Warringah Council

REPORT TO APPLICATION DETERMINATION PANEL

Meeting held on 21 February 2013

14 Gardere Avenue Curl Curl - Demolition works and construction of a dwelling house and swimming pool

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2012/1411

Responsible Officer	Alex Keller
Land to be developed (Address):	Lot 93 DP 5539 , 14 Gardere Avenue CURL CURL NSW 2096
Proposed Development:	Demolition works and construction of a dwelling house and swimming pool
Zoning:	LEP - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Warringah Council Application Determination Panel
Land and Environment Court Action:	Yes
Owner:	Mr Stuart Macaulay Thomas
Applicant:	Mr Stuart Macaulay Thomas

Application lodged:	26/11/2012
Application Type	Local
State Reporting Category	Residential - Single new detached dwelling
Notified:	29/11/2012 to 14/12/2012
Advertised	Not Advertised in accordance with A.7 of WDCP
Submissions	5

Estimated Cost of Works:	$ 1,371,488

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report)

taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;

- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (upto the time of determination) by the applicant, persons who have made submissions regarding the application and any advice provided by relevant Council / Government / Authority Officers on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 1.2 Aims of Plan
Warringah Development Control Plan - A.5 Objectives
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - C3 Parking Facilities
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D7 Views
Warringah Development Control Plan - D9 Building Bulk
Warringah Development Control Plan - D16 Swimming Pools and Spa Pools

RECOMMENDATION

Refusal

SITE DESCRIPTION

Property Description:	Lot 93 DP 5539 , 14 Gardere Avenue CURL CURL NSW 2096
Detailed Site Description:	The subject land is identified as Lot 93 DP 5539 (the site) and addressed as No.14 Gardere Avenue , Curl Curl. The land is 421.1 sqm and a rectangular shape 10.1m wide and 41.8m long. The site is a corner lot on the north west corner of Tanderra Place and Gardere Avenue. The site is surrounded by single detached residential dwellings and has views of south Curl Curl beach reserve and the ocean. The land contains no significant vegetation and has sections of exposed sandstone bedrock with a lawn area (55sqm) at the western end of the site.

Map:



SITE HISTORY

Building Application No.322/79 was approved for a garage roof in 1973.

Building Application No.2750/56 was approved for a brick dwelling in 1956.

A site inspection revealed the building may be being used as three seperate occupancies. No available record of building conversion of the site into three residential occupancies has been identified. This issue has been referred to Compliance Services to investigate.

The applicant lodged a Class 1 appeal on 23 January 2013 in the NSW Land and Environment Court (Case No.13/10041) for a Deemed Refusal of the development application.

PROPOSED DEVELOPMENT IN DETAIL

The development involves the following:

- Demolition of all existing structures on site;
- Construction of a dwelling house

**Basement Level (FFL20.1)* - Double garage, services compartments, internal stair access and storeroom;
**Lower Ground Level (FFL22.8 to FFL23.5)* - Media room, cellar/Bar, bathroom, terrace, swimming pool (and pump compartment) and internal stair access;
**Ground Level (FFL25.7 to FFL27.1)* Terrace, living/dining room, internal courtyard, entry area, kitchen, scullery,laundry, bathroom, two bedrooms and stair access;
**First Floor Level (FFL29.8)* Master bedroom, sitting room, terrace, ensuite and internal stairs.

- Excavation, drainage and on-site detention (OSD) and landscaping site

works.

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment A.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under 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	None applicable.
Section 79C (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 79C (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 79C (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Clauses 54 and 109 of the EP&A Regulation 2000. No additional information was requested. The applicant submitted information in response to a request for withdrawal of the application. In accordance with Clause 55 of the EP&A Regulations 2000 Council did not agree to the proposed amendments and advised the applicant on 22 January 2013 . Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter may be addressed via a condition of consent, as applicable Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter may be addressed via a condition of consent, as applicable Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter may be addressed via a condition of consent, as applicable

Section 79C 'Matters for Consideration'	Comments
	Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter may be addressed via a condition of consent, as applicable
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	(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 79C (1) (c) – the suitability of the site for the development	The site is considered suitable for residential development for a single dwelling house, however it is considered that the development proposed does not respond appropriately to the site constriants, DCP controls or neighbours concerns regarding the proposal.
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	This assessment has found the proposal to be contrary to the relevent requirement(s) of the Warringah DCP relating to building setbacks, landscaping, swimming pools and building bulk and will result in a development which will create an undesirable built form, such that it would undermine the character of the area and be contrary to the expectations of the community for the planning controls. In this regard, the development, as proposed, is not considered to be in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and Warringah Development Control Plan.
As a result of the public exhibition process council is in receipt of 5 submission/s from:

Name:	Address:
Mr Keith Eric Lindegger	30 A Gardere Avenue CURL CURL NSW 2096
Margot Helen Stolle	PO BOX 307 FRESHWATER NSW 2096
Mr William Charles Gowans	20 Gardere Avenue CURL CURL NSW 2096

Name:	Address:
Mr Peter Raymond Lindsay	16 Gardere Avenue CURL CURL NSW 2096
Stephanie Anne Owen Simon Owen	18 Gardere Avenue CURL CURL NSW 2096

Council received 5 submissions of objection (including 1 petition of 26 signatures) relating to the development proposal. The following issues were raised in the submissions and each have been addressed below:

- Views
- Building Bulk
- Natural Light
- Privacy
- Dilapidation risk
- Inadequate landscaping
- Streetscape impacts
- Future land-use
- Neighbour consultation

The matters raised within the submissions are addressed as follows:

- *Concern for view impacts are not minimised and the development is of an inconsiderate design for overlooking properties including No.16 Gardere Avenue and No. 28 Gardere Avenue.*
  Comment: The proposal has not been submitted with any view assessment information such as a view sharing analysis in accordance with the Planning Principles for 'View Sharing' *NSWLEC 140 Tenacity Consulting vs Warringah Council.* This issue is addressed in detail under *Part D7 Views* within this report. In summary, inadequate information has been provided by the applicant to enable an accurate view assessment to be undertaken and is considered to carry determining weight to warrant reason for refusal.

- *Concern that the proposal has excessive building bulk and creates an inconsiderate design response to adjacent dwellings and the streetscape.*
  Comment: The proposed dwelling house is of a contemporary design. The building design has minimal external side windows at ground floor or side wall articulation and includes the use of cement rendered wall planes and a flat roof design. The design changes required to appropriately address building articulation and visual interest for the exterior of the proposal would require amended plans and cannot be suitably addressed by conditions. This issue is addressed in detail under *Part D9 Building Bulk* and is considered to carry determining weight to warrant reason for refusal.

- *Concern that the proposal will create a loss of natural light on the southern side of No.16 Gardere Avenue due to narrow building separation.*
  Comment: The wall adjacent to the common boundary with No.16 Gardare Avenue is on a 900mm setback that is a consistent setback to surrounding residential development. The dwelling on No.16 Gardere Avenue will overshadow the subject site and the windows on the southern side of No.16 Gardere Avenue have an outlook onto the northern wall of the development. The building complies with the maximum building height and whilst non-compliant

with the side boundary envelope it is considered that the proposal will not cause an unreasonable loss of natural light to adjacent land. This issue is not considered to have determining weight.

- *Concern that the proposal will lead to a loss of privacy by the overlooking deck areas on the upper floor.*
  Comment: The deck on the upper floor is set in 2.1m from the northern side boundary and has dimensions of 1.9m x 4.6m, is located off the master bedroom, and overlooks the central courtyard of the proposed dwelling. It is considered that the size and location of the deck will not lead to an unreasonable loss of privacy for any surrounding land. This issue is not considered to have determining weight.

- *Concern that the development excavation work will create dilapidation risks to adjacent land at No.16 Gardare Avenue.*
  Comment: The risk of dilapidation can be suitably addressed by conditions for appropriate measures to ensure adequate support and excavation methods and minimise any structural risks from occurring to adjacent property. A geotechnical report No.26039LBrt prepared by *JK Consulting Engineers* dated 25 October 2012 has been provided to address geotechnical conditions to ensure suitable constuction/excavation measures for the development. This issue is not considered to have determining weight and may be addressed by suitable conditions.

- *The development has inadequate landscaping area due to the excessive building footprint size for the land.*
  Comment: The proposal does not comply with *Part D1 Landscape Open Space and Bushland Setting* under the Warringah DCP. In this regard, elements of landscaping at the sides of the building and within raised planter boxes do not meet the landscaping requirements to qualify for inclusion in the landscape calculation and the footprint of the building prevents an effective landscaped setting to be provided. In this regard the proposal does not satisfy elements of the Warringah DCP that relate to landscaping that assist to reduce impacts of bulk and scale, maintain continuity of landscaping between adjacent land and provide enhanced amenity for the streetscape. This issue is addressed in detail under *Part D1 Landscape Open Space and Bushland Setting* and is considered to carry determining weight to warrant reason for refusal.

- *Concern that the proposal is not compatible with the existing streetscape and the external appearance creates unsympathetic streetscape impacts.*
  Comment: The subject land is a corner lot and therefore has two street frontages to consider. The site is also narrower (10.06m wide) than the minimum lot width for subdivision (being 13.0m) under the WDCP and therefore an appropriate response and design consideration in accordance with the WDCP is required. In general it is considered that the proposal has not responded adequately to address the requirements of *Part B7 Front Boundary Setback* including the provision that "secondary street variation must consider the character of the secondary street".This issues is considered in detail under *Part B7 Front Boundary Setback* and *Part D9 Building Bulk* and is considered to carry determining weight to warrant reason for refusal.

- *Concern that the development will be used in the future for more than a single residence and therefore create additional parking impacts on the street.*
  Comment: The development proposal is for a single dwelling house and this issue may be addressed by conditions that the occupancy is to remain consistent with the definition of a "dwelling house". The proposal includes off street parking for 2 cars and complies with the

parking requirements under *Part C3 Parking* of the WDCP. This issue is not considered to have determining weight.

- *Concern that the applicant did not consult with neighbours during the design and preparation of the application which has lead to unsympathetic impacts on neighbours and the streetscape.* Comment: Consultation with neighbours by an applicant prior to lodgement of a development application is not a statutory requirement. The proposal was notified to adjacent land owners in accordance with *Part A7 Notification* of the WDCP to enable public comment on the proposal to be received and considered as part of the development assessment process. Warringah Council has a prelodgement service for applicants to assist in identifying potential issues that may arise with a development application however no prelodgement was held for this proposal. Environmental design issues and compliance with the WDCP controls are addressed in detail within this report under the heading *Warringah Development Control Plan.* In summary the proposal is not considered to adequately respond to the requirements of *Part B Built Form Controls* or *Part D Design* of the WDCP, and therefore the proposal is not in the public interest.

MEDIATION

No requests for mediation have been made in relation to this application.

REFERRALS

Internal Referral Body	Comments
Development Engineers	Development Engineers have reviewed the proposal and raise no objections to the proposal subject to conditions.
Landscape Officer	No objections in relation to the landscape plan.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.447355S Dated 18/9/2012).

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

Commitment	Required Target	Proposed
Water	40	Achievable
Thermal Comfort	Pass	Achievable
Energy	40	Achievable

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The application was referred to Ausgrid who did not raise any objection to the proposal.

Warringah Local Environment Plan 2011

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	No
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum subdivision lot size:	N/A	N/A	N/A	N/A
Height of Buildings:	8.5m	8.2m	N/A	Yes
Rural Subdivision:	N/A	N/A	N/A	N/A
No Strata Plan or Community Title Subdivisions in certain rural and environmental zones:	N/A	N/A	N/A	N/A

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

1.2 Aims of Plan

Description of Non-Compliance/Inconsistency:
The proposal is inconsistent with the following Aims of the WLEP 2011:
in relation to residential development, to:

> *(i) protect and enhance the residential use and amenity of existing residential environments*
>
> *(ii) promote development that is compatible with neighbouring development in terms of bulk, scale and appearance,*
>
> Comment:
> The proposal does not adequately respond to the surrounding streetscape and dwelling to protect and enhance the amenity of the residential environment. In this regard the proposal does not minimise impacts of bulk and scale on adjacent land and contributes to impacts of view loss issues, narrow spatial separation and loss of continuity with the landscaped setting of surrounding low density residential development.
>
> The proposal has not been suitably design to respond to consideration of bulk, scale and appearance to be compatible with neighbouring development. In this regard the public interest in the form of objections from neighbouring residential land is indicative that the proposal is not adequately designed to promote compatible development and has been received, by public objections, as being incompatible in terms amenity impacts of bulk, scale and streetscape appearance.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant aims of WLEP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is is not supported, in this particular circumstance.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	6.92m	N/A	Yes
B3 Side Boundary Envelope	45 degrees at 5m	Within envelope	N/A	No
B3 Side Boundary Envelope	45 degrees at 5m	Within envelope	N/A	No
B5 Side Boundary Setbacks (North)	0.9m	0.0m Garage 0.5m Lightwell 0.9 Dwelling	100% 44% N/A	No No Yes
B5 Side Boundary Setbacks (West)	0.9m	5.29m	N/A	Yes
B7 Front Boundary Setbacks Gardere Avenue	6.5m	0.0m Garage 1.5m Pool 6.5m Dwelling parapet and side walls 11.4m Glass front window/wall (living room)	100% 76% N/A N/A	No No Yes Yes
B7 Front Boundary Setbacks (Secondary frontage) Tanderra Place % variation taken off 3.5m minimum.	6.5m to 3.5m	0.0m Garage 2.6m Pool 1.15m to 2.6m Dwelling ground floor 3.15 Dwelling upper floor	100% 25% 67% to 25% 10%	No No No No
D1 Landscaped Open Space (LOS) and Bushland Setting (Site area 421.1sqm (-6%) (Min Lot size 450 sqm))	40% (168.4 sqm)	26% (111sqm)	73%	No

*Refer to details under the Merit Assessment provided for B3 Side Boundary Envelope, B5 Side Boundary Setback, B7 Front Boundary Setback and D7 Landscaped Open Space.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	No
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	No	No
R2 Side Boundary Envelope Exceptions	No	No

Clause	Compliance with Requirements	Consistency Aims/Objectives
B5 Side Boundary Setbacks	No	Yes
Side Setbacks - R2	No	Yes
Side Setback Exceptions - R2	No	Yes
B7 Front Boundary Setbacks	No	No
R2 - All other land in R2 Zone	No	No
Front Boundary Exceptions - R2	No	No
Front Boundary Exceptions - All Zones	No	No
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	No	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
Residential accommodation - one or two dwellings	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	No
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D5 Orientation and Energy Efficiency	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	No	No
D8 Privacy	Yes	Yes
D9 Building Bulk	No	No
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D16 Swimming Pools and Spa Pools	No	No
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Private Property Tree Management	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

A.5 Objectives

The development is considered against the underlying objectives of the Warringah Developent Control Plan (WDCP) as follows:

- *To ensure development responds to the characteristics of the site and the qualities of the surrounding neighbourhood.*

  Comment:

  The proposal does not adequately respond to the site characteristics to protect and enhance the qualities of the residential environment. In this regard, the proposal does not minimise impacts of bulk and scale on adjacent land and contributes to impacts of view loss issues, narrow spatial separation and loss of continuity with the landscaped setting of surrounding neighbourhood.

- *To ensure new development is a good neighbour, creates a unified landscape, contributes to the street, reinforces the importance of pedestrian areas and creates an attractive design outcome.*

  Comment:

  It is considered that the proposal does not demonstrate qualities that support, or have been percieved (indicated by public objections recieved), as "a good neighbour", and that "creates a unified landscape, contributes to the street, and creates an attractive design outcome". In this regard, it is considered that the building bulk, lack of landscaped open space and amenity impacts on neighbouring land and the streetscape do not satisfy this objective.

- *To inspire design innovation for residential, commercial and industrial development.*

  Comment:

  Elements of the proposal include innovative architectual design. However, it is considered that overall the proposal has not been designed with sufficent regard to critcal considerations of streetscape, building bulk and scale, spatial seperation, landscaping and amenity impacts on adjacent land to be consistent with the WDCP.

- *To provide a high level of access to and within development.*

  Comment:

  The proposal provides adequate level of access to, and within, the development by the provision of a vehicle garage, external and internal stairs.

- *To protect environmentally sensitive areas from overdevelopment or visually intrusive development so that scenic qualities, as well as the biological and ecological values of those areas, are maintained.*

  Comment:

  The site is not within an identified environmentally sensitive area (e.g. coastal foreshore) and

therefore the proposal will not create any unreasonable impacts on biological or ecological values of those areas.

- *To achieve environmentally, economically and socially sustainable development for the community of Warringah.*

  Comment:

  Environmental impacts of the proposal are addressed within Part B and Part D of this report where they are deemed to be satisfactory, or if not, are addressed in detail where they do not meet DCP requirements and cannot be addressed by conditions. The proposal is not considered to have an adverse economic impact on the community of Warringah. The proposed design has triggered a number of objections for reasons of streetscape impacts, view impacts, and excessive bulk and scale from the surrounding community which is not considered to be indicative of a socially sustainable development, in that some reasons for objection cannot be addressed by conditions and warrant refusal of the proposal. Reasons for neighbours objections are addressed under the heading "Submission" within this report.

Having regard to the above assessment, it is concluded that the proposed development is not consistent with the aims and objectives of WDCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979.

B3 Side Boundary Envelope

Description of non-compliance

The side boundary envelope is 45 degrees at 5m above the side boundary. The proposal breaches the side boundary envelope between 6.5m and 10.5m toward the upper eastern end of the building and to a lesser extent (up to 300mm) at the eastern end of the first floor.

Merit consideration

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

- *To ensure that development does not become visually dominant by virtue of its height and bulk.*

  Comment:

  The proposal is located on a 6.5m front setback for the side walls of the front terrace facing Gardere Avenue with an excavated garage located within the front setback (to replace an existing garage). The adjacent dwelling at No.16 Gardere Avenue is setback 9.4m. The front (glass) wall for the living room of the proposed dwelling facing Gardere Avenue is setback 11.4m however the ground floor to ceiling height of 3.7m plus a 1.0m parapet above creates a non-compliance with the building envelope. Therefore from the adjacent side elevation's on Tanderra Place and No.16 Gardere Avenue the development appears visually dominant by virtue of its height and bulk in relationship with the street corner and adjacent dwelling.

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

  Comment:

  The proposed non-compliances with the building envelope will not create an unreasonable impact on natural light, solar access or privacy. The top floor is stepped-in to provide upper spatial separation. Notwithstanding however, the narrow setback and high privacy walls (for the ground floor level) proposed at the eastern end of the building (north elevation) increases the amenity impacts of spatial separation on adjacent land of No.16 Gardere Avenue.

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

  Comment:

  The proposal includes a split level floor design to transition up the site from east to west. It is considered that the ground floor levels suitably respond to the sloping topography of the site.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is is not supported, in this particular circumstance.

B7 Front Boundary Setbacks

Description of non-compliance

The proposal includes a stormwater detention tank, two car garage, staircase/hallway, services alcoves/installations and a swimming pool within the front setback for Gardere Avenue and Tanderra Place. In addition, approximately one-quarter of the dwelling house is within the secondary 3.5m front setback area facing Tanderra Place. It is not possible for the dwelling to comply with a 6.5m front setback to Tanderra Place since the land is only 10m wide along this axis, therefore allowance to a 3.5m secondary road setback is reasonable.

Merit consideration:

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

- *To create a sense openness.*

  Comment:

  The street frontage elevation facing Tanderra Place has extensive wall planes and insufficient articulation and variation in the built form to address the residential street and provide a sense of openness. The general appearance creates impacts of bulk and scale with minimal landscaping along the length of the wall plane to provide a satisfactory sense of openness and address the residential nature of the street.

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

  Comment:

  The visual continuity and pattern of buildings in the vicinity of the site along Tanderra Place is dominated by residential dwellings within landscaped settings. The proposed setback for the Tanderra Place and building appearance is inconsistent with the visual pattern and continuity of dwellings, and the landscaping proposed is inadequate to provide effective screening and planting within the front setback area for the scale of the building. In this regard, inadequate details are provided to demonstrate proposed landscape elements can be maintained to provide effective screen planting/sustainable growth.

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

  Comment:

  The proposal includes extensive wall planes with minimal articulation, landscaping and fenestration to address the street to enhance the visual quality of the streetscape. The south facing wall of the proposal are setback 1.1m and 2.6m and with singular unbroken wall planes that extend along 71% of the street frontage (not including the garage). While the site is situated on land with areas of exposed bedrock it is considered that an insufficient use of landscaping, window fenestration, articulation and variation in materials has been used to protect and enhance the visual quality of the streetscape.

- *To achieve reasonable view sharing.*

  Comment:

  Insufficient information has been submitted to demonstrate reasonable view sharing. View sharing issues are addressed in detail under Part D7 - Views.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is is not supported, in this particular circumstance.

C3 Parking Facilities

Description of non-compliance

Carparking exceeds the requirement for a garage to be not more than 50% of the dwelling width (dwelling width is 4.0m), with the proposed garage being 6.0m wide.

Merit consideration

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

- *To provide adequate off street carparking.*

  Comment:

  The development provides the following on-site car parking:

Use	Appendix 1 Calculation	Required	Provided	Difference (+/-)
Dwelling House	2 car spaces	2 car spaces	2 car spaces	N/A
Total				

  Adequate parking is provided for the proposal

- *To site and design parking facilities (including garages) to have minimal visual impact on the street frontage or other public place.*

  Comment:

  The proposal replicates the existing parking arrangement on site that includes 2 car spaces in the existing garage fronting Gardere Avenue. The new garage will be externally faced with natural sandstone cladding and a double garage door opening). Therefore, the change to the existing visual impact of the garage will be consistent to the current development of the site, with no unreasonable impact on the street for the garage.

- *To ensure that parking facilities (including garages) are designed so as not to dominate the street frontage or other public spaces.*

  Comment:

  Carparking is required to be a maximum of 6m wide for a detached dwelling house garage or not more than 50% of the dwelling width, whichever is the lesser. In this case the dwelling is only 9.0m wide and therefore the lesser dimension is 4.5m (half the dwelling width). The garage is however 6.0m wide and situated below the dwelling and replaces an existing excavated double garage. Therefore is it considered that the proposal is consistent with the existing development pattern on the site and will not create an unreasonable impact on the streetscape (there are similar garage configurations nearby in the street) and will not dominate other public spaces.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

The proposal has 26% (111sqm) of landscaping (including pool surface and natural rock outcrops).

Merit consideration

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

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

  Comment:

  The proposal does not provide adequate landscape planting within the front setbacks to maintain and enhance the streetscape frontage along Tanderra Place. In this regard, the building setback is on a reduced setback and inadequate planting is provided for the site conditions and building bulk and scale to establish effective landscaped setting and enhance the streetscape.

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

  Comment:

  Medium to high plants proposed are Bamboo, Kentia Palm, Canary Island Date Palm and Frangipani. The proposal does not include sufficient endemic local native plants to provide "enhanced indigenous vegetation and provide habitat for wildlife" and therefore does not adequately address the requirements of this clause.

- *To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.*

  Comment:

  Landscaping proposed on the site is ineffective to demonstrate that it has sufficient dimensions to sustainably support low and medium shrubs, and canopy tree planting within the setback areas to adequately mitigate the height, bulk and scale of the building. The landscaping areas of the site will also be, for the substantial part, screened by masonry walls and structures preventing the appearance of a landscaped setting to be achieved that is consistent with the requirements of the DCP.

- *To enhance privacy between buildings.*

  Comment:

  The use of landscaping for the proposal to enhance privacy between dwellings is limited to bamboo planting within the northern side setback, however this planting in itself is screened by a boundary screen wall of masonry/concrete construction. The proposal generally relies on wall structures to create privacy for the rest of the building facing Gardere Avenue and Tanderra Place.

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

  Comment:

  The site includes a swimming pool and outdoor area (including lawn dimensions of 6m x 4.5m) and therefore has adequate space at the front and rear of the building to support outdoor recreational opportunities to meet the needs of the occupants.

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

  Comment:

  The proposal has sufficient area within the western setback (6.0m) to provide for service functions, including clothes drying.

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

  Comment:

  The proposal has been provided with an OSD design that meets council's *Technical Specification* for stormwater detention. The proposal requires 40% of the site to be deep soil planting, however the OSD plans list the post development deep soil as 24.5% of the site area. While the existing site has approximately 19% of the site retained as landscaping the proposal is not consistent with facilitating DCP requirements for improvement in stormwater management and infiltration of stormwater in that it does not achieve the DCP minimum 40% site area for landscaping, despite the full redevelopment of the site.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is is not supported, in this particular circumstance.

D7 Views

Merit consideration

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

- *To allow for the reasonable sharing of views.*

  Comment:

  In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, are applied to the proposal.

  1. Nature of the views affected

"*The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured*".

Comment to Principle 1:

The nature of the views to be affected are water views toward south Curl Curl beach and the coastal interface.

2. What part of the affected property are the views obtained

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

Comment to Principle 2:

Views obtained from No.16 Gardere Avenue include a diagonal view across the front of the site toward the southern end of Curl Curl Beach and coastal area. views are also gained across the site from No.28, No.30, No.30A, No.32A and No.24 Gardere Avenue. No height poles/frame have been provided to enable an accurate assessment of the proposal. View impacts have not been adequately addressed within the applicants submitted information to enable an accurate assessment.

3. Extent of impact

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

Comment to Principle 3:

It is estimated that the extent of the view impact is likely to be 'minor' to 'moderate' due to the existing available view corridor that is wide due to the elevated position of adjacent dwellings and dwellings that overlook the site at No.16, No.32A and No.34 Gardere Avenue. No adequate view analysis or information such as a height frame have been provided by the applicant to enable an accurate qualitative assessment of the actual view impact.

4. Reasonableness of the proposal that is causing the impact

"*The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide*

the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable."

Comment to Principle 4:

The proposal does not comply with various relevant planning controls applying to the land. It is considered that reasonable design amendments should be considered that would significantly reduce view impacts raised by neighbours. In this regard, it is likely that such amendments would also reduce the extent of non-compliance with the planning controls by "a more skilful design".

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

  Comment:

  The proposal is not considered to adequately demonstrate innovative design solutions that have minimised unnecessary view impacts.

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

  Comment:

  The proposal does not include the removal of mature canopy trees to accommodate the proposed building footprint or access views.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

D9 Building Bulk

Merit consideration

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

- *To encourage good design and innovative architecture to improve the urban environment.*

  Comment:

  The proposal includes large areas of continuous wall planes within the front setback area to Tanderra Place with insufficient variation to building setbacks to provide visual relief and address the street. In this regard, insufficient techniques have been used to provide visual interest, fenestration, articulate walls to reduce building mass and reduce the appearance of building bulk along the southern elevation. Landscape plantings are also inadequate to reduce the visual bulk of the building, provide effective screening and a landscaped setting for the bulk and scale of the building.

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

  Comment:

  The proposed building bulk creates a visual impact on adjacent property of No.16 Gardere Avenue including coastal view impacts, reduced spatial separation and reduced amenity. In this regard it is considered the development also fails to appropriately address the secondary street frontage of Tanderra Place including minimal wall height (ceiling height) to reduce building mass, providing sufficient landscape plantings to reduce the visual bulk and adequate variation to building materials and windows to create visual interest.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is is not supported, in this particular circumstance.

D16 Swimming Pools and Spa Pools

Merit consideration

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

- *To ensure swimming pools and spas are located to preserve the natural environment, streetscape and residential amenity.*

  Comment:

  The proposed swimming pool is located on top of the garage structure and fully inside the front setback. While the location of the pool is obscured from street level by a planter box the additional height also requires a planterbox/safety fence with the pool structure being 5.3m above road level. The requirements of Part D16 includes provision that where a site has two street frontages a pool "*is not to be situated within the primary frontage"*. The proposal includes a pool across the width of the primary frontage and fully within the 6.5m setback. In this regard, it is considered that the proposal has not been located to preserve the streetscape and adjacent residential amenity.

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

  Comment:

  The pool design is fully located within the primary setback and is therefore not considered to be an innovative design solution to improve the urban environment and respond to the site location, available land characteristics and existing streetscape amenity. By comparison, swimming pools located near the site at No.4, No.6, No.8 and No.9A Farnell Street and No.2 Beverly Place are also located on properties with two street frontages with their pools located outside or only partially within the secondary street frontage or only partially within the primary street frontage.

In this regard, it is considered that the proposal does not demonstrate an innovative design to minimise or reduce non-compliance variation's to improve the urban environment.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is is not supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

Refer to Assessment by Council's Natural Environment Unit elsewhere within this report.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

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

The proposal has been assessed 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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

- Inconsistent with the objectives of the DCP
- Inconsistent with the zone objectives of the LEP
- Inconsistent with the aims of the LEP
- Inconsistent with the objectives of the relevant EPIs
- Inconsistent with the objects specified in S.5(a)(i) and (ii) of the Environmental Planning and Assessment Act 1979

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

RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2012/1411 for the Demolition works and construction of a dwelling house and swimming pool on land at Lot 93 DP 5539,14 Gardere Avenue, CURL CURL, subject to the reasons outlined as follows:

1. **Warringah Local Environmental Plan 2011 - 1.2 Aims of Plan**
   Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of *Warringah Local Environmental Plan 2011* in that the development is inconsistent with the Aims of the Warringah LEP.

2. **Warringah Development Control Plan - A.5 Objectives**
   Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of *Warringah Development Control Plan* in that the development is inconsistent with the requirements and objectives of Part A5 of the DCP.

3. **Warringah Development Control Plan - B7 Front Boundary Setbacks**
   Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of *Warringah Development Control Plan* in that the development is inconsistent with the requirements and objectives of *Part B7 Front Boundary Setbacks* Control.

4. **Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting**
   Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of *Warringah Development Control Plan* in that the development is inconsistent with the requirements and objectives of *Part D1 Landscaped Open Space and Bushland Setting* Control.

5. **Warringah Development Control Plan - D7 Views**
   Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of *Warringah Development Control Plan* in that the development is inconsistent with the requirements and objectives of Part D7 Views Control in that the development application contains insufficient information to enable a proper and accurate view impact assessment.

6. **Warringah Development Control Plan - D9 Building Bulk**
   Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of *Warringah Development Control Plan* in that the development is inconsistent with the requirements and objectives of *Part D9 Building Bulk* Control.

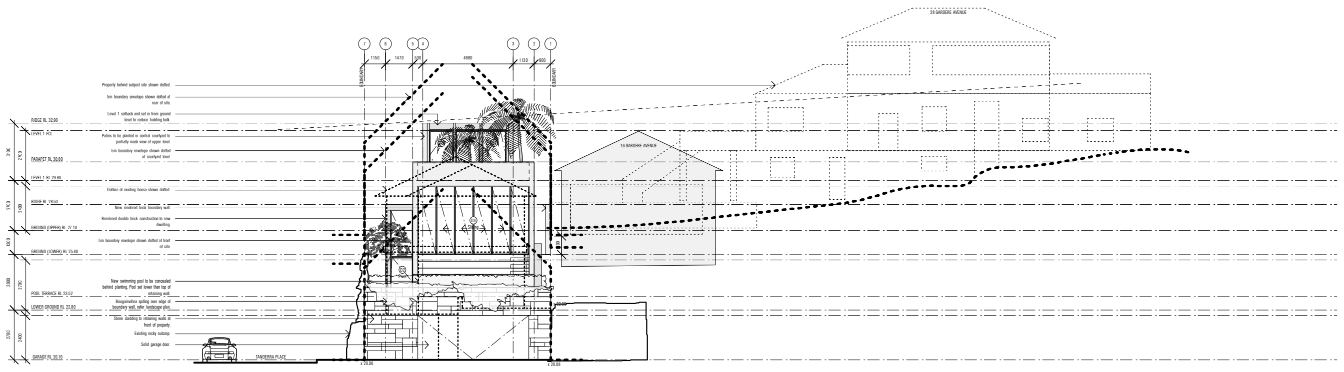
7. **Warringah Development Control Plan - D16 Swimming Pools and Spa Pools**
   Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of *Warringah Development Control Plan* in that the development is inconsistent with the requirements and objectives of the *Part D16 Swimming Pools and Spas* Control.

8. **Other Matters**

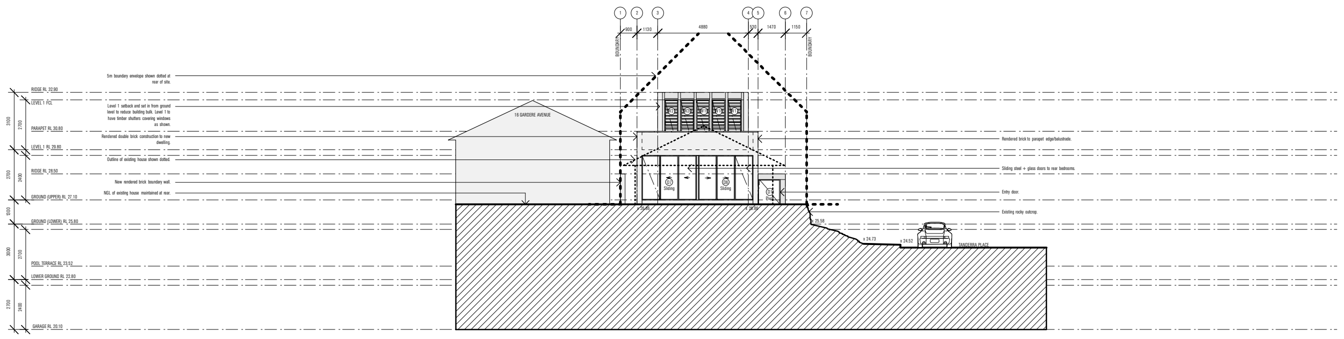
Pursuant to Section 79C(1)(e) of the Environmental Planning and Assessment Act, 1979 the proposed development is not in the public interest as the development is inconsistent with the Warringah DCP controls and requirements relating to front setbacks, landscaping, building bulk and streetscape amenity that the community can reasonably expect to be provided on this site, location and within the respective zone.

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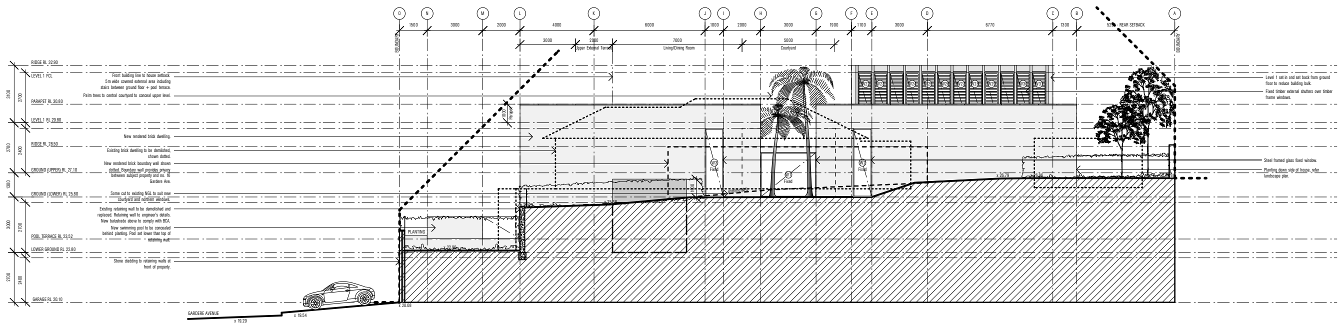
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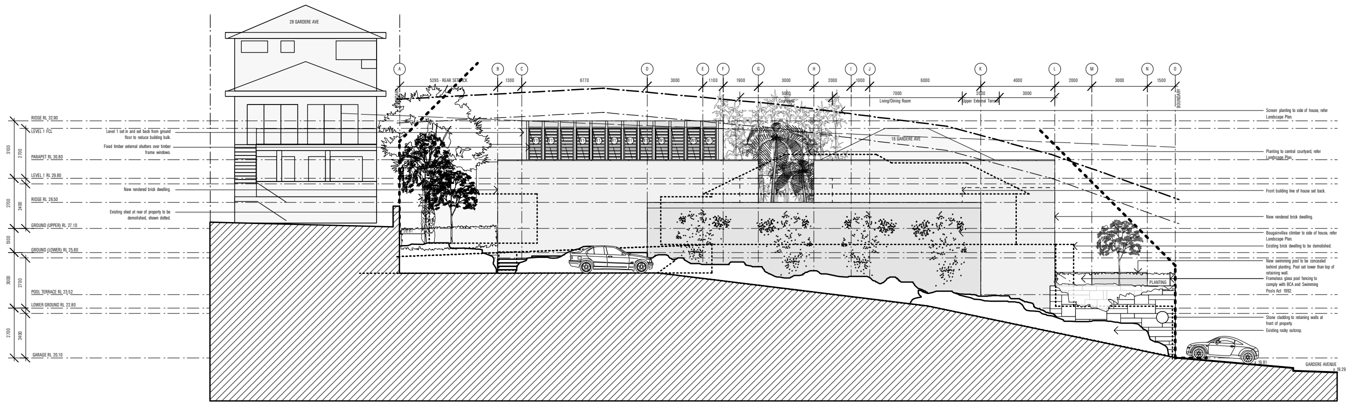
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Scale: 1:100



2 WEST ELEVATION
Scale: 1:100



1 NORTH ELEVATION
Scale: 1:100



2 SOUTH ELEVATION
Scale: 1:100

PROJECT	THOMAS RESIDENCE
ADDRESS	14 GARDERE AVENUE, CURL CURL
	LOT 93, DP5539
DOCUMENT	DEVELOPMENT APPLICATION
DRAWING	ELEVATIONS
	NOTIFICATION
DATE	13.09.12 SCALE
DRAWN	SB PROJECT NO. 10006
DRAWING NO.	NOTIFICATION REV NO.

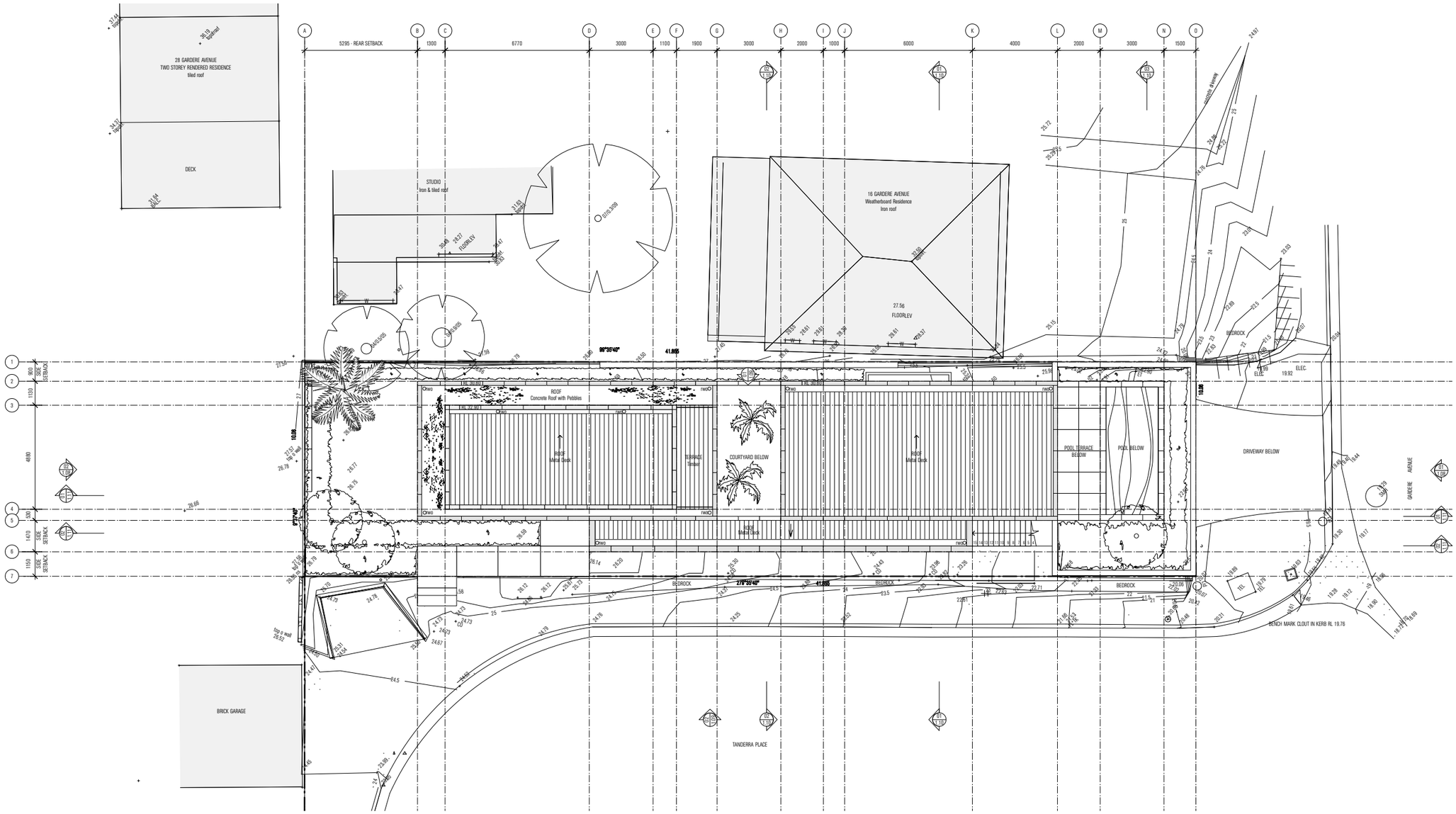
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PROJECT	THOMAS RESIDENCE
ADDRESS	14 GARDERE AVENUE, CURL CURL
	LOT 93, DP5539
DOCUMENT	DEVELOPMENT APPLICATION
DRAWING	NOTIFICATION PLAN
DATE	12.11.12
SCALE	
DRAWN	SB
PROJECT NO.	10006
DRAWING NO.	NOTIFICATION
REV NO.	

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