

REPORT TO APPLICATION DETERMINATION PANEL

Meeting held on 06 June 2016

16 Ellen Street Curl Curl - Construction of a dwelling house and driveway and subdivision of 1 lot into 2 lots

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2015/1123
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Responsible Officer:	Daniel Milliken
Land to be developed (Address):	Lot 100 DP 1096368, 16 Ellen Street CURL CURL NSW 2096
Proposed Development:	Construction of a dwelling house and driveway and subdivision of 1 lot into 2 lots
Zoning:	LEP - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Warringah Council Application Determination Panel
Land and Environment Court Action:	No
Owner:	Terence William Jones Lynne Ellen Jones
Applicant:	Terence William Jones Lynne Ellen Jones

Application lodged:	16/11/2015
Application Type:	Local
State Reporting Category:	Residential - Single new detached dwelling
Notified:	24/11/2015 to 09/12/2015
Advertised:	Not Advertised, in accordance with A.7 of WDCP
Submissions:	14
Recommendation:	Approval

Estimated Cost of Works:	\$ 1,236,801.00
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ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and

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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 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 - B9 Rear Boundary Setbacks

Warringah Development Control Plan - C1 Subdivision

Warringah Development Control Plan - C9 Waste Management

Warringah Development Control Plan - D7 Views

SITE DESCRIPTION

Property Description:	Lot 100 DP 1096368 , 16 Ellen Street CURL CURL NSW 2096
Detailed Site Description:	The proposal is for the subdivision of No. 16 Ellen Street and the construction of a new dwelling. No. 16 Ellen Street currently consists of two lots, Lot 100 DP 1096368 that contains the current dwelling and will be subdivided as part of this proposal; and Lot 1 DP 1243087 which is an access handle to Batho Street and will form part of the new Lot 102 to give vehicle access. The site has an area of 1043.07sqm and slopes down steeply towards the east. Existing on the site is a two storey dwelling with an attached double garage. A large rock shelf sits near the centre of the site that in effect, cuts the site in half in terms of usable land and creates a platform on the western side that can accommodate a dwelling. The surrounding development consists of detached residential dwellings to the east, south and west. Stewart House, a large multi unit development catering for people with disabilities and special needs, is located to the immediate north of the site.

Map:



SITE HISTORY

DA2005/0741 for site consolidation and two lot subdivision was refused on 8 June 2006 for the following reasons:

1. Pursuant to Clause 8F of the Environmental Planning and Assessment Regulation 2000, the application does not provide valid owner's consent for utilising a Crown Road Reserve for access purposes.
2. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 and the FS Curl Curl Locality Statement of Warringah Local Environmental Plan 2000, the proposal is inconsistent with the Desired Future Character of the FS Locality.
3. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 and the Built Form Control of the FS Curl Curl Locality Statement of Warringah Local Environmental Plan 2000, the proposal does not comply with the Housing Density provisions of the FS Locality Statement.
4. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 and the Built Form Control of the FS Curl Curl Locality Statement of Warringah Local Environmental Plan 2000, the proposal will result in a numerical shortfall of Landscaped Open Space provision in proposed Lot 1 following subdivision, and a qualitative shortfall in relation to Lot 2.
5. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 and Clause 38 Glare and Reflection of Warringah Local Environmental Plan 2000, the proposal will result in glare or light overspill that adversely impacts on the adjoining residence.
6. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 and Clause 43 Noise of Warringah Local Environmental Plan 2000, the proposal will result in noise emission that adversely impacts on the adjoining residence.

7. *Pursuant to Section 79C(l)(a)(i) of the Environmental Planning and Assessment Act 1979 and Clause 56 Retaining Unique Environmental Features on Site of Warringah Local Environmental Plan 2000, the proposal is incompatible with the natural landscape feature on the site.*
8. *Pursuant to Section 79C(l)(a)(i) of the Environmental Planning and Assessment Act 1979 and Schedule 7- Matters for Consideration in a Subdivision of Land under Warringah Local Environmental 2000, the proposal does not comply with the allotment dimensions provisions of Schedule 7.*

PLM2014/0163 to discuss the construction of a dwelling house and subdivision of land was held on 17 March 2015. Relevant advice given included:

- *"The proposed subdivision and dwelling is generally compliant with the subdivision and built form controls, and is considered to be generally acceptable.*
- *In terms of design, the development shall illustrate compliance with D1 Landscape Open Space and Bushland Setting. Each lot shall be able to demonstrate 40% LOS for each respective dwelling and compliant building height. It is noted the proposal will require one forced non-compliance with the Lot depth (<27m) but compliance with Lot width and area will be achieved. The dwelling footprint and bulk should be reduced (based on prior refusal of the same design for DA2005/0741) and setbacks increased, including use of a carport and sensitive construction that responds to the site features."*

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for subdivision and the construction of a dwelling house.

In detail, the proposal includes:

- The subdivision of No. 16 Ellen Street to create a new lot with access from Batho Street to the west via an access handle.
- The construction of an access driveway from Batho Street with a flattened section towards the middle designed to provide future driveway access to the rear of No. 25 Loch Street.
- Excavation of portions of the site in preparation for a dwelling.
- The construction of a four bedroom, three storey dwelling with an upper level double garage and mechanical turntable.
- The construction of retaining walls to the east of the dwelling to provide an area of private open space.
- Associated landscaping works.

Note: The applicant was requested to provide amended plans that reduced the height of the eastern retaining walls, moved the On-Site-Detention tank to under the ground level deck, change the balustrade around the upper vehicle access area to reduce glare from car headlights when viewed from the east, and detail screen planting on the western boundary of the new lot. There are no changes to the built form of the dwelling.

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)

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

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 79C (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 79C (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 79C (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clauses 54 and 109</u> of the EP&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. <u>Clause 92</u> of the EP&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. <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. <u>Clause 98</u> of the EP&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. <u>Clause 98</u> of the EP&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.
Section 79C (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 79C (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 79C (1) (d) – any	See discussion on “Public Exhibition” in this report.

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Section 79C 'Matters for Consideration'	Comments
submissions made in accordance with the EPA Act or EPA Regs	
Section 79C (1) (e) – the public interest	There have been 14 objections to this proposal raising various concerns including that the proposal is not in the public interest. The site is large enough to be subdivided and meet the minimum lot size development standard. The proposed dwelling will sit within the 8.5m height limit and has been set back from the unique rock shelf on the site, thereby protecting it. While the proposal will not fit with the predominant subdivision pattern, the site itself is unique in that it is both larger than the residential sites to the south (meaning that this development is not possible on any one site further south) and is, in effect split in two by the rock shelf. The rear platform on the site (created by the rock shelf) is not easily accessible or usable from Ellen Street, however, the access handle from Batho Street does provide adequate vehicle access. In this regard, provided a dwelling that results in no unreasonable amenity impacts on surrounding properties can be constructed, the subdivision of the land and the use of the rear of the site meets the objectives of the zone and provides housing for the growing population using existing infrastructure. Therefore, the proposal is 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 14 submission/s from:

Name:	Address:
Mr Murray O'Donnell	18 Ellen Street CURL CURL NSW 2096
Jamie Cockerill	5 Batho Road FRESHWATER NSW 2096
Dominica Andersen	2 / 28 Loch Street FRESHWATER NSW 2096
Stewart House School	22 Ellen Street CURL CURL NSW 2096
Willowtree Planning	Level 6, 189 Kent Street SYDNEY NSW 2000
Mr Simon John Fraser	9 Loch Street FRESHWATER NSW 2096
Mr Mark Robert Aubrey	14 Ellen Street CURL CURL NSW 2096
Mr David Charles Smith	12 Ellen Street CURL CURL NSW 2096
Darren Andrew Holland Mrs Tania Holland	23 Loch Street FRESHWATER NSW 2096
Mr Andrew Robin Smith	PO Box 179 DEE WHY NSW 2099

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Name:	Address:
Mr Crispin Marcel Swan	17 Loch Street FRESHWATER NSW 2096
Mr Bruce Jeyers Loudon	5 Wyadra Avenue FRESHWATER NSW 2096
Mrs Jenny Thompson	15 Loch Street FRESHWATER NSW 2096
Ms Kylie Jane Gill	3 Batho Road FRESHWATER NSW 2096

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

- **Damage to Stewart House.**
- **Construction noise and disruption**
- **Subdivision Pattern and Depth**
- **Disturbance to Natural Landform**
- **Traffic, Access and Safety**
- **Parking**
- **Visual Impacts**
- **Views**
- **Solar Access**
- **Setbacks**
- **Privacy**
- **Building Height and Built Form**
- **Zone Objectives**
- **Crime**
- **Glare and Reflection**
- **Private Open Space**
- **Native Vegetation**
- **Heritage**
- **Notification**

The matters raised within the submissions are addressed as follows:

- **Damage to Stewart House**

The submissions raised concerns that the proposal would cause damage to Stewart House, in particular to two buildings that sit on the same rock face.

Comment:

Conditions will be included in the consent requiring dilapidation reports for Stewart House and other affected buildings on the same rock shelf.

In addition, a condition requiring compliance with all recommendations and requirements within the Geotechnical Report prepared by Crozier Geotechnical Consultants has been included in the consent.

This matter is not considered to be a reason for refusal.

- **Construction noise and disruption**

The submissions raised concerns that the construction of the development will disrupt the programs run by Stewart House and will impact on other neighbouring properties and the street.

Comment:

Construction noise and impacts are an inevitable and unavoidable part of development and are not themselves a reason for refusal.

Conditions limiting excavation and construction hours have been included in the consent to protect the amenity of the neighbouring residents. The construction of the development will result in additional vehicles and trucks using the street, however, this increase will be consistent with other similar developments occurring in other similar streets around the Northern Beaches.

This matter is not considered to be a reason for refusal.

- **Subdivision Pattern and Depth**

The submissions raised concerns that the proposal is not consistent with the desired future character of the area or the surrounding subdivision pattern. The submissions also raised concerns that each of the new lots do not meet the minimum depth as required by the WDCP.

Comment:

The proposed subdivision will be inconsistent with the current established pattern to the south of the site (Stewart House, on a single large lot is located to the immediate north). However, the natural land form (i.e. the large rock shelf) establishes a platform at the rear of No. 16 Ellen Street that cannot be easily accessed from Ellen Street. As such, if the proposal can meet the minimum lot size control and a dwelling can be constructed that would not result in unreasonable amenity impacts, then a new lot comprising the rear portion of No. 16 Ellen Street is appropriate.

As discussed below in this report, the proposed dwelling is reasonable and will minimise amenity impacts to the neighbouring properties.

Each of the new lots will not meet the minimum depth requirements, however, these non-compliances are relatively minor and do not prevent a reasonable development that can meet the planning controls, including the minimum landscaped open space provisions.

This matter is not considered to be a reason for refusal.

- **Disturbance to Natural Landform**

The submissions raised concerns that the proposal would disturb the natural land form and require substantial earthworks, impacting the natural rock outcrop on the site.

Comment:

The proposal has been set back from the rock shelf in order to protect this unique feature of the site and the area.

Excavation will be required, however, the main areas of excavation are on the western side of the site, away from the rock shelf which is located near the eastern boundary.

All dwellings disturb the natural land form to some degree. The proposal will protect the main unique rock feature of the site, maintain the rock face that links along neighbouring dwellings and as such, is acceptable.

This matter is not considered to be a reason for refusal.

- **Traffic, Access and Safety**

The submissions raised concerns that the location of the driveway will result in a vehicle and pedestrian safety impact at the intersection of Loch Street, Batho Street and Wyadra Avenue.

Comment:

The application was referred to Council's Development Engineers in relation to the driveway location and gradients and to Council's Traffic Engineers in relation to the impacts on the road network. No objections were raised by either the Development or Traffic Engineers.

The low number of vehicle movements into and out of the site is not expected to result in a safety issue. In addition, cars will be able to enter and exit the site in a forward direction, minimising safety concerns for pedestrians.

This matter is not considered to be a reason for refusal.

- **Parking**

The submissions raised concerns that the proposal will result in the loss of on-street parking that is currently used by residents and employees of Stewart House.

Comment:

The driveway crossing is approximately 3.75m wide. This is less than one car space and will not unreasonably reduce on-street parking. The proposal also includes two garaged spaces and an area for two visitor cars. This is adequate for the development and therefore, this matter is not considered to be a reason for refusal.

- **Visual Impacts**

The submissions raised concerns that the proposal will result in an increased sense of enclosure to the neighbouring properties and will present as an overbearing structure. The submissions also raised concerns that the proposal will have a visual impact from Ellen Street and the public domain to the east of the site.

Comment:

The proposal will add a new relatively large building element in a location that is currently occupied by vegetation.

In relation to a sense of enclosure, the dwellings at Nos. 25 and 23 Loch Street are elevated above the development site and the western elevation of the proposal is approximately 6.3m in height (2.2m below the maximum 8.5m limit). As a result, views over the proposed dwelling will be obtained from the current surrounding dwellings (and from No. 25 Loch Street if it is redeveloped with an upper level) and the development will appear to step down with the slope of the land. In this regard, a reasonable sense of openness will be maintained and the

proposal will not appear unreasonably overbearing.

This matter is not considered to be a reason for refusal.

- **Views**

The submissions raised concerns that the proposal would result in unreasonable view loss.

Comment:

This matter is discussed in detail under Part D7 Views, below in this report.

In summary, the proposal will block important aspects of the views obtained from No. 25 Loch Street, No. 23 Loch Street and No. 14 Ellen Street. These views will mostly be lost from the lower levels of Nos. 25 and 23 Loch Street with greater views being retained from the ground and first floors. No. 14 Ellen Street will lose some views from the studio at the rear of the site.

The proposal is entirely within the height limit and performs well against the remaining built form controls resulting in only minor non-compliances that do not unreasonably impact on views. In particular, the western elevation of the dwelling, which will have the greatest impact on views from No. 25 Loch Street, is approximately 2.2m below the maximum building height and fully compliant with the side boundary envelope and side boundary setback controls. In addition, the dwelling has been positioned away from the rock shelf and the eastern boundary, thereby reasonably protecting views from No. 23 Loch Street and No. 14 Ellen Street.

It is not considered that there is a better or more skillful design that would preserve a substantially greater amount of views while providing the same development potential. In this regard, the proposal is worth of support and will result in a reasonable sharing of views.

This matter is not considered to be a reason for refusal.

- **Solar Access**

The submissions raised concerns that the proposal will result in unreasonable overshadowing.

Comment:

Certified shadow diagrams submitted with the application show that all neighbouring properties will retain more than three hours of sunlight to their private open spaces between 9am and 3pm in midwinter.

This matter is not considered to be a reason for refusal.

- **Setbacks**

The submissions raised concerns that the proposed setbacks of the dwelling do not provide sufficient separation to the neighbouring properties.

Comment:

This matter is discussed in detail under B5 Side Boundary Setbacks and B9 Rear Boundary Setbacks, below in this report.

In summary, the proposal complies with the side setbacks with the exception of the driveway and vehicle access area that will sit close to ground level on the northern side of the site.

A 934mm setback to the western ("rear") boundary will impact the openness of the "rear" yard. However, the need to locate the dwelling away from the rock shelf means that a 6.0m setback to the boundary with No. 25 Loch Street is impractical.

The western elevation of the dwelling will sit at a maximum of approximately 6.3m, 2.2m below the 8.5m maximum height limit. Landscaping to screen the western elevation is proposed. The western elevation is also reasonably articulated with the upper level being 9.65m wide, taking up approximately 51.3% of the 18.8m wide site.

Given the unique circumstances of the site, the need to preserve the rock shelf, the compliance with the minimum lot size and the well designed and screened western elevation of the dwelling, the proposal will provide reasonable spatial separation, a reasonable sense of openness and will minimise impacts on the neighbouring properties.

This matter is not considered to be a reason for refusal.

- **Privacy**

The submissions raised concerns that the dwelling will overlook properties on Ellen Street.

Comment:

The proposed dwelling is substantially elevated above the dwellings fronting Ellen Street. The views to the east will dominate the outlook from the eastern facing windows and balconies. The distance, both vertically and horizontally, to the private open spaces of the dwellings fronting Ellen Street is substantial enough to result in minimal privacy impacts.

A good example of the effect of the vertical and horizontal separation minimising privacy impacts is shown by the existing studio at the rear of No. 14 Ellen Street. This studio has a balcony on the eastern side and can look down, however, the dominant views of the beach and ocean to the east as well as the vertical and horizontal separation results in a situation that does not cause privacy impacts to the neighbouring properties.

This matter is not considered to be a reason for refusal.

- **Building Height and Built Form**

The submissions raised concerns that the proposed dwelling will breach the height limit, will be overbearing and that the garage on the upper level should be replaced with a carport to reduce the built form.

Comment:

The dwelling is entirely within the 8.5m height limit, steps down the slope and includes a western elevation that is approximately 2.2m below the 8.5m limit.

The garage on the upper level is not an unnecessarily large structure and provides secure,

weather proof parking for the residents that an open carport would not achieve. The garage also results in a cleaner built form than a carport which, with one or two cars parked under it, would not substantially improve view sharing. Overall, the design will reasonably minimise the built form, especially when viewed from the west.

This matter is not considered to be a reason for refusal.

- **Zone Objectives**

The submissions raised concerns that the proposal is inconsistent with the objectives of the zone and the WLEP 2011.

Comment:

The proposal is consistent with the objectives of the zone in that, it will provide for the housing needs of the community within a low density residential environment, will not impact on other land uses that provide facilities or services to meet the day to day needs of residents, and will provide a reasonable landscaped setting.

The development is also consistent with the aims of the WLEP 2011 for residential development in that, it will reasonably protect the amenity of the existing residential environment, it will be reasonably compatible with neighbouring development in terms of bulk, scale and appearance, and will increase the availability and variety of dwellings to enable population growth without having adverse effects on the character and amenity of Warringah.

This matter is not considered to be a reason for refusal.

- **Crime**

The submissions raised concerns that the driveway will encourage public access and loitering in an area that was otherwise redundant.

Comment:

There is no evidence to support this claim. This private driveway will be similar to thousands of other private driveways across the local government area and is not expected to increase crime in the area.

This matter is not considered to be a reason for refusal.

- **Glare and Reflection**

The submissions raised concerns that the proposal will result in unreasonable glare and reflection.

Comment:

Conditions have been included in the consent requiring the roof to be of a medium to dark tone to specifically minimise glare and reflection. In addition, a solid balustrade has been proposed to avoid car headlights on the upper parking area from being visible from the nearby public spaces to the east.

The lower area of private open space and the upper balconies will serve to block lights from the eastern facing living room windows from shining down onto the properties along Ellen Street.

- **Private Open Space**

The submissions raised concerns that development will not have sufficient private open space.

Comment:

The control requires a minimum of 60sqm of private open space to be provided.

The plans submitted with the application and released online show that the site provides more than 60sqm of private open space. Approximately 104sqm is provided in the rear yard, in addition to the balcony areas.

This matter is not considered to be a reason for refusal.

- **Native Vegetation**

The submissions raised concerns that the proposal is within an area designated as native vegetation and that the application did not contain a Biodiversity Management Plan.

Comment:

The application was referred to Council's Natural Environment (Biodiversity) Officer who provided the following comments in part:

"The top of the site contains two remnant trees that must be protected. Conditions have been put in place for Council to review and approve Tree Protection Plan before Construction Certificate is approved."

The top of the site (Department of Lands property off Batho Road) contains mostly weeds, some noxious. There is mapped native vegetation on the development site, and this must be replaced with native landscaping."

The weeds on the site will be removed and all replacement plantings will be native vegetation. A Biodiversity Management Plan is not required for this site.

This matter is not considered to be a reason for refusal.

- **Heritage**

The submissions requested that further analysis be undertaken of the impacts of the proposal on the adjacent heritage item "Stewart House".

Comment:

An assessment of the impacts of the proposal on Stewart House has been undertaken. The proposed dwelling will be reasonably separated from Stewart House by dense vegetation. Stewart House is currently surrounded by dwellings of similar size and scale. Therefore, the proposal will not diminish the heritage qualities of Stewart House and no further analysis is

required.

This matter is not considered to be a reason for refusal.

- **Notification**

The submissions raised concerns that the proposal was not adequately notified.

Comment:

The application was notified to 12 nearby property owners and residents that would be directly affected by the development. Properties at the northern end of Batho Street were not directly contacted as the development is not visible north of the Stewart House site.

Council notifies applications in accordance with the Warringah Development Control Plan and in this particular case, notified all required properties.

This matter is not considered to be a reason for refusal.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
Development Engineers	No objection to approval and subject to conditions as recommended.
Landscape Officer	Concern is raised with regard to the visual impact of the 2 proposed visitor parking bays located over and adjacent to the large rock outcrop to the north and as viewed from the public spaces to the east. The plans indicate clear glass balustrade. Preference would be given to opaque treatment to screen vehicles from this prominent position and reduce any potential glare impacts from night time access. The plans also indicate construction of retaining walls on the edge of the rock outcrop to the east of the dwelling. This area provides for stormwater detention, grass and planting. The visual impact is to extend built form and building bulk to the edge of the elevated rock outcrop in a visually prominent part of the site. It is recommended that a more sympathetic transition be provided between the dwelling and the rock outcrop, with retaining walls located no closer than 2 metres from the rock edge with a landscape treatment and materials in harmony with the natural landscape. The issues raised above are exacerbated by the removal of several <i>Casuarina</i> trees in the driveway access handle and 1 x <i>Ficus rubiginosa</i> (Port Jackson Fig) in the location of the visitor parking bays, reducing the soft landscape components currently providing a backdrop when viewed from public spaces to the east. If approval is to be granted, it is recommended that the above issues

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Internal Referral Body	Comments
	be addressed and conditions recommended be included to minimise visual and environmental impacts of the proposed works. Planners comment: The balustrade around the visitor parking bays has been amended to be solid, minimising glare. The retaining walls have been reduced in size to minimise the impact on the rock shelf.
Natural Environment (Biodiversity)	The top of the site contains two remnant trees that must be protected. Conditions have been put in place for Council to review and approve a Tree Protection Plan before the Construction Certificate is approved. The top of the site (Department of Lands property off Batho Road) contains mostly weeds, some noxious. There is mapped native vegetation on the development site, and this must be replaced with native landscaping. The protection of other street trees on Council land should be referred to Council's Tree Management Officer and/or Landscape Officer for their comments/conditions.
Buildings, Property, Spatial Information	No objections raised and no condition recommended.
Road Reserve	No impact on existing road assets.
Traffic Engineer	No objection is raised on the proposal on traffic grounds subject to the Development Engineers to consider the compliance of the driveway with the Council's driveway profile.

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.
NSW Department of Lands - Lands and Property Management Authority	The NSW Department of Lands raised no objections to the proposal and did not recommend any conditions of consent.

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. 660714S dated 8 October 2015).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	40	41

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

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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	Complies
Minimum subdivision lot size:	450sqm	Lot 101 - 493sqm Lot 102 - 450.3sqm (550.07sqm including access handle)	Yes Yes
Height of Buildings:	8.5m	8.47m	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision - consent requirements	Yes
4.1 Minimum subdivision lot size	Yes
4.3 Height of buildings	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

The proposal will result in a battle-axe lot. The front boundary is technically to Batho Street, however, the dwelling is set back 934mm from the shared boundary with No. 25 Loch Street. This is an internal boundary, however, in the circumstances of the site, the objectives of the rear boundary have been used to assess the performance of the proposal. This is reflected in the following table and the detailed discussions below.

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	Approximately 8.01m	11.25%	No
B3 Side Boundary Envelope	North - 5m	One encroachment of between nil and 400mm in height for a length of 2.07m	Nil - 8%	No
	South - 5m	One encroachment of between nil and 300mm in height for a length of 850mm	Nil - 6%	No
B5 Side Boundary Setbacks	North - 0.9m	Between nil and 2.05m	100% - nil	No
	South - 0.9m	Minimum of 985mm	N/A	Yes
B7 Front Boundary Setbacks	To Batho Street - 6.5m	28m	N/A	Yes
B9 Rear Boundary Setbacks	To the western boundary with No. 25 Loch Street -	934mm	84.43%	No

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	6.0m			
	To the eastern boundary	Minimum of 9.2m	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	Lot 101 - 40%	40.2% (200.1sqm)	N/A	Yes
	Lot 102 - 40%	47.7% (214.8sqm)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
R2 Side Boundary Envelope Exceptions	No	Yes
B5 Side Boundary Setbacks	No	Yes
Side Setbacks - R2	No	Yes
Side Setback Exceptions - R2	No	Yes
B7 Front Boundary Setbacks	Yes	Yes
R2 - All other land in R2 Zone	Yes	Yes
B9 Rear Boundary Setbacks	No	Yes
All other land under R2	No	Yes
Rear Boundary Exceptions - R2	No	Yes
C1 Subdivision	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
C9 Waste Management	No	Yes
Residential accommodation - one or two dwellings	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
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

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Clause	Compliance with Requirements	Consistency Aims/Objectives
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
E1 Private Property Tree Management	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E5 Native Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of non-compliance

The proposal has a maximum wall height of 8.01m.

The control requires a maximum of 7.2m.

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.*
- *To ensure development is generally beneath the existing tree canopy level.*
- *To provide a reasonable sharing of views to and from public and private properties.*
- *To minimise the impact of development on adjoining or nearby properties.*
- *To ensure that development responds to site topography and to discourage excavation of the natural landform.*
- *To provide sufficient scope for innovative roof pitch and variation in roof design.*

Comment:

The dwelling will remain within the 8.5m height limit and will be approximately 6.3m high along the western elevation (closest to No. 25 Loch Street to the immediate west). The proposal also complies with the side setbacks (with the exception of the driveway access ramp, close to ground level) and is set back adequately from the eastern boundary.

In this regard, the development will not be unreasonably visually dominant when viewed from neighbouring properties or nearby public spaces. No canopy trees will be removed, the development includes an innovative roof design and responds well to the site topography.

View loss is discussed in detail under Part D7 - Views below in this report. In summary, the proposal will result in a reasonable sharing of views.

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 includes minor breaches on both the northern and southern elevations as follows:

Northern elevation - One encroachment of between nil and 400mm in height for a length of 2.07m.

Southern elevation - One encroachment of between nil and 300mm in height for a length of 850mm.

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.*
- *To ensure adequate light, solar access and privacy by providing spatial separation between buildings.*
- *To ensure that development responds to the topography of the site.*

Comment:

Both envelope breaches are minor. The northern breach consists of a portion of the vehicle access area where the land drops away over a rock outcrop. The southern breach is a maximum of 300mm on a corner of the stair well.

These minor breaches will not result in a development that is visually dominant given the proposal's performance against the remaining built form controls.

Adequate light, solar access and privacy will be maintained to the neighbouring properties given the positioning of windows, balconies and the siting of the dwelling.

The proposal remains within the 8.5m height limit on a steeply sloping site and therefore responds well 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

A portion of the vehicle access ramp leading from the garage to the driveway is set back between nil and 1.17m from the northern boundary. The driveway is also located on the boundary.

The control requires a minimum side setback of 900mm.

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.*
- *To ensure that development does not become visually dominant.*
- *To ensure that the scale and bulk of buildings is minimised.*
- *To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.*
- *To provide reasonable sharing of views to and from public and private properties.*

Comment:

The element of the development that breaches the side setback is located close to ground level and is for vehicle access.

This element will not result in the dwelling becoming visually dominant or having an unreasonable bulk and scale. Adequate privacy, amenity and solar access will be maintained to the neighbouring properties, the development will result in a reasonable sharing of views and the site will contain more than 40% landscaped open space.

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

As mentioned in the Built Form Control table section above, the proposal is located a minimum of 934mm from the western boundary shared with No. 25 Loch Street. Due to this site being a battle axe lot, the western boundary to No. 25 Loch Street is an internal boundary, however, in this particular case it is reasonable to use the objectives listed below to assess this aspect of the proposal.

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 site will contain 47.7% landscaped open space and will protect the large rock shelf located in the eastern half of the lot. Adequate area for deep soil planting will be maintained.

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

Comment:

A 934mm setback to the western boundary will impact on the openness of the "rear" yard. However, the need to locate the dwelling away from the rock shelf means that a 6.0m setback to the boundary with No. 25 Loch Street is impractical.

The western elevation of the dwelling will sit at a maximum height of approximately 6.3m. This is 2.2m below the 8.5m maximum height limit. Landscaping is proposed within the setback area to screen the western elevation which has also been designed to be reasonably articulated. The upper level of the dwelling (containing the garage and entry) is 9.65m wide, taking up approximately 51.3% of the 18.8m wide site. This will leave the remaining parts of the western elevation with a relatively low level development.

Given the unique circumstances of the site, the need to preserve the rock shelf, the compliance with the minimum lot size and the well designed and screened western elevation of the dwelling, the proposal will provide a reasonable sense of openness.

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

Comment:

The upper level of the western elevation contains a garage and entry. There will be no privacy impacts caused by the 934mm setback as there are no windows to habitable rooms, balconies or decks.

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

Comment:

The proposal will add a new dwelling in a location that has not previously contained a dwelling. However, to the immediate north of the site is Stewart House, containing a large multi unit building in alignment with the proposed dwelling. To the immediate south of the site is a single storey studio, again, in alignment with the proposed dwelling.

The proposal will preserve the large rock shelf on the site, which is the main unique feature of the landscape.

The proposal will meet the minimum lot size control, and will reasonably maintain the pattern of buildings, rear gardens and landscape elements.

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

Comment:

The upper level of the western elevation contains a garage and entry. There will be no privacy impacts caused by the 934mm setback as there are no windows to habitable rooms, balconies or decks.

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.

C1 Subdivision

Component	Requirement	Proposed	Compliant
Lot requirements	R2 Low Density Residential zone requirements: Proposed new allotments: a) Minimum width: 13 metres b) Minimum depth: 27 metres; and c) Minimum building area: 150m²	Lot 101 - 18.67m width x 23.825m / 28.895m depth Lot 102 - 18.67m width x 21.45m / 26.52m depth The proposal includes the construction of a dwelling.	No - minor variation supported due to the level of compliance with the built form controls, in particular, Landscaped Open Space. See discussion below.
Access	Motor vehicle access to each residential allotment is required from a constructed and dedicated public road. Where access is proposed to a section of unconstructed public road, then the subdivision will need to provide legal, constructed access to the Council's satisfaction. Access for Council service vehicles, emergency vehicles and garbage collection vehicles must be provided. Driveways, accessways, etc, to allotments should have a gradient not exceeding 1:4 and allow for transitions at a minimum length of 1.5m and at a grade no steeper than 1:10. Driveways in excess of 200 metres will not be allowed for residential development. Driveways that are 30m or	Each new lot will have vehicular access. The driveway to Lot 102 is less than 30m in length and is 3.6m wide.	Yes

more in length require a passing bay to be provided every 30m. To provide a passing bay, driveways shall be widened to 5.0m for a distance of at least 10m.

Passing bays should have regard to sight conditions and minimise vehicular conflict.

Vehicular ingress/egress points to internal lots may be used as passing/turning bays, subject to extension of a right-of-carriageway over the passing/turning bay.

Rights-of-carriageway should be located so as to accommodate all vehicle turning facilities.

Width of accessways are to be as follows:

Number of lots to be serviced	Width of clear constructed accessway (m)
1 - 5	3.5
6 - 10	5.0
in excess of 10	Access is to be provided by a private or public road constructed with a width that is in accordance with Council standard specifications for engineering

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	<table><tr><td></td><td>works (AUSPEC 1)</td></tr></table> Provision of services in rights of carriageway are as follows: <table><tr><td>Number of lots to be serviced</td><td>Additional width to be provided in Right of Carriageway (m)</td></tr><tr><td>Up to 3 lots</td><td>0.5</td></tr><tr><td>4 or more lots</td><td>1.0</td></tr></table>		works (AUSPEC 1)	Number of lots to be serviced	Additional width to be provided in Right of Carriageway (m)	Up to 3 lots	0.5	4 or more lots	1.0		
	works (AUSPEC 1)										
Number of lots to be serviced	Additional width to be provided in Right of Carriageway (m)										
Up to 3 lots	0.5										
4 or more lots	1.0										
Design and construction	All roads, rights of carriageway, drainage design and construction is to be in accordance with Council's policy requirements including; AUSPEC 1 - Council's Specification for Engineering Works, Development Engineering Minor Works Specification, On Site Stormwater Detention (OSD) Technical Specification and Council's Water Sensitive Urban Design Policy. Additionally, internal roads must be designed in accordance with the relevant Australian Standards. Subdivision design needs to maximise and protect solar access for each dwelling by considering factors such as orientation, shape, size and lot width.	The proposal was referred to Council's Development Engineers who raised no objections, subject to conditions.	Yes								
Drainage	Provision should be made for each allotment to be drained by gravity to a Council-approved drainage system. The topography of	Each lot will be drained by gravity to a Council-approved drainage system.	Yes								

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	the land should not be altered to adversely affect the natural drainage patterns. Stormwater should drain directly to a Council-approved drainage system and not via adjoining properties unless via a formalised interallotment drainage system. The proposed allotments are to be drained to the direction of the natural fall of the land. Interallotment drainage easements will be required through adjoining properties to adequately drain land to Council's downstream system.		
Restrictions	Any easement, right-of-carriageway, or other restriction that is placed on the title of any land as a requirement of the approval of the subdivision is to be protected by a positive covenant or like instrument with the Council nominated as a party.	Positive covenants will be required for the drainage easement and have been included in the recommended conditions of consent.	Yes
Environmentally constrained land	In areas subject to constraints such as flooding, tidal inundation, threatened species, landslip risk, bushfire or any other matter, adequate safe area for building, where the risk from hazard is minimised, is to be provided within an allotment. Where possible, lot boundaries should utilise natural land features such as creeks, escarpments and rock outcrops.	The lot boundary and siting of the dwelling has taken into account the topography of the site, in particular, the large rock shelf.	Yes
Bushfire	Subdivision should be designed to minimise the risk from potential bushfire. Asset protection zones	N/A	Yes

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	should be contained within the property boundaries of the new subdivision.		
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Description of non-compliance

The two new lots have a minor non-compliance in relation to the minimum depths.

Lot 101 is proposed with a minimum depth of 23.825m and a maximum of 28.895m.

Lot 102 is proposed with a minimum depth of 21.45m and a maximum of 26.52m.

The control requires a minimum of 27m.

Merit consideration

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

- *To regulate the density of development.*
- *To limit the impact of new development and to protect the natural landscape and topography.*
- *To ensure that any new lot created has sufficient area for landscaping, private open space, drainage, utility services and vehicular access to and from the site.*
- *To maximise and protect solar access for each dwelling.*
- *To maximise the use of existing infrastructure.*
- *To protect the amenity of adjoining properties.*
- *To minimise the risk from potential hazards including bushfires, land slip and flooding.*

Comment:

The proposal included the construction of a dwelling on the new Lot 102. The performance of this dwelling against the controls has demonstrated that the subdivision proposed is suitable. The non-compliance with the minimum depths will not result in related non-compliances with the LOS control for either new lot and will not result in any unreasonable amenity impacts to the surrounding or nearby properties.

The proposed new boundary alignment will protect the unique topography of the site, in particular, the prominent rock shelf.

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.

C9 Waste Management

A detailed waste management plan has not been submitted with the application. To ensure proper disposal of demolition and builders' wastes, a condition has been included in the consent requiring details prior to the issue of a construction certificate.

D7 Views

Merit consideration

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:

Views will be affected from the following properties:

- No. 25 Loch Street
- No. 23 Loch Street
- No. 14 Ellen Street

No. 25 Loch Street

Views of the ocean, Curl Curl Beach, the land water interface and South Curl Curl rock pool will be affected by the proposal.

No. 23 Loch Street

Views of the ocean, Curl Curl Beach and the land water interface will be affected by the proposal.

No. 14 Ellen Street

Views of North Curl Curl Headland, Curl Curl Beach and the breaking waves will be affected from the single storey studio at the rear of the site.

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:

No. 25 Loch Street

The views of the ocean, Curl Curl Beach, the land water interface and South Curl Curl rock pool are

obtained over the rear boundary. The views are obtained from standing positions from the lower ground level rear yard and from a small landing and the rear facing windows on the ground level of the dwelling.

No. 23 Loch Street

The views of the ocean, Curl Curl Beach and the land water interface are obtained over a side boundary. The views are obtained from standing and sitting positions from several levels of the stepped rear yard, the ground floor deck, the first floor deck and the first floor living areas.

No. 14 Ellen Street

The views of North Curl Curl Headland, Curl Curl Beach and the breaking waves are obtained from the balcony of the single storey studio at the rear of the site. The views are obtained from sitting and standing positions over 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:

No. 25 Loch Street

No. 25 Loch Street enjoys expansive views of the ocean as well as a part of Curl Curl Beach and the South Curl Curl Rock pool.

From the ground level balcony of No. 25 Loch Street, the proposal will block a portion of the beach, a small portion of the rock pool and a small area of breaking waves. The large expanse of ocean will remain unaffected, some beach views will be retained as will the majority of the South Curl Curl Rock pool.

From the lower ground level rear yard of No. 25 Loch Street, the proposal will block a larger portion of the beach and breaking waves and a small portion of the ocean. Depending on the standing position of the viewer, the South Curl Curl Rock pool will be either totally or partly obscured. The majority of ocean views will remain unaffected and some beach views and South Curl Curl Rock pool views will be retained (depending on the standing position of the viewer).

Only a small percentage of overall views will be affected by the proposal, however, the affected views include the South Curl Curl Rock pool, the beach and the breaking waves. Those views are the most important aspects of the total views obtained from No. 25 Loch Street and will be affected from the lower ground and ground levels. In this regard, the view loss is considered to be moderate/severe.

No. 23 Loch Street

No. 23 Loch Street enjoys expansive views of the ocean as well as most of Curl Curl Beach (from the upper levels of the dwelling), the breaking waves, North Curl Curl Headland and the South Curl Curl Rock pool.

From the lower portions of the rear yard of No. 23 Loch Street, the proposal will block most of the beach

views, the main area of breaking waves (that are not already obscured by existing vegetation and North Curl Curl Headland. The large expanse of ocean will remain mostly unaffected. South Curl Curl Rock pool is not readily visible from the lower rear yard levels.

From the ground level balcony of No. 23 Loch Street, the proposal will block a portion of the beach and a portion of breaking waves. The large expanse of ocean will remain mostly unaffected, most of the beach views will be retained, North Curl Curl Headland will be retained as will the South Curl Curl Rock pool.

From the first floor level of No. 23 Loch Street, when standing in the worst viewing position, the proposal will block a small portion of the beach. The ocean, North Curl Curl Headland, the breaking waves and the South Curl Curl Rock pool will be retained.

Only a small percentage of overall views will be affected by the proposal and these are all over the side boundary. The most important aspects of the total views, including the South Curl Curl Rock pool, the beach, the breaking waves and North Curl Curl Headland will be either completely or mostly (in the case of the beach) retained from the first floor level of No. 23 Loch Street (which comprises the main living and entertaining areas). In this regard, the view loss is considered to be minor.

No. 14 Ellen Street

From the worst standing position on the balcony of the studio at the rear of the site, the proposal will block views of North Curl Curl Headland, some of Curl Curl beach and a small area of breaking waves, all over the side boundary. From the best standing position, all these views are retained. Views of the ocean and South Curl Curl Rock pool will be retained. In this regard, the view loss is considered to be minor.

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:

No. 25 Loch Street

The key controls affecting view loss from No. 25 Loch Street are the overall building height, the side boundary setbacks and the side boundary envelope.

The proposal, at the western elevation (closest to No. 25 Loch Street) is approximately 6.3m in height, 2.2m below the maximum limit of 8.5m. The proposal is fully compliant with the side setbacks (with the exception of the driveway and vehicle access area which is on the northern elevation, close to ground level and is set back between nil and 1.17m).

There are minor breaches of the side boundary envelope on the northern and southern elevations. The portions of the dwelling that breach the envelopes (by a maximum of 400mm and 300mm respectively) will be obscured by the rear (western) elevation of the proposal and will not have an unreasonable impact on views.

No. 23 Loch Street

The key controls affecting view loss from No. 23 Loch Street are the overall building height and the set back to the eastern boundary.

The proposal will be entirely below the maximum height limit of 8.5m.

The proposed dwelling has been positioned as far from the rock shelf (i.e. as far west) as possible, resulting in a minimum setback of 9.2m to the eastern boundary. This set back is reasonable and will serve to protect the rock shelf and views from No. 23 Loch Street (when compared to a proposal set back a minimum of 6.0m).

No. 14 Ellen Street

The key control affecting view loss from No. 14 Ellen Street is the set back to the eastern boundary.

The proposed dwelling has been positioned as far from the rock shelf (i.e. as far west) as possible, resulting in a minimum setback of 9.2m to the eastern boundary. This set back is reasonable and will serve to protect the rock shelf and views from No. 14 Ellen Street (when compared to a proposal set back a minimum of 6.0m).

Conclusion

The proposal will block important aspects of the views obtained from No. 25 Loch Street, No. 23 Loch Street and No. 14 Ellen Street. These views will mostly be lost from the lower levels of Nos. 25 and 23 Loch Street with greater views being retained from the ground and first floors. No. 14 Ellen Street will lose views from the studio at the rear of the site.

The proposal is entirely within the height limit and performs well against the remaining built form controls resulting in minor non-compliances that do not unreasonably impact on views. In particular, the western elevation of the dwelling, which will have the greatest impact on views from No. 25 Loch Street, is approximately 2.2m below the maximum building height and fully compliant with the side boundary envelope and side boundary setback controls. In addition, the dwelling has been positioned away from the rock shelf and the eastern boundary, thereby protecting views from No. 23 Loch Street and No. 14 Ellen Street.

It is not considered that there is a better, or more skillful, design that would preserve a substantially greater amount of views while providing a similar development potential. In this regard, the proposal is worth of support and will result in a reasonable sharing of views.

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

Comment:

The proposed dwelling is an innovative design that is well stepped and articulated. While the dwelling will not be readily visible from Loch Street or Batho Street to the west, it will be visible from Carrington Parade (which runs along the beach front). From Carrington Parade, the proposal will not unreasonably detract from the urban environment.

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

Comment:

No existing canopy trees will be impacted on by the proposal.

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.

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 \$ 1,236,801		
Contributions	Levy Rate	Payable
Total Section 94A Levy	0.95%	\$ 11,750
Section 94A Planning and Administration	0.05%	\$ 618
Total	1%	\$ 12,368

ASSESSMENT SUMMARY

The proposed subdivision will be inconsistent with the current established pattern to the south of the site (Stewart House, on a single large lot is located to the immediate north). However, the natural land form (i.e. the large rock shelf) establishes a platform at the rear of No. 16 Ellen Street that cannot be easily accessed from Ellen Street. As such, if the proposal can meet the minimum lot size control and a dwelling can be constructed that would not result in unreasonable amenity impacts, then a new lot comprising the rear portion of No. 16 Ellen Street is appropriate.

Both new lots (Lot 101 containing the existing dwelling at No. 16 Ellen Street and Lot 102 to contain the proposed new dwelling) meet the minimum lot size and will comply with the minimum landscaped open space requirements. Each of the new lots will not meet the minimum depth requirements, however, these non-compliances are relatively minor and do not prevent a reasonable development that can meet the objectives of the planning controls and minimise impacts to adjoining or nearby properties.

The proposed dwelling is entirely within the height limit, is set back a minimum of 9.2m from the eastern boundary and includes only minor non-compliances with the side boundary envelop and side boundary setbacks, both of which do not result in unreasonable amenity or view loss impacts.

In relation to views, the proposal will block important aspects of the views obtained from No. 25 Loch Street, No. 23 Loch Street and No. 14 Ellen Street. These views will mostly be lost from the lower levels of Nos. 25 and 23 Loch Street with greater views being retained from the ground and first floors. No. 14 Ellen Street will lose some views from the studio at the rear of the site.

The proposal is entirely within the height limit and performs well against the remaining built form controls resulting in only minor non-compliances that do not unreasonably impact on views. In particular, the western elevation of the dwelling, which will have the greatest impact on views from No. 25 Loch Street, is approximately 2.2m below the maximum building height and fully compliant with the side boundary envelope and side boundary setback controls. In addition, the dwelling has been positioned away from the rock shelf and the eastern boundary, thereby reasonably protecting views from No. 23 Loch Street and No. 14 Ellen Street.

It is not considered that there is a better or more skillful design that would preserve a substantially greater amount of views while providing the same development potential. In this regard, the proposal is worth of support and will result in a reasonable sharing of views.

Overall, the unique topography and natural features on the site (the large escarpment) creates a situation where this development is possible on the relatively flat rear section of No. 16 Ellen Street. Compliance with controls, especially lot size, building height and setbacks are reasonable and acceptable. A view sharing analysis has found that the loss of views is satisfactory and not unreasonable. Finally, the proposal will retain the significant natural features of the site and will meet the objectives of the WLEP 2011, the R2 Low Density Residential zone and the Planning Controls.

The proposal is therefore worthy of support.

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 DA2015/1123 for Construction of a dwelling house and driveway and subdivision of 1 lot into 2 lots on land at Lot 100 DP 1096368, 16 Ellen Street, CURL CURL, 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

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
01 Issue A	12.11.2015	Gartner Trovato Architects
02 Issue A	12.11.2015	Gartner Trovato Architects
03 Issue A	12.11.2015	Gartner Trovato Architects
04 Issue B	20.04.2016	Gartner Trovato Architects
05 Issue B	20.04.2016	Gartner Trovato Architects
06 Issue B	20.04.2016	Gartner Trovato Architects
07 Issue B	20.04.2016	Gartner Trovato Architects
Colours and Finished Board	Not dated	Gartner Trovato Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Report on Geotechnical Site Investigation	September 2015	Crozier Geotechnical Consultants

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.

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans. (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) Where works are to be carried out to a Class 1a building, smoke alarms are to be installed throughout all new and existing portions of that 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 and the use will not exceed more than 5dB (A) above the background level when measured from any property boundary

and/or habitable room(s) consistent with the Environment Protection Authority's NSW Industrial Noise Policy and/or Protection of the Environment Operations Act 1997.

(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

(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 sewerred areas or managed on-site in unsewerred 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.

(o) New solid fuel burning heaters or existing solid fuel heaters affected by building works must comply with the following:

(1) AS 2918:2001 Domestic Solid Fuel Burning Appliances – Installation.

(2) AS 4013:2014 Domestic Solid Fuel Burning Appliances – Method of Determination of Flue Gas Emissions.

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 \$ 1,236,801.00		
Contributions	Levy Rate	Payable
Total Section 94A Levy	0.95%	\$ 11,749.61
Section 94A Planning and Administration	0.05%	\$ 618.40
Total	1%	\$ 12,368.01

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.

This fee must be paid prior to the issue of the Construction Certificate. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To provide for contributions in accordance with Warringah's Development Contributions Plan.

5. **Security Bond**

A bond (determined from cost of works) of \$10,000 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.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at www.warringah.nsw.gov.au/your-council/forms).

Reason: To ensure adequate protection of Councils infrastructure.

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

6. **On-site Stormwater Detention Compliance Certification**

Drainage plans detailing the provision of On-site Stormwater Detention in accordance with Warringah Council's "On-site Stormwater Detention Technical Specification" and the concept drawing by Barrenjoey Consulting Engineers, drawing number 150714 SW1 DA dated 29/9/2015.

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

Reason: To ensure appropriate provision for the disposal of stormwater and stormwater management arising from the development. (DACENC03)

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. **Structural Adequacy and Excavation Work**

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required.

All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
- (b) comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: Safety. (DACENC19)

9. **Shoring of Adjoining Property**

Should the proposal require shoring to support an adjoining property or Council land, owner's consent for the encroachment onto the affected property owner shall be provided with the engineering drawings. Council approval is required if temporary rock anchors are to be used within Council land.

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

Reason: To ensure that owners consent is obtained for ancillary works, and to ensure the protection of adjoining properties and Council land. (DACENCO5)

10. **Waste Management Plan**

A waste management plan that addresses Clauses C8 and C9 in the Warringah DCP must be prepared for this development.

Details of the method of transportation and location of the waste/recycling centres are to be included in the plan

Details demonstrating compliance must be provided to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.(DACHPC03)

11. **Tree protection**

(a) Existing trees which must be retained

All trees not indicated for removal on the approved plans, unless exempt or noxious in Warringah

(b) Tree protection

i) No tree roots greater than 50mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.

ii) All structures are to bridge tree roots greater than 50mm diameter unless directed otherwise by a qualified Arborist on site.

iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.

iv) All tree pruning within the subject site is to be in accordance with WDCP2011 Clause

E1 Private Property Tree Management and AS 4373 Pruning of amenity trees

v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site. (DAKLAC01)

12. **Arborist Report and Tree Protection Plan Required**

A number of trees on Council land will be impacted by this development proposal, including

two native trees likely to be from the remnant native vegetation.

An Arborist Report and Tree Protection Plan is required for any trees within the development site and including trees on adjoining Council road reserve.

An Arborist Report and Tree Protection Plan meeting Australian Standards AS 4970 "Protection of Trees on Development Sites" must be approved by Council prior to the issue of the Construction Certificate.

Reason: To protect and manage remnant trees and street trees before and during construction. (DACNEC10)

13. **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 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)

14. **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 does not occur as a result of the development. (DACPLC03)

15. **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 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)

16. **Dilapidation Reports**

Dilapidation Reports, including photographic survey of the adjoining building at Stewart House and the rear studio at No.14 Ellen Street are to be prepared.

The reports must detail the physical condition of those properties, both internally and externally as appropriate, including such items as fencing, retaining walls, landscaping infrastructure, walls, ceilings, roof, structural members and other similar items that would be affected.

The reports shall be submitted to Council and the Accredited Certifier prior to the issue of a Construction Certificate.

Should the "Zone of Influence" be determined to be beyond the abovementioned properties, then those areas are to be included in the Report.

(Note: This documentation is for record keeping purposes only, and may be used by an applicant or affected property owner to assist in any action required to resolve any dispute over damage to adjoining properties arising from the works. It is in the applicant's and adjoining owner's interest for it to be as full and detailed as possible).

Reason: To ensure the safety and stability of, and to prevent damage to, the neighbouring properties and for the proper management of records. (DACPLCPCC1)

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

17. **Public Liability Insurance - Works on Public Land**

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$10 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Warringah Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land. (DACEND01)

18. **Landscaping**

"GROUND FLOOR & LANDSCAPE PLAN - October 2015" must be implemented, in order to replace removed native vegetation with species native to the area.

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

Reason: Replacement of mapped native vegetation/bushland that will be impacted by the development. (DACNED03)

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

19. **Vehicle Crossings**

The provision of one vehicle crossing three metres wide in accordance with Warringah

Council Drawing No A4-3330/1 Normal 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)

20. Maintenance of Road Reserve

The public footways and roadways adjacent to the site shall be maintained in a safe condition at all times during the course of the work.

Reason: Public Safety. (DACENE09)

21. 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)

22. Protection of rock

- i) All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition and construction works.
- ii) Should any Aboriginal sites be uncovered during earthworks, works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: Preservation of significant environmental features (DACLAEOG1)

23. Noxious Weed Control

No noxious or environmental weeds, as listed on Warringah Councils website are to be

imported on to the site.

Any noxious weeds, in accordance with the Noxious Weeds Act 1993 for this development.

Details prepared in writing demonstrating compliance is to be submitted to the Principal Certifying Authority.

Reason: To comply with the Noxious Weeds Act 1993 and protection of adjoining mapped native vegetation. (DACNEE02)

24. Implement Tree Protection Plan before and during works

Implement Tree Protection Plan for any trees to be retained within the development site and including trees on adjoining Council road reserve.

An Arborist Report and Tree Protection Plan meeting Australian Standards AS 4970 "Protection of Trees on Development Sites" must be approved by Council prior to the issue of the Construction Certificate.

Reason: Protection of trees to be retained (DACNEEDW2)

25. 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**

26. 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)

27. Required Planting

Tree, shrub and groundcover species (with the exception of turf areas) provided in the

landscape open space to the east of the dwelling are to comprise local native species only.
Reason: To maintain environmental amenity. (DACLAF01)

28. **Removal of All Temporary Structures/Material and Construction Rubbish**

Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

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

Reason: To ensure bushland management. (DACPLF01)

**CONDITIONS THAT MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF ANY STRATA
SUBDIVISION OR SUBDIVISION CERTIFICATE**

29. **Positive Covenant for On-site Stormwater Detention**

A positive covenant (under the provisions of Section 88B of the Conveyancing Act 1919) is to be created on the final plan of subdivision and accompanying 88B instrument, requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to Council's standard requirements, which are available from Warringah Council. Warringah Council shall be nominated as the sole authority empowered to release, vary or modify such covenant.

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

Reason: To ensure ongoing maintenance of the on-site stormwater detention system.
(DACENH02)

30. **Provision of Services for Subdivision**

The applicant is to ensure all services including, water, electricity, telephone and gas are provided, located and certified by a registered surveyor on a copy of the final plan.

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

Reason: To ensure that utility services have been provided to the newly created lots.
(DACENH03)

31. **Right of Carriageway**

A right of carriageway (under the provisions of Section 88B of the Conveyancing Act) is to be created on the final plan of subdivision and accompanying 88B instrument to include all vehicular access and maneuvering areas.

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

Reason: Council's subdivision standards and the statutory requirements of the Conveyancing Act 1919. (DACENH04)

32. **Restriction as to User for On-site Stormwater Detention**

A restriction as to user (under the provisions of Section 88B of the Conveyancing Act) is to be created on the final plan of subdivision and accompanying 88B instrument for the on-site stormwater detention system, restricting any alteration or additions to the system. The terms

of such restriction are to be prepared to Council's standard requirements, which are available from Warringah Council. Warringah Council shall be nominated as the party to release, vary or modify such restriction.

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

Reason: To ensure no modification to the on-site stormwater detention structure without Council's approval. (DACENH07)

33. Stormwater Drainage and Utility Services Plan

A plan of subdivision identifying the location of water, gas, telephone, electricity and stormwater drainage in relation to boundaries and/or relevant easements, prepared by a registered surveyor is to be submitted to Council.

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

Reason: To ensure that services have been provided with appropriate easements as required by the Conveyancing Act 1919. (DACENH10)

34. Survey Plan - Construction Identification

A declaration by a registered surveyor shall be provided to Council as evidence that all construction has been effected within the appropriate property, easement boundaries and rights of carriageway. This shall be in the form of a copy of the final subdivision or easement plan, with the distances from the boundaries to the edges of these structures endorsed in red thereon and signed by the surveyor.

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

Reason: To ensure accurate location of buildings, access and services (DACENH12)

35. Sydney Water Compliance Certification

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au <<http://www.sydneywater.com.au>> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

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

Reason: To ensure compliance with the statutory requirements of Sydney Water. (DACENH13)

36. **Certification of Utility Services**

The provision of all utilities/services and/or street lighting are to be certified by the relevant authority(s) and/or authorised contractor.

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

Reason: To ensure services have been provided in accordance with the relevant authorities requirements. (DACENH15)

37. **Easement for Drainage**

An easement for drainage (under the provisions of Section 88B of the Conveyancing Act) is to be created on the final plan of subdivision the accompanying 88B instrument to ensure all drainage infrastructure is located within the appropriate easement(s).

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

Reason: Council's Subdivision standards and statutory requirements of the Conveyancing Act 1919. (DACENH16)

38. **Easement for Services**

An easement for services (under the provisions of Section 88B of the Conveyancing Act) is to be created on the final plan of subdivision and the accompanying 88B instrument to ensure all utility services are located within the appropriate easement(s).

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

Reason: Council's Subdivision standards and statutory requirements of the Conveyancing Act 1919.(DACENH18)

39. **On-Site Stormwater Detention Compliance Certification**

Prior to issue of a subdivision certificate the on-site stormwater detention (OSD) system must be certified by a consulting engineer and include a "works as executed" (WAE) drawing certified by a registered surveyor and overdrawn in red on a copy of the approved OSD system plans. Additionally a Compliance Certificate is to be issued by an Accredited Certifier in Civil Works registered with the Institute of Engineers Australia, stating that the works are in accordance with the approved plans.

Reason: To ensure stormwater disposal is constructed to standard specifications AUSPEC 1. (DACENH21)

40. **Release of Subdivision Certificate**

To enable the lodgement of the final plan at the NSW Land and Property Information Department the Subdivision Certificate shall not be issued until the Final Occupation Certificate for the approved development.

Reason: To ensure that the plans relate to approved development. (DACENH23)

41. **Subdivision Certificate Application**

Prior to the issue of the Subdivision Certificate, a completed Subdivision Certificate form, a

final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919 are to be submitted to Council. Nine copies of the final plan of subdivision are to be submitted. All plans of survey are to show connections to at least two Survey Co-ordination Permanent Marks. The fee payable is to be in accordance with Council's fees and charges.

Reason: Statutory requirement of the Conveyancing Act 1919. (DACENH24)

42. **Title Encumbrances**

All easements, rights of carriageway, positive covenants and restrictions as to user as indicated on the plans and required by this consent are to be created on the title naming Warringah Council as the sole authority empowered to release or modify.

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

Reason: To ensure proper management of land. (DACENHS14)

NORTHERN BEACHES COUNCIL

ATTACHMENT A

Notification Plan	Title	Date
 2015/342686	Plans - Notification	18/11/2015

ATTACHMENT B

Notification Document	Title	Date
 2015/348553	notification map	24/11/2015

NORTHERN BEACHES COUNCIL

ATTACHMENT C

Reference Number	Document	Date
 2015/342701	Plan - Survey	15/07/2015
 2015/342735	Report - Geotechnical	25/09/2015
 2015/342738	Report BASIX Certificate	25/09/2015
 2015/342743	Report - Proposed Subdivision and Vehicle Access Assessment	02/10/2015
 DA2015/1123	16 Ellen Street CURL CURL NSW 2096 - Development Application - Subdivision	16/11/2015
 2015/339574	DA Acknowledgement Letter - Lynne Ellen Jones - Terence William Jones	16/11/2015
 2015/342706	Report Statement of Environmental Effects	18/11/2015
 2015/342748	Pre-Lodgement Meeting Notes	18/11/2015
 2015/342709	Plans - External	18/11/2015
 2015/342711	Plans - Internal	18/11/2015
 2015/342712	Certification of Shadow Diagrams with Plans	18/11/2015
 2015/342673	Development Application Form	18/11/2015
 2015/342676	Applicant Details - Owners Consent Crown	18/11/2015
 2015/342680	Cost Summary Report	18/11/2015
 2015/342686	Plans - Notification	18/11/2015
 2015/342756	Plans - Master Set	18/11/2015
 2015/343885	File Cover	19/11/2015
 2015/343897	Referral to AUSGRID - SEPP - Infrastructure 2007	19/11/2015
 2015/343899	Referral to Department of Lands	19/11/2015
 2015/348550	notification letter 12	24/11/2015
 2015/348553	notification map	24/11/2015
 2015/350039	Traffic Engineer Referral Response	24/11/2015
 2015/356489	Notification seeking lands consent for proposed subdivision - DA2015/1123 - 16 Ellen Street Curl Curl	01/12/2015
 2015/360893	Natural Environment Referral Response - Biodiversity	04/12/2015
 2015/361597	Online Submission - O'Donnell	04/12/2015
 2015/361600	Online Submission - Stewart House	04/12/2015
 2015/361245	Development Engineering Referral Response	04/12/2015
 2015/361598	Online Submission - Cockerill	05/12/2015
 2015/361599	Online Submission - Andersen	07/12/2015
 2015/362864	Online Submission - Willowtree Planning	07/12/2015
 2015/362837	Objection to DA2015/1123 - Willowtree Planning - 16 Ellen Street CURL CURL	07/12/2015
 2015/363854	Online Submission - Fraser	07/12/2015

NORTHERN BEACHES COUNCIL

	2015/363858	Online Submission - Aubrey	07/12/2015
	2015/363931	Online Submission - Smith	08/12/2015
	2015/364299	Online Submission - Holland	08/12/2015
	2015/364579	Submission - Smith	08/12/2015
	2015/364517	Online Submission - Smith	08/12/2015
	2015/364583	Submission - Holland	08/12/2015
	2015/365220	Online Submission - Swan	09/12/2015
	2015/365435	Online Submission - Loudon	09/12/2015
	2015/365863	Online Submission - Thompson	09/12/2015
	2015/366265	Submission Acknowledgement Letter - Stewart House School - SA2015/361600	10/12/2015
	2015/381086	Road Assets Referral Response	21/12/2015
	2016/017689	Request for update - Willowtree Planning	20/01/2016
	2016/056976	Regarding submission from 25 Loch Street CURL CURL - DA2015/1123 - Bbf Planners	18/02/2016
	2016/064558	Height Pole Locations : 16 Ellen St Curl Curl	22/02/2016
	2016/067703	Receipt	02/03/2016
	2016/069732	Refund Document Sent to Accounts 20160304 - Overpayment of DA fees	04/03/2016
	2016/071274	Submission - Gill	07/03/2016
	2016/092913	Height Pole Certification : 16 Ellen	23/03/2016
	2016/118924	Request from objector for WDAP to determine the application	07/04/2016
	2016/112650	General Query - Request to allow WDAP - 16 Ellen Street Curl Curl	11/04/2016
	2016/119262	From applicant re objectors statements	13/04/2016
	2016/116893	Working Plans	14/04/2016
	2016/116950	Site photos	14/04/2016
	2016/117841	Landscape Referral Response	15/04/2016
	2016/118870	Request for WDAP determination - 16 Ellen Street Curl Curl	17/04/2016
	2016/141846	Amended plans	20/04/2016

PANEL PLANS

No plans titled 'ADP Panel Plans' found in TRIM.