

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

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| <b>Application Number:</b>                | DA2023/1794  |
| <b>Responsible Officer:</b>               | Maxwell Duncan   |
| <b>Land to be developed (Address):</b>    | Lot 369 DP 752017, 323 McCarrs Creek Road TERREY HILLS NSW 2084<br>Lot 425 DP 752017, 323 McCarrs Creek Road TERREY HILLS NSW 2084           |
| <b>Proposed Development:</b>              | Alterations and additions to the existing building and change of use to bed and breakfast accommodation, and construction of a swimming pool |
| <b>Zoning:</b>                            | Warringah LEP2011 - Land Zoned RU4 Primary Production Small Lots   |
| <b>Development Permissible:</b>           | Yes  |
| <b>Existing Use Rights:</b>               | No   |
| <b>Consent Authority:</b>                 | Northern Beaches Council   |
| <b>Land and Environment Court Action:</b> | No   |
| <b>Applicant:</b>                         | Brent Gasson   |

|                                  |                          |
|----------------------------------|--------------------------|
| <b>Application Lodged:</b>       | 14/12/2023               |
| <b>Integrated Development:</b>   | No                       |
| <b>Designated Development:</b>   | No                       |
| <b>State Reporting Category:</b> | Other                    |
| <b>Notified:</b>                 | 16/08/2024 to 30/08/2024 |
| <b>Advertised:</b>               | Not Advertised           |
| <b>Submissions Received:</b>     | 0                        |
| <b>Clause 4.6 Variation:</b>     | Nil                      |
| <b>Recommendation:</b>           | Refusal                  |

|                                 |                 |
|---------------------------------|-----------------|
| <b>Estimated Cost of Works:</b> | \$ 2,221,286.40 |
|---------------------------------|-----------------|

### PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for alterations and additions to the existing dwelling and use as a **bed and breakfast accomodation**.

Specifically, the works incorporate the following:

- Demolition works
- Change of use from a dwelling house to bed and breakfast accomodation

- Alterations and additions to the existing dwelling house including extension of the existing dwelling and first floor addition
- New swimming pool and outdoor living area
- Croquet Green
- Associated landscaping
- Double garage

### **AMENDED PLANS**

On 17 April 2024, Council wrote to the applicant raising concerns/issues that would not allow Council to support the application. The issues raised included biodiversity and incorrect nomination of the development application (the proposal involves integrated development). The applicant indicated that they were looking to address concerns raised in the letter and a extension to provide additional information. A Biodiversity management plan and amended plans were submitted in 31 July 2024, and owners consent from the Metropolitan Local Aboriginal Land Council was provided on 6 August 2024. The application was re-notified as 'integrated development' from 16 August 2024 - 30 August 2024. No submissions were received.

### **ASSESSMENT INTRODUCTION**

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

### **SUMMARY OF ASSESSMENT ISSUES**

Warringah Local Environmental Plan 2011 - Zone RU4 Primary Production Small Lots  
Warringah Local Environmental Plan 2011 - 5.4 Controls relating to miscellaneous permissible uses  
Warringah Local Environmental Plan 2011 - 6.2 Earthworks  
Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land  
Warringah Development Control Plan - B5 Side Boundary Setbacks  
Warringah Development Control Plan - E2 Prescribed Vegetation  
Warringah Development Control Plan - E5 Native Vegetation  
Warringah Development Control Plan - E6 Retaining unique environmental features

## SITE DESCRIPTION

|  |  |
|--|--|
| <p><b>Property Description:</b></p>      | <p>Lot 369 DP 752017 , 323 McCarrs Creek Road TERREY HILLS NSW 2084<br/>Lot 425 DP 752017 , 323 McCarrs Creek Road TERREY HILLS NSW 2084</p>   |
| <p><b>Detailed Site Description:</b></p> | <p>The subject site consists of two (2) allotments located on the western side of McCarrs Creek Road, Terrey Hills, being Lots 369 and 425 in DP 752017.</p> <p>The site is irregular in shape with a frontage of approximately 62m along McCarrs Creek Road. The site has a total surveyed area of 1.232 hectares.</p> <p>The site is located within the RU4 Primary Production Small Lots zone of Warringah Local Environmental Plan 2011 and accommodates a dwelling house and outbuilding.</p> <p>The site has an easterly aspect with significant vegetation towards the rear eastern boundary. A large rock outcrop straddles the front west boundary.</p> <p>Adjoining and surrounding development is characterised by nature reserve to the east, undeveloped land to the north, rural properties to the south and further to the north and residential dwellings to the west.</p> |

Map:



## SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site.

The land has been used for residential purposes for an extended period of time.

### ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

| Section 4.15 Matters for Consideration  | Comments   |
|---|--|
| Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument   | See discussion on “Environmental Planning Instruments” in this report.   |
| Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument                                      | There are no current draft environmental planning instruments.   |
| Section 4.15 (1) (a)(iii) – Provisions of any development control plan  | Warringah Development Control Plan applies to this proposal.   |
| Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement   | None applicable.   |
| Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021) | <p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. This matter is capable of being addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&amp;A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter is capable of being addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter is capable of being addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter is capable of being addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent</p> |

| Section 4.15 Matters for Consideration   | Comments   |
|--|--|
|  | authority to consider the provisions of the Building Code of Australia (BCA). This matter is capable of being addressed via a condition of consent.  |
| Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality | <p>(i) <b>Environmental Impact</b><br/>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.</p> <p>(ii) <b>Social Impact</b><br/>The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b><br/>The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p> |
| Section 4.15 (1) (c) – the suitability of the site for the development   | The site is not considered to be suitable for this particular form and scale of development, given that Council's Biodiversity Team do not support the proposal due to the environmental impacts caused by the Asset Protection Zones (APZ's).   |
| Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs   | See discussion on “Notification & Submissions Received” in this report.  |
| Section 4.15 (1) (e) – the public interest   | No matters have arisen in this assessment that would justify the refusal of the application in the public interest.  |

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is classified as bush fire prone land and the proposed development is for a special fire protection purpose (tourist and visitor accommodation) under Section 100B of the Rural Fires Act 1997. As such, the proposal is integrated development and requires a bush fire safety authority from the NSW Rural Fire Service.

The application was referred to the NSW RFS as integrated development. The NSW RFS issued a bush fire safety authority, subject to conditions. The recommendations of the Bush Fire Report, along with the conditions from the NSW RFS as part of the bush fire safety authority.

The RFS referral states

*"Prior to the Development approval, and in perpetuity to ensure ongoing protection from the impact of bush fires, a suitable mechanism, such as an instrument pursuant to section 88 of the Conveyancing Act 1919 or an adopted Council Plan of Management, must be in place over Lot*

*148 321 McCarrs Creek Road Terry Hills, (lot located abutting the subject site on its north eastern site boundary) to ensure its ongoing management as an Inner Protection Area (IPA) in accordance with Appendix 4 of Planning for Bush Fire Protection 2019."*

As discussed throughout this report, Council cannot support APZ required, due to associated Biodiversity impacts.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 16/08/2024 to 30/08/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

## REFERRALS

| Internal Referral Body                    | Comments  |
|---|---|
| Environmental Health<br>(Unsewered Lands) | <p><b><i>Supported, with conditions</i></b></p> <p>This application is seeking consent for alterations and additions to an existing dwelling and change of use to bed and breakfast accommodation and construction of a new dwelling at 323 McCarrs Creek Road, Terrey Hills.</p> <p>The new dwelling is to be constructed so as to be attached to the existing dwelling.</p> <p><b><u>Swimming Pool</u></b></p> <p>A swimming pool is proposed for use by both the dwelling proprietor and the bed and breakfast accommodation. The new dwelling will consist of 3 bedrooms.</p> <p>Under guidance from NSW Health the swimming pool onsite is considered a public swimming pool as it is <i>used or intended to be used for human bathing, swimming or diving to which the public is admitted, whether free of charge, on payment of a fee or otherwise.</i></p> <p><i>This includes pools:</i></p> <ul style="list-style-type: none"> <li>• <i>provided at a hotel, motel or guest house or at holiday units, or similar facility, for the use of guests.</i></li> <li>• <i>situated at private residential premises used for commercial purposes.</i></li> </ul> <p>Therefore, the swimming pool will have to comply with Public Health legislation. Conditions will be applied prior to Occupation Certificate.</p> <p><b><u>Food Business</u></b></p> <p>The kitchen/food storage area of the dwelling that is used for B&amp;B accommodation becomes a food business under the definition by the NSW Food Authority.</p> |

| Internal Referral Body | Comments   |
|------------------------|--|
|                        | <p><i>Examples of home-based food businesses include:</i></p> <ul style="list-style-type: none"> <li>• <i>preparing food for sale at markets or school canteens in a domestic kitchen</i></li> <li>• <b><i>bed and breakfast accommodation</i></b></li> <li>• <i>home-based childcare for a fee involving provision of food</i></li> <li>• <i>home-based catering businesses.</i></li> </ul> <p>Therefore, the applicant will be required to register their home food business details with Council prior to Occupation Certificate.</p> <p><b><u>On Site Wastewater</u></b></p> <p>This development will result in a total of 5 bedrooms (7 people based on the new draft guideline). A letter from Gary Hobart, Wastewater Management, has stated there is an existing AWTS onsite accredited for a maximum of 10 people. Council accepts this letter to confirm the AWTS is suitable however it is noted through the architectural plans, the new location of the swimming pool appears to be encroaching on the land application area for the existing AWTS.</p> <p>Please refer to wastewater plan submitted as part of DA2021/2228. The <i>Environment &amp; Health Protection Guidelines: Onsite Wastewater Management Draft Guidelines 2023</i> has a buffer range of 3.0-15.0m from LAA to swimming pools. The applicant is to engage a wastewater consultant to assess the location of the land application area in regard to the new proposed swimming pool location. The consultant is to provide a plan identifying the current location of the LAA for the existing AWTS, the location of the AWTS and the proposed location for the disposal of backwash swimming pool water. The pool water disposal location is to be suitably located away from the AWTS LAA so as not to impact upon the existing LAA.</p> <p>UPDATED REFERRAL</p> <p>A further wastewater report has been provided by the applicant. The report was prepared by Broadcrest Consulting Pty Ltd, dated February 2024, reference number 3444-WW-A-01. The report proposes a pressure dosed absorption bed for the proposed dwelling.</p> <p>It is proposed to dispose of effluent from the treatment system servicing the existing dwelling via surface semi-fixed spray irrigation field.</p> <p>Environmental Health recommends approval subject to conditions.</p> |
| Landscape Officer      | <p><b><i>Supported, with conditions</i></b></p> <p>The proposal is supported with regard to landscape issues.</p> <p>The application is assessed by Landscape Referral against</p>   |

| Internal Referral Body           | Comments  |
|----------------------------------|---|
|                                  | <p>Warringah Local Environmental Plan 2011 and the following Warringah Development Control Plan 2011 controls (but not limited to):</p> <ul style="list-style-type: none"> <li>• D1 Landscaped Open Space and Bushland Setting</li> <li>• E1 Preservation of Trees or Bushland Vegetation and E2 Prescribed Vegetation</li> </ul> <p>The Arboricultural Impact Assessment (AIA) identified 13 trees of which trees 8, 9, 10, and 11 are located on the neighbouring property and as such must be protected during works. Trees 2, 4, 5, and some Cocos Palms are proposed to be removed and are all exempt by species, therefore can be managed or removed at the discretion of the applicant without consent. No concerns are raised with the removal of tree 3 as it is native to northern NSW and south-east QLD. As recommended in the AIA a Project Arborist shall be engaged to supervise work in the tree protection zone of trees to be retained.</p> <p>To offset any canopy loss two locally native trees shall be installed within the property boundaries.</p>  |
| NECC (Bushland and Biodiversity) | <p><b>Not Supported</b></p> <p><b>Original Comments (11th March 2024)</b><br/>Council's Biodiversity Referrals team have assessed the Development Application for compliance against the following provisions:</p> <ul style="list-style-type: none"> <li>• Warringah DCP cl. E2 Prescribed Vegetation</li> <li>• Warringah DCP cl. E5 Native Vegetation</li> <li>• Warringah DCP cl. E6 Retaining Unique Environmental Features</li> <li>• Bushfire Prone Lane - Planning for Bushfire Protection 2019</li> </ul> <p>An Arborist Report (Seasoned Tree Consulting, October 2023) was submitted with the application which assessed 13 trees in proximity to the proposed development. Of the 13 trees assessed, four are proposed for removal including 2 x Illawarra Flame Trees (<i>Brachychiton acerifolius</i>), 1 x Macadamia tree (<i>Macadamia integrifolia</i>) and 1 x Tuckeroo (<i>Cupaniopsis anacardioides</i>). No objections to the removal of these trees as all species are listed on Northern Beaches Council Exempt Tree Species list with the exception of the Macadamia tree which is not native to NSW.</p> <p>As the site is located within Bushfire Prone Land a Bushfire Risk Assessment Report (Bushfire Planning Services, February 2023) was submitted with the application. The RFS have provided General Terms of Approval noting the following regarding the establishment of an Asset Protection Zone:</p> <ul style="list-style-type: none"> <li>• north east up to the subject lots site boundary;</li> </ul> |



| Internal Referral Body | Comments   |
|------------------------|--|
|                        | <ul style="list-style-type: none"> <li>• south east, projecting back from the furthest part of the proposed works, for a distance of 55m or up to the part south eastern site boundary;</li> <li>• south west up to the subject lots site boundary; and,</li> <li>• north west up to the subject lots site boundary abutting McCarrs Creek Road.</li> </ul> <p>It is also noted that the RFS have identified that <i>"the proposed Change of use of the existing dwelling, to a Bed and Breakfast, would require the approval and the creation of an 88b instrument, over the adjacent parcel of land (located on the subjects sites north eastern site boundary - Lot 147 321 McCarrs Creek Road), to form an easement to enable and facilitate the vegetation management of the land, to a compliant APZ IPA standard, and thereby ensure that its exposure not exceed radiant heat levels of 29kW/sqm and hence achieving compliant separation distances with PBP 2019 Table A1.12.5."</i></p> <p>The RFS GTA's provide new information regarding additional vegetation management requirements for the APZ which are located offsite in the adjoining lot. As a result, this additional vegetation management has not been considered by the proposal and owners consent has not been provided by the adjoining lot. The APZ should be contained wholly within the site boundary and not overlap adjoining private or public land. The RFS have identified that <i>"in the event that the approval for the easement for vegetation management, cannot be obtained over the adjacent lot, the applicant can if desirous, revise the description of the proposed works, including the change of use of the existing dwelling to an Bed and Breakfast, by virtue of an updated Bushfire Consultants Report, forwarded through to the Consent authority via the NSW Planning Portal, to enable a reassessment of the proposal to be undertaken and if applicable new conditions devised and a advice reissued"</i>. It is noted that Council's Biodiversity Referrals team do not support the offsite APZ.</p> <p>Furthermore, it is noted that significant vegetation clearing has occurred within the south-eastern portion of the site. As this area is outside of the any proposed APZ and given its proximity to Ku-ring-gai Chase National Park, vegetation within this area is to be managed under a Biodiversity Management Plan (BMP) in accordance with Northern Beaches Council's Biodiversity Requirements for Development Applications. Site assessment conducted by Council's Biodiversity Officer showed native resilience in the soil bank and as such management of the site will likely be comprised of weed removal and assisted natural regeneration. The BMP is to be prepared by a suitably qualified professional and should not be onerous in nature, however have a practical approach to management of the site. The BMP is to consider threatened species within proximity to the site and their potential for occurring within the</p> |

| Internal Referral Body                                    | Comments   |
|---|--|
|   | <p>seedbank.</p> <p><b>Additional Comments (2nd September 2024)</b><br/>It is noted that Council's Biodiversity Referrals team have reviewed the following additional information provided by the applicant:</p> <ul style="list-style-type: none"> <li>• Biodiversity Management Plan (East Coast Ecology, July 2024)</li> <li>• Consent Letter from MLALC regarding Asset Protection Zone</li> </ul> <p>Whilst owners consent has been provided in principal for the continued vegetation management of 321 McCarrs Creek Road, Council's Biodiversity Referrals team still do not support the use of an APZ offsite. As it is the change in use of the existing dwelling that requires the additional bushfire measures from the RFS, the applicant is encouraged to consider reverting to the original use of the dwelling and investigating a redesign of the proposed development such that it may fulfil the desired requirements of the site.</p> <p>The BMP submitted as part of the application has been reviewed and provides a considered approach for managing native vegetation within the historically cleared land at the rear of the site. The BMP will only be required to be implemented should the application be supported.</p> |
| NECC (Development Engineering)                            | <p><b>Supported, with conditions</b><br/>The proposed development is in Region 2. On-site detention is not required as the development is analts &amp; adds and the site drains to a creek. A geotechnical report has been provided. Vehicle crossing construction is not proposed. I have no objections to the proposed development subject to the inclusion of the recommended engineering conditions of consent.</p>  |
| Parks, reserves, beaches, foreshore                       | <p><b>Supported, with conditions</b><br/>The property adjoins public reserve to the west and National Park to the east. The proposed works are sufficiently setback from both the east and west boundaries. No physical encroachments over the site boundaries are permitted, and structures and built elements are not permitted beyond the site boundaries. All development works must ensure that surface sediment runoff and/or erosion is controlled, managed and contained within the site boundaries.</p>   |
| External Referral Body                                    | Comments   |
| Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48 | <p><b>Supported, with conditions</b><br/>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>  |

| External Referral Body   | Comments   |
|--|--|
| Aboriginal Heritage Office   | <p><b>Supported, with conditions</b></p> <p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> |
| Roads and Maritime Service<br>- Roads Act 1993, s138<br>(Non-integrated)   | <p><b>Supported, with conditions</b></p> <p>TfNSW has reviewed the submission and notes the proposed alterations and additions pertain wholly within the site. As such, TfNSW raises no objections to the development proposal subject to conditions.</p>  |
| Integrated Development -<br>Rural Fire Service - Rural<br>Fires Act, s100B -<br>Subdivisions and Special<br>Fire Protection Purposes | <p><b>Supported, with conditions</b></p> <p>The New South Wales Rural Fire Service (NSW RFS) has considered the information submitted and provided General Terms of Approval to be imposed if the application is to be approved.</p>   |

#### **ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\***

All, Environmental Planning Instruments (SEPPs 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 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 (Sustainable Buildings) 2022**

A BASIX certificate has been submitted with the application (see Certificate No. A509721 dated 28 September 2023).

A condition can be included requiring compliance with the commitments indicated in the BASIX Certificate.

##### **SEPP (Transport and Infrastructure) 2021**

###### Ausgrid

Section 2.48 of Chapter 2 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 who raised no objections, subject to conditions which have been included in the recommendation of this report.

**SEPP (Resilience and Hazards) 2021**

**Chapter 4 – Remediation of Land**

Sub-section 4.6 (1)(a) of Chapter 4 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 sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

**Warringah Local Environmental Plan 2011**

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

Principal Development Standards

| Standard             | Requirement | Proposed | % Variation | Complies |
|----------------------|-------------|----------|-------------|----------|
| Height of Buildings: | 8.5m        | 8.49m    | -           | Yes      |

Compliance Assessment

| Clause  | Compliance with Requirements |
|---|------------------------------|
| 4.3 Height of buildings                                 | Yes                          |
| 5.3 Development near zone boundaries                    | Yes                          |
| 5.4 Controls relating to miscellaneous permissible uses | Yes                          |
| 5.8 Conversion of fire alarms                           | Yes                          |

| Clause                          | Compliance with Requirements |
|---------------------------------|------------------------------|
| 6.2 Earthworks                  | Yes                          |
| 6.4 Development on sloping land | Yes                          |
| 6.11 Affordable housing         | Yes                          |

### Detailed Assessment

#### **Zone RU4 Primary Production Small Lots**

| Land use definition: WLEP 2011 | Permitted or Prohibited |
|--------------------------------|-------------------------|
| Bed and Breakfast Accomodation | Permitted with consent  |

The underlying objectives of the RU4 Primary Production Small Lots zone

- *To enable sustainable primary industry and other compatible land uses.*

Comment:

N/A

- *To encourage and promote diversity and employment opportunities in relation to primary industry enterprises, particularly those that require smaller lots or that are more intensive in nature.*

Comment:

The subject site is for tourist and visitor accomodation.

- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*

Comment:

The APZ's required for the proposed development would have any unreasonable impact on the vegetation on the adjoining vacant land to the north.

The application fails to satisfy this objective.

- *To minimise the impact of development on long distance views of the area and on views to and from adjacent national parks and bushland.*

Comment:

The proposed development will not have any unreasonable impact upon views to and from adjacent national parks and bushland.

- *To maintain and enhance the natural landscape including landform and vegetation.*

Comment:

The application fails to enhance the natural landscape including landform and vegetation.

- *To ensure low intensity of land use other than land uses that are primary industry enterprises.*

Comment:

The bed and breakfast accommodation is a low intensity land use, however the siting of the development will have any unreasonable environmental impact.

- *To maintain the rural and scenic character of the land.*

Comment:

The development does not detract from the rural *and scenic character of the land*.

#### **5.4 Controls relating to miscellaneous permissible uses**

Clause 5.4 states that development for the purposes of a bed and breakfast accommodation, must not consist of more than 3 bedrooms. The existing cottage being proposed to be utilised for the purposes of bed and breakfast accommodation proposes 3 bedrooms. The application complies with this clause.

#### **6.2 Earthworks**

The objectives of Clause 6.2 - 'Earthworks' require development:

- (a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, and*
- (b) to allow earthworks of a minor nature without requiring separate development consent.*

In this regard, before granting development consent for earthworks, Council must consider the following matters:

- (a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality*

Comment: The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

- (b) the effect of the proposed development on the likely future use or redevelopment of the land*

Comment: The proposal will not unreasonably limit the likely future use or redevelopment of the land.

- (c) the quality of the fill or the soil to be excavated, or both*

Comment: The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

- (d) the effect of the proposed development on the existing and likely amenity of adjoining properties*

Comment: The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions have been included in the recommendation of this report to limit impacts during excavation/construction.

*(e) the source of any fill material and the destination of any excavated material*

Comment: The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

*(f) the likelihood of disturbing relics*

Comment:

The development was referred to the Aboriginal Heritage Office who provided comments and conditions that have been included in the consent.

*(g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area*

Comment: The site is not located in the vicinity of any watercourse, drinking water catchment or environmentally sensitive areas.

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.

#### **6.4 Development on sloping land**

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

*(a) the application for development has been assessed for the risk associated with landslides in relation to both property and life, and*

Comment: The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert (White Geotechnical Group dated, 18 august 2023). This report concludes that the proposed development is acceptable from a geotechnical perspective and therefore, Council is satisfied that the development has been assessed for the risk associated with landslides in relation to both property and life.

*(b) the development will not cause significant detrimental impacts because of stormwater discharge from the development site, and*

Comment: The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective. The application has also been assessed by Council's Development Engineers in relation to stormwater. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development will not cause significant detrimental impacts because of stormwater discharge from the development site.

(c) the development will not impact on or affect the existing subsurface flow conditions.

Comment: The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective. The application has also been assessed by Council's Development Engineers in relation to stormwater. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development will not result in adverse impacts or effects on the existing subsurface flow conditions.

## Warringah Development Control Plan

### Built Form Controls

| Built Form Control                                  | Requirement | Proposed   | % Variation* | Complies |
|---|-------------|--|--------------|----------|
| B1 Wall height                                      | 7.2m        | 5.6m   | -            | Yes      |
| B5 Side Boundary Setbacks                           | North -10m  | lower deck - 1.5m<br>swimming pool - 6m<br>dwelling house -11m | 40 - 85%     | No       |
|   | South - 10m | dwelling house- 20m  | -            | Yes      |
| B7 Front Boundary Setbacks                          | 20m         | 42m  | -            | Yes      |
| B12 National Parks Setback (rear)                   | 20m         | dwelling house -<br>approximately 206m                         | -            | Yes      |
| D1 Landscaped Open Space (LOS) and Bushland Setting | 30%         | 68%  | -            | Yes      |

### Compliance Assessment

| Clause   | Compliance with Requirements | Consistency Aims/Objectives |
|--|------------------------------|-----------------------------|
| A.5 Objectives   | Yes                          | Yes                         |
| B1 Wall Heights  | Yes                          | Yes                         |
| B5 Side Boundary Setbacks  | No                           | Yes                         |
| B7 Front Boundary Setbacks   | Yes                          | Yes                         |
| B12 National Parks Setback   | Yes                          | Yes                         |
| C2 Traffic, Access and Safety  | Yes                          | Yes                         |
| C3 Parking Facilities  | Yes                          | Yes                         |
| C4 Stormwater  | Yes                          | Yes                         |
| C6 Building over or adjacent to Constructed Council Drainage Easements | Yes                          | Yes                         |
| C7 Excavation and Landfill   | Yes                          | Yes                         |
| C8 Demolition and Construction   | Yes                          | Yes                         |
| C9 Waste Management  | Yes                          | Yes                         |
| D1 Landscaped Open Space and Bushland Setting                          | Yes                          | Yes                         |
| D2 Private Open Space  | Yes                          | Yes                         |
| D3 Noise   | Yes                          | Yes                         |



| Clause   | Compliance with Requirements | Consistency Aims/Objectives |
|--|------------------------------|-----------------------------|
| 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                         |
| D14 Site Facilities                                | Yes                          | Yes                         |
| D16 Swimming Pools and Spa Pools                   | Yes                          | Yes                         |
| D18 Accessibility and Adaptability                 | Yes                          | Yes                         |
| D20 Safety and Security                            | Yes                          | Yes                         |
| D21 Provision and Location of Utility Services     | Yes                          | Yes                         |
| D22 Conservation of Energy and Water               | Yes                          | Yes                         |
| E1 Preservation of Trees or Bushland Vegetation    | Yes                          | Yes                         |
| E2 Prescribed Vegetation                           | No                           | No                          |
| E5 Native Vegetation                               | No                           | No                          |
| E6 Retaining unique environmental features         | Yes                          | Yes                         |
| E7 Development on land adjoining public open space | Yes                          | Yes                         |
| E10 Landslip Risk                                  | Yes                          | Yes                         |

#### Detailed Assessment

#### **B5 Side Boundary Setbacks**

##### Description of non-compliance

This control requires development to be setback 10metres from both side boundaries.

The proposed lower deck and swimming pool propose a 1.5m - 6m setback to the northern side boundary, presenting a 40-85% variation to the control.

##### Merit consideration

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

- *To provide opportunities for deep soil landscape areas.*

##### Comment:

The proposal demonstrates compliance with the landscaped open space numerical requirements, therefore, maintaining acceptable dimensions for future opportunities for deep soil landscape.

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

Comment:

The non-conforming elements are not considered visually dominant structures are situated close to existing ground level, with the side access stairs following the slope of the land along the south-eastern boundary, which will provide for improved external access.

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

Comment:

Any perceived visual dominance of the build will be mitigated by the existing and proposed vegetation.

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

Comment:

As detailed above, the deck and swimming are at ground floor level, and as such the scale and bulk is minimised.

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

Comment:

The encroachment into the side setback area will not result in any unacceptable view loss from surrounding private properties or the public domain.

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 s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## **E2 Prescribed Vegetation**

Clause E2 Prescribed Vegetation requires the following:

*1. The following is prescribed for the purposes of clause 5.9(2) of Part 2 of the Vegetation SEPP:*

*All native vegetation identified on:*

*a) DCP Map Threatened and High Conservation Habitat*

*b) DCP Map Wildlife Corridors*

*c) DCP Map Native Vegetation*

*d) known or potential habitat for threatened species, populations or ecological communities as listed under the NSW Threatened Species Conservation Act 1995 and/or the Commonwealth Environment Protection and Biodiversity Conservation Act 1999.*

*2. Development is to be situated and designed to minimise the impact on prescribed vegetation, including remnant canopy trees, understorey vegetation, and ground cover species.*

Council's Natural Environment section (Biodiversity) does not support the proposed development due to the potential impact on the development on the bushland within the site and within the adjoining land.

This impact is caused by the requirement for an APZ under the GTA provided by the NSW Rural Fire Service.

As such, the development fails to comply with the specified requirements of the subject clause, and the provided information is not enough that the proposed development can be found to comply with the requirements of this clause.

This is included as a reason for refusal.

### **E5 Native Vegetation**

Council's Natural Environment section (Biodiversity) does not support the proposed development due to the potential impact on the development on the bushland within the site and within the adjoining

This impact is caused by the requirement for an APZ under the GTA provided by the NSW Rural Fire Service.

Based on the assessment provided by Council's Natural Environment Section, the application is recommended for refusal.

### **E6 Retaining unique environmental features**

Clause E6 of WDCP 2011 requires development to be designed to address any distinctive environmental features of the site and on adjoining nearby land and that development should respond to such features through location of structures, outlook, design and materials. The site contains a unique environmental feature in terms of a natural watercourse with rock shelves, waterfalls and rock pools.

Clause E6 of the WDCP2011 requires design solutions to be explored, including (relevant to the proposed development):

- Choosing parts of the site to develop where features are not present;
- Minimising on-site disturbance;
- Locating buildings to take advantage of environmental features;
- Utilising construction methods that limit impact on sloping/ difficult sites eg. pole construction;
- Implementing a soil and water management plan to limit impact.

It is considered that the proposed development has not adequately considered these design solutions to conserve and enhance the unique environmental features.

This will form a reason for refusal of the application.

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

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

## **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

## **POLICY CONTROLS**

### **Northern Beaches Section 7.12 Contributions Plan 2022**

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$22,213 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,221,286.

## **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 2021;
- 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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

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

## **RECOMMENDATION**

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2023/1794 for the Alterations and additions to the existing building and change of use to bed and breakfast accommodation, and construction of a swimming pool on land at Lot 369 DP 752017,323 McCarrs Creek Road, TERREY HILLS, Lot 425 DP 752017,323 McCarrs Creek Road,

TERREY HILLS, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979 the proposed development is not suitable for the site. It is unacceptable to have an Asset Protection Zone (APZ) offsite in this instance, as this would result in an unreasonable environmental impact. The proposal does not satisfy Warringah Development Control Plan 2011 Clauses E2 Prescribed Vegetation, E5 Native Vegetation; and E6 Retaining unique environmental features for the adjoining northern property.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Warringah Local Environmental Plan 2011.
3. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause Zone RU4 Primary Production Small Lots of the Warringah Local Environmental Plan 2011.

In signing this report, I declare that I do not have a Conflict of Interest.

**Signed**



**Maxwell Duncan, Principal Planner**

The application is determined on 17/09/2024, under the delegated authority of:



**Thomas Prosser, Acting Development Assessment Manager**