ceiling	Max 8.26m	NO*
Front Setback	6.5m	Access bridge to dwelling: 3m	NO*
		Dwelling: 6.5m	YES
		First Floor Balcony: 4.8m	NO*
Rear Setback	6.0m	Dwelling: 17.4m	YES
		Pool: 3.2m, however occupies less than 50% (30% occupied) of Rear Building Setback Area	YES
Side Setbacks	0.9m	North 0.9m	YES
		South 0.9m	YES
Side Boundary Envelope	5.0 m x 45 degrees	North The proposed non-compliance is limited to: - Rear upper most section of roofing on the second storey. Which achieves a maximum depth of 0.2m for a length of 0.4m	NO*
		South The proposed non-compliance is limited to: - Balcony balustrading located along southern edge of the 'Master Balcony' located on the Second Floor. It must be noted that the building proper complies with the requirements of this Built Form Control along this elevation.	NO *
Housing Density	1 dwelling per 450m ²	1 dwelling per 483.1m ²	YES
Landscape open space	40% (193.24m ²)	43.4% (209.7m ²)	YES

* These variations are addressed below.

Variations to the Built Form Controls: F5 – Curl Curl Locality

As shown in the table above, the proposed development does not comply with the following Built Form Controls for the locality:

Side Boundary Envelope

The Side Boundary Envelope control in this locality is “5.0m/45 degrees”. An assessment of the plans reveals that the western most portion of the second storey element along the northern elevation is outside the projected building envelope, whilst the breach along the southern elevation consists of balcony balustrading.

The non-compliance along the northern elevation is confined to a maximum depth of approximately 0.2m, achieving a maximum length of approximately 0.4m. The non-compliance along the southern elevation is confined to a maximum depth of approximately 1m, achieving a maximum length of approximately 7.2m.

The following planning considerations have been applied in the assessment of the side boundary envelope non-compliances:

(a) The development is not to be visually dominant by virtue of its height and bulk.

Comment: With regards to the northern elevation, it is noted that the elevation is articulated with various building elements and materials. The area of non-compliance along this elevation is the second storey which is set back from the first floor, providing ample modulation which significantly reduces the visual bulk of this element. Furthermore, it must be noted that the use of a variety of materials including light weight cladding, cement render and windows also effectively reduces the bulk and scale of this elevation. This, when combined with the minor area of non-compliance, results in an elevation that does not dominate surrounding properties.

With regards to the southern elevation, it must be noted that the area of non-compliance is limited to the balustrade along the southern most edge of the ‘Master Balcony’ located on the top floor of the proposal. From the southern edge of the balcony, the second storey elevation and associated roof form is setback by approximately 2.5m. It can be seen that this allows for ample modulation along this elevation, effectively reducing the overall visual bulk and dominance of the proposed area of non-compliance.

Given the above, the visual bulk of the building is minimised and is not visually dominant by virtue of its height and bulk with the exception of view loss considerations.

(b) The development shall preserve the amenity of the surrounding land.

Comment: The building envelope non-compliances do not translate to unreasonable impacts to surrounding neighbours and the streetscape in terms of overshadowing, privacy and visual amenity, as demonstrated by consideration of the proposal against the General Principles of Development Control and the Desired Future Character Statement elsewhere in this report. Having regards to view loss however, it is noted that the proposal results in an unreasonable view loss from adjoining and nearby properties located to the north of the subject site. However, notwithstanding the above, it must be noted that a development fully compliant with the side boundary envelope Built Form Controls would not resolve the view loss issues in this instance.

(c) The development must respond to site topography.

Comment: The proposal is for construction of a new dwelling that requires minimal excavation and fill, and is predominantly located within the Building Height limits with the exception of minor areas of non-compliance. Accordingly, the proposal is considered to effectively respond to site topography.

(d) Adequate separation must be provided between buildings.

Comment: The proposal complies with the controls in relation to side boundary setbacks, and provides sufficient amounts of modulation and articulation along both side boundary elevations to provide ample separation between buildings. Accordingly, the proposal is considered to adequately address this requirement.

(e) Provision is to be made for adequate landscaping opportunities.

Comment: The site contains substantial landscaped areas and a comprehensive landscape plan that includes significant amounts of new planting. Accordingly, the proposal is considered to adequately address this requirement.

(f) A sense of openness is to be maintained between adjoining properties.

Comment: The development provides sufficient landscaped and private open space areas and will maintain adequate spatial separation to the adjoining dwellings. As such, a sense of openness between adjoining properties is maintained.

Clause 20 Variation to the Side Boundary Envelope – Not Supported

The proposal is consistent with the Desired Future Character Statement for the locality, and relevant State Environmental Planning Policies. However, in relation to the General Principles of Development Control, the proposal fails to be consistent with General Principle 61 – Views. It is noted that generally, the proposed areas of non-compliance do not result in unreasonable or unacceptable neighbour impacts or unacceptable impacts on the streetscape and the character of the locality with the exception of view loss. With regards to view loss, it must be noted that a development that fully complied with the requirements of this Built Form Control would most likely result in similar view loss.

However, it is noted that in order for a variation to be granted with regards to this development, total compliance is required with all General Principles of Development Control, State Environmental Planning Policies and the Desired Future Character Statement. Given that the proposal does not meet the requirements of *General Principle 61 – Views*, the variation to the Side Boundary Envelope Built Form Control cannot be supported.

For the reasons given above, the above identified Clause 20 Variation is not supported.

Building Height

The Building Height Built Form Control in this locality allows for a maximum building height of 8.5m and a maximum ceiling height of 7.2m. An assessment of the plans reveals that the proposal has a maximum building height of 8.56m, and a maximum ceiling height of 8.26m. Accordingly, the proposal fails to comply with the requirements of this Built Form Control.

The following planning considerations have been applied in the assessment of the Building Height non-compliances:

(a) The development is not to be visually dominant by virtue of its height and bulk.

Comment: With regards to the proposed building height, it must be noted that the maximum height achieved by the proposal is a total of approximately 0.06m above natural ground level. Given the modulation, variety of building finishes and materials, and the minimal extent of the non-compliance, it is not considered that the proposal will be dominant by virtue of its height and bulk as a result of the proposed non-compliance with this aspect of the Built Form Control.

With regards to the non-compliance with the maximum ceiling height, given that this is primarily an internal non-compliance and that the proposal results in a minor non-compliance with the maximum building height, this non-compliance is not considered to result in a dwelling that is visually dominant by virtue of its height and bulk.

(b) The development shall preserve the amenity of the surrounding land.

Comment: The non-compliance with this Built Form Control is not considered to result in unreasonable external impacts to surrounding neighbours and the streetscape in terms of overshadowing, privacy and visual amenity, as demonstrated by consideration of the proposal against the General Principles of Development Control and the Desired Future Character Statement. However, it is noted that the proposed development results in an unreasonable view loss from adjoining and nearby properties located to the north of the subject site. In this regard, it is noted that a development fully compliant with the Building Height Built Form Control would not resolve the view loss issues in this instance.

(c) Ensure that development responds to site topography and minimises excavation of the natural landform

Comment: The proposal is for construction of a new dwelling that requires minimal excavation and fill. With regards to the Building height limits, it must be noted that the proposed non-compliance is minimal and primarily the result of the slope of the site which equates to 10.5%. Accordingly, the proposal is considered to effectively respond to site topography.

(d) Provide sufficient area for roof pitch and variation in roof design rather than a flat roof.

Comment: Although the proposal directly contradicts this planning consideration, it must be noted that the proposed flat roof is a common modern architectural feature and one that is commonly represented within the locality. With regards to this proposal, the flat roof effectively reduces the bulk of the proposal and accordingly, is supported.

Clause 20 Variation to the Building Height – Not Supported

The proposal is consistent with the Desired Future Character Statement for the locality and relevant State Environmental Planning Policies. It is noted that generally the proposed areas of non-compliance do not result in unreasonable or unacceptable neighbour impacts or unacceptable impacts on the streetscape and the character of the locality with the exception of view loss. With regards to view loss, it must be noted that a development that fully complied with the requirements of this Built Form Control would most likely result in similar view loss impacts.

However, it is noted that under Clause 20 of the WLEP 2000, in order for a variation to be granted with regards to this development, full consistency is required with all General Principles of Development Control, State Environmental Planning Policies and the Desired Future Character Statement. Given that the proposal does not meet the requirements of *General Principle 61 – Views*, the variation to the Building Height Built Form Control cannot be supported.

For the reasons given above, the above identified Clause 20 Variation is not supported.

Front Building Setback

The Front Building Setback Control in this locality is “6.5m”. An assessment of the plans reveals that the proposal fails to comply with the requirements of this Control.

The proposed areas of non-compliance consist of an access bridge and associated stairs and a first floor balcony. The proposed access way is located approximately 3m from the front boundary whilst the First Floor Balcony is located 4.8m. It must be noted that the bulk of the dwelling is situated 6.5m from the front boundary.

The following planning considerations have been applied in the assessment of the Front Boundary Setback non-compliances:

(a) Create a sense of openness

Comment: It is noted that the proposed non-compliances consist of open structures, with no roofing located within the front setback area. It must be noted the proposed balcony area, although identified as being located on the first floor, is level with the street access to the dwelling. This is because the garage area below the balcony was the site of substantial excavation for the existing dwelling. It is noted however, that when viewed from the south the proposed balcony area is substantially raised but when viewed from the street is generally located approximately level with the street.

For the reasons identified above it is considered that the proposal will maintain a sense of openness.

(b) Provide opportunities for landscaping

Comment: The proposed non-compliances do not reduce existing opportunities for landscaping. The proposed balcony area will occur above the existing impervious driveway area which is retained by the proposal. The proposed access way is approximately in the same position as the existing access way resulting in minimal impact upon the landscaped elements currently located within the front setback area.

It must be noted that the proposal includes substantial landscape planting within the front yard area which will improve the quality of the existing landscaped area.

Accordingly, given that the proposal will not reduce existing opportunities and will improve the existing landscaped areas, the proposal is considered to satisfy this outcome.

(c) Minimise the impact of development on the streetscape

Comment: As mentioned previously, it must be noted that the proposal provides ample opportunity for landscaping and that the proposed areas of non-compliance are open style structures that will preserve a sense of openness. It must be noted that the proposed areas of non-compliance are not bulky elements and are primarily located at street level.

Given the relatively light weight nature of the proposed elements and that the proposal will not adversely impact upon the amenity of the streetscape, the impacts of the proposal upon the streetscape are effectively minimised.

(d) Maintain the visual continuity and pattern of buildings, front gardens and landscape elements

Comment: The proposed areas of non-compliance are generally compatible with existing structures on adjoining and adjacent properties and as a result, maintain the visual continuity and pattern of buildings. With regards to the front garden and landscape elements, the proposal maintains the existing landscaped open spaces located within the Front Setback area, which are compatible with those on adjoining properties. Accordingly, the proposal adequately addresses this requirement.



Clause 20 Variation to the Front Building Setback – Not Supported

The proposal is consistent with the Desired Future Character Statement for the locality and relevant State Environmental Planning Policies. It is noted that generally the proposed areas of non-compliance do not result in unreasonable or unacceptable neighbour impacts or unacceptable impacts on the streetscape and the character of the locality with the exception of view loss. With regards to view loss, it must be noted that a development that fully complied with the requirements of this Built Form Control would most likely result in similar view loss impacts.

However, it is noted that under Clause 20 of the WLEP 2000, in order for a variation to be granted with regards to this development, total compliance is required with all General Principles of Development Control, State Environmental Planning Policies and the Desired Future Character Statement. Given that the proposal does not meet the requirements of *General Principle 61 – Views*, the variation to the Front Building Setback Built Form Control cannot be supported.

For the reasons given above, the above identified Clause 20 Variation is not supported.

GENERAL PRINCIPALS 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 Principal	Applies	Comments	Complies
CL38 Glare & reflection	YES	The schedule of external materials submitted with the application indicates that the proposal includes metal sheeting is to be used. Accordingly, should the application be approved suitable conditions of consent can be imposed requiring all areas of metal to be of a medium to dark colour, ensuring compliance with the requirements of this General Principle. Subject to this condition the proposal is considered satisfactory.	YES, subject to condition
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	Should the application be approved, suitable conditions can be imposed requiring construction processes not to unreasonably impact on the surrounding amenity, pedestrian and road safety, or the natural environment. Given the above, the proposal is satisfactory in relation to this General Principle.	YES, subject to conditions
CL43 Noise	YES	Noise generated during the construction of the proposed development and subsequent use of the dwelling is not expected to generate unacceptable noise emissions beyond the reasonable expectations of adjoining residents in a built up residential area. Notwithstanding the above, it is noted that the proposal also includes a swimming pool which	YES, subject to conditions

General Principal	Applies	Comments	Complies
		would require a pool pump. Should the application be approved, a condition of consent can be imposed requiring the pool pump not exceed 5dBA. Given the above, the proposal is satisfactory in relation to this General Principle subject to conditions.	
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 and there is no evidence to suggest that the site is contaminated, and therefore, no further consideration is required.	YES
CL49 Remediation of Contaminated Land	NO	No Comment	N/A
CL49a Acid Sulfate Soils	NO	No Comment.	N/A
CL50 Safety & Security	YES	The proposal will not be detrimental to the safety and security of the locality, and therefore, the proposal is satisfactory in relation to this General Principle.	YES
CL51 Front Fences and Walls	NO	The proposal does not include a front fence.	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	YES	The site is currently serviced by existing utilities and this would remain the case should the application be approved.	YES
CL55 Site Consolidation in 'Medium Density Areas'	NO	No Comment.	N/A
CL56 Retaining Unique Environmental Features on Site	YES	The proposal does not include the removal or alteration of any unique environmental features located on the subject site. Accordingly, it is considered that the proposal is satisfactory in relation to this General Principle.	YES
CL57 Development on Sloping Land	YES	It is noted that the proposal is located on sloping land, with the site generally having a gradient of approximately 10.5%. With regards to this General Principle, it is noted that the proposal does not result in	YES

General Principal	Applies	Comments	Complies
		<p>significant additional excavation. Furthermore, the proposed building steps down the site resulting in minimal non-compliances with the Building Height Built Form Control.</p> <p>Accordingly the proposal is considered to adequately address the requirements of this General Principle.</p>	
CL58 Protection of Existing Flora	YES	The development will not impact on the substantial natural resource and landscaping assets of the site and adjoining properties, and therefore, the proposal is satisfactory in relation to this General Principle.	YES
CL59 Koala Habitat Protection	NO	No Comment.	N/A
CL60 Watercourses & Aquatic Habitats	NO	No Comment.	N/A
CL61 Views Note: Please refer to the separate section dealing with this General Principle after this table.	YES	<p>A site inspection and review of submitted plans reveals that the proposal will have an impact upon views obtained across the subject site by properties located to the north. In this regard, the proposal is not satisfactory in relation to view sharing and is inconsistent with this General Principle. Accordingly, the application is recommended for refusal on this basis.</p> <p>This issue is discussed in more detail in the following section of this report under <i>Clause 61 – Views</i>.</p>	NO
CL62 Access to sunlight	YES	<p>The submitted shadow diagrams demonstrate that the development is consistent with the requirements of this General Principle in that at least 50% the principle open space areas of adjoining property owners will receive a minimum of 2 hours sunlight.</p> <p>Accordingly, the proposal satisfies the requirements of this General Principle.</p>	YES
CL63 Landscaped Open Space	YES	Given the amount of landscaped open space proposed on the subject site, it is considered that ample landscaped areas will be located on the subject site to meet the requirements of this General Principle.	YES
CL64 Private open space	YES	Sufficient private open space has been provided on-site in accordance with the principles stipulated under this General Principle.	YES
CL65 Privacy	YES	<p>The development has been assessed as being consistent with the requirements of this clause, in that it will not cause unreasonable or direct overlooking of the habitable rooms and private open spaces of the adjoining dwellings.</p> <p>It is noted that the proposal includes large balconies along the southern side boundary of the subject site. However, given the substantial difference in elevation between the subject site and the property to the south (56 Robertson Road), the proposal is not considered to result in direct overlooking of the</p>	YES

General Principal	Applies	Comments	Complies
		<p>adjoining property. Views achieved from the balconies will occur across and over the existing dwelling. It must be noted that the proposed FFL of the lower balcony is 34.4RL whilst the ridge height of the adjoining dwelling is 34.45RL.</p> <p>With regards to privacy between the subject site and properties located to the rear, it is noted that the proposal includes a rear raised deck area at the rear of the property that has a FFL of approximately 30.30RL. This provides an increase of approximately 0.6m above the existing ground level of the subject site.</p> <p>In this regard, it is noted that the dwellings located on adjoining properties to the rear of the subject sites provide minimal rear building setbacks, with the principal private open space not located along the shared rear boundary of either property and the subject site. In this regard, it must be noted that this General Principle specifically relates to Principal Private Open Space areas only.</p> <p>Furthermore, it must be noted that the adjoining properties located to the rear of the subject site are well below the subject site, with a Ground Level of approximately RL28, as obtained from Councils GIS. Accordingly, should the application be approved, views achieved from the rear deck area will occur over and above adjoining properties.</p> <p>In addition to the above, direct and close overlooking between dwellings with regards to windows has effectively been reduced to a reasonable level through spatial separation, the orientation of windows and the use of high sill windows where appropriate.</p> <p>Accordingly the proposal is considered to adequately satisfy the requirements of this General Principle.</p>	
CL66 Building bulk	YES	The proposal will have a visual bulk and an architectural scale consistent with adjoining properties and will not detract from the streetscape. As such, the proposal is satisfactory in relation to this General Principle.	YES
CL67 Roofs	YES	The flat roof form is considered suitable and appropriate in the roofscape of the locality. As such, the proposal is satisfactory in relation to this General Principle.	YES
CL68 Conservation of Energy and Water	YES	Should the application be approved a condition of consent can be imposed which requires compliance with the submitted BASIX certificate. Subject to this condition, the proposal is considered to satisfy the requirements of this General Principle.	YES, Subject to condition.
CL69 Accessibility – Public and Semi-Public Buildings	NO	No Comment.	N/A

General Principal	Applies	Comments	Complies
CL70 Site facilities	YES	The site facilities have a minimal visual impact from the streetscape and therefore are consistent with the requirements of this general principal.	YES
CL71 Parking facilities (visual impact)	YES	The proposed parking facilities are well integrated into the proposed dwelling and will not be readily apparent when viewed from the street or other public spaces. Accordingly the proposal is considered to satisfy the requirements of this general Principle.	YES, Subject to condition
CL72 Traffic access & safety	YES	The proposed methods of access to and from the site satisfy the requirements of this General Principle.	YES
CL73 On-site Loading and Unloading	NO	No Comment.	N/A
CL74 Provision of Carparking	YES	The proposal provides two (2) carparking spaces meeting the requirements of this General Principle and Schedule 17 of the WLEP 2000.	YES
CL75 Design of Carparking Areas	YES	The proposed carparking areas are of a size and dimension to satisfy the requirements of this General Principle.	YES
CL76 Management of Stormwater	YES	The proposed stormwater system has been considered by Councils Development Engineers and is acceptable subject to conditions. Accordingly, subject to conditions, the proposal is satisfactory in relation to this General Principle.	YES, subject to conditions.
CL77 Landfill	NO	No comment.	N/A
CL78 Erosion & Sedimentation	YES	Should the application be approved, appropriate conditions associated with management of erosion and sedimentation can be imposed ensuring compliance with the requirements of this General Principle.	YES, subject to conditions
CL80 Notice to Metropolitan Aboriginal Land Council and the National Parks and Wildlife Service	NO	Not applicable.	N/A
CL81 Notice to Heritage Council	REPEALED		
CL82 Development in the Vicinity of Heritage Items	NO	The site is not located within the vicinity of a heritage item.	N/A
CL83 Development of Known or Potential Archaeological Sites	NO	No comment.	N/A

Clause 61 - Views

General Principle 61 – Views of the WLEP 2000 stipulates that “*Development is to allow for the reasonable sharing of views*”.

As a result of a detailed site inspection and subsequent assessment of the plans for the proposed development in relation to the requirements of Clause 61 of WLEP 2000, it is concluded that the proposal does not provide for satisfactory/reasonable view sharing and will unreasonably affect the views of adjoining properties to the north of the subject site including No. 52 and No. 46 Robertson Road. It must be noted that although view loss will also occur from 5 Pitt Road, this view loss is considered acceptable.

In determining whether the proposal represents view sharing, the Planning Principle outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, has been applied to the proposed development. Consideration of the view sharing is detailed as follows;

Principle 1: The nature of views to be affected

The first step is to 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.

Comment: The existing views to be impacted upon are views of the Tasman Ocean, Curl Curl Beach, Curl Curl Lagoon, Manly and North Head. Accordingly, the views to be impacted upon are not considered to be iconic, with the exception those of North Head. The views to be impacted from the various properties are as follows:

a) 52 Robertson Road:

Ground Floor Level – Tasman Ocean, Curl Curl Lagoon, Manly and North Head.

In this regard, it should be noted that from certain areas on the ground floor, views of North Head are whole and include the interface between water and land. With regards to Curl Curl Lagoon, views are whole and include the interface between land and water. Of these views, only views of North Head are iconic.

First Floor Level – Curl Curl Beach, Ocean, Manly, Curl Curl Lagoon, and North Head.

In this regard, it should be noted that views of North Head, Curl Curl Beach and Curl Curl Lagoon are whole views in which the interface between water and land can be seen. Of these views, only views of North Head are iconic.

b) 46 Robertson Road:

First Floor Level – North Head

In this regard it should be noted that the views obtained of North Head are whole iconic views and show the interface between land and water. It is noted that views of Curl Curl Beach are also obtained from this property; however they will not be impacted upon by the proposed development.

c) 5 Pitt Road:

First Floor Level – Ocean views

In this regard, it should be noted that the views impacted upon are water views only and do not show the interface between land and water.

Principle 2: Where the views are obtained

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

Comment: Given the orientation of the subject site and that of the identified properties all views to be impacted upon occur across the side boundaries of the affected properties and the subject site.

a) 52 Robertson Road:

Ground floor Level – Ocean (sitting and standing)

Curl Curl Lagoon(sitting and standing)

Manly(sitting and standing), and

North Head(sitting and standing).

First Floor Level – Curl Curl Beach (sitting and standing)

Ocean (sitting and standing)

Manly (sitting and standing),

Curl Curl Lagoon (sitting and standing), and

North Head (sitting and standing).

b) 46 Robertson Road:

First Floor Level – North Head (sitting and standing),

c) 5 Pitt Road:

First Floor Level – Ocean views (sitting and standing),

Principle 3: The extent of the impact

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

a) 52 Robertson Road:

Ground Floor Level – **Ocean:** These views are obtained from the living/sitting room area. The impacts upon this view will be severe.

Curl Curl Lagoon: These views are obtained from the living/sitting room area. The impacts upon this view will be devastating.

Manly: These views are obtained from the living/sitting room area. The impacts upon this view will be devastating.

North Head: These views are obtained from the living/sitting room area. The impacts upon this view will be devastating.

First Floor Level – **Curl Curl Beach:** These views are obtained from studio area. The impacts upon this view will be devastating.

Ocean: These views are obtained from a studio area. The impacts upon this view will be moderate.

Manly: These views are obtained from a studio area. The impacts upon this view will be devastating.

Curl Curl Lagoon: These views are obtained from a studio area. The impacts upon this view will be negligible.

North Head: These views are obtained from a studio area. The impacts upon this view will be negligible.

b) 46 Robertson Road:

First Floor Level – **North Head:** These views are obtained from a living/dining room. The impacts upon this view will be devastating.

c) 5 Pitt Road:

First Floor Level – **Ocean:** These views are obtained from a bedroom/balcony area. The impacts upon this view will be minor.

Principle 4: The reasonableness of the proposal

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

Comment: In order to determine the reasonableness of the development proposal, consideration has to be given to the following two (2) issues;

- i) the compliance of the proposal in relation to the built form controls for the locality.
- ii) the extent an impact can be mitigated by a more skilful design without affecting the development potential or amenity of a proposed development.

The compliance of the proposed development

The non-compliance with the Side Boundary Envelope, Front Building Setback or Building Height Built Form Controls are not considered to be severe and are not principally responsible for the view loss impacts in their own right. Were the proposal to demonstrate full compliance with these Built Form Controls, the impacts upon views achieved by adjoining and adjacent property owners would be similar.

The applicant has argued that as the proposal is generally compliant with no substantial impacts arising from the proposed non-compliances, the proposal constitutes a reasonable development. Although the proposal may be reasonable with regards to the Built Form Controls, further consideration is required as stipulated within Principle 4 of the 'Tenacity Test'. Further, Clause 18 of WLEP 2000 states that strict compliance with development standards does not guarantee that the development is consistent with either the General Principles of Development Control or the Desired Future Character Statement.

In addition to the above, Principle 4 of the 'Tenacity Test' states that in order to establish the reasonableness of a fully complying development, consideration must be given as to whether a more skilful design would ameliorate the impact on views whilst still providing the applicant the same development potential and amenity.

Skilful design

With regards to skilful design, consideration must be given to:

- i) the positioning, location and significance of the views impacted upon,
- ii) aspects of the development impacting upon these views, having regards to the development potential and amenity that they provide
- iii) and the dimensions and scope of the site in relation to the proposed development.

Accordingly, below is a detailed consideration of the above identified points.

i) the positioning, location and significance of the views impacted upon

Careful consideration must be given to the views to be impacted upon having regards to their location and positioning on adjoining properties and the value of the views. In this regard, valuable views to be significantly impacted upon by the proposed development are obtained from First and Ground Floor areas of No 52 Robertson Road and the First Floor areas of No.46 Robertson Road

With regards to views obtained from Ground Floor areas, expectation to retain these views is considered to be unreasonable given that they occur from the Ground Floor area. With regards to the views achieved from the First Floor areas, given the value of these views and the devastating impact on these views as a result of the development, potential skilful designs solutions should seek to retain these views where possible.

ii) aspects of the development impacting upon these views, having regards to the development potential and amenity that they provide

The majority of the devastating impacts will occur as a result of the Second Floor from the proposed dwelling. Were this area to be deleted or redesigned, retention of views towards the south from the above identified areas of the adjoining properties could be achieved.

Development Potential

Total floor area is a readily calculable indication development potential. Although true development potential transcends this basic notion, requiring careful consideration of various factors, it is the only easily identifiable indicator applicable to all sites. Accordingly, it is noted that the proposed dwelling provides a total floor area of approximately 320.55m², including external balcony areas, but excluding ground floor external paved areas. Were the Second Floor area deleted, this would result in a reduction of floor area by a total of approximately 54m². This would result in a total floor area for the dwelling of 266.55m².

In this regard, it can be seen that the additional storey provides a relatively modest increase in development potential as it equates to approximately 16.8% of the total floor area of the proposal. It can be seen that this area is not so significant, that it is inconceivable for it to be provided elsewhere on the subject site.

Development Amenity

With regards to amenity, indicators are considered to consist of views, solar access, privacy and service functions provided. In this regard, it is noted that the views obtained from the Second Floor would be substantial.

Having regards to views, similar views could continue to be obtained from the first floor area of the subject site or the second floor area, were it redesigned so as to preserve the views of adjoining properties. Although it is possible that these views may be obscured should the property to the south of the subject site be developed, this is not a valid consideration. This is as it relies upon the assumption that the adjoining dwelling to the south will be redeveloped at a later date, with no solid evidence that this will occur.

With regards to other indicators, the level of solar access and privacy provided and the service functions present on the Second Floor area are not so substantial that a more skilful design could allow for equitable amenity values whilst also preserving views achieved from adjoining properties.

Although redesign of the Second Floor area may result in relocation to an area that will receive less sunlight, given the residential nature of the area, configuration of allotments and scope of buildings on adjoining allotments, it is likely that potential other areas on the subject site could still provide reasonable amounts of sunlight.

With regards to use and privacy, it is likely that relocation or redesign of the Second Floor area would continue to provide an adequate and acceptable level of privacy and similar use as to what is currently proposed.

Given the above considerations, it can be seen that the amenity provided by the Second Storey area is not so significant that it cannot be readily achieved or created if the second storey were redesigned or relocated.

iii) and the dimensions and scope of the site in relation to the proposed development.

The subject site is not drastically unusual with regards configuration, topography, or size. The proposed dwelling allows for a substantial rear setback in excess of 19m to both the Ground Floor and First Floor areas, and a setback of 26m to the Second Floor. This provides ample space towards the rear of the property for relocation or potential redesign of the Second Storey to preserve the views of properties located to the north of the subject site.

Conclusion

The retention of a significant and meaningful portion of the views to the south, including the land/water interface of North Head, Curl Curl Beach, and Manly from No.46 and 52 Robertson Road is considered to be a desirable planning outcome and would constitute 'view sharing'. It has been demonstrated that a more skilful design would serve to maintain a significant and meaningful portion of these views, and therefore, represent 'view sharing' between properties without having an unreasonable impact on the development potential or amenity of the subject site. This conclusion has been based on an assessment of the proposed development as amended and having considered the four Planning Principles outlined within the Land and Environment Court Case Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140.

Further, substantial amendments to the proposed development are required to achieve 'view sharing'. The extent of redesign required is outside the scope of this development application and therefore a fresh development application is required.

Given the above, the proposed development and the proposal as amended, does not satisfy the requirements of Clause – 61 Views of WLEP 2000, and therefore, is recommended for refusal on these grounds.

Caselaw for Assessing Impacts

Notwithstanding the consideration of the proposal against the established Planning Principle regarding view loss as discussed in detail above, further additional established caselaw also aids

in the consideration of the proposal with regards to view sharing. It must be noted that the above consideration of the proposal established only two key areas from which views occur that will be unreasonably impacted upon by the proposed development. These views are obtained from the Top Floor studio area of 52 Robertson Road and the Top Floor Living/Dining room area of 46 Robertson Road. Given that these are the only areas identified as being of significant concern, consideration of impacts of view loss within the following section are limited to these views only.

Of particular interest, is the Land and Environment Court Case *Pafburn v North Sydney Council* [2005] NSWLEC 444. This court case considered several court cases and established five common themes that need to be considered in considering impacts of development upon adjoining and adjacent properties. These cases were *Tenacity Consulting v Warringah* [2004] NSWLEC 140, *Parsonage v Ku-ring-gai Council* [2004] NSWLEC 347 which dealt with the assessment of overshadowing, and *Meriton v Sydney City Council* [2004] NSWLEC 313 and *Super Studio v Waverley Council* [2004] NSWLEC 91 which dealt with the assessment of overlooking.

In this regard, the themes are as follows:

The first theme is that change in impact may be as important as the magnitude of impact. Where a north-facing living room receives uninterrupted sunlight all day in mid-winter, the occupant is likely to perceive its reduction to three hours as a major loss of amenity, despite the fact that the three hours of retained sunlight complies with the rule of thumb in most development control plans and the RFDC.

Comment: It must be noted that the change in impact resulting from the proposed development is significant. Currently, the properties located to the north enjoy full views of Curl Curl Beach, Manly and North Head. From 52 Robertson Road, views of Curl Curl Beach and Manly will be completely obscured, whilst views of North Head will be retained. From 46 Robertson Road, views of North Head will be obscured.

Accordingly, the proposal will result in a significant change in impact and a significant magnitude of impact.

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Accordingly, the proposal will result in a significant change in impact and a significant magnitude of impact.

The second theme is that in assessing an impact, one should balance the magnitude of the impact with the necessity and reasonableness of the proposal that creates it. An impact that arises from a reasonable or necessary proposal should be assessed differently from an impact of the same magnitude that arises from an unreasonable or unnecessary proposal. For example, adding a balcony to the living room of a dwelling that has no other balconies is a more reasonable proposal than adding a balcony to a dwelling that already has six balconies.

Comment: The proposal seeks consent for demolition and construction of a new dwelling that is of a similar bulk, scale, and height with existing properties in the area. Accordingly, it is considered that the proposal is one that is wholly reasonable.

The third theme is that in assessing an impact one should take into consideration the vulnerability of the property receiving the impact. A north-facing window 900mm from the side boundary is much harder to protect against loss of sunlight or views than a similar window 10m from the front or rear boundary.

Comment: With regards to vulnerability of the affected properties, it must be noted that the existing dwellings located on adjoining and nearby properties have been orientated to achieve views generally facing south, over the subject site. As such, any development on the subject site is likely to result in significant impacts upon views achieved over the property.

Accordingly, adjoining properties have a high vulnerability to view loss with regards to development on the subject site. It must be noted that this does not mean that development should result in view loss, simply that adjoining properties have a high vulnerability to view loss.

The fourth theme is that the skill with which a proposal has been designed is relevant to the assessments of its impacts. Even a small impact should be avoided if a more skilful design can reduce or eliminate it.

Comment: In this regard, as demonstrated under the consideration of the proposal against the requirements of the View Loss Planning Principle, it is considered that a more skilful design could readily avoid impacts of the proposed development on adjoining properties.

The fifth theme is that an impact that arises from a proposal that fails to comply with planning controls is much harder to justify than one that arises from a complying proposal. People affected by a proposal have a legitimate expectation that the development on adjoining properties will comply with the planning regime.

Comment: With regards to this theme, it is noted that although the proposal does not fully comply with the Built Form Controls, namely Building Height, Side Boundary Envelope and Front Building Setback, a development that fully complied with these requirements would result in similar view loss impacts.

Conclusions on Caselaw for Assessing Impacts

It must be noted that of the above identified 'themes' the proposal is supported by the fact that it constitutes a reasonable proposal, adjoining properties have a high vulnerability to view loss impacts, and that although the proposal does not comply, a fully compliant development would result in similar impacts.

Notwithstanding the above, it must be noted that the change in impact is significant and that a more skilful design would allow for substantially more view sharing between the subject site and adjoining properties.

SCHEDULES

Schedule 8 - Site analysis

Adequate site analysis documentation has been provided for this application.

Schedule 17 – Provision of Carparking

Adequate carparking has been provided on site to satisfy the requirements of this Schedule.

POLICY CONTROLS

Warringah Section 94 Development Contribution Plan

The proposal is subject to the application of Council's Section 94A Development Contributions Plan. The following monetary contributions are required to provide for additional infrastructure generated from this development.

<i>Warringah Section 94A Development Contributions Plan</i>			
Contribution based on total development cost of		\$	2,187,900.00
Contribution - all parts Warringah	Levy Rate	Contribution Payable	Council Code
Total S94A Levy	0.95%	\$20,785	Rams
S94A Planning and Administration	0.05%	\$1,094	Rams
Total	1.0%	\$21,879	

Should the application be approved, a suitable condition to levy S94A will be required.

MEDIATION

Mediation was requested for this development application by adjoining and adjacent property owners, however, the applicant did not agree to the meeting.

CONCLUSION

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, SEPP BASIX, SEPP (Infrastructure) 2007, Warringah Local Environmental Plan 2000, Draft Warringah Local Environmental Plan 2009, Warringah Development Control Plan and the relevant codes and policies of Council. In particular, the view sharing issues were assessed having regard to the Planning Principle of the Land and Environment Court (Tenacity Vs Warringah).

Generally, the proposal will not result in a development that is out of character with the scale and pattern of adjoining development. The proposed development has been found to be consistent with the Desired Future Character Statement for the F5 Curl Curl Locality. With the exception of Clause 61 – Views, the proposal is consistent with the General Principles of Development Control. The variation to the Side Boundary Envelope, Building Height and Front Building Setback Built Form Controls do not translate to unreasonable or unacceptable neighbour impacts, with regards to privacy and overshadowing, or unacceptable impacts on the streetscape and the character of the locality. However, the variation cannot be supported as the proposed development is inconsistent with the requirements of 'Clause 61 – Views of the General Principles of Development Control'.

The proposal was notified to neighbouring properties and during this process seven (7) submissions from five (5) separate property owners were received by Council during the notification of the application. In terms of the public interest, the concerns within each submission have been considered and addressed in detail in this report.

The proposed development has been assessed with consideration of the Planning Principle of the NSW Land and Environment Court (Tenacity Vs Warringah). In summary, the proposal is assessed as being inconsistent with the requirements of Clause 61 – Views of WLEP 2000 and the established Planning Principle in that a more skilful design would achieve satisfactory 'view sharing' without unreasonably affecting the development potential of the land. The extent and

severity of the view impacts expected by the proposed development is sufficient to carry determining weight to warrant refusal despite general compliance with the Built Form Controls and consistency with the Desired Future Character.

All processes and assessments have been satisfactorily addressed and it is concluded that the proposed development does not satisfy the requirements of Clause 61- Views WLEP 2000 as detailed in the report. Therefore, the proposal is recommended for refusal.

RECOMMENDATION (REFUSAL)

That Council as the consent authority refuse Development Application No. DA2009/0324 for demolition of an existing dwelling and construction of a new dwelling and swimming pool at Lot 14, DP 5796, No.54 Robertson Road, North Curl Curl for the following reasons:

1. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 and Clause 12 (1)(a) of Warringah Local Environmental Plan 2000, the proposed development is not consistent with the requirements of General Principles of Development Control 61 – Views contained within the Warringah Local Environmental Plan 2000 (as amended):
2. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 and Clause 12 (2)(b) of Warringah Local Environmental Plan 2000, the development does not comply with the Built Form Controls applying under the F5 Curl Curl Locality, including Front Building Setback, Side Boundary Envelope and Building Height Built Form Control.
3. Pursuant to Section 79C(1)(a)(ii) of the Environmental Planning and Assessment Act 1979, the development does not comply with the Draft Warringah Local Environmental Plan 2009 in that the proposal does not comply with the maximum Height of Buildings provided by Part 4.3(2) of the Draft Warringah Local Environmental Plan 2009.
4. Pursuant to Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979, the proposal will result in unacceptable impacts upon the built environment due to the view loss impacts arising from the proposed development.
5. Pursuant to Section 79C(1)(c) of the Environmental Planning and Assessment Act 1979, it has not been demonstrated that the subject site is suitable for the scope of the proposed development.
6. Pursuant to Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979, the proposal is not considered to be in the public interest.



The figure contains several architectural drawings for a development application:

- Top Left: SOUTH ELEVATION** (1:100 scale). Shows the south side of the building with a grid from A to E. Levels range from +0.00 to +1.00.
- Top Right: WEST ELEVATION** (1:100 scale). Shows the west side of the building with a grid from 1 to 3. Levels range from +0.00 to +1.00.
- Bottom Left: NORTH ELEVATION** (1:100 scale). Shows the north side of the building with a grid from A to E. Levels range from +0.00 to +1.00.
- Bottom Right: EAST ELEVATION** (1:100 scale). Shows the east side of the building with a grid from 1 to 3. Levels range from +0.00 to +1.00.
- Center: LONG SECTION** (1:100 scale). A vertical cross-section showing the internal structure, including floors, roof, and foundation. Grid lines A to E are shown.
- Right: SHORT SECTION** (1:100 scale). A horizontal cross-section showing the internal structure, including floors, roof, and foundation. Grid lines 1 to 3 are shown.
- Materials Legend**: A table listing materials and their specifications.

Material	Specification
P1 - DULUX WHITE ON WHITE ON	INTERIOR WALLS
P2 - DULUX WHITE ON WHITE ON	INTERIOR CEILING
P3 - DULUX WHITE ON WHITE ON	INTERIOR FLOOR
P4 - DULUX WHITE ON WHITE ON	INTERIOR ROOF
P5 - DULUX WHITE ON WHITE ON	INTERIOR STAIRS
P6 - DULUX WHITE ON WHITE ON	INTERIOR DOORS
P7 - DULUX WHITE ON WHITE ON	INTERIOR WINDOWS
P8 - DULUX WHITE ON WHITE ON	INTERIOR HANDRAILS
P9 - DULUX WHITE ON WHITE ON	INTERIOR LIGHT FIXTURES
P10 - DULUX WHITE ON WHITE ON	INTERIOR FURNITURE
P11 - DULUX WHITE ON WHITE ON	INTERIOR PLASTER
P12 - DULUX WHITE ON WHITE ON	INTERIOR PAINT
P13 - DULUX WHITE ON WHITE ON	INTERIOR GLASS
P14 - DULUX WHITE ON WHITE ON	INTERIOR METAL
P15 - DULUX WHITE ON WHITE ON	INTERIOR WOOD
P16 - DULUX WHITE ON WHITE ON	INTERIOR TILE
P17 - DULUX WHITE ON WHITE ON	INTERIOR CARPET
P18 - DULUX WHITE ON WHITE ON	INTERIOR LINOLEUM
P19 - DULUX WHITE ON WHITE ON	INTERIOR RUBBER
P20 - DULUX WHITE ON WHITE ON	INTERIOR FABRIC
P21 - DULUX WHITE ON WHITE ON	INTERIOR LEATHER
P22 - DULUX WHITE ON WHITE ON	INTERIOR PAPER
P23 - DULUX WHITE ON WHITE ON	INTERIOR GLASS BLOCK
P24 - DULUX WHITE ON WHITE ON	INTERIOR GLASS CURTAIN
P25 - DULUX WHITE ON WHITE ON	INTERIOR GLASS PARTITION
P26 - DULUX WHITE ON WHITE ON	INTERIOR GLASS DOOR
P27 - DULUX WHITE ON WHITE ON	INTERIOR GLASS WINDOW
P28 - DULUX WHITE ON WHITE ON	INTERIOR GLASS SKYLIGHT
P29 - DULUX WHITE ON WHITE ON	INTERIOR GLASS ROOF
P30 - DULUX WHITE ON WHITE ON	INTERIOR GLASS FLOOR
P31 - DULUX WHITE ON WHITE ON	INTERIOR GLASS WALL
P32 - DULUX WHITE ON WHITE ON	INTERIOR GLASS CEILING
P33 - DULUX WHITE ON WHITE ON	INTERIOR GLASS STAIR
P34 - DULUX WHITE ON WHITE ON	INTERIOR GLASS DOOR
P35 - DULUX WHITE ON WHITE ON	INTERIOR GLASS WINDOW
P36 - DULUX WHITE ON WHITE ON	INTERIOR GLASS SKYLIGHT
P37 - DULUX WHITE ON WHITE ON	INTERIOR GLASS ROOF
P38 - DULUX WHITE ON WHITE ON	INTERIOR GLASS FLOOR
P39 - DULUX WHITE ON WHITE ON	INTERIOR GLASS WALL
P40 - DULUX WHITE ON WHITE ON	INTERIOR GLASS CEILING
P41 - DULUX WHITE ON WHITE ON	INTERIOR GLASS STAIR
P42 - DULUX WHITE ON WHITE ON	INTERIOR GLASS DOOR
P43 - DULUX WHITE ON WHITE ON	INTERIOR GLASS WINDOW
P44 - DULUX WHITE ON WHITE ON	INTERIOR GLASS SKYLIGHT
P45 - DULUX WHITE ON WHITE ON	INTERIOR GLASS ROOF
P46 - DULUX WHITE ON WHITE ON	INTERIOR GLASS FLOOR
P47 - DULUX WHITE ON WHITE ON	INTERIOR GLASS WALL
P48 - DULUX WHITE ON WHITE ON	INTERIOR GLASS CEILING
P49 - DULUX WHITE ON WHITE ON	INTERIOR GLASS STAIR
P50 - DULUX WHITE ON WHITE ON	INTERIOR GLASS DOOR
P51 - DULUX WHITE ON WHITE ON	INTERIOR GLASS WINDOW
P52 - DULUX WHITE ON WHITE ON	INTERIOR GLASS SKYLIGHT
P53 - DULUX WHITE ON WHITE ON	INTERIOR GLASS ROOF
P54 - DULUX WHITE ON WHITE ON	INTERIOR GLASS FLOOR
P55 - DULUX WHITE ON WHITE ON	INTERIOR GLASS WALL
P56 - DULUX WHITE ON WHITE ON	INTERIOR GLASS CEILING
P57 - DULUX WHITE ON WHITE ON	INTERIOR GLASS STAIR
P58 - DULUX WHITE ON WHITE ON	INTERIOR GLASS DOOR
P59 - DULUX WHITE ON WHITE ON	INTERIOR GLASS WINDOW
P60 - DULUX WHITE ON WHITE ON	INTERIOR GLASS SKYLIGHT
P61 - DULUX WHITE ON WHITE ON	INTERIOR GLASS ROOF
P62 - DULUX WHITE ON WHITE ON	INTERIOR GLASS FLOOR
P63 - DULUX WHITE ON WHITE ON	INTERIOR GLASS WALL
P64 - DULUX WHITE ON WHITE ON	INTERIOR GLASS CEILING
P65 - DULUX WHITE ON WHITE ON	INTERIOR GLASS STAIR
P66 - DULUX WHITE ON WHITE ON	INTERIOR GLASS DOOR
P67 - DULUX WHITE ON WHITE ON	INTERIOR GLASS WINDOW
P68 - DULUX WHITE ON WHITE ON	INTERIOR GLASS SKYLIGHT
P69 - DULUX WHITE ON WHITE ON	INTERIOR GLASS ROOF
P70 - DULUX WHITE ON WHITE ON	INTERIOR GLASS FLOOR
P71 - DULUX WHITE ON WHITE ON	INTERIOR GLASS WALL
P72 - DULUX WHITE ON WHITE ON	INTERIOR GLASS CEILING
P73 - DULUX WHITE ON WHITE ON	INTERIOR GLASS STAIR
P74 - DULUX WHITE ON WHITE ON	INTERIOR GLASS DOOR
P75 - DULUX WHITE ON WHITE ON	INTERIOR GLASS WINDOW
P76 - DULUX WHITE ON WHITE ON	INTERIOR GLASS SKYLIGHT
P77 - DULUX WHITE ON WHITE ON	INTERIOR GLASS ROOF
P78 - DULUX WHITE ON WHITE ON	INTERIOR GLASS FLOOR
P79 - DULUX WHITE ON WHITE ON	INTERIOR GLASS WALL
P80 - DULUX WHITE ON WHITE ON	INTERIOR GLASS CEILING
P81 - DULUX WHITE ON WHITE ON	INTERIOR GLASS STAIR
P82 - DULUX WHITE ON WHITE ON	INTERIOR GLASS DOOR
P83 - DULUX WHITE ON WHITE ON	INTERIOR GLASS WINDOW
P84 - DULUX WHITE ON WHITE ON	INTERIOR GLASS SKYLIGHT
P85 - DULUX WHITE ON WHITE ON	INTERIOR GLASS ROOF
P86 - DULUX WHITE ON WHITE ON	INTERIOR GLASS FLOOR
P87 - DULUX WHITE ON WHITE ON	INTERIOR GLASS WALL
P88 - DULUX WHITE ON WHITE ON	INTERIOR GLASS CEILING
P89 - DULUX WHITE ON WHITE ON	INTERIOR GLASS STAIR
P90 - DULUX WHITE ON WHITE ON	INTERIOR GLASS DOOR
P91 - DULUX WHITE ON WHITE ON	INTERIOR GLASS WINDOW
P92 - DULUX WHITE ON WHITE ON	INTERIOR GLASS SKYLIGHT
P93 - DULUX WHITE ON WHITE ON	INTERIOR GLASS ROOF
P94 - DULUX WHITE ON WHITE ON	INTERIOR GLASS FLOOR
P95 - DULUX WHITE ON WHITE ON	INTERIOR GLASS WALL
P96 - DULUX WHITE ON WHITE ON	INTERIOR GLASS CEILING
P97 - DULUX WHITE ON WHITE ON	INTERIOR GLASS STAIR
P98 - DULUX WHITE ON WHITE ON	INTERIOR GLASS DOOR
P99 - DULUX WHITE ON WHITE ON	INTERIOR GLASS WINDOW
P100 - DULUX WHITE ON WHITE ON	INTERIOR GLASS SKYLIGHT

The figure consists of two architectural site plans for a development at 14 Robertson Rd, North Curl Curl. The left plan is labeled '1 DEMOLITION PLAN' and shows the layout of existing buildings, including a 'SUBJECT SITE' and a 'SURF RESERVE'. The right plan is labeled '2 SITE ANALYSIS • SITE PLAN' and shows the same layout with additional features like 'SEA VIEWS', 'LAGOON VIEWS', and 'SURF RESERVE'. Both plans include a scale bar (0 to 1200) and a north arrow.

Site and Elevation Plans

