

## REPORT TO APPLICATION DETERMINATION PANEL

Meeting held on 22 April 2014

**72 Quirk Street Dee Why - Alterations and additions to a dwelling house and construction of a swimming pool**

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

|                                           |                                                                                   |
|-------------------------------------------|-----------------------------------------------------------------------------------|
| <b>Application Number:</b>                | DA2013/1264                                                                       |
| <b>Responsible Officer:</b>               | David Auster                                                                      |
| <b>Land to be developed (Address):</b>    | Lot 97 DP 8139 , 72 Quirk Street DEE WHY NSW 2099                                 |
| <b>Proposed Development:</b>              | Alterations and additions to a dwelling house and construction of a swimming pool |
| <b>Zoning:</b>                            | LEP - Land zoned R2 Low Density Residential                                       |
| <b>Development Permissible:</b>           | Yes                                                                               |
| <b>Existing Use Rights:</b>               | No                                                                                |
| <b>Consent Authority:</b>                 | Warringah Council Application Determination Panel                                 |
| <b>Land and Environment Court Action:</b> | No                                                                                |
| <b>Owner:</b>                             | Brendan Michael O'Connor<br>Andrea Terezia O'Connor                               |
| <b>Applicant:</b>                         | Architexture Australia Pty Ltd                                                    |
| <b>Application lodged:</b>                | 22/10/2013                                                                        |
| <b>Application Type:</b>                  | Local                                                                             |
| <b>State Reporting Category:</b>          | Residential - Alterations and additions                                           |
| <b>Notified:</b>                          | 23/01/2014 to 31/01/2014                                                          |
| <b>Advertised:</b>                        | Not Advertised in accordance with A.7 of WDCP                                     |
| <b>Submissions:</b>                       | 8                                                                                 |
| <b>Recommendation:</b>                    | Approval                                                                          |
| <b>Estimated Cost of Works:</b>           | \$ 437,000                                                                        |

## 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 - 4.3 Height of buildings  
 Warringah Development Control Plan - B1 Wall Heights  
 Warringah Development Control Plan - B3 Side Boundary Envelope  
 Warringah Development Control Plan - B5 Side Boundary Setbacks  
 Warringah Development Control Plan - B7 Front Boundary Setbacks  
 Warringah Development Control Plan - B9 Rear Boundary Setbacks  
 Warringah Development Control Plan - D6 Access to Sunlight  
 Warringah Development Control Plan - D7 Views  
 Warringah Development Control Plan - D8 Privacy  
 Warringah Development Control Plan - D9 Building Bulk

## **SITE DESCRIPTION**

|                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|-----------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Property Description:</b>      | Lot 97 DP 8139 , 72 Quirk Street DEE WHY NSW 2099                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Detailed Site Description:</b> | <p>The site is located on the northern side of Quirk Street. It has a frontage of 12.565m, a rear (northern) boundary of 12.18m, an eastern side boundary of 59.97m, and a western side boundary of 56.735m.</p> <p>The site to the west is on the same orientation, and of similar dimensions. The site borders 5 neighbouring sites to the east, which are on an east/west orientation, with frontages to Carew Street. The rear neighbour also fronts onto Carew Street. Surrounding development consists of one and two storey dwellings.</p> <p>The subject site accommodates an existing two storey dwelling, with attached double garage.</p> <p>The site slopes down from front to rear, and west to east, and the rear yard area contains a number of large rock outcrops creating a unique environmental feature. There are a number of mature trees on site.</p> |

Map:



## SITE HISTORY

The site has a long history of residential use, with no other previous recorded uses. The existing front garage was approved by Council in 1981. No prelodgment meeting was held for the current application.

## PROPOSED DEVELOPMENT IN DETAIL

The proposal involves alterations and additions to the existing two storey dwelling. The dwelling will be extended to both front and rear. The ground floor will contain the principle living areas at the rear of the dwelling, a study and guest bedroom. The first floor will contain 4 bedrooms and a lounge room.

The existing garage will be retained as a storeroom, and a new garage constructed beneath the south west corner of the building.

A swimming pool and patio area are also proposed in the rear yard.

Amended plans were received during the assessment process, which increased setbacks and articulation of the eastern elevation in particular. These plans were re-notified to surrounding neighbours, and are the subject of this assessment.

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 '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) | <p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This Clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this Clause within the Regulations. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This Clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the</p> |

| Section 79C 'Matters for Consideration'                                                                                                                                           | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                   | building designer prior to the issue of a Construction Certificate. This Clause is not relevant to this application.                                                                                                                                                                                                                                                                                                                                                                |
| 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.<br>(ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.<br>(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 the proposed development.                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 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                                                                                                                                         | No matters have arisen in this assessment that would justify the refusal of the application in the public interest.                                                                                                                                                                                                                                                                                                                                                                 |

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## 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 8 submission/s from:

| Name:                                               | Address:                                |
|-----------------------------------------------------|-----------------------------------------|
| Patricia Anne Newton<br>Paul Vincent Newton         | 26 Carew Street DEE WHY NSW 2099        |
| John Arthur Beninati                                | 22 Carew Street DEE WHY NSW 2099        |
| Ross Palazzi                                        | 24 Carew Street DEE WHY NSW 2099        |
| James Scott Blair                                   | 70 Quirk Street DEE WHY NSW 2099        |
| Hector Ross Palazzi                                 | 24 Carew Street DEE WHY NSW 2099        |
| Sattler & Associates                                | 19 Raven Place CLOTHIERS CREEK NSW 2484 |
| Brendan Michael O'Connor<br>Andrea Terezia O'Connor | Po Box 1096 DEE WHY NSW 2099            |
| Denis Fish                                          | 18A Coonanga Road NORTH AVALON NSW 2107 |

The submissions from Denis Fish are on behalf of the owners of Nos. 26 and 28 Carew Street. The

submissions from Sattler & Associates are also on behalf of the owners of 26 and 28 Carew Street.

The following issues were raised in the submissions and each have been addressed below:

- Proposal is for a new dwelling not alterations and additions
- Compliance with relevant planning controls
- Inadequate Statement of Environmental Effects
- Solar access
- Bulk and scale
- Privacy
- Stormwater
- Building envelope, building height, boundary setbacks, wall heights, failure to reasonably step back the eastern facade at the upper level, site coverage
- Location of pool causing noise
- View loss
- Inadequate survey, plans
- Change to driveway resulting in loss of street tree
- Encroachment on airspace
- Devaluation of neighbouring properties
- Estimated cost of development
- Character of development
- Fill on eastern boundary

The matters raised within the submissions are addressed as follows:

- **Proposal is for a new dwelling not alterations and additions**  
Comment: This issue is discussed in detail under 'Other Matters' in this report, including an assessment against the relevant planning principle. In summary, the proposal is considered acceptable as 'alterations and additions', as opposed to a 'new dwelling'.
- **Noncompliance with relevant planning controls**  
Comment: Compliance and noncompliance with the relevant planning controls is assessed in each relevant part of this report. In summary, the proposal is considered to be generally acceptable with respect to the relevant controls, despite the proposed non-compliances.
- **Inadequate Statement of Environmental Effects**  
Comment: Concerns were raised that the Statement of Environmental Effects (SEE) was inadequate and not in accordance with the Environmental Planning and Assessment Regulation 2000. However, the SEE provided is considered to be adequate to assist in understanding the development. Council has carried out its own assessment with regard to compliance with the relevant controls and the likely environmental impacts arising from the development, having regard to all documents provided by the applicant, and all documents received from objectors. The issue is not considered to carry determining weight.
- **Solar access**  
Comment: The site is on a north/south orientation, and as such will overshadow the western

neighbours in the morning, and the eastern neighbours in the afternoon, ensuring three hours of sunlight is maintained to neighbour's private open spaces on June 21. The shadow diagrams provided with the application confirm a reasonable level of solar access will be maintained to all neighbours.

The objections from the eastern neighbours have raised concerns that their rear yards are already overshadowed in the morning's by their own dwellings and northern neighbours. Number 26 has raised particular concern in relation to their pool area. The submissions stated that the rear yard areas would not receive 3 full hours of sunlight between 9am and 3pm.

The development will only significantly overshadow numbers 26 and 28 Carew Street, with only a small amount of overshadowing of the south western rear corner of number 24.

The orientation of the sites means that any 8.5m high development of the subject site will overshadow the eastern neighbours in the afternoon. Additionally, it is noted that the eastern neighbours are lower than the subject site, and as such are more vulnerable to overshadowing. From the diagrams provided it seems clear that at least 50% of the private open space of each neighbour will be in sunlight for 3 hours throughout the day on June 21 (albeit different parts of the private open spaces), as required by clause D6 Access to Sunlight of the WDCP.

The proposed building envelope non-compliance will not add a significant or unreasonable amount to overshadowing. If the building were to fully comply with the building envelope, it would not create any significant benefit with respect to solar access for the neighbours. It is noted also that it is unlikely the swimming pool at number 26 will be in high usage in the middle of winter when the overshadowing would be at its worst, and that this property has its own rear shed and shade structure. To penalise the applicant's property for these structures is unreasonable.

The objections are not supported in respect to solar access.

- **Bulk and scale**

Comment: This issue is assessed in detail under clause D9 Building Bulk in this report. In summary the proposal is not considered to result in an unreasonable bulk and scale. The objections are not supported in this regard.

- **Privacy**

Comment: Privacy is discussed in detail under clause D8 in this report. In summary, the proposal is considered to maintain a reasonable level of privacy, subject to conditions of consent regarding sill heights of certain windows.

- **Stormwater**

Comment: Council's development engineers have assessed the proposal and are satisfied with the provisions for stormwater disposal. Conditions have been provided to ensure stormwater is disposed of in accordance with Council policy and the relevant Australian Standards. The issue is considered to be adequately satisfied in this regard.

- **Building envelope, building height, boundary setbacks, wall heights, failure to reasonably**

**step back the eastern facade at the upper level, site coverage**

Comment: These issues are assessed under the relevant sections of this report. In summary, the proposal is considered acceptable, with the exception of the issues raised in relation to height, which is addressed via a condition of consent to lower the overall height. The submissions are not supported in this regard.

- **Location of pool causing noise**

Comment: Concerns were raised with the proposed location of the pool causing noise issues to the secondary dwellings at the rear of numbers 22 and 24 Carew Street. The pool is considered to be a relatively standard residential use in rear yards, which is unlikely to cause unreasonable noise concerns through its use. It would generally be expected to be used during the day time, and would not unreasonably impact on bedrooms of neighbours used mainly at night time. Relocation to the western boundary is not acceptable due to the large rock outcrops in that area. A standard condition of consent is recommended requiring that all machinery make no more than 5dBa noise when measured at the boundary. Subject to this condition the objection is not supported.

- **View loss**

Comment: View loss has been assessed in detail under clause D7 Views in this report. In summary, the proposal is considered to result in a reasonable sharing of views. The objection is not supported in this regard.

- **Inadequate survey, plans**

Comment: Concerns were raised that the survey provided is unreadable, and the plans do not show the natural ground levels. The levels shown on the survey, while small, are readable, and have been used to determine ground levels in assessing the development. The elevation plans do not show the levels, however these levels have been assessed using the levels shown on the section plans.

- **Change to driveway resulting in loss of street tree**

Comment: The proposed new driveway will result in the loss of an existing street tree. Council's Landscape Officer was consulted regarding this street tree, and it is not considered to be of a size or value that its loss should result in refusal of the development. A condition has been provided by the Landscape Officer requiring removal of the street tree to be undertaken by a Council approved contractor. The objection is not supported in this regard.

- **Encroachment on airspace**

Comment: Concerns were raised that many of the proposed east facing windows are designed to take in the views across the eastern properties, which would make development of these properties more difficult in the future. Any such development in the future would be assessed on a merits basis, and the fact that any neighbour has built prior to take advantage of any particular view is not a matter for consideration under the Tenacity principles. However, it is noted that the primary living areas of the proposal will remain on the lower level. The objection is not supported in this regard.

- **Devaluation of neighbouring properties**

Comment: The value of neighbouring properties is not a matter for assessment under section 79C of the Environmental Planning and Assessment Act 1979.

- **Estimated cost of development**

Comment: Concerns were raised with the estimated cost of the development. The Cost Summary Report has been filled out by the architect, and is estimated at \$437,000 total. Given that the development will generally retain the existing foundations, floor plate and a significant part of the existing ground floor level, the estimated cost to construct the proposed additions is considered to be reasonable.

- **Character of development**

Comment: Concerns were raised with the proposed character of the development compared to surrounding development. It is true that most surrounding development incorporates a pitched roof style of building, and the proposal will be a different shape and style to the existing, generally older, style homes in the immediate vicinity. However, the development is of a contemporary architectural design, and will remain a single, detached, albeit large, dwelling. It is expected that over time the older and under developed properties nearby will develop to their full potential, and a range of architectural styles is likely to arise. The character of the proposal is not considered to be unreasonable in its context.

- **Fill on eastern boundary**

Comment: Concerns were raised regarding the amount of fill on the eastern boundary. The plans do not note any large amount of fill, although there may be some to provide soil for some screen planting between the proposed pool and the eastern boundary. This is not however considered to be excessive, or have any unreasonable impacts on neighbours.

## MEDIATION

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

## REFERRALS

| Internal Referral Body | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Development Engineers  | <p>The applicant proposed to amend the existing garages.<br/>The existing driveway crossing is shared with No.70 Quirk Street on Council areas.<br/>In the proposal, the existing shared driveway need to be lowered to accommodate the new level of garage.<br/>Since the shared driveway is used by No.70 too, the proposed change of existing driveway is not acceptable.</p> <p>The applicant shall install a new separated crossing.<br/>It shall be located about 1-2 m away from the original crossing.<br/>However, a street tree need to be removed in order to relocate the crossing.<br/>Please refer the DA to landscape for assessment.</p> |

| Internal Referral Body | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                        | Apart from the crossing issue, Development Engineer has no objection subject to follow conditions.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Landscape Officer      | <p>No objections to the proposal in general terms. The plans indicate that some rock is required to be removed to accommodate the dwelling, however the large rock outcrop and overhang in the rear yard is to be retained. The retention and protection of this rock feature is supported.</p> <p>Several trees are indicated for removal on the plans, including some near the rock outcrop. No objection to the removals is raised subject to protection of the rock. Weed species around the rock outcrop are also to be removed to enhance the rock as a feature in the rear yard.</p> <p>No objections to approval subject to conditions as recommended.</p> |

| 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. A173301 dated 17 October 2013). 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 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.

## **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?                                                                       | Yes |
| 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        | 8.7m     | 2.3%        | Condition to reduce parapet height by 200mm will ensure compliance. |
| 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 |
|--------|------------------------------|
|        |                              |

| Clause                                  | Compliance with Requirements              |
|-----------------------------------------|-------------------------------------------|
| Part 1 Preliminary                      | Yes                                       |
| Land Use Table                          | Yes                                       |
| Part 4 Principal development standards  | No                                        |
| 4.3 Height of buildings                 | No<br>(see detail under Clause 4.6 below) |
| 4.6 Exceptions to development standards | Yes                                       |
| 5.9 Preservation of trees or vegetation | Yes                                       |
| Part 6 Additional Local Provisions      | Yes                                       |
| 6.2 Earthworks                          | Yes                                       |
| 6.4 Development on sloping land         | Yes                                       |

#### Detailed Assessment

#### **4.6 Exceptions to development standards**

The application has stated that it complies with the height control of 8.5m. However the survey shows that the existing driveway drops to a level of RL65.57, meaning a small part of the proposed front parapet, with a maximum height of RL74.27 will breach the height limit by 200mm. No clause 4.6 statement has been provided with the application to support the proposed variation. However, given that the parapet is an architectural feature and serves no other purpose a condition is recommended to reduce the parapet by 200mm to ensure compliance with the control. Subject to this condition the proposal will comply with the height control.

#### **Warringah Development Control Plan**

##### Built Form Controls

| Built Form Control             | Requirement | Proposed                                                                                   | % Variation*                   | Complies                    |
|--------------------------------|-------------|--------------------------------------------------------------------------------------------|--------------------------------|-----------------------------|
| B1 Wall height                 | 7.2m        | 7.6m                                                                                       | 5.26%                          | No                          |
| B2 Number of storeys           | N/A         | N/A                                                                                        | N/A                            | N/A                         |
| B3 Side Boundary Envelope      | 5m          | Breach both sides. Up to 900mm east side, up to 1.2m west side.                            | N/A                            | No                          |
| B4 Site Coverage               | N/A         | N/A                                                                                        | N/A                            | N/A                         |
| B5 Side Boundary Setbacks      | 0.9m        | East side dwelling 800mm<br>Existing garage nil<br>Privacy screen 500mm<br>West side 900mm | 11.11%<br>N/A<br>44.44%<br>N/A | No<br>Existing<br>No<br>Yes |
| B7 Front Boundary Setbacks     | 6.5m        | Existing garage 5.2m<br>New garage and First floor 6.3m                                    | N/A<br>3.08%                   | Existing<br>No              |
| B9 Rear Boundary Setbacks      | 6m          | Patio/pergola 1m<br>New pool 17m                                                           | 83.33%<br>N/A                  | No<br>Yes                   |
| B11 Foreshore Building Setback | N/A         | N/A                                                                                        | N/A                            | N/A                         |

|                                                     |     |     |     |     |
|-----------------------------------------------------|-----|-----|-----|-----|
| B12 National Parks Setback                          | N/A | N/A | N/A | N/A |
| B13 Coastal Cliffs Setback                          | N/A | N/A | N/A | N/A |
| B14 Main Roads Setback                              | N/A | N/A | N/A | N/A |
| B15 Minimum Floor to Ceiling Height                 | N/A | N/A | N/A | N/A |
| D1 Landscaped Open Space (LOS) and Bushland Setting | 40% | 45% | N/A | Yes |

**\*Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example:  $38/40 \times 100 = 95$  then  $100 - 95 = 5\%$  variation)

#### Compliance Assessment

| Clause                                           | Compliance with Requirements | Consistency Aims/Objectives |
|--------------------------------------------------|------------------------------|-----------------------------|
| Part A Introduction                              | Yes                          | Yes                         |
| A.5 Objectives                                   | Yes                          | Yes                         |
| Part B Built Form Controls                       | Yes                          | Yes                         |
| B1 Wall Heights                                  | No                           | Yes                         |
| B3 Side Boundary Envelope                        | No                           | Yes                         |
| B5 Side Boundary Setbacks                        | No                           | Yes                         |
| Side Setbacks - R2                               | No                           | Yes                         |
| Side Setback Exceptions - R2                     | Yes                          | Yes                         |
| B7 Front Boundary Setbacks                       | No                           | Yes                         |
| B9 Rear Boundary Setbacks                        | No                           | Yes                         |
| All other land under R2                          | No                           | Yes                         |
| Rear Boundary Exceptions - R2                    | Yes                          | Yes                         |
| Part C Siting Factors                            | Yes                          | Yes                         |
| C2 Traffic, Access and Safety                    | Yes                          | Yes                         |
| C3 Parking Facilities                            | Yes                          | Yes                         |
| C4 Stormwater                                    | Yes                          | Yes                         |
| C5 Erosion and Sedimentation                     | Yes                          | Yes                         |
| C7 Excavation and Landfill                       | Yes                          | Yes                         |
| C8 Demolition and Construction                   | Yes                          | Yes                         |
| Residential accommodation - one or two dwellings | Yes                          | Yes                         |
| Part D Design                                    | Yes                          | Yes                         |
| D1 Landscaped Open Space and Bushland Setting    | Yes                          | Yes                         |
| D2 Private Open Space                            | Yes                          | Yes                         |
| D3 Noise                                         | Yes                          | Yes                         |
| D5 Orientation and Energy Efficiency             | Yes                          | Yes                         |
| D6 Access to Sunlight                            | Yes                          | Yes                         |

| Clause                                     | Compliance with Requirements | Consistency Aims/Objectives |
|--------------------------------------------|------------------------------|-----------------------------|
| D7 Views                                   | Yes                          | Yes                         |
| D8 Privacy                                 | Yes                          | Yes                         |
| D9 Building Bulk                           | Yes                          | Yes                         |
| 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           | Yes                          | Yes                         |
| D20 Safety and Security                    | Yes                          | Yes                         |
| Part E The Natural Environment             | Yes                          | Yes                         |
| E1 Private Property Tree Management        | Yes                          | Yes                         |
| E6 Retaining unique environmental features | Yes                          | Yes                         |
| E10 Landslip Risk                          | Yes                          | Yes                         |

#### Detailed Assessment

### **B1 Wall Heights**

#### Description of non-compliance

The proposed wall height is generally compliant with the control. However the front wall will be up to 7.6m above the existing ground level of the driveway at its lowest point.

#### Merit consideration:

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

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

#### Comment:

The non-compliant element forms a minor part of the overall development, and is caused by the slope of the existing driveway and floor level of the existing garage. It will not cause the development to have an unreasonable visual impact in the area.

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

#### Comment:

The development will remain of a height that is below the tree canopy level.

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

Comment:

The proposal is considered to result in a reasonable sharing of views as assessed under clause D7 Views in this report.

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

Comment:

The proposal is not considered to result in any unreasonable impacts on adjoining properties as assessed throughout this report. The non-compliant element forms a small part of the overall development, and is confined to a part of the front elevation.

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

Comment:

The proposal generally complies with the control. As discussed above the non-compliance is caused by the slope of the driveway and existing excavated floor level of the garage. The development generally responds to the topography.

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

Comment:

Sufficient scope for innovative roof pitch and variation in design is maintained. The proposal is generally compliant with the control apart from a small section of the front elevation.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

### **B3 Side Boundary Envelope**

Description of non-compliance

The proposal will breach the envelope on both sides. On the east side it will breach by between approximately 200mm and 950mm for a length of 21.2m. On the west side it will breach by between approximately 0mm and 1.25m for a length of 22.3m.

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 development is broken up into a number of different elements on both sides through good use of articulation to minimise the bulk and scale. The breaches on both sides are caused in large part by an architectural feature being the proposed parapet style roof line. The non-compliant elements will not cause the development to unreasonably visually dominate the area.

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

Comment:

Adequate light, solar access and privacy is maintained by the proposal, as assessed in the relevant sections of this report. No windows or balconies will be above the envelope, and the development will not unreasonably overshadow neighbouring properties.

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

Comment:

The site topography slopes down from front to rear and west to east. However, the building platform is generally quite flat due to the retention of the existing dwelling, and no stepping of the development is necessary. The proposal adequately responds to the topography.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / 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.

## **B5 Side Boundary Setbacks**

### Description of non-compliance

The existing dwelling is on a slight angle to the side boundaries, and a small part of the eastern wall will be 800mm from the east side boundary. The proposed privacy screen above the existing garage structure is 500mm from the east side boundary.

### 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 opportunities for deep soil landscape areas.*

Comment:

The proposal will maintain more than 40% of the site as landscaped open space and adequate deep soil areas will remain. There is no deep soil area in the current east side setback adjacent to the dwelling and this situation will remain unchanged.

- *To ensure that development does not become visually dominant.*

Comment:

The proposed breaches of the side setback control are very minor, and will not cause the development to become visually dominant. The existing eastern wall is to be retained at 800mm, and the new wall above will maintain that setback. The privacy screen is a small structure, and will not be visually obtrusive.

- *To ensure that the scale and bulk of buildings is minimised.*

Comment:

The minor side setback non-compliances will not cause the building to be of an unreasonable bulk and scale. The bulk and scale is minimised through articulation of the building, and the side setbacks are varied along both side elevations.

- *To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.*

Comment:

Adequate separation is maintained. To the east the neighbour's rear boundaries join the subject site, and their dwellings are well away from the development. A reasonable level of privacy, amenity and solar access is considered to be maintained, as assessed throughout this report.

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

Comment:

The proposal is considered to maintain a reasonable sharing of views, as assessed in D7 Views in this report.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / 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.

## **B7 Front Boundary Setbacks**

#### Description of non-compliance

The existing front garage will remain at 5.2m from the front boundary, and the roof will be used as an entry deck. The south west corner of the new garage and first floor addition will be 6.3m from the front boundary, but will otherwise be compliant.

#### 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 new works will generally comply with the control, with only a small part of the south western corner breaching the 6.5m front setback in a minor way. The new works will generally be well behind the front setback with a maximum front setback of up to 10.5m in the south eastern corner of the new first floor. The existing garage in the front setback is to be retained, with the roof converted to an uncovered entry deck. In this regard the sense of openness in the area will be maintained.

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

#### Comment:

The dwellings to the west are stepped further to the north as the front boundary moves further to the north. The existing dwelling on the subject site is currently behind the building line created by the western dwellings, and the front extensions will maintain the visual continuity created by existing development.

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

#### Comment:

The development will provide modern, architecturally designed alterations and additions to the dwelling, and will provide an attractive addition to the streetscape.

- *To achieve reasonable view sharing.*

#### Comment:

A reasonable sharing of views is considered to be maintained as assessed in D7 Views in this report.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / 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.

## B9 Rear Boundary Setbacks

### Description of non-compliance

The proposed patio and pergola in the rear setback is 1m from the rear boundary. The control allows a variation for outbuildings provided they do not cover more than 50% of the rear setback area. The patio area is approximately 26sqm and covers approximately 33% of the rear setback area.

### 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 opportunities for deep soil landscape areas are maintained.*

#### Comment:

The development provides for greater than 40% landscaped open space. Adequate deep soil areas will be maintained.

- *To create a sense of openness in rear yards.*

#### Comment:

The rear structure is a relatively small, open type structure, and will not unreasonably impact on the sense of openness in the rear yard area.

- *To preserve the amenity of adjacent land, particularly relating to privacy between buildings.*

#### Comment:

The rear patio area will not have any unreasonable privacy impact on neighbours, being at ground level. It will not have any other unreasonable amenity impacts.

- *To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.*

#### Comment:

There are a number of structures in the rear setback areas of neighbours to the north, east and west. In this regard the proposed works will maintain the existing pattern of buildings, rear gardens and landscape elements.

- *To provide opportunities to maintain privacy between dwellings.*

#### Comment:

The proposed patio area will not have any unreasonable privacy impacts, and will not prevent any opportunities to maintain privacy in the future.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / 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.

### **D6 Access to Sunlight**

The proposal is consistent with the requirements and objectives of the control. An assessment against the planning principles in *The Benevolent Society v Waverley Council* [2010] NSWLEC 1082 has also been carried out below:

**The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. (However, even at low densities there are sites and buildings that are highly vulnerable to being overshadowed.) At higher densities sunlight is harder to protect and the claim to retain it is not as strong.**

Comment: The site is a low density area, in the R2 zone. It is noted that the adjoining sites to the east are lower than the subject site, and are therefore somewhat vulnerable to overshadowing in the afternoon. Given the subdivision pattern it is inevitable that any 8.5m high development will overshadow the eastern neighbours to some extent.

**The amount of sunlight lost should be taken into account, as well as the amount of sunlight retained.**

Comment: Of the eastern neighbours, number 24 Carew Street will lose very little sunlight compared to the existing dwelling. Number 26 will lose a significant portion by 3pm in the afternoon, and number 28 will lose sunlight to its whole private open space by 3pm in the afternoon. The objections have stated that they are overshadowed most of the day by their own dwellings and northern neighbours. However it is clear from extrapolating the shadow diagrams provided that the eastern neighbour's private open spaces will be in full sunlight (except for shading caused by their own single storey outbuildings) at 12pm, and at least 50% of each private open space will be in full sunlight for at least 2 hours before midday and 1 hour after midday.

**Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.**

Comment: The proposed envelope non-compliance on the eastern side of the development will cause some extra overshadowing. However, it is a minor amount of extra overshadowing, and a further setback or reduction in height of the eastern parapet would not significantly improve the situation, while somewhat reducing the internal amenity of the development. The proposed overshadowing is not considered unreasonable.

**To be assessed as being in sunlight, the sun should strike a vertical surface at a horizontal angle of**

**22.5o or more. (This is because sunlight at extremely oblique angles has little effect.) For a window, door or glass wall to be assessed as being in sunlight, half of its area should be in sunlight. For private open space to be assessed as being in sunlight, either half its area or a useable strip adjoining the living area should be in sunlight, depending on the size of the space. The amount of sunlight on private open space should be measured at ground level.**

Comment: The proposal will not overshadow any of the eastern buildings except for number 28 at 3pm. No diagram has been provided for that wall, however the dwelling on that site has its garage on the ground floor on the western side, with the main living area on the first floor. It is unlikely the door or window at first floor level will be overshadowed. Given the solar access control only protects private open spaces the possible overshadowing of any window by 3pm is not considered unreasonable.

**Overshadowing by fences, roof overhangs and changes in level should be taken into consideration. Overshadowing by vegetation should be ignored, except that vegetation may be taken into account in a qualitative way, in particular dense hedges that appear like a solid fence.**

Comment: The eastern neighbours are overshadowed in the morning by their own dwellings, and their northern neighbours. It is noted that number 26 also has an outbuilding to the north of their pool, and a shade structure to the west of their pool, both of which would create some overshadowing of their own private open space.

**In areas undergoing change, the impact on what is likely to be built on adjoining sites should be considered as well as the existing development.**

Comment: The area is generally undergoing change, and there many existing dwellings in the area not developed to their full potential. This development will push the limits of the potential, particularly with regard to the building envelope control. However, as discussed in this report the envelope non-compliance is not considered to result in unreasonable impacts on solar access.

The proposal is considered to be generally consistent with the planning principle.

## **D7 Views**

One submission from the western neighbour (number 70 Quirk St) raised concerns with view loss.

### 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 view affected will be a glimpse of ocean from the rear deck through trees and roofs. It is not a 'whole view', and is a very small portion of water at a long distance. There is also a view available from the front yard of the property, which is another, slightly larger, glimpse of ocean among trees and roofs, although this view is unlikely to be impacted upon significantly. The views are not considered highly valuable in the context of the Tenacity principles.

### **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:

The rear view is from a standing position on the rear deck and sunroom, and is directly across the side boundary. The view at the front is available from the front yard and entryway. There is a front facing living room window. However there is a hedge planted in front of it, and the view from the window is at an extreme angle across the side boundary.

### **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:

The extension to the rear of the dwelling will block a small ocean glimpse from the rear deck and sunroom. However, the rear of the dwelling will retain views across the rear of the subject site towards the ocean and headland. These more valuable views will remain unaffected. The view at the front of the property will be slightly impacted upon from the front entryway. However, the impact on the actual living room window will be minor. The view loss from the 'whole of the property' is considered to be negligible to minor, given that the main view to the rear will be fully retained.

### **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 is non-compliant with the built form controls in a number of areas as discussed in this report. However, the only non-compliance that will have any impact on views is the minor breach of the front setback control in the south west corner of the development, where the proposal will be approximately 200mm inside the front setback area. This impact will be very small. The existing building at number 70 is setback approximately 10m from the front boundary, and it is likely that any future development of the property will bring the dwelling forwards.

The actual loss of view at the front is considered to be so minor that it a redesign should not be required. The development is considered to maintain a reasonable sharing of views.

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

Comment:

Given that a reasonable sharing of views is considered to be maintained, the development is considered to be sufficiently innovative.

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

Comment:

No existing canopy trees are to be affected to create/retain views.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / 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.

## **D8 Privacy**

Objections were received raising privacy concerns. The proposal is considered to maintain a reasonable level of privacy to neighbours. The principle living areas are located on the ground floor and generally orientated towards the rear yard. The upper floor is comprised mostly of bedrooms, with one Lounge room and balcony at the rear.

On the western side of the first floor all windows have been made opaque. The ground floor windows are generally adjacent to the neighbouring garage and do not cause any unreasonable impacts.

On the eastern side of the first floor there are a number of windows proposed. Windows 7 and 8 are full

length windows but are proposed as opaque. Window 22 is a bathroom window and opaque. Window 21 is a bedroom window. The bedroom also has a south facing window and in this regard a condition will require window 21 to have a sill height of 1.65m. Window 24 is a Lounge room window, and it is considered it should also have a 1.65m sill height to adequately protect privacy.

Window 23 is a bedroom window, however this is the only window in that bedroom. The applicants have proposed a 1.5m sill height, with a built in desk running along the western wall which will ensure a person cannot stand right up against the window. A site inspection included a viewing from the existing first floor west facing window (which has a 1.5m sill height), and it was confirmed that the 1.5m sill height, combined with the built-in-desk will be sufficient to maintain a reasonable level of privacy to the western neighbours.

The rear first floor decks are angled slightly towards the west, however they are generally orientated to look out towards the rear of the site, and will have minimal impacts on the privacy of the neighbouring sites given they are located off a bedroom and secondary living area and are generally less than 2m in width. A privacy screen is recommended as a condition of consent along the eastern edge of the eastern deck. Subject to this condition privacy will be adequately protected.

On the lower level window 4 is a study window. The study also has a south facing window. A 1.65m sill height is also recommended. Window 5 is a small storeroom window and will not cause any unreasonable impacts. Window 6 is a Lounge room window, and given it is a living area and will overlook the western neighbour's private open space, it is recommended this window also have a 1.65m sill height.

A privacy screen has been proposed along the eastern edge of the front entry deck, and this will adequately protect privacy from this area.

The rear ground floor deck is located adjacent to the roof of the existing outbuilding in the neighbouring yard, and the largest most usable space of the deck is located towards the western side of the site, and includes privacy screening on that side. The rear deck will not cause unreasonable privacy impacts.

Subject to conditions as discussed above, the development will maintain a reasonable level of privacy.

An assessment against the planning principle mentioned in the control, *Meriton v Sydney City Council* [2004] NSWLEC 313, has also been carried out below:

**The ease with which privacy can be protected is inversely proportional to the density of development. At low-densities there is a reasonable expectation that a dwelling and some of its private open space will remain private. At high-densities it is more difficult to protect privacy.**

Comment: The area is a low density area. As discussed above, subject to conditions of consent the development will maintain a reasonably high level of privacy to the neighbouring private open spaces.

**Privacy can be achieved by separation. The required distance depends upon density and whether windows are at the same level and directly facing each other. Privacy is hardest to achieve in developments that face each other at the same level. Even in high-density development it is unacceptable to have windows at the same level close to each other. Conversely, in a low-density area, the objective should be to achieve separation between windows that exceed the numerical standards above. (Objectives are, of course, not always achievable.)**

Comment: The proposal has a great deal of separation between buildings to the east, and does not create any direct clashes between windows with the western neighbour. As discussed above, conditions regarding

sill heights and privacy screening will ensure the proposed east facing windows do not cause unreasonable impacts.

**The use of a space determines the importance of its privacy. Within a dwelling, the privacy of living areas, including kitchens, is more important than that of bedrooms. Conversely, overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time.**

Comment: The proposed primary living areas are at the ground floor level, and subject to the conditions discussed above will not cause any unreasonable over looking of the neighbouring private open spaces. There is a secondary living area proposed at the rear of the first floor, however all other rooms at first floor level are bedrooms and bathrooms. The east facing windows at first floor level will be either opaque or have raised sill heights as discussed. The balcony off the upper level living area will also be required to have a privacy screen. Subject to these conditions the private open spaces of the eastern neighbours will be protected to a reasonable level, noting that the subdivision pattern will inevitably cause at least some overlooking from the subject site.

**Overlooking of neighbours that arises out of poor design is not acceptable. A poor design is demonstrated where an alternative design, that provides the same amenity to the applicant at no additional cost, has a reduced impact on privacy.**

The overlooking does not particularly arise out of poor design. Given the subdivision pattern any dwelling on the subject site is always likely to be setback approximately 900mm from the eastern side boundary (which is the eastern neighbour's rear boundaries). To expect a simple blank wall, with no windows along the entire side elevation is unreasonable. The conditions discussed above will adequately limit overlooking opportunities to the neighbouring private open spaces.

**Where the whole or most of a private open space cannot be protected from overlooking, the part adjoining the living area of a dwelling should be given the highest level of protection.**

Comment: The subdivision pattern means that any one part of the eastern private open spaces are not easily separable from another part in terms of protecting a certain section of the private open space. The private open spaces of the eastern neighbours are most closely connected to their internal living areas at the furthest possible point from the subject site, as a result of the subdivision pattern. As discussed, conditions of consent are recommended to reasonably limit the amount of overlooking by the development.

**Apart from adequate separation, the most effective way to protect privacy is by the skewed arrangement of windows and the use of devices such as fixed louvres, high and/or deep sills and planter boxes. The use of obscure glass and privacy screens, while sometimes being the only solution, is less desirable.**

Comment: Once again, it is not the arrangement of windows that causes overlooking issues, so much as the subdivision pattern, which will inevitably result in some level of overlooking for any two storey development on the subject site. Conditions have been recommended requiring high sill heights and privacy screening. Privacy will be maintained to a reasonable level.

**Landscaping should not be relied on as the sole protection against overlooking. While existing dense vegetation within a development is valuable, planting proposed in a landscaping plan should be given little weight.**

Comment: No screen planting is proposed along the side boundaries, other than adjacent to the swimming pool area. However, given the rocky outcrops along the eastern boundary and the 900mm side setback, it would be impractical and perhaps impossible to provide any significant screen planting to attempt to further protect privacy. The conditions discussed above will be adequate to protect privacy to a reasonable level.

**In areas undergoing change, the impact on what is likely to be built on adjoining sites, as well as the existing development, should be considered.**

Comment: The area has a large number of older or underdeveloped dwellings, and is considered to be slowly undergoing change. The conditions discussed above will protect privacy to a reasonable level as surrounding blocks are developed over time. The main outlook from the development will be over their own rear yard.

**Conclusion:** The subdivision pattern, and the topography, means that the eastern neighbours in particular will always be vulnerable to at least some level of overlooking from the subject site. However, as discussed, the current proposal will maintain privacy to a reasonable level subject to conditions of consent.

## **D9 Building Bulk**

Objections have been raised to the proposed bulk and scale of the building. The proposal does not step in every where at the upper level as required by the control. Although it does have some minor steps in from the side boundaries.

### 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 is of a contemporary design, and will create an attractive addition to the streetscape. The walls have been well articulated and broken up on all elevations, through the use of varied setbacks and differing colours and materials. Whilst the proposal may not be to the personal taste of the neighbouring objectors, it is considered to be of 'good design' and 'innovative'. The proposal achieves this objective.

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

#### Comment:

The proposal will be large compared to the existing dwelling on site, and compared to the existing single storey dwelling on the adjacent neighbour to the west. However, the proposed size of the building is not particularly unusual in this part of Dee Why and North Curl Curl. It is noted that the private hospital five properties to the west contains a very large building in the context of the area. The proposed development will not be out of character in the area in this regard.

The proposal is not considered to have any unreasonable visual impacts when viewed from adjoining

properties or public areas. It is noted that the neighbouring properties to the east are downhill from the subject site, and as such any redevelopment of the site to the 8.5m height limit will have some visual impacts. This is a symptom of the subdivision pattern and the topography. The proposal will not comply with the building envelope, however, the stepping in of a portion of the first floor walls to comply with the envelope would not make any significant difference to the view of the dwelling from the neighbouring sites.

The proposal is considered to achieve this objective.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / 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.

The proposal has also been assessed against the planning principle established in *Veloshin v Randwick Council* [2007] NSWLEC 428 below.

**The appropriateness of a proposal's height and bulk is most usefully assessed against planning controls related to these attributes, such as maximum height, floor space ratio, site coverage and setbacks. The questions to be asked are:**

**Are the impacts consistent with impacts that may be reasonably expected under the controls? (For complying proposals this question relates to whether the massing has been distributed so as to reduce impacts, rather than to increase them. For non-complying proposals the question cannot be answered unless the difference between the impacts of a complying and a non-complying development is quantified.)**

Comment: The proposal is generally consistent with the applicable built form controls for the main bulk of the dwelling, with the exception of the building envelope control, which it will breach on both sides. Some of this non-compliance is caused by the proposed parapets - an architectural feature. The removal of these parapets, and a small stepping in of the tops of the walls to numerically comply with the control, would not make a large amount of difference to the perceived bulk and scale of the dwelling.

**How does the proposal's height and bulk relate to the height and bulk desired under the relevant controls?**

Comment: Given that the proposal is generally consistent with the built form controls (with the above mentioned exception of the envelope control), the proposed height and bulk must be considered generally consistent with the bulk desired under the relevant controls. As discussed above, the removal of the proposed parapets and a stepping in of the upper level, would make a relatively minimal difference to the overall bulk and scale. It is acknowledged that the proposal may be considered to be approaching the upper limits of what would be the maximum acceptable for this site, however, the proposal is considered to be reasonable on its merits.

**Where the planning controls are aimed at preserving the existing character of an area, additional questions to be asked are:**

**Does the area have a predominant existing character and are the planning controls likely to maintain it?**

**Does the proposal fit into the existing character of the area?**

Comment: The existing character of the area is made up of mostly older style dwellings with pitched roofs. The proposed development is of a more contemporary design with a flat roof and parapets. However, the development will remain a single detached dwelling, albeit a large dwelling. It is clear that there are a number of properties in the vicinity that are likely to be developed to a much greater extent in the future. Although this development will be large compared to some of the existing surrounding development, it is likely that more and more sites will develop to their full potential in time. The proposal is not considered to be unreasonably out of character in the area.

**Where the planning controls are aimed at creating a new character, the existing character is of less relevance. The controls then indicate the nature of the new character desired. The question to be asked is:**

**Is the proposal consistent with the bulk and character intended by the planning controls?**

Comment: The proposal is generally consistent with the bulk and character desired by the planning controls given it is for the most part generally consistent with these controls. As noted above, it will break the building envelope, however not to such an extent as to be unreasonable.

**Where there is an absence of planning controls related to bulk and character, the assessment of a proposal should be based on whether the planning intent for the area appears to be the preservation of the existing character or the creation of a new one. In cases where even this question cannot be answered, reliance on subjective opinion cannot be avoided. The question then is:**

**Does the proposal look appropriate in its context?**

Comment: The proposal is subject to the relevant built form controls discussed in this report, and Clause D9 - Building Bulk. As assessed above and within this report, the proposal is considered to be reasonable with regard to the relevant controls. There is no desired future character stated under the current planning controls, however the development is considered to achieve the relevant objectives of the relevant controls. The proposal will develop the site in a manner which seeks to maximise its potential in relation to the controls. The development will admittedly look large in its current context, particularly in comparison to the immediate western neighbour (a small, single storey dwelling). However, as the neighbouring sites develop over time in accordance with the applicable built form controls, as is evident right throughout this area of Dee Why and Curl Curl, the development will be compatible with the evolving residential character in this area.

**Conclusion:** The proposed bulk and scale of the development is considered to be acceptable for the reasons given above, particularly in relation to the evolving nature of the area with many large dwellings replacing more modest older style homes. The outcome is on balance considered to be reasonable.

## **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

The proposal will not significantly effect threatened species, populations or ecological communities, or their habitats.

## **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

## **POLICY CONTROLS**

### **Warringah Section 94A Development Contribution Plan**

The proposal is subject to the application of Council's Section 94A Development Contributions Plan.

The following monetary contributions are applicable:

| Warringah Section 94 Development Contributions Plan          |                  |                |
|--------------------------------------------------------------|------------------|----------------|
| Contribution based on a total development cost of \$ 437,000 |                  |                |
| <b>Contributions</b>                                         | <b>Levy Rate</b> | <b>Payable</b> |
| Total Section 94A Levy                                       | 0.95%            | \$ 4,152       |
| Section 94A Planning and Administration                      | 0.05%            | \$ 219         |
| Total                                                        | 1%               | \$ 4,370       |

### **Other Matters - Alterations and Additions versus New Dwelling**

Objections were raised that the development should be classified as a 'new dwelling', rather than 'alterations and additions'. An assessment against the planning principles established in *Coorey v Municipality of Hunters Hill* [2013] NSWLEC 1187 has been carried out below:

#### **Qualitative issues**

##### **How is the appearance of the existing building to be changed when viewed from public places?**

Comment: The only public area the building is significantly visible from is Quirk Street. The appearance of the building when viewed from the public domain will be altered to a significant extent. However, it will remain as a two storey single dwelling, and will retain the existing configuration of the front garage (to be converted to a storage room), sloping front driveway and landscaped front setback.

##### **To what extent, if any, will existing landscaping be removed and how will that affect the setting of the building when viewed from public places?**

Comment: The development will result in the removal of some vegetation, but nothing that is considered to be significant or of any great value in the area. The existing front setback landscaping will generally be maintained, and the land form at the rear will not be significantly altered with the addition of a swimming pool and decking at the rear.

##### **To what extent, if any, will the proposal impact on a heritage item, the curtilage of a heritage item or a heritage conservation area?**

Comment: The proposal will not impact on any heritage item.

##### **What additional structures, if any, in the curtilage of the existing building will be demolished or altered if the proposal is approved?**

Comment: The plans show most of the existing garage and foundations of the existing building to be retained. The Ground Floor Plan indicates that a significant portion of the existing walls and almost the entire floor plate are to be retained. Much of the internal walls will be demolished. The First Floor Plan indicates that the existing first floor will be demolished and replaced. The existing roof will also be demolished.

##### **What is the extent, if any, of any proposed change to the use of the building?**

Comment: There is no change of use to the building. It will remain as a dwelling house.

**To what extent, if any, will the proposed development result in any change to the streetscape in which the building is located?**

Comment: The main bulk of the dwelling will generally be setback more than the minimum requirement of 6.5m and in this regard will create a development generally within the front setback expectations. The development will certainly be larger than the small single storey dwelling adjacent to the west. However, there are a number of two storey dwellings further to the west, and there is a large hospital building five properties to the west. The development will be one of the larger developments in the streetscape, but is not considered unreasonable.

**To what extent, if any, are the existing access arrangements for the building proposed to be altered?**

Comment: The existing access arrangements will be very similar to the existing access arrangements. The driveway will continue to provide access adjacent to the western edge of the property to a new garage, although the old garage is to be retained as a store room. The new front door will be accessed via a path over the roof of the existing garage/proposed storeroom.

**To what extent, if any, will the outlook from within the existing building be altered as a consequence the proposed development?**

Comment: The existing dwelling has outlooks to the front, rear and sides from the existing ground and first floors. The proposed development will maintain these outlooks. The proposal includes a new rear deck at the Ground Level, similar to the existing one although closer to the rear of the property. The dwelling will continue to be largely comprised of bedrooms at the first floor level, although it will have a secondary living area constructed with balconies looking out to the rear. The existing garage roof will be converted to a deck to provide a new entry way, however it is unlikely this area will be used for recreation given its lack of privacy and location away from the principle living areas. Overall the outlook from the building will certainly be increased, but not to an unreasonable extent.

**Is the proposed demolition so extensive to cause that which remains to lose the characteristics of the form of the existing structure?**

Comment: The proposal will add to the front and rear of the existing dwelling at both Ground and First Floor levels. Much of the external fabric and floor plate of the existing ground floor and garage will be retained, while the first floor will be demolished. The additions will change the form of the existing dwelling at first floor level in particular. However at the ground floor level the configuration of the rear deck and existing garage/proposed storeroom and driveway access will be largely similar to the existing dwelling.

**Quantitative issues**

**To what extent is the site coverage proposed to be changed?**

Comment: The existing site coverage is approximately 320sqm or approximately 45% of the site. The proposal results in a site coverage of approximately 396sqm (56%). It is noted however that approximately 70sqm of this increase (which is the great majority of the increase) is caused by the proposed swimming pool and rear decking, all of which is detached from the dwelling in the rear yard. The main dwelling will essentially occupy the area of the site covered by the existing dwelling.

**To what extent are any existing non-compliances with numerical controls either increased or diminished by the proposal?**

Comment: The overall height of the existing dwelling will be reduced, and the envelope non-compliance in the region of the existing first floor will also be reduced. However the first floor and envelope non-compliance will be extended to the front and rear. Subject to condition of consent the proposal will increase the area of the building that does not comply with the building envelope to a significant extent.

**To what extent is the building envelope proposed to be changed?**

Comment: The extent of the building envelope will be significantly increased. The proposed development will be approximately 2.5 to 3 times larger than the existing dwelling.

**To what extent are boundary setbacks proposed to be changed?**

Comment: The side boundary setbacks will be retained and are within the 900mm expectation created by the controls. The minimum front boundary setback will be maintained by the retention of the existing garage, although the setback to the main bulk of the building will be decreased. However, it will still generally be significantly greater than the minimum 6.5m expectation. The rear setback will be altered by the addition of the decking and pool in the rear yard, however the setback of the main bulk of the dwelling will not be significantly altered given the length of the site and rear yard.

**To what extent will the present numerical degree of landscaping on the site be changed?**

Comment: The existing site has approximately 58% landscaped open space. The proposal provides for approximately 45% landscaped open space. There is therefore a reduction in landscaped open space, although as above it is noted that a significant portion of this reduction is caused by the rear pool and decking, which for the purposes of assessment against this planning principle, it is considered may be included as landscaping features.

**To what extent will the existing floor space ratio be altered?**

Comment: The floor space ratio will be altered from approximately 0.2:1 existing to approximately 0.46:1 proposed. It will therefore approximately double the FSR on site. However the FSR remains within reasonable levels for a single detached dwelling.

**To what extent will there be changes in the roof form?**

Comment: The roof form will be completely changed from the existing pitched roof to the proposed flat roof surrounded by parapets.

**To what extent will there be alterations to car parking/garaging on the site and/or within the building?**

Comment: The proposal will create a new double garage to replace the existing single and double garages (3 existing spaces total). The car parking will be consolidated in this regard by the proposal.

**To what extent is the existing landform proposed to be changed by cut and/or fill to give effect to the proposed development?**

Comment: The proposed cut and fill is relatively minor. There will be some excavation to accommodate the new garage and the swimming pool. And some fill around the pool. It will have very little impact on the overall landform of the site.

**What relationship does the proportion of the retained building bear to the proposed new development?**

Comment: The retained dwelling will form the clear base and middle of the development, with extensions being made to front and rear. Proportionately the alterations and additions will mean the dwelling will become approximately 2 to 3 times larger.

**Conclusion:**

The proposal will make very significant alterations and additions to the existing dwelling, and it is clear from the assessment above that based on the planning principles there are a number of points both in favor of it being considered as a 'new dwelling' and in favor of considering it as 'alterations and additions'. It is considered that on balance, the development could easily be considered as either.

One element that the above planning principles do not really address is what *benefit* is to be gained by calling the development alterations and additions, as opposed to a new dwelling. In this case there are two minor non-compliances with the front and side setback controls caused by the existing garage, which is largely excavated into the ground and is not significantly above ground level. The proposal involves retaining these non-compliances, however they are considered to have very little impact on the streetscape or neighbours, despite the neighbour's objections.

The existing first floor is to be demolished, and the proposed building envelope non-compliances do not rely on maintaining any existing envelope non-compliance. Whether the development is called a new dwelling or alterations and additions makes no difference in this regard. The building envelope non-compliance has been assessed against the relevant DCP control and is not considered to result in unreasonable impacts on the neighbours or streetscape.

The submissions state that the overall height and floor levels would or could be lowered if the development was considered as a whole new dwelling, and that the proposed floor levels create unreasonable impacts. However, the development as a whole is generally compliant with the 8.5m height limit as discussed in this report. Impacts arising out of the height of the floor levels such as privacy concerns are adequately addressed by conditions of consent, and the height of the ground floor level and first floor level is not considered to result in unreasonable impacts.

In summary, the proposal is not reliant on being considered as alterations and additions to justify the proposed non-compliances, and no unreasonable impacts on the neighbours or surrounding area are considered to arise as a result of the development. Therefore, whether or not the proposal is considered as a new dwelling or alterations and additions is not particularly important. As the applicants have applied for 'alterations and additions', and no real benefit arises out of being considered as alterations and additions as opposed to a new dwelling, on balance the application is considered acceptable as 'alterations and additions'.

## CONCLUSION

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

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

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

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

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

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

## RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2013/1264 for Alterations and additions to a dwelling house and construction of a swimming pool on land at Lot 97 DP 8139, 72 Quirk Street, DEE WHY, subject to the conditions printed below:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

#### 1. **Approved Plans and Supporting Documentation**

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

##### a) Approved Plans

| <b>Architectural Plans - Endorsed with Council's stamp</b> |                  |                    |
|------------------------------------------------------------|------------------|--------------------|
| <b>Drawing No.</b>                                         | <b>Dated</b>     | <b>Prepared By</b> |
| DA4                                                        | January 20, 2014 | Architexture       |
| DA5                                                        | January 20, 2014 | Architexture       |
| DA6                                                        | January 20, 2014 | Architexture       |
| DA7                                                        | January 20, 2014 | Architexture       |
| DA8                                                        | January 20, 2014 | Architexture       |
| DA9                                                        | January 20, 2014 | Architexture       |
| DA10                                                       | January 20, 2014 | Architexture       |
| DA11                                                       | January 20, 2014 | Architexture       |
| DA12                                                       | January 20, 2014 | Architexture       |
| DA13                                                       | January 20, 2014 | Architexture       |

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

c) No construction works (including excavation) shall be undertaken prior to the release of the Construction Certificate.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans. (DACPLB01)

## 2. **Prescribed Conditions**

(a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

(b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

(c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
- (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

(d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

- (i) in the case of work for which a principal contractor is required to be appointed:
  - A. the name and licence number of the principal contractor, and
  - B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
  - A. the name of the owner-builder, and
  - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

(e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

- (i) protect and support the adjoining premises from possible damage from the excavation, and
- (ii) where necessary, underpin the adjoining premises to prevent any such damage.
- (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative Requirement (DACPLB09)

**3. General Requirements**

(a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

(b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

(c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

(d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

(e) Prior to the release of the Construction Certificate payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

(f) Smoke alarms are to be installed throughout all new and existing portions of any Class 1a building in accordance with the Building Code of Australia prior to the occupation of the new works.

(g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

(h) No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(j) All sound producing plant, equipment, machinery or fittings will not exceed more than 5dB(A) above the background level when measured from any property boundary and will comply with the

Environment Protection Authority's NSW Industrial Noise Policy. )

(k) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

(l) Prior to the commencement of any development onsite for:

- i) Building/s that are to be erected
- ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
- iii) Building/s that are to be demolished
- iv) For any work/s that is to be carried out
- v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

(m) Any Regulated System (e.g. air-handling system, hot water system, a humidifying system, warm-water system, water-cooling system, cooling towers) as defined under the provisions of the Public Health Act 2010 installed onsite is required to be registered with Council prior to operating.

Note: Systems can be registered at [www.warringah.nsw.gov.au](http://www.warringah.nsw.gov.au)

(n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

(1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

(2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

(3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

(4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community. (DACPLB10)

## FEES / CHARGES / CONTRIBUTIONS

### 4. **Policy Controls**

Warringah Section 94A Development Contribution Plan

The proposal is subject to the application of Council's Section 94A Development Contributions Plan.

The following monetary contributions are applicable:

| Warringah Section 94 Development Contributions Plan          |                  |                 |
|--------------------------------------------------------------|------------------|-----------------|
| Contribution based on a total development cost of \$ 437,000 |                  |                 |
| <b>Contributions</b>                                         | <b>Levy Rate</b> | <b>Payable</b>  |
| Total Section 94A Levy                                       | 0.95%            | \$ 4,152        |
| Section 94A Planning and Administration                      | 0.05%            | \$ 219          |
| <b>Total</b>                                                 | <b>1%</b>        | <b>\$ 4,370</b> |

The amount will be adjusted at the time of payment according to the quarterly CPI (Sydney - All Groups Index). Please ensure that you provide details of this Consent when paying contributions so that they can be easily recalculated.

Reason: To provide for contributions in accordance with the Warringah Section 94A Development Contributions Plan 2012.

### 5. **Bonds**

Security Bond

A bond (determined from cost of works) of \$1000 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection)

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate protection of Council's infrastructure. (DACENZ01)

## CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

6. **Stormwater Disposal from Low Level Property**

Stormwater shall be disposed of to an existing approved system or in accordance with Council's "Stormwater Drainage: From Low Level Properties Policy". Details demonstrating that the existing approved system can accommodate the additional flows or compliance with the "Stormwater Drainage: From Low Level Properties Policy" are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for disposal and stormwater management arising from development. (DACENC02)

7. **Vehicle Crossings Application Formwork Inspection**

An application for street levels shall be made with Council subject to the payment of fee applicable at the time of payment. The fee includes all Council inspections relating to the driveway construction and must be paid.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property. (DACENC12)

8. **Vehicle Driveway Gradients**

Driveway gradients within the private property are not to exceed a gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility. Access levels across the road reserve are to comply with the allocated vehicle profile detailed in Council's Minor Works Policy.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure suitable vehicular access to private property. (DACENC13)

9. **Trees and / or Landscaping**

In order to protect and enhance onsite vegetation and trees the following applies to the development site:

**(a) Existing trees which must be retained**

All trees not indicated for removal on the approved plans.

**(b) Weed removal**

All noxious weeds on the site are to be removed prior to completion of the works.

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site. (DACLAC01)

10. **Compliance with Standards**

The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards. (DACPLC02)

Advice to Applicants: At the time of determination in the opinion of Council, the following (but not

limited to) Australian Standards are considered to be appropriate:

- (a) AS2601.2001 - Demolition of Structures\*\*
- (b) AS4361.2 - Guide to lead paint management - Residential and commercial buildings\*\*
- (c) AS4282:1997 Control of the Obtrusive Effects of Outdoor Lighting\*\*
- (d) AS 4373 - 2007 'Pruning of amenity trees' (Note: if approval is granted) \*\*
- (e) AS 4970 - 2009 'Protection of trees on development sites'\*\*
- (f) AS/NZS 2890.1:2004 Parking facilities - Off-street car parking\*\*

\*Note: The Australian Human Rights Commission provides useful information and a guide relating to building accessibility entitled "the good the bad and the ugly: Design and construction for access". This information is available on the Australian Human Rights Commission website [http://www.humanrights.gov.au/disability\\_rights/buildings/good.htm](http://www.humanrights.gov.au/disability_rights/buildings/good.htm)

\*\*Note: the listed Australian Standards is not exhaustive and it is the responsibility of the applicant and the Certifying Authority to ensure compliance with this condition and that the relevant Australian Standards are adhered to. (DACPLC02)

#### 11. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Light colours such as off white, cream, silver or light grey colours are not permitted.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that excessive glare or reflectivity nuisance from glazing does not occur as a result of the development. (DACPLC03)

#### 12. **Window modifications and privacy screen**

The following windows are to have the following sill heights as measured from the finished floor levels as shown on the approved plans:

- Window 4 (west facing Study) - sill height of 1.65m
- Window 6 (west facing Lounge) - sill height of 1.65m
- Window 21 (west facing Bed 2) - sill height of 1.65m
- Window 23 (west facing Bed 3) - sill height of 1.5m
- Window 24 (west facing Lounge) - sill height of 1.65m

A 1.65m high privacy screen (measured from finished floor level) is to be erected along the entire eastern edge of the first floor eastern balcony (located off the Lounge, and accessed via W25).

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: In order to maintain privacy to the adjoining properties. (DACPLC06)

#### 13. **Sewer / Water Quickcheck**

The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre prior to works commencing to determine whether the development will affect any Sydney Water asset's sewer and water mains, stormwater drains and/or easement, and if further requirements need to be met. Plans will be appropriately stamped.

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

- Quick Check agents details - see Building Developing and Plumbing then Quick Check; and
- Guidelines for Building Over/Adjacent to Sydney Water Assets - see Building Developing and Plumbing then Building and Renovating.
- Or telephone 13 20 92.

Reason: To ensure compliance with the statutory requirements of Sydney Water. (DACPLC12)

**14. Reduction in height of front parapet**

The proposed front parapet, shown on the approved plans at a height of RL74270 is to be reduced in height by 200mm to a maximum height of RL74070.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Compliance with the 8.5m height limit control. (DACPLCPCC1)

**CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**

**15. Street Tree Removal**

i) Removal of the located in the road verge as indicated on the approved plans is to be undertaken only by a Council approved contractor.

ii) The list of currently approved contractors may be obtained from Council's Public Trees Section.

Reason: Public liability (DACLADPC1)

**CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**

**16. Vehicle Crossings**

The provision of one vehicle crossing 4 metres wide in accordance with Warringah Council Drawing No A4-3330/3 NL and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property. (DACENE05)

**17. Layback Construction**

A layback 4 metres wide (excluding the wings) is to be constructed in accordance with Warringah Council Drawing No A4-2276 and specifications.

Reason: To ensure suitable vehicular access to private property. (DACENE08)

**18. Trees Condition**

During the construction period the applicant is responsible for ensuring all protected trees are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to. In this regard all protected plants on this site shall not exhibit:

- (a) A general decline in health and vigour.
- (b) Damaged, crushed or dying roots due to poor pruning techniques.
- (c) More than 10% loss or dieback of roots, branches and foliage.
- (d) Mechanical damage or bruising of bark and timber of roots, trunk and branches.
- (e) Yellowing of foliage or a thinning of the canopy untypical of its species.
- (f) An increase in the amount of deadwood not associated with normal growth.
- (g) An increase in kino or gum exudation.
- (h) Inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition.
- (i) Branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of Trees. (DACLAEO3)

**19. Protection of rock**

The rock outcrop and overhang located on the western boundary in the rear yard is to be retained and protected during the works.

Reason: Protection of significant environmental features (DACLAEDW1)

**20. Installation and Maintenance of Sediment Control**

Measures used for erosion and sediment control on building sites are to be adequately maintained at all times and must be installed in accordance with Warringah Council Specifications for Erosion and Sediment Control. All measures shall remain in proper operation until all development activities have been completed and the site fully stabilised.

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

Reason: To protect the environment from the effects of sedimentation and erosion from development sites. (DACPLE02)

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

**21. Reinstatement of Kerb**

All redundant laybacks and vehicular crossings shall be reinstated to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To facilitate the preservation of on street parking spaces. (DACENF03)

**22. Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards

and Codes by a suitably qualified person.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

**Note:** The following Standards and Codes applied at the time of determination:

- (a) Australian/New Zealand Standard **AS/NZS 3500.3** - 2003 - Plumbing and drainage - Stormwater drainage
- (b) Australian/New Zealand Standard **AS/NZS 3500.3** - 2003/Amdt 1 - 2006 - Plumbing and drainage - Stormwater drainage
- (c) National Plumbing and Drainage Code.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development. (DACENF05)

### 23. Required Planting

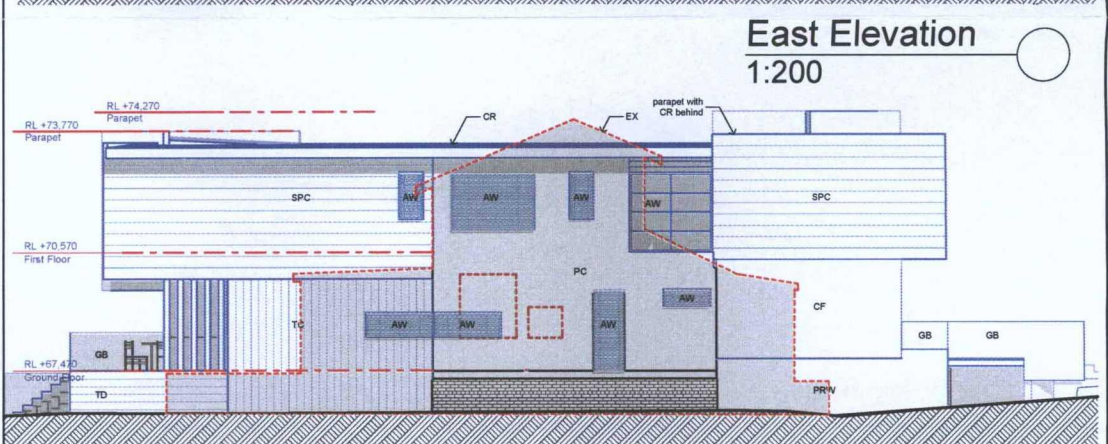
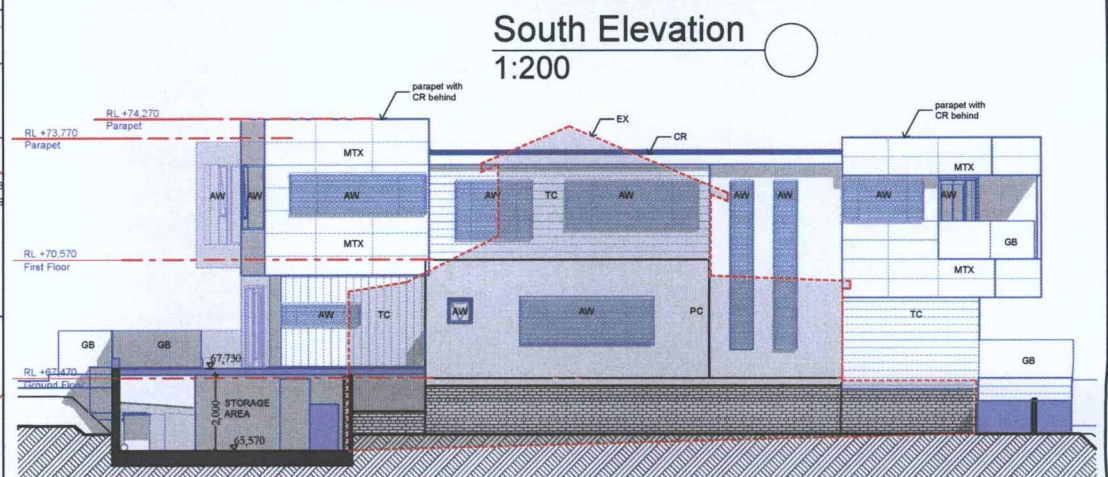
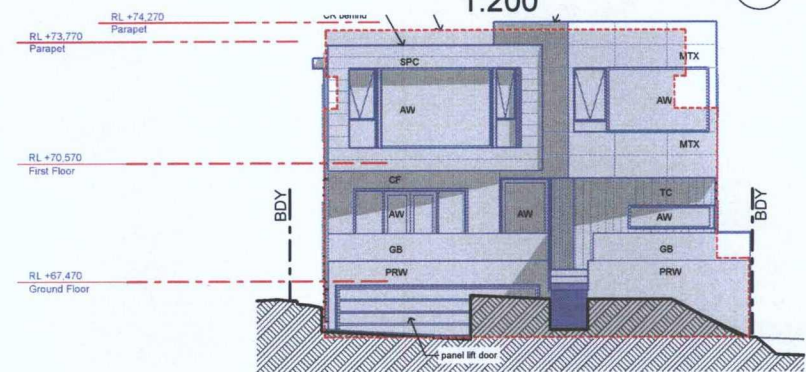
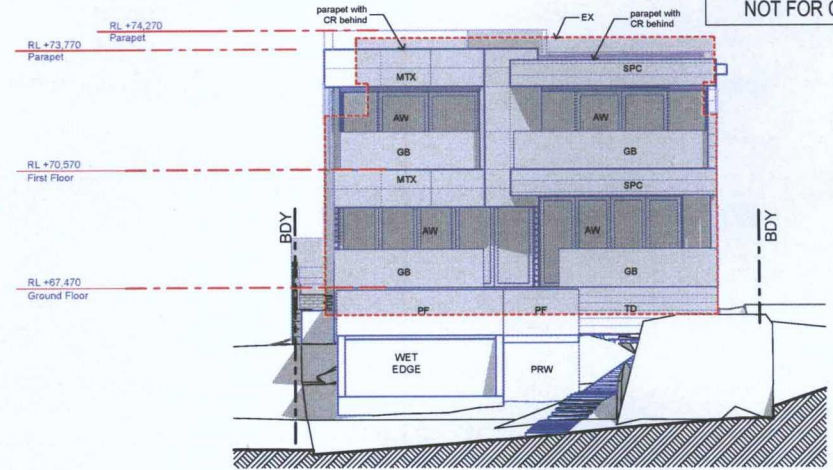
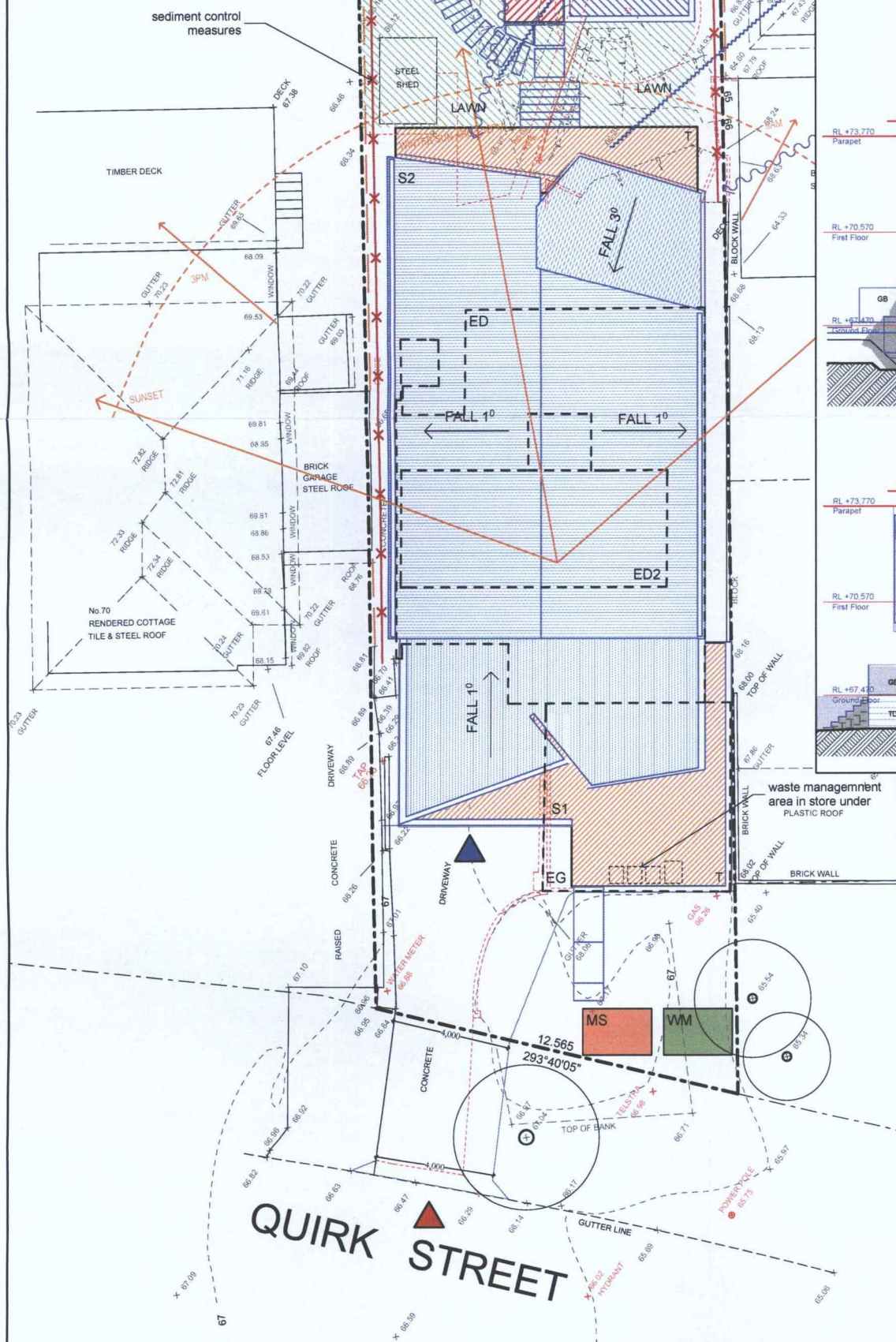
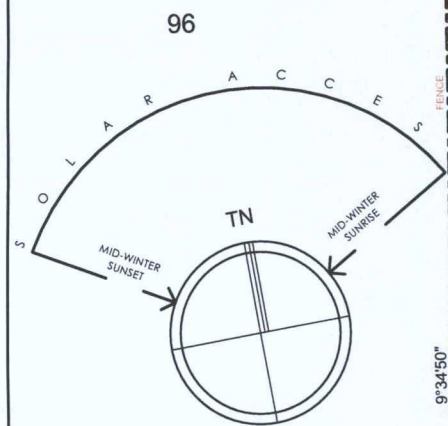
The tree/s listed in the following schedule shall be planted in accordance with the following schedule:

| No. of Trees Required. | Species                                                                                                                                   | Location                         | Min Pot Size |
|------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|--------------|
| 2                      | Tree/s selected from Council's Tree Replacement Guide available at <a href="http://www.warringah.nsw.gov.au">www.warringah.nsw.gov.au</a> | 1 x front yard and 1 x rear yard | 25 litre     |
| 1                      | <i>Banksia ericifolia</i>                                                                                                                 | Road verge in front of the site  | 25 litre     |

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To maintain environmental amenity. (DACLAF01)

## SECTION



## LEGEND

|  |                             |  |                                                |  |                            |
|--|-----------------------------|--|------------------------------------------------|--|----------------------------|
|  | NEW POOL                    |  | POSITION OF EXISTING GROUND FLOOR SHOWN DASHED |  | BOUNDARY                   |
|  | NEW TERRACE ON GROUND FLOOR |  | POSITION OF EXISTING FIRST FLOOR SHOWN DASHED  |  | S1 SINGLE STOREY COMPONENT |
|  | NEW DECKS ON GROUND FLOOR   |  | POSITION OF EXISTING GARAGE SHOWN DASHED       |  | S2 TWO STOREY COMPONENT    |
|  | PRIVATE OPEN SPACE          |  | EXISTING CONTOURS SLOPE OF LAND                |  | TREE TO BE REMOVED         |
|  | WASTE MANAGEMENT            |  | CAR ENTRY POINT                                |  | GARAGE ENTRY POINT         |
|  | MATERIAL STOCKPILE          |  |                                                |  |                            |

GB glass balustrade to BCA  
AW aluminium window  
CR Colorbond roof with Colorbond gutters and downpipes  
TC selected timber panel cladding  
PC 75mm polystyrene cladding system on 90mm stud frame  
MTX timber framed with matrix panel cladding  
TD timber deck to engineers details  
PF pool fence to AS1926  
CL clothes drying line  
PRT painted retaining wall  
CF timber framed wall with concrete finish  
EX Existing building outline

# Architexture

All construction work to be performed in accordance with Australian Standards and Building Code of Australia 2007.

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Dimensions shall not be obtained by scaling off drawings. All dimensions shall be site checked prior to commencement of works. All measurements on plans are subject to change due to site variances, engineering requirements and Council conditions.

Project Name:

**Additions and Alterations**

Drawing Title:

**NOTIFICATION**

Project Number:

O'Connor 1012

Client Name:

O'Connor Residence

Client Address:

72 Quirk Street, Dee Why, NSW, 2099,

Site Area 711.4m<sup>2</sup>

Lot 97 Section B in DP 8139

Architect:

Darren Tye

Status:

Development Application

Scale: 1:200 @ A3

Drawing No.: DA20

Plot Date:

Tuesday, 22 October 2013

File Location:

O'Connor 1012 DA Submission.pln

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