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STATEMENT OF ENVIRONMENTAL EFFECTS

NEW HOUSE AT

1A COONAWARRA ROAD TERRY HILLS



Applicant/Owner: Gordon Minquan Wei

Prepared by: Fortey & Grant Architecture

Revision: A

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Introduction

This report has been prepared in support of a DA for a new house made under Division 6.7 of the Environmental Planning and Assessment Act 1979 (EP&A Act). The BIC application is made to the Northern Beaches Council (Council) seeking to 'regularise' building works undertaken unlawfully at Lot 2 DP 856406, 1A Coonawarra Road, Terrey Hills (subject site).

Consistent with the decision of Preston CJ of the Land and Environment Court (Court), in *Kuring-gai Council v Buyozo Pty Ltd* [2021] NSWCA 177, a development consent cannot be granted retrospectively in relation to unauthorised building works. Specifically, Preston CJ held that:

Starting with the general, although the modification of a development consent is taken not to be the grant of a development consent (s 4.55(4) and s 4.56(1C) of the EP&A Act), the modification of a development consent shares with the grant of a development consent the essential characteristic of only operating prospectively so as to authorise the doing of something in the future (para. 37).

Although retrospective approval cannot be granted to unauthorised works, the Court has widely applied the concept of a 'notional DA' when determining a BIC application. This approach is consistent with the decisions of the Court in *Ireland v Cessnock City Council* [1999] 110 LGERA 311; [1999] NSWLEC 250 and *Lee v Randwick City Council* [2021] NSWLEC 1200, wherein a notional development assessment was not only deemed appropriate, but central to achieving a balanced outcome that addressed both planning merit and compliance concerns.

Accordingly, this Statement of Planning Support (SPS) provides a 'notional' assessment of the unlawful works on the subject site, having regard the relevant planning controls under the Warringah Local Environmental Plan 2011 (LEP 2011) and the Warringah Development Control Plan 2011 (DCP 2011).

Subject Site and Adjoining Locality

Description of the Subject Site

The subject site is legally described as Lot 2 DP 856406 at 1A Coonawarra Road, Terrey Hills. The subject site is an irregular shaped lot measuring 1.33 ha in extent. The front western boundary measures 75.13m and adjoins Coonawarra Road, the rear eastern boundary measures 166.63m and adjoins 186 Cooyong Road and 185 Kallaroo Road, the northern side boundary measures 71.16m and adjoins 13 Cooyong Road, the southern side boundary measures a combined length of 161.17m and adjoins an unformed road reserve and 261 Coonawarra Road further to the south and south-west.

Topography

The subject site exhibits significant topographical variation, with the land generally sloping from north to south. The elevation ranges from approximately RL180.0 in the northern portion to RL170.0 in the southern portion, creating a total fall of approximately 12m. The gradients vary across the subject site, with gentle slopes in the northern portion, moderate slopes in the middle portion, and steeper slopes in the southern portion

Structures

The subject site currently contains –

1 - concrete slab with partially constructed brickwork, in place of the previously existing dwelling shown as STRUCTURE 1 on the WORKS AS EXECUTED SITE PLAN WAE-01

2 – A finished Studio shown as STRUCTURE 2 on the WORKS AS EXECUTED SITE PLAN WAE-01

3 – A Metal Shed - Garage shown as STRUCTURE 3 on the WORKS AS EXECUTED SITE PLAN WAE-01

4 – A Metal Shed - Storage shown as STRUCTURE 4 on the WORKS AS EXECUTED SITE PLAN WAE-01

Fencing is provided along the property boundaries, with an unsealed driveway providing vehicular access to the location of the intended dwelling house, studio and sheds.

Adjoining Locality

Adjoining and surrounding development is characterised by residential development sited within the RU4 zone. Adjoining allotments generally comprise large dwelling houses, with associated outbuildings, tennis courts and swimming pools.



Relevant History

Relevant History

A search of Council's Application Enquiry reveals no previous Development Applications (DA), Complying Development Certificates, or Development Consents have been considered relating to the unauthorised works.

Unauthorised Works

Description of Unauthorised Works

It is understood that Council Officers have undertaken an inspection of the subject site and, in doing so, have identified the unauthorised works to be:

- The existing house was demolished, and a new slab was poured, and the brickwork was under construction for the new dwelling. The Council Officer was informed that the previous house had termite damage, and the brickwork had become loose.

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- A stormwater drain had been installed and was allowing site water to enter the street.
- No silt barrier or other means of erosion control were installed.

These unauthorised works relate to STRUCTURE 1.

In the process of obtaining a building certificate for STRUCTURE 1, Council have stated that STRUCTURE 2, STRUCTURE 3, and STRUCTURE 4 are also unauthorised works.

The below extract shows the footprint of the unauthorised slab and brickwork, being generally in the location of the previously existing dwelling house.

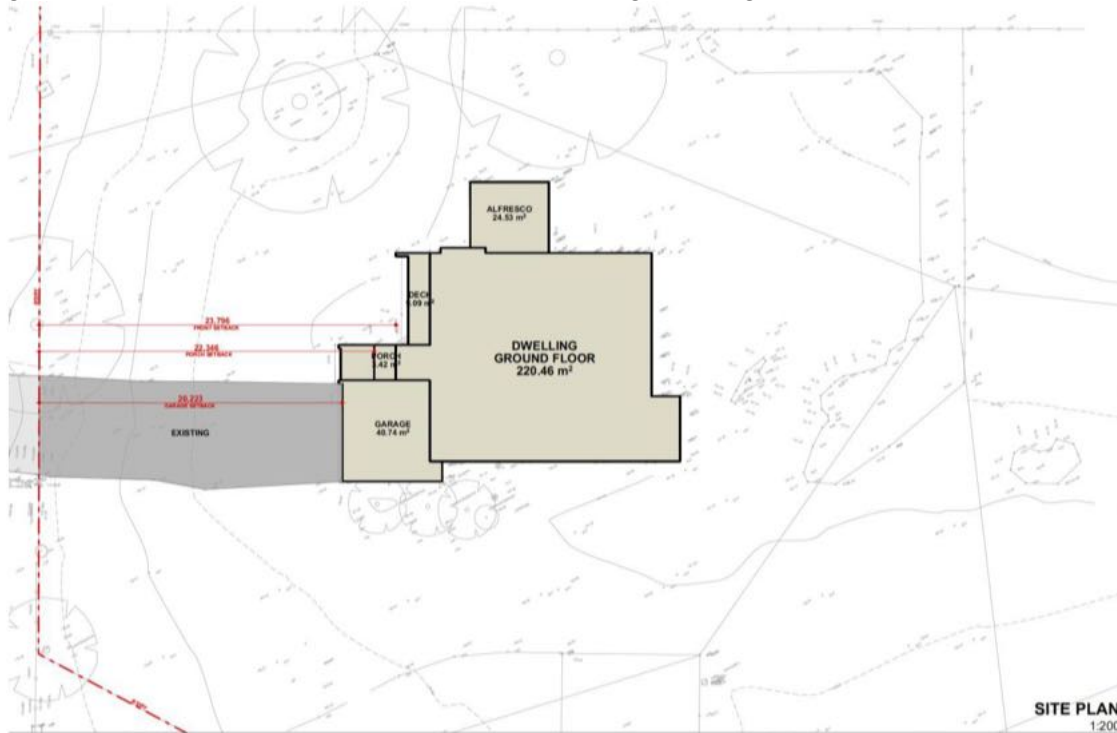


Figure 1. Site plan showing general footprint of the unauthorised slab and brickwork of STRUCTURE 1. STRUCTURE 1, STRUCTURE 2, STRUCTURE 3, and STRUCTURE 4 Are all shown on the WORKS AS EXECUTED SITE PLAN WEA-01 and the detailed survey prepared for the site by Ensure Consulting Pty Ltd

Notional Planning Assessment Pursuant to Section 4.15 of the EP&A Act

This section provides a notional development assessment with regard to the relevant matters for consideration under Section 4.15 of the EP&A Act.

STATE ENVIRONMENTAL PLANNING POLICY (SUSTAINABLE BUILDINGS) 2022

This policy generally applies to all residential developments (excluding alterations and additions less than \$50,000) and all non-residential developments, except those excluded in Chapter 3.1 of the policy.

SEPP (Sustainable Buildings) 2022 would have been applicable at the time of the unauthorised works for STRUCTURE 1 and, as such, a BASIX Certificate would be required for this structure.

The design of the proposed dwelling of STRUCTURE 1 is generally finalised to the extent that a BASIX Certificate can be issued. Accordingly, should Council resolve to approve this BIC application, a valid BASIX Certificate will accompany any future DA in relation to the proposed dwelling house and use of the unauthorised slab and brickwork.

STATE ENVIRONMENTAL PLANNING POLICY (TRANSPORT AND INFRASTRUCTURE) 2021

Chapter 2: Infrastructure

The provisions of SEPP (Transport and Infrastructure) 2021 have been considered in this notional development assessment. The subject site is not in close proximity to any major electricity infrastructure, rail corridors or classified roads.

Accordingly, the unlawful works would have been satisfactory with regard to State Environmental Planning Policy (Transport and Infrastructure) 2021.

STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021

Chapter 4: Remediation of Land

Chapter 4 requires the consent authority to consider whether the subject site is contaminated.

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A basic search of the NSW EPA List of NSW Contaminated Sites (the List) reveals that the subject site is not identified as a contaminated site, nor is it located proximal to contaminated land.

It is noted that the List is not exhaustive and may not contain all contaminated sites in NSW. Accordingly, it is also noted that available records indicate that the subject site has a long history of residential use and is unlikely to pose a contamination risk.

On this basis, had development consent been sought, the subject site can be considered suitable for residential purposes associated with the unauthorised structures on site.

Accordingly, the unauthorised works would have been considered satisfactory with regard to State Environmental Planning Policy (Resilience and Hazards) 2021.

WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011

The relevant matters for consideration under LEP 2011 are assessed as follows:

Land Use Zone: RU4 Primary Production Small Lots.

The unauthorised work involves demolition of the existing dwelling house and commencement of construction of a new single-story dwelling, with a concrete slab and partial brickwork completed (known as STRUCTURE 1). While these works were undertaken without the necessary approval of Council, dwelling houses are permitted in the RU4 zone with consent. The proposed single-story dwelling house is modest in scale and would have minimal impact on neighbouring properties, views, vegetation, and the area's scenic character, consistent with RU4 zone objectives

The studio (STRUCTURE 2), Shed-Garage (STRUCTURE 3) and Shed-Storage (STRUCTURE 4) were present on site before STRUCTURE 1. These works have no record of the necessary approvals of Council. Dwelling houses, garages and storage are permitted in the RU4 zone with consent. STRUCTURES 1, 2 and 3 are of a modest in scale and have had a minimal impact on neighbouring properties, views, vegetation, and the area's scenic character, consistent with RU4 zone objectives. They are all smaller than STRUCTURE 1 and have attracted no negative comments to this date

Relevant Development Standards

Site Area = 13,300m² (1.33ha)

4.3 Height of Buildings

The maximum allowable Height is 8.5m

STRUCTURE 1 is proposed to be 3.5m high

STRUCTURE 2 is 4.2m high by survey

STRUCTURE 3 is 5.0m high by survey

STRUCTURE 3 is 4.4m high by survey

Complies

Complies

Complies

Complies

6.4 Development on Sloping Land

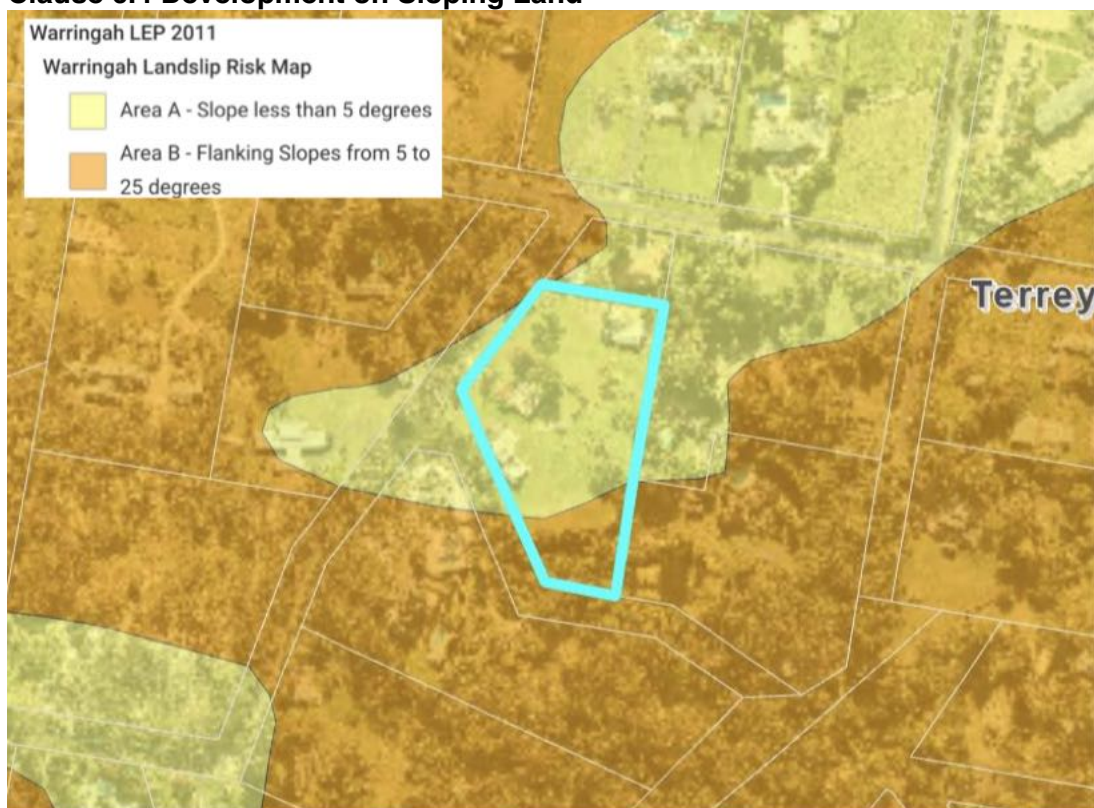
Development Area A and Area B

Complies

The unauthorised works are limited to a slab and minor brickwork and development either on grade or existing requiring no significant earthworks. This minimised any potential impacts arising from landslip. Also see discussion below.

LEP 2011 Discussion

Clause 6.4 Development on Sloping Land



Cl 6.4 requires Council to ensure development on land identified within Areas A through E on the Landslip Risk Map meets specific safety and environmental criteria prior to the grant of development consent. Council must be satisfied that the development application includes a thorough assessment of landslide risks to both property and life, demonstrates that stormwater discharge from the site won't cause significant negative impacts, and confirms that subsurface water flow patterns won't be disrupted. These requirements align with the underlying objectives of cl 6.4, which aim to prevent landslide-related impacts, manage stormwater effects on slope stability, and maintain subsurface flow conditions to protect both the development site and surrounding properties.

Accordingly, any future DA for the use of the unauthorised works and construction of the dwelling house must be accompanied by a Geotechnical Report that includes, but is not

limited to, a Landslide Hazard Assessment undertaken in accordance with the Australian Geomechanics Society's 'Practice Note Guidelines for Landslide Risk Management'. In addition, a detailed Stormwater/Wastewater Management Plan, incorporating erosion and sediment control measures, must also be included.

WARRINGAH DEVELOPMENT CONTROL PLAN 2011

Relevant Development Controls Part B Built Form Controls

Site Area = 13,300m² (1.33ha)

Part 3.2 General Residential Controls

PART B FORM CONTROLS

Part B1 Wall Heights

Wall Heights Max 7.2m allowable

The maximum proposed height of STRUCTURE 1 is 3.5m

Complies

The tallest of the existing structures is 5m by survey

Complies

B5 Side Boundary Setbacks

Min 10m setback allowable

STRUCTURE 1 is setback greater than 10m

Complies

STRUCTURE 2 is setback 2.79m

Does Not Comply

STRUCTURE 3 is setback 2.79m

Does Not Comply

STRUCTURE 4 is setback greater than 10m

Complies

B7 Front Boundary Setbacks

Min 20m setback allowable

STRUCTURE 1 is setback 20m

Complies

STRUCTURE 2 is setback greater than 20m

Complies

STRUCTURE 3 is setback greater than 20m

Complies

STRUCTURE 4 is setback greater than 20m

Complies

B9 Rear Boundary Setbacks

Min 10m setback allowable

STRUCTURE 1 is setback greater than 10m

Complies

STRUCTURE 2 is setback greater than 10m

Complies

STRUCTURE 3 is setback greater than 10m

Complies

STRUCTURE 4 is setback 9.17m

Does Not Comply

In relation to non-compliances-

Structures 3 and 4 are sheds and are not occupied. Their use (or lack of use) does not have a substantial impact on the surrounding area. The bulk of these buildings has not and does not attract complaint from the surrounding neighbours. Structure 4 encroaches a 0.83m into a 10m rear setback. This is a minimal encroachment with no environmental effect.

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The Studio (STRUCTURE 2) has limited accommodation capacity as it only has 1 bedroom. The chances of this structure being used at all are reduced if the House (STRUCTURE 1) is completed.

Structures 2 and 3 are encroach into the 10m side setback 7.2m. Although this is a substantial amount of the total setback the environmental effect is lessened by the presence of an unformed road on the opposite side of this boundary. The unformed road is unused and heavily overgrown with trees. The boundary to the property on the opposite side of the unformed road is 22.9m from Structures 2 and 3. This setback is the effective setback to development in the area and it more than complies

PART C SITING FACTORS

Part C2 Traffic, Access and Safety

The existing driveways and crossovers do not impact negatively on traffic access and safety. An approved DA for the structures on site will allow this situation to be maintained and ensure adequate sightlines, internal queuing spaces and single vehicle crossings.

C3 Parking Facilities

The incomplete house (STRUCTURE 1) will contain 2 car spaces. This complies with DCP requirements. The concrete slab as poured provides for a garage width of 6.525m This is a 8.75% variation on the 6m width required.

C4 Stormwater

Stormwater discharges to the street. The use of the unauthorised stormwater drainage has been ceased. Any future DA will be accompanied by a detailed Stormwater Plan, including erosion and sediment control measures.

C7 Excavation and Landfill

It is understood that no excavation was required to accommodate the unauthorised works. Should any future DA involve excavation, it will ensure consistency with the objectives of this part.

C8 Demolition and Construction

It is understood that no further demolition is required. Any future DA will be accompanied by a Waste Management Plan, ensuring construction waste is adequately managed.

C9 Waste Management

See D8

PART D DESIGN

D1 Landscaped Open Space and Bushland Setting

A minimum of 30% of the site area is to be Landscaped
The Structures on site and driveways allow for
more than 30% of the site is to be landscaped

Complies

D2 Private Open Space

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Minimum 60m ² of private open space required	
The Structures on site and driveways allow for over 60m ²	Complies
Minimum dimension of 5m for private open space required	
The Structures on site and driveways allow for over 5m minimum dimension	Complies

D3 Noise

Structures 2, 3 and 4 are finished and cannot generate construction noise.
For STRUCTURE 1 the unauthorised works are limited to a slab and brickwork. Any future DA will adequately consider the location and noise emission of any proposed mechanical plant and equipment.

D6 Access to Sunlight

The primary living areas and associated habitable spaces receive 3 hours sun. Complies

D7 Views

The maximum height and siting of the unauthorised works do not give rise to any view impacts. View impacts will be adequately addressed under and future DA. Complies

D8 Privacy

STRUCTURE 1 is a slab intended for a single storey building. The minimum privacy separation distances are exceeded. STRUCTURE 2 is a single storey build in oriented away from the side boundary. Structures 3 and 4 un-inhabited sheds.

D9 Building Bulk

STRUCTURE 1 is a slab intended for a single storey building. All buildings on site are or will be single storey.

D10 Building Colours and Materials

Not relevant for the unauthorised works. To be addressed by a future DA.

D11 Roofs

STRUCTURE 1 works are limited to slab and brickwork. A future DA will address the roof requirements.
Structures 2, 3 and 4 are shown as single storey with the ridge heights noted on the survey.

PART E THE NATURAL ENVIRONMENT

E5 Native Vegetation

The subject site is not located within an area mapped as Threatened and High Conservation Habitat or Wildlife Corridors.

The subject site is partly identified within a Native Vegetation area at its southern most extent. The unauthorised works are significantly removed from this area. There is no proposed modification to native vegetation

E10 Landslip Risk

Area A slope Less than 5°. This will not effect the unauthorised works.

Area A Slope Area A Slope No. Refer to the LEP 2011 Less than 5° Less than 5° section of this SPS.

DCP 2011 DISCUSSION

C3 Parking Facilities

The additional width of the unauthorised slab to provide for the future garage structure is warranted as it:

- Enhances the provision of adequate off-street parking by:
 - a. Accommodating contemporary vehicle sizes more safely;
 - b. Providing sufficient clearance for door opening and access, particularly benefiting users with mobility needs; and,
 - c. Enabling safer manoeuvring space.
- Maintains minimal visual impact on the street frontage through:
 - a. A modest 0.525m increase that is imperceptible from the street; and,
 - b. Maintaining consistency with streetscape character.
- Ensures the garage does not dominate the public space by:
 - a. Keeping the width increase proportionally small relative to the overall façade (42% of façade width); and,
 - b. Similar setback and positioning to the previously existing garage structure.

The studio (STRUCTURE 2) and the Shed-Storage (STRUCTURE 4) do not provide any car spaces. The Shed- Garage (STRUCTURE 3) does not provide parking for cars as these spaces are required to house the machinery necessary to maintain a block of land of this size

Bushfire Prone Land

The unauthorised works must be considered against the requirements of Planning for Bush Fire Protection 2019 (PBP 2019). The following points are noted in this regard:

- The unauthorised works demonstrate positive attributes from a bush fire protection perspective:

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- a. Use of appropriate non-combustible materials consistent with bush fire construction principles
- b. Masonry construction providing inherent fire resistance properties
- c. Engineered concrete slab providing a stable, non-combustible building platform (See supporting Engineer Statement).

These elements form the basis for developing a compliant dwelling house, subject to detailed bush fire assessment under any future DA.

Future Development Pathway

Following regularisation of the unauthorised works, a future DA will be lodged addressing the following matters:

1. Bush Fire Assessment Report

- Comprehensive site analysis including vegetation classification within 140m
- Slope assessment within 100m
- APZ calculations based on vegetation, slope and local Fire Danger Index
- BAL Assessment Certificate

2. Integration of Existing Works

- Incorporation of certified slab and brickwork into compliant dwelling design
- Verification of setbacks to achieve required APZs for BAL-29 or lower
- Demonstration of construction standard compatibility

3. Additional Bush Fire Protection Measures

- Water supply provisions
- Access arrangements
- Services specifications
- Landscaping details

The unauthorised works provide an appropriate basis for a bush fire compliant dwelling, incorporating suitable non-combustible materials and construction methods. A Building Certificate will regularise these works, enabling progression to a DA that adequately addresses all bush fire protection requirements under PBP 2019.

In consideration of the Stop Works Order issued by Council, the subsequent staged approach of regularising the unauthorised works before proceeding with a complete DA provides a clear pathway for achieving a compliant residential dwelling and a mutually beneficial outcome. The nature of the existing construction using appropriate materials provides confidence that these works can be successfully incorporated into a fully compliant dwelling design.

This approach will ensure commitment to achieving appropriate bush fire protection outcomes while pragmatically addressing the unauthorised works through proper statutory processes.

The Likely Impacts of the Unauthorised Works

The likely impacts of the unauthorised works have been addressed throughout this notional assessment. The unauthorised works do not result in any unreasonable amenity impacts to adjoining properties or the public domain, nor do they impact upon the existing or desired future character of the surrounding area.

The Suitability of the Site for the Unauthorised Works

The subject site can suitably accommodate the unauthorised works.

The Public Interest

The unauthorised works are consistent with the objectives of the RU4 zone and can be considered to be in the public interest.

Conclusion

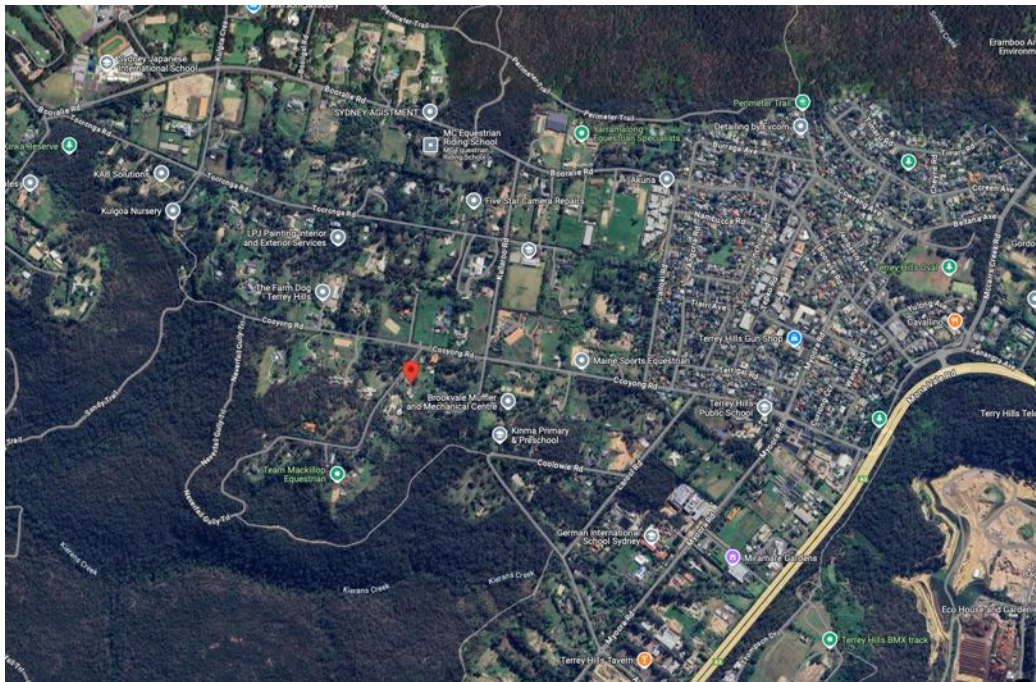
For the reasons set out in the preceding parts of this SPS, the unauthorised works have not resulted in a form of development that is incompatible with adjoining and surrounding development or land uses. Furthermore, the unauthorised works are unlikely to preclude the grant of development consent to any future DA relating to the proposed dwelling house, subject to the submission of a detailed development application and supporting documentation in satisfaction of the relevant requirements under LEP 2011, DCP 2011 and the PBP 2019.

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APPENDIX

Location Plan



STRUCTURE 4



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STRUCTURE 2 and STRUCTURE 3



STRUCTURE 1

