

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2023/0803
----------------------------	-------------

<b>Responsible Officer:</b>	Kye Miles
<b>Land to be developed (Address):</b>	Part Lot 1 DP 845094, 287 Mona Vale Road TERREY HILLS NSW 2084
<b>Proposed Development:</b>	Alterations and additions to the existing Hills Flower Market site
<b>Zoning:</b>	Warringah LEP2011 - Land Zoned RU4 Primary Production Small Lots WLEP Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	Yes
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Hills Marketplace Pty Limited
<b>Applicant:</b>	Hills Marketplace Pty Limited

<b>Application Lodged:</b>	28/06/2023
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Mixed
<b>Notified:</b>	04/07/2023 to 18/07/2023
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	7
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 9,729,500.00
---------------------------------	-----------------

### EXECUTIVE SUMMARY

This development application seeks consent for substantial alterations and additions to the existing Hills Flower Market (Garden Centre), including signage.

The application is referred to the Development Determination Panel (DDP) due to the receipt of more than five submissions objecting to the proposal. Of the seven submissions received, six were objections while one was in support. Concerns raised primarily pertain to traffic and amenity impacts,

particularly loss of acoustic privacy, as well as issues regarding permissibility, landscaped area, stormwater, and excavation.

The proposal does not result in any variations to principal development standards under Warringah Local Environmental Plan (WLEP) 2011. Critical assessment issues included those raised within the submissions and non-compliance with the Side Boundary Setbacks, Rear Boundary Setbacks, Main Roads Setback and Landscaped Open Space and Bushland Setting controls.

Variations to the abovementioned Development Control Plan (DCP) controls are considered acceptable within the context of the site, with vast improvements proposed across the site, including enhanced streetscape landscaping, rationalisation of buildings and signage, upgrades to environmental management, and compliant parking to accommodate additional floorspace/uses.

These issues have largely been resolved during the assessment process through the submission of amended plans. Concerns raised by Council regarding surplus parking spaces and inadequate landscaped area have been addressed by the removal of parking spaces and incorporation of additional deep soil landscaping across the site.

The proposal involves the expansion and reconfiguration of tenancies within the existing Hills Flower Market, resulting in a reduction of Gross Floor Area (GFA) from 2,606.4m<sup>2</sup> to 2,552.5m<sup>2</sup>. However, the proposal includes a new detached restaurant of 467.6m<sup>2</sup>, representing a 12.5% increase in food and drink premises uses on the site. Despite this increase, the proposed use of the site is deemed consistent with zone objectives and the wider locale, as discussed in detail within the report.

Additionally, the proposal seeks alterations to a shop, which is a prohibited use in the RU4 Primary Production Small Lots zone under WLEP 2011. However, this portion of the site benefits from Existing Use Rights for the purposes of a shop, as per Division 4.11 of the Environmental Planning and Assessment Act, 1979. Furthermore, the site benefits from the provisions of Schedule 1 Additional Permitted Uses (18) of WLEP 2011, allowing development for the purpose of a '*Garden Centre*'.

After a detailed assessment, the proposal is found to be consistent with the objectives of relevant standards and controls, with no issues warranting refusal of the proposed development.

Therefore, this report concludes with a recommendation that the DDP grant **APPROVAL** to the development application, subject to conditions.

## **PROPOSED DEVELOPMENT IN DETAIL**

Development Consent is sought for alterations and additions to the existing Hills Flower Market, including associated signage.

Specifically, the application seeks consent for the following elements:

- Demolition of various structures, including, the existing dwelling house and at grade parking
- Construction of a new restaurant with ancillary brewing equipment (see below for further details)
- Construction of new garden centre and rural supplies outlet
- Alterations and additions to existing building
- Ancillary plant cultivation area
- Installation of nine illuminated business identification signs
- Provision of 182 on site car parking spaces

- Construction on new paths and retaining walls
- Removal of 28 trees, (15 of which are exempt)
- Replanting of 15 trees and associated landscaping
- Bulk cut and fill earthworks
- Installation of a new stormwater drainage system

### **Operational details**

The proposed operational details of the Hills Flower Market are listed within the submitted Statement of Environmental Effects, however, a brief overview is provided for the proposed new buildings, including an expanded garden centre with ancillary plant cultivation area, rural supplies outlet and a new restaurant that will include a small area for ancillary brewing equipment.

The specific uses are detailed below:

- Flower Shop – 473.6m<sup>2</sup>
- Garden Centre (including shared amenities) – 1,042m<sup>2</sup>
- Café/Restaurant - 244m<sup>2</sup>
- Restaurant (including ancillary brewing equipment) – 467.6m<sup>2</sup>
- Rural Supplies – 350.7m<sup>2</sup>

No changes are proposed to the existing ancillary office space on the mezzanine level.

### **Hours of Operation**

The businesses in the Hills Marketplace, both existing and proposed, will have designated trading hours, as displayed below:

- Existing commercial and retail tenancies: 7.00 am to 8:30 pm daily
- Existing café/restaurant: 7.00 am to 10.00 pm daily
- Proposed restaurant: 7.00 am to 10.00 pm Sunday-Wednesday, and 7.00 am to 12.00 am Thursday-Saturday

### **Traffic Management**

The proposal will provide 182 off-street parking spaces (existing and proposed) throughout the site.

Existing vehicular access will remain unaltered.

### **AMENDED PLANS**

Following a preliminary assessment of the application, Council issued an RFI to the applicant on 1 November 2023, outlining concerns with the application.

The concerns related to front setback, landscaped open space and referral issues (Environmental Health, Development Engineering, and Water Management).

The applicant lodged amended plans and additional information to address the concerns on 28 November 2023.

Revised civil engineering plans were lodged with Council on 7 December 2023.

The amended plans incorporated the following changes:

- Removal of 14 carparking spaces and convert to deep soil landscaping.
- Installation of a safety fence around the OSD bio-basin.

Additional amended plans (including updated landscaping and civil engineering plans) were lodged on 1 May 2024, which involved increasing the OSD bio-basin's side setback to 2.5m (+0.8m).

### **Community Participation Plan**

The proposed amendments will have a reduced environmental impact on the adjoining properties when compared to the original proposal. Therefore, formal re-notification is not required in accordance with Northern Beaches Community Participation Plan.

### **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 - 2.5 Additional permitted uses for particular land

Warringah Local Environmental Plan 2011 - Zone RU4 Primary Production Small Lots

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 - B9 Rear Boundary Setbacks

Warringah Development Control Plan - B14 Main Roads Setback

Warringah Development Control Plan - C3 Parking Facilities

Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting

Warringah Development Control Plan - D3 Noise

Warringah Development Control Plan - D8 Privacy

Warringah Development Control Plan - D23 Signs

## SITE DESCRIPTION

<b>Property Description:</b>	Part Lot 1 DP 845094 , 287 Mona Vale Road TERREY HILLS NSW 2084
<b>Detailed Site Description:</b>	<p>The subject site is legally described as Lot 1 in Deposited Plan 845094 and is known as 287 Mona Vale Road, Terrey Hills. Colloquially the site is known by the business present at the site, being Hills The Flower Market .</p> <p>The site falls within the RU4 Primary Production Small Lots zone pursuant to the Warringah Local Environmental Plan 2011, and benefits from the provisions of Schedule 1 Additional Permitted Uses (18) of the same instrument.</p> <p>The site is rectangular in shape has a street frontage of 142.3m along Mona Vale Road</p> <p>Overall the site has a surveyed area of 2.0 hectares, or 20,000m<sup>2</sup>.</p> <p>The site presently accommodates a garden centre with associated sub-uses (i.e., mower shop, pool supplies), growing areas, garden shop, restaurant, car parking, landscape supplies, detached dwelling house and ancillary components (i.e., small cafe, amenities). The site obtains vehicular access from Mona Vale Road and from Myoora Road into the patron car parks.</p> <p><b>SURROUNDING DEVELOPMENT</b></p> <p>The development is bound by different land uses on all four sides.</p> <ul style="list-style-type: none"><li>• Immediately north-east of the site is a large parcel of land that appears to accommodate a small dwelling, sheds interspersed across the lot.</li><li>• Immediately north-west of the site is a large parcel accommodating a place of public worship.</li><li>• Immediately south-west of the site is a large parcel accommodating a function centre and motel, colloquially known as Miramare Gardens</li><li>• South-east beyond the road is bound by bushland and the JJ Memorial Hill Reserve and Kimbriki Resource Recovery Centre.</li></ul> <p>Myoora Road generally leads to large lot residential properties, educational establishments, landscape supply sites, and a private hospital that is under construction.</p>

Map:



## **SITE HISTORY**

The land has been used for commercial purposes since the 1920s. A search of Council's records has revealed the following relevant history:

On 2 December 1997, an application (97/311) for alterations and additions to the existing flower shop, including refreshment room, child care centre and three glass houses, with ancillary parking was approved by Warringah Shire Council.

On 14 December 1999, an application (1643DA) for alterations and additions to Hills Flower market shop to reposition entry and exit driveways, associated carparking and landscaped areas was approved by Warringah Shire Council.

On 31 January 2006, an application (DA2004/1012) for alterations and additions to existing flower market building with basement carparking, use of additions as a retail plant nursery, minor ancillary works, and demolition of one glasshouse was approved by the Land & Environment Court.

On 18 December 2006, an application (DA2005/1010) for change of use to include turf outlet, rainwater tank outlet & rural supplies outlet approved by the Land & Environment Court. In addition, modification (Mod2004/1012/1) of DA2005/1010, including, alterations to the configuration of on-site car parking provision was approved by the Land & Environment Court.

### **Recent Pre-Lodgement Meeting**

On 11 August 2022, the applicant met with Council to discuss a proposal for alterations and additions of the Hills Flower Market site, under pre-lodgement meeting reference PLM2022/0156. In that meeting, a design was presented that was generally similar in architecture to that of the subject scheme. In its written minutes, Council advised that the application could be supported subject to increasing the quantum of landscaping and providing additional information regarding existing use rights, stormwater impacts, and appropriate traffic management.

## **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. These matters have been addressed via a condition of consent.</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 amended plans, revised engineering and water management details.</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 has been 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 has been 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 the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
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> 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> 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> 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 Matters for Consideration	Comments
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
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

- **Does the existing use satisfy the definition of "existing use" under the *Environmental Planning and Assessment Act 1979* (the ‘Act’)?**

Section 4.65 of the Act defines an existing use as:

*"(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for this Division, have the effect of prohibiting that use, and*

*(b) the use of a building, work or land:*

*(i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and  
(ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse."*

This necessarily requires the following questions to be answered:

1. Was the use of a building for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for this Division, have the effect of prohibiting that use?

### Comment:

The Applicant has provided evidence in the form of historical building approvals (DA2004/1012), which reveals that the use of the shop commenced as a lawful purpose on 2 January 2009, prior to the coming into force of Warringah Local Environmental Plan 2011 on 9 December 2011.

2. Was the use of the building granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?



Comment:

The use of the building as a shop was lawfully approved by Council on 31 January 2006, prior to the coming into force of Warringah Local Environmental Plan 2011 on 9 December 2011.

3. Has the use of the building been carried out within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse?

Comment:

The Applicant has provided evidence in the form of historical building approvals, which reveals that the use of the building was carried out since its most recent approval in 2006, which is within one year from the date on which the provision having the effect of prohibiting the use commenced.

- **What is “the land on which the existing use was carried out” for the purposes of cl 162-167 of the Environmental Planning and Assessment Regulation 2021 (“the Regulation”)?**

Meagher JA in *Steedman v Baulkham Hills Shire Council [No. 1] (1991) 87 LGERA 26* stated (at 27) the rule to be applied as follows: “if the land is rightly regarded as a unit and it is found that part of its area was physically used for the purpose in question it follows that the land was used for that purpose”.

Comment:

Having regard to the above case law, it is noted that a part of the area of the land was physically used for the purpose in question and therefore, it is considered that the land was not used for that purpose and that existing use rights do not apply to the whole of the subject site.

- **What are the planning principles that should be adopted in dealing with an application to alter enlarge or rebuild and existing use?**

The judgement in *Fodor Investments v Hornsby Shire Council (2005) NSWLEC 71*, sets out the planning principles that should be applied in dealing with development applications seeking to carry out development on the basis of existing use rights. The principles of *Fodor Investments v Hornsby Shire Council (2005) NSWLEC 71* however have been varied by more recent judgements of the Court to the extent described in *Saffioti v Kiama Municipal Council [2019] NSWLEC 57* and *Made property Group Pty Ltd v North Sydney Council [2020] NSWLEC 1332* in that the planning controls apply to the existing use provided they do not derogate, due to the planning controls within an EPI being 'incorporated provisions' and therefore matters for consideration as described within Clause 4.67 of the Environmental Planning and Assessment Act, 1979.

The following four principles adopted by the NSW Land and Environment Court in this case will have general application in dealing with development applications that rely on existing use rights:

- 1. How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?**

*While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessments.*

Comment:

The flower market/shop is located in a ground floor space of the main building. The works largely relate to minor internal refinements and a slight expansion (17.6m<sup>2</sup>). In this regard, the proposed changes to the existing flower market/shop will have an indiscernible impact on building bulk.

**2. What is the relevance of the building in which the existing use takes place?**

*Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.*

Comment:

The Hills Flower Market commenced operations since the 1920's. It is considered the proposal would not be out of character with the area and is an established use within the locality. The minor internal expansion will not have a discernible impact on building bulk, off-street parking or neighbouring amenity.

**3. What are the impacts on adjoining land?**

*The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.*

Comment:

As above, impacts to adjoining land will be inexistent given the internal nature of the works.

**4. What is the internal amenity?**

*Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.*

Comment:

Not applicable to the proposed development.

## Conclusion

The use has been approved under a previous environmental planning instrument (WLEP 2000) and, therefore, is a lawful use. Subsequently, the use can be retained under the current environmental planning instrument (WLEP 2011).

### **BUSHFIRE PRONE LAND**

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the application that included a certificate (prepared by Australian Bushfire Protection Planners, dated 20 October 2022) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

### **NOTIFICATION & SUBMISSIONS RECEIVED**

The subject application has been publicly exhibited from 04/07/2023 to 18/07/2023 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 process council is in receipt of 7 submission/s from:

<b>Name:</b>	<b>Address:</b>
Debbie Gai Severino	58 Myoora Road TERREY HILLS NSW 2084
Mr Marc Collins	103 Booralie Road TERREY HILLS NSW 2084
Ms Lesley Dawn Nalbandian	47 / 0 Tooronga Road TERREY HILLS NSW 2084
Terrey Hills Progress Association	22 Myoora Road TERREY HILLS NSW 2084
Mr Alexander Armour	35 Myoora Road TERREY HILLS NSW 2084
Duffys Forest Residents Association	PO Box 567 TERREY HILLS NSW 2084
Tomasy Planning Pty Ltd	1 / 41 - 49 Darley Street East MONA VALE NSW 2103

Seven (7) submissions were received, one (1) is support and six (6) in objection to the application.

The following issues were raised in the submissions:

- **Traffic**
- **Noise**
- **Inconsistent with zone objectives**
- **Permissibility**
- **Landscaped area**
- **Stormwater**
- **Excavation**

The above issues are addressed as follows:

- **Traffic**

The submissions raised concerns that the development will have a detrimental impact on the congestion of surrounding streets and will give rise to greater traffic hazards and risks, particularly upon students and parents of the nearby school.

Comment:

This issue is addressed in detail under Council's Traffic Referral Comments. In summary, the applicant submitted a Traffic Impact Assessment with the application, which assessed the likely traffic impacts of the proposal on the adjacent road network due to additional traffic and parking demand generated by the development.

The assessment and information provided by the applicant is considered reasonable and adequate and Council's Traffic Section raises no concerns in relation to the proposed development on traffic grounds, recognising that the proposal will be acceptable in relation to traffic impacts. In addition, to ensure appropriate traffic management, a condition has been imposed. This condition mandates a thorough review and approval of the Construction Traffic Management Plan (CTMP) by Council's Traffic Section before a Construction Certificate can be issued.

This matter does not warrant the refusal of the application.

- **Noise**

The submissions raised concerns that that the proposal will result in unreasonable acoustic impacts from the new restaurant and additional traffic generation.

Comment:

The application is supported by an Acoustic Impact Assessment, prepared by Stantec, dated 1 June 2023. The assessment has predicted noise impacts at the most sensitive boundary positions. The measurements show that all the relevant criteria (as provided for in the WDCP 2011 and EPA NSW Industrial Noise Policy) for noise emissions will be met. In addition, the application has been referred to Council's Environmental Health (Industrial) Officer who supports the proposal, subject to recommended conditions of consent including additional certification of acoustic requirements.

Overall, the predicted noise levels as detailed in the Acoustic Report indicate noise compliance is achievable with the list criteria at the location of the nearest noise sensitive residential receivers.

This matter does not warrant the refusal of the application.

- **Inconsistent with zone objectives**

The submissions raised concerns that the proposed use of the site is inconsistent with the zone objectives and the immediate locality.

Comment:

The subject site is zoned RU4 Primary Production Small Lots and contains an existing garden centre commonly known as 'Hills Flower Market'. Although, the proposal seeks substantial alterations and additions to the existing premises, the predominant use is retained, only intensified. The proposed works will be generously set back from the boundaries, while proposed perimeter planting will readily screen the premises from adjoining and surrounding residential sites. On balance, the proposal will reasonably maintain neighbourhood amenity, while remaining consistent with the zone's objectives and the desired future character of the Terrey Hills locality.

This matter does not warrant the refusal of the application.

- **Permissibility**

The submissions raised concerns with the permissibility of the proposed land uses, particularly, with the ancillary brewery and office spaces

Comment:

Matters relating to permissibility have been discussed throughout this report. In summary, the proposal's predominant use is appropriately defined as a *Garden Centre* and is therefore permitted with consent in the RU4 zone pursuant to Schedule 1 of WLEP 2011. Additionally, the proposal involves the construction of a new restaurant that seeks to include an area with ancillary brewing equipment. It is considered that this area constitutes an ancillary function to the restaurant, given its minimal size and scale. Furthermore, the applicant has satisfactorily demonstrated that portions of the central building have Existing Use Rights for the purposes of a *Shop*, as per Division 4.11 of the Environmental Planning and Assessment Act, 1979.

This matter does not warrant the refusal of the application.

- **Landscaped area**

The submissions raised concerns that the proposal provides inadequate landscaped area.

Comment:

This matter is discussed in detail under Part D1 Landscaped Open Space. In summary, the proposal has been amended to minimise excessive car parking and to provide additional deep soil areas across the site, particularly within the frontage. Additionally, the proposal involves a slight increase in deep soil landscaping by 6.7% (1,320.3 m<sup>2</sup>). Overall, the landscape proposal incorporates a variety of treatments to the development area, including tree and mass planting in the front setback zone, aimed at softening the built form.

This matter does not warrant the refusal of the application.

- **Stormwater**

The submissions raised concerns that the proposal will impact upon existing drainage infrastructure and create unreasonable run-off.

Comment:

The application was reviewed by Council's Development Engineering section, with consideration given to stormwater aspects. The engineering team supports the proposal, subject to specific conditions attached to this report. Overall, the proposed development will not result in significant adverse impacts due to stormwater discharge from the development site.

This matter does not warrant the refusal of the application.

- **Excavation**

The submissions raised concerns with the excavation and construction impacts associated with the proposed drainage infrastructure, and the potential impact on the nearby structures at No. 48 Myoora Road (Miramare Gardens).

Comment:

The application is supported by a detailed geotechnical assessment which provides information on the site's subsurface condition and demonstrates that the proposed excavation is satisfactory, subject to compliance with the recommendations made in the report. In relation to any potential damage to adjoining properties as a result of excavation on the site, conditions of consent are recommended which require a pre and post dilapidation survey be undertaken of the neighbouring properties to document the condition of these sites. Where damage is identified as a part of this process, remedial works is a civil matter between the respective parties.

This matter does not warrant the refusal of the application.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><b>Supported - subject to conditions</b></p> <p>The application has been investigated with respects to aspects relevant the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Environmental Health (Contaminated Lands)	<p><b>Supported - subject to conditions</b></p> <p>Geo-Logix Pty Ltd (Detailed Site Investigation -Report reference: 2201064Rpt01FinalV02_8Nov22 Date: 8 November 2022 ) was commissioned by Hills Marketplace Pty Ltd (Hills Marketplace) to conduct a Detailed Site Investigation (DSI) of the property located at 287 Mona Vale Road, Terrey Hills NSW. In 2021, Geo-Logix completed a Preliminary Site Investigation (PSI) for the property. The PSI identified numerous potential contaminating activities having</p>

Internal Referral Body	Comments
	<p>occurred onsite including:</p> <ul style="list-style-type: none"> <li>• Demolition of structures potentially containing asbestos and lead based paint;</li> <li>• Historical market gardening;</li> <li>• Importation of fill of unknown origin as part of the site redevelopment and to fill a former farm dam; and</li> <li>• Minor mechanic repairs.</li> </ul> <p>While lower levels of petroleum hydrocarbons, PAHs, OCPs and heavy metals were reported in soil, COPCs were not identified in soil at concentrations in excess of assessment criteria in all samples analysed. The risk that past site activities have contaminated on-site soils is considered low and acceptable.</p> <p>As COPCs were not detected in on-site soil and all identified sources of potential contamination at the site are 'top down' processes expected to first affect surficial soils, it is considered that the risk of contamination to on-site groundwater and surface water is also low and acceptable.</p> <p>Based on the results of investigation, the site is considered suitable for the proposed commercial development. On this basis Environmental Health supports the proposal with conditions</p>
Environmental Health (Industrial)	<p><b><i>Supported - subject to conditions</i></b></p> <p><b>General Comments</b></p> <p>The development the subject of this DA involves alterations and additions to the existing Hills Marketplace development located at No. 287 Mona Vale Road, Terrey Hills. The two proposed new buildings will accommodate an expanded garden centre and rural supplies outlet and a new restaurant that will include a small area for ancillary brewing equipment. In respect of the new restaurant, it is proposed that it includes a small area for ancillary brewing equipment where some craft beer will be produced on-site [quantities are discussed at page 22].</p> <p>This type of community interaction in the production stage has become very popular with restaurants today. While a small area for ancillary brewing equipment is proposed within the new restaurant, the principal purpose of the new restaurant will remain as a licensed restaurant. The operation of the brewing equipment is to provide theatre/ambience within the restaurant that will be an ancillary feature of the overall operation of the new restaurant. And Development consent is also sought to undertake minor alterations and additions throughout the ground floor level of the existing building including to the area occupied by the existing Garden Centre, Taste Buds Café and the area formerly occupied by Piemonte Restaurant and to carry out minor reconfiguration and expansion of the existing flower shop.</p> <p>The proposal seeks consent to demolish various existing structures</p>

Internal Referral Body	Comments
	<p>and at-grade parking, to undertake preparatory bulk earthworks, to remove 28 site trees, to comprehensively upgrade the site landscaping including providing substantial compensatory planting, to provide additional at grade parking and to install new business identification signage. Development consent is sought to operate a mix of land uses from the Hills Marketplace site encompassing an expanded garden centre with ancillary plant cultivation area, a new restaurant (including ancillary brewing equipment), the existing café/restaurant and a new rural supplies outlet. The existing flower shop is also proposed to continue operating from the Hills Marketplace site.</p> <p>Our areas of interest are :</p> <p><u>Noise</u>  A Noise Impact Assessment by Stantec ref: 301351061, 1/6/2023 states that the development is not expected to generate excessive noise.</p> <p>We note a residential dwelling adjacent 285 Mona Vale Road as being the most likely impacted.</p> <p>The main noise sources generated by the development that may impact the local community and environment include:</p> <ul style="list-style-type: none"> <li>• Noise emissions from the operation of mechanical plant servicing the proposed development to the surrounding noise-sensitive receivers.</li> <li>• Traffic generated by the development, including, vehicle movements entering and exiting the car parking spaces provided.</li> <li>• Noise emissions from the operation of the licensed restaurant which is proposed to operate up to 12:00am.</li> </ul> <p>The proposed development has proposed the following hours of operation:  The café is proposed to operate between the hours of 7:00am – 10:00pm (7 days a week).  The proposed restaurant with ancillary brewing facilities on the south-western boundary will operate between 7:00am – 10:00pm (Sunday – Wednesday) and will extend its operation hours on Thursday – Saturday to midnight (12:00am).  All other retail tenancies have their own specific trading hours, but will operate at any point between the hours of 7:00am – 8:30pm (7days a week).</p> <p>External Dinning and vehicles leaving site (eg 12.00am) are considered that main noise risk areas as other matters can be acoustically treated. Offensive noise from shouting or yelling will need robust management from the business operator. Details on managing theses issues needs addressing.</p> <p>Noise from equipment and plant is yet to be assessed but we consider that this can be managed during works.</p>



Internal Referral Body	Comments
	<p>A noise assessment under operating conditions is considered the best way of dealing with potential issues.</p> <p>Additionally the designated "Lawn-Landscaped Garden Common area for the enjoyment of visitors to the site and for consumption of food and beverages purchased on site "requires clarification as to whether this area will be open at night and if so what hours and if liquor is to be consumed?</p> <p><u>Sewer</u> The site has a septic tank and macerator pump which pumps to the private sewer line off site (Council reference WW00620 approved 11 Feb 2021 for 5 years).</p> <p>Restaurants will most likely require a grease trap to Sydney water requirements.</p> <p>The pump to sewer agreement will have restrictions and requirements which we are not privy to at this time. The increased load on this pump to sewer system and its ability to cope without failure (eg rags or other items can easily jamb macerator systems) needs to be documented. A blockage and resulting overflow of a fully occupied site is likely to cause public health and water pollution issues. A fail safe back up plan is required.</p> <p><u>Smoke/ odour /water pollution matters.</u> No issues anticipated.</p> <p>Environmental Health seeks further comment/detail from the applicant based on the above comments prior to any support being given to the proposal.</p> <p><b>ADDITIONAL INFORMATION RECEIVED AND OUR COMMENTS</b> 21/11/2023 The applicant has also advised: <i>The existing site has a septic tank. Our preliminary design includes a new sewer pump station with emergency storage.</i></p> <p><i>Restaurants will most likely require grease to Sydney water requirements. 1 x 3,000 litres noted grease arrestor is proposed.</i></p> <p><i>The pump to sewer agreement will have restrictions and requirements which we are not privy to at this time. No comment.</i></p> <p><i>The increased load on this pump to sewer system and its ability to cope without failure (eg rags or other items can easily jamb macerator systems) needs to be documented. A blockage and resulting overflow of a fully occupied site is likely to cause public health and water pollution issues. A fail safe back up plan is required.</i></p>

Internal Referral Body	Comments
	<p><i>Our fail-safe back up within the preliminary design includes a Muffin Monster preceding the new sewer pump station, plus an emergency storage tank.</i></p> <p><i>So, the internal sewerage system will have three layers of redundancy-</i></p> <ol style="list-style-type: none"> <li><i>1. Essential Power Supply</i></li> <li><i>2. Muffin Monster</i></li> <li><i>3. Emergency Storage.</i></li> </ol> <p>Henry &amp; Hymas will develop the design on behalf of the Applicant and upload to the portal for Construction Certificate.</p> <p>To progress this matter conditions of approval may be added in lieu of further submissions and therefore Environmental Health will support the proposal.</p> <p>Further update additional information received by EH 28/11/23 clarifying a number of matters that proposed draft conditions were to address. The applicant has requested that these conditions be deleted to avoid any confusion. This has been done with exception of the Plan of Management condition.</p>
Environmental Health (Food Premises, Skin Pen.)	<p><b><i>Supported - subject to conditions</i></b></p> <p>The provision of sanitary facilities we are advised is subject to final plans however we are concerned that as facilities are to be partly shared that we need to be satisfied that these will be adequate (including the need for urinals). Sites where facilities are not adequate or located at distance may be a potential issue. Therefore, we need to know what calculations have been done to ensure compliance with the BCA Part 4F Kitchen and food storage fit-out details compliance can be dealt with by way of conditions. Access to grease traps and sewer. This matter is dealt with under the industrial referral.</p> <p>Environmental Health cannot support the proposal at this time pending additional information.</p> <p><b>ADDITIONAL INFORMATION 21/11/2023</b></p> <p>The applicant has confirmed Sanitary Facilities complying to BCA as: <u>Existing</u>.</p> <p>Garden Centre 1 &amp; 2</p> <p>Ground Floor</p> <ul style="list-style-type: none"> <li>• 1 pan</li> <li>• 1 basin</li> </ul> <p>Mezzanine</p> <ul style="list-style-type: none"> <li>• 4 pans</li> </ul>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> <li>• 1 urinal</li> <li>• 4 basins</li> </ul> <p>Flower Shop / Café staff Mezzanine</p> <ul style="list-style-type: none"> <li>• 2 pans</li> <li>• 2 basins</li> </ul> <p><u>New</u></p> <p>Garden Centre Shared Amenity 2 (all tenancies have access)</p> <ul style="list-style-type: none"> <li>• 5 pans</li> <li>• 2 urinals</li> <li>• 5 basins</li> </ul> <p>Includes DDA compliant facilities</p> <p><u>Total proposed (excluding Restaurant 1).</u></p> <ul style="list-style-type: none"> <li>• 12 pans (5 male, 7 female)</li> <li>• 3 urinals</li> <li>• 12 basins (6 male, 6 female)</li> </ul> <p>The works proposed will result in a surplus of sanitary facilities, when Restaurant 1 is not operating. and advised also:</p> <p><u>Total proposed exclusively for Restaurant 1 (indicative)*</u></p> <ul style="list-style-type: none"> <li>• 7 pans (incl DDA) (2 male, 5 Female)</li> <li>• 3 urinals</li> <li>• 6 basins (incl DDA) (2 male, 4 female)</li> </ul> <p>* Note restaurant patrons will also have access to the Garden Centre shared Amenity 2, immediately adjacent.</p> <p><u>Total proposed for the development including Restaurant 1</u></p> <ul style="list-style-type: none"> <li>• 18 pans</li> <li>• 7 urinals</li> <li>• 18 basins</li> </ul> <p>The works proposed will result in a surplus of sanitary facilities. Environmental Health therefore now supports the proposal with</p>

Internal Referral Body	Comments
	<p>conditions.</p> <p>Further update additional information received by EH 28/11/23 clarifying a number of matters that proposed draft conditions were to address. The applicant has requested that these conditions be deleted to avoid any confusion ie " It is noted that fit-out of restaurant 1 will be undertaken under a separate approval pathway. This has been done and conditions adjusted accordingly.</p>
Landscape Officer	<p><b><i>Supported - subject to conditions</i></b></p> <p><u>Additional Information Comment 28/11/23:</u> The amended plans are noted and the conditions have been updated accordingly.</p> <p><u>Original Comment:</u> Landscape Referral raises concern that the proposed development does not achieve the 70% landscaped area under the WDCP requirement, and this matter shall be assessed and determined under merit consideration by the Assessing Planning Officer. Furthermore, it is noted that the calculations shown on drawing A100-20 DA-6 include permeable parking and walkways. Not including these non-compliant areas, the landscaped area (or landscape open space) is in fact 51%. The commentary from the Landscape Referral team in the PLM notes was "...the use of permeable pavers is not accepted as being part of the LOS for the purpose of the LOS calculation and should only be used as a complimentary feature to further enhance the site". Finally, some accessible carparking spaces are shown within permeable areas, and Landscape Referral questions the suitability of their location.</p> <p>The PLM notes stated "<i>It is advised that Landscape team will seek a landscape outcome to preserve / establish a boundary landscape buffer to the cultivation area boundaries</i>". Should the development application be approved, an amended Landscape Plan shall be submitted which includes a landscape buffer along the north-eastern boundary for the full extent of the cultivation area, and shall be a minimum width of 3 metres as measured perpendicular to that boundary.</p> <p>The Arboricultural Impact Assessment (AIA) identified 28 trees for removal, of which 15 trees (3, 8, 9, 11, 16, 22, 23, 24, 25, 27, 28, 29, 30, 31, and 32) are exempt by species or height and as such do not require consent for removal. Of the 13 remaining trees seven are exotic species and six are native. These remaining 13 trees can be supported for removal, and the landscape proposal shows 14 replacement native trees which will sufficiently offset any tree canopy loss. Landscape Referral supports the tree protection recommendations outlined in the AIA, and a Project Arborist shall be engaged to supervise the works in the tree protection zone of trees to be retained, subject to the imposed conditions.</p>

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	<p><b>Supported - subject to conditions</b></p> <p>The proposal seeks approval for Alterations and additions to the existing Hills Flower Market site.</p> <p>The comments in this referral relate to the following applicable controls and provisions:</p> <ul style="list-style-type: none"> <li>• NSW Biodiversity Conservation Act 2016</li> <li>• Planning for Bushfire Protection 2019</li> <li>• Warringah DCP - Clause E2 Prescribed Vegetation</li> </ul> <p>The proposal has been submitted with an Arboricultural Impact Assessment (AIA) that has assessed a total of 47 trees and determined that a total of 3 high category trees (2, 4 and 5) and another 25 low category trees would have to be removed in order to facilitate the proposed alterations and additions (1, 3, 8, 9, 10, 11, 12, 14, 15, 16, 18, 20, 22, 23, 24, 25, 27, 28, 29, 30, 31, 21, 33, 34 and 35). Of these 28 trees a total of 7 trees are prescribed (4, 18, 20, 22, 33, 34 and 35). The submitted Tree management plan (pages 27 and 28 of the AIA) shows another 6 additional trees have been removed before the submission of the application.</p> <p>The submitted Bushfire report that has determined that the level of risk to be awarded to the site is BAL 12.5. The BF report has also determined that the existing Asset Protection Zones (APZ) are compliant with PBP 2019 requirements. Therefore, no additional vegetation removal will be required for the establishment of APZs.</p> <p>The proposed Landscape Proposal includes a total of 14 native trees and a range of native shrubs, groundcovers and climbers which are found to be adequate for the area.</p> <p>The development is designed, sited and will be managed to avoid any significant adverse environmental impact.</p>
NECC (Development Engineering)	<p><b>Supported - subject to conditions</b></p> <p>The proposal includes the removal of the existing on-site stormwater detention (OSD) basin and replaces this with a new combined OSD/ Water Quality basin adjacent to the proposed restaurant on the south western boundary of the site. The submitted engineering plans have been reviewed and the following information must be submitted for further assessment.</p> <ol style="list-style-type: none"> <li>1. The 'Drains' computer model for the design must be submitted by the applicant's engineer.</li> <li>2. A summary table for the OSD design is to be provided on the drawings.</li> <li>3. Hydraulic Grade Line Analysis for the connection into the existing easement pipe.</li> </ol>

Internal Referral Body	Comments
	<p>4. Dimensions of the basin to ensure required volume is achieved.</p> <p>5. An overflow is to be provided above the Top Water Level in case of a blockage to the orifice.</p> <p>6. The proposed detention basin exceeds 300mm in depth and as such must include a fence around the perimeter for safety.</p> <p>7. It is unclear how access for maintenance of the basin is proposed. Details for access must be shown on the plans.</p> <p>The submitted Geotechnical report references the incorrect plans which detail a basement which does not appear to be included on the architectural plans. It is considered that the report be amended to reflect the correct plans and must also reference the civil engineering plans.</p> <p>The existing driveway access points are to remain which is acceptable.</p> <p>Development Engineering cannot support the proposal due to insufficient information to dress stormwater management in accordance with Clause C4 of the DCP.</p> <p><b>Amended plans and documentation submitted 28/11/2023</b></p> <p>The revised stormwater management plans and model have addressed the previous issues. The Geotechnical report has also been amended as requested.</p> <p>Development Engineering support the proposal, subject to conditions as recommended.</p> <p><b>02/05/2024:</b></p> <p>Amended stormwater plans reflecting boundary setback to 2.5m are provided, no objections to approval subject to conditions as recommended.</p>
NECC (Water Management)	<p><b>Supported - subject to conditions</b></p> <p>02/05/2024:</p> <p>Amended stormwater plans reflecting boundary setback to 2.5m are provided, no objections to approval subject to conditions as recommended.</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> <li>• Supplied plans and reports;</li> <li>• Relevant LEP and DCP clauses; and</li> <li>• Northern Beaches Water Management for Development Policy</li> </ul>

Internal Referral Body	Comments
	The proposed stormwater management strategy is satisfactory.
Road Reserve	<p><b>Supported - without conditions</b></p> <p>There are no apparent works on the road reserve or impacts on existing road assets therefore no comments are provided.</p>
Strategic and Place Planning (Urban Design)	<p><b>Supported - without conditions</b></p> <p>This advice is provided as an internal referral from the Urban Design Unit to the Development Assessment Officer for consideration and coordination with the overall assessment.</p> <p>The application DA2023/0803 seeks consent for alterations and additions to the existing Hills Marketplace development located at No. 287 Mona Vale Road, Terrey Hills. The following is proposed:</p> <ul style="list-style-type: none"> <li>• Demolition of some buildings, carparking and landscape;</li> <li>• Re-grading of part of the site;</li> <li>• Re-designed landscape;</li> <li>• Alteration to existing buildings;</li> <li>• Two new buildings to accommodate a larger garden centre.</li> </ul>
Traffic Engineer	<p><b>Supported - subject to conditions</b></p> <p><u>Additional comments on amended plans - 28/11/23</u></p> <p>Amended plans have been received which slightly reduce the level of offstreet parking from 188 to 182 spaces. The proposed level of parking still exceeds the DCP requirements with the previous referral comments and conditions still valid</p> <p><u>Original comments - 3/10/23</u></p> <p>The development application is for alterations and additions to the existing Hills Marketplace garden. The existing development on the site is comprised of a Plant Nursery/Flower Shop (1685m<sup>2</sup>), Rural Supplies premises (570m<sup>2</sup>), a cafe/restaurant (seating capacity for 86 patrons), ancilliary offices, a house and offstreet parking to support the existing uses.</p> <p>The proposed development will have an expanded garden centre (1042m<sup>2</sup>) Flower Shop (473.6m<sup>2</sup>), Rural supplies (350.7m<sup>2</sup>), a second restaurant will be added with a total restaurant seating</p>

Internal Referral Body	Comments
	<p>capacity of 366 seats (711m<sup>2</sup>) and ancilliary offices (235.9m<sup>2</sup>). A total of 188 car spaces will be available to support the uses with 5 loading bays/servicing bays catering for small and medium rigid trucks.</p> <p><u>Traffic Generation</u></p> <p>The applicants traffic consultant has conducted surveys of traffic movements to and from the site to establish the existing traffic generation from the site, the traffic consultant has then revised these values to take account of traffic generated by the alterations and additions on the site to estimate the post development traffic generation. It has been estimated that the peak projected traffic generation from the site of post development will be 201 vehicles per hour in the weekend midday period however the weekend peak will only increase by 2 vehicles per hour above existing volumes. The largest increase in traffic generation from the site post development is anticipated to occur in am peak period with 25 additional traffic movements per hour.</p> <p>SIDRA analysis conducted for a number of intersections surrounding the development has revealed little change to the level of service or delays at the intersections and on this basis the traffic generation from the site post development is not a matter of concern.</p> <p><u>Parking</u></p> <p>The development will be served by 188 car parking spaces including 39 in an existing basement level. Six of the 188 spaces are accessible parking spaces. There are also 3 motorcycle parking spaces, 2 medium rigid vehicle service bays and 3 Small Rigid Vehicle service bays.</p> <p>In terms of DCP requirements the development requires:</p> <p>1 parking space for every 3 seats for the restaurant uses i.e <math>336/3 = 112</math> car spaces  6.1 spaces per 100m<sup>2</sup> GLFA (retail) for the flower shop i.e <math>473.6 \times 6.1/100 = 29</math> spaces</p> <p>For the garden centre and rural supplies uses the Warringah DCP suggests that Landscape and Garden supplies developments should provide 15 spaces or 0.5 spaces per 100m<sup>2</sup> of site area. These rates are considered likely to underestimate parking demands for this type of use which is more appropriately assessed as bulky goods retail.</p> <p>1.9 spaces per 100m<sup>2</sup> GFA (bulky goods retail) for the garden centre = <math>1042 \times 1.9/100 = 20</math> spaces  1.9 spaces per 100m<sup>2</sup> GFA (bulky goods retail) for the rural supplies = <math>350.7 \times 1.9/100 = 7</math> spaces</p> <p>1 space/40m<sup>2</sup> for the ancilliary office uses = <math>235.9/40 = 6</math> spaces</p>



Internal Referral Body	Comments
	<p>Total parking requirement = <math>112 + 29 + 20 + 7 + 6 = 174</math> spaces.</p> <p>The parking provision of 188 spaces exceeds this requirement. The developer proposes that 6 of these spaces (3%) be accessible which is supported. The accessible parking spaces appear to be sized and marked in accordance with AS2890.6 however this will be conditioned.</p> <p><u>Vehicle Access</u></p> <p>No changes are proposed to the the existing vehicular access arrangements with separate entry and exit driveways to remain accessible from Mona Vale Road and a third vehicle ingress/egress driveway to remain available via a right of way to Myoora Road. The retention of the vehicle access points to Mona Vale Road, a State Road, has not been opposed by Transport for NSW (TfNSW) and as such their retention is supported. The swept path plots provided in the traffic report show trucks entering and exiting via the Mona Vale Road Entry driveway which is inadequately sized to allow for passing of an egressing medium rigid truck and entry of a B85 vehicle, permitting truck egress by this driveway would therefore be unsafe. The driveways to Mona vale Road should therefore be marked and signposted as Entry and Exit driveways to clarify any confusion. This will be conditioned.</p> <p><u>Servicing</u></p> <p>The RMS Guide to traffic generating developments encourages developers to provide separate driveways for truck access and passenger vehicle access. This development provides no separation of service vehicles from customer vehicle traffic which may result in vehicle to vehicle conflict and safety concerns particularly for movements involving reversing trucks in areas of high pedestrian activity such as customer carparking areas.</p> <p>The service/delivery bays are each sized to cater for movements only by small and medium rigid vehicles (MRVs) less than 8.8m in length. It is noted in the traffic report that some deliveries/servicing by trucks greater than 8.8m will occur but that these generally take place prior to 7am and after 4pm. The restaurant uses, which are proposed to occur into the evening will mean that customers will still be parking on site after hours. To minimise conflict between customer movements and deliveries by vehicles in excess of 8.8m in length it will be conditioned that vehicles larger than 8.8m MRV's access the site only via Myoora Road after 10pm and before 6am to minimise conflict with customer vehicles or pedestrians. In addition, to cater for afterhours turning by vehicles up to the size of 14.8m semi-trailers it will be conditioned that a No Parking zone applying 6pm to 7am to be signposted throughout the 15 bay 90 degree parking areas denoted Zone 13 &amp; Zone 15 on the DA plan No. A100-20 DA-6</p>

Internal Referral Body	Comments
	A revised Loading and Service Vehicle Management Plan will also be conditioned to ensure that the above requirements are captured.
Waste Officer	<b>Supported - subject to conditions</b>  Waste Management Assessment

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<b>Supported - subject to conditions</b>  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.
Roads and Maritime Service - SEPP (Transport and Infrastructure) 2021, s2.122 - Traffic generating development	<b>Supported - subject to conditions</b>  The proposal was referred to Transport for NSW (TfNSW) who provided a response stating that the proposal is acceptable subject to the following requirements:  1. <i>Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system that impact upon Mona Vale Road are to be submitted to TfNSW for approval, prior to the commencement of any works.</i>  <i>A plan checking fee will be payable, and a performance bond may be required before TfNSW approval is issued.</i>  2. <i>A Road Occupancy Licence (ROL) should be obtained from Transport Management Centre for any works that may impact on traffic flows on the Mona Vale Road during construction activities.</i>  These recommendations will be included as a condition of consent.

### 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 (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.

#### **Transport for NSW (TfNSW)**

Section 2.118 - Development with frontage to classified road states:

*The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—*

*(a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*

*(b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—*

*(i) the design of the vehicular access to the land, or*

*(ii) the emission of smoke or dust from the development, or*

*(iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*

*(c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

#### **Comment:**

The application was referred to Transport for NSW who did not raise any objection to the proposal.

Section 2.121 and Schedule 3 of this Policy requires that the following development(s) are referred to the TfNSW as Traffic Generating Development:

Purpose of Development	Size or Capacity (Site with access to any road)	Size of Capacity (Site with access to classified road or to a road that connects to classified road if access is within 90m of connection, measured along alignment of connecting road)
Commercial premises	10,000m <sup>2</sup> in area	2,500m <sup>2</sup> in area
Shops and commercial premises	4,000m <sup>2</sup>	1,000m <sup>2</sup>

**Note:** Under Section 2.121(2) of Chapter 2, ‘relevant size of capacity ‘is defined as meaning:

*“(2) (a) in relation to development on a site that has direct vehicular or pedestrian access to any road - the size or capacity specified opposite that development in Column 2 of the Table to Schedule 3, or*

*(b) in relation to development on a site that has direct vehicular or pedestrian access to a classified road or to a road that connects to a classified road where the access (measured along the alignment of the connecting road) is within 90m of the connection - the size or capacity specified opposite that development in Column 3 of the Table to Schedule 3.”*

Comment:

The site is accessed via Mona Vale Road, which is a classified road and has an area greater than 2,500m<sup>2</sup> and is therefore traffic generating development.

The application was referred to Transport for NSW who responded and did not raise any objection to the proposal.

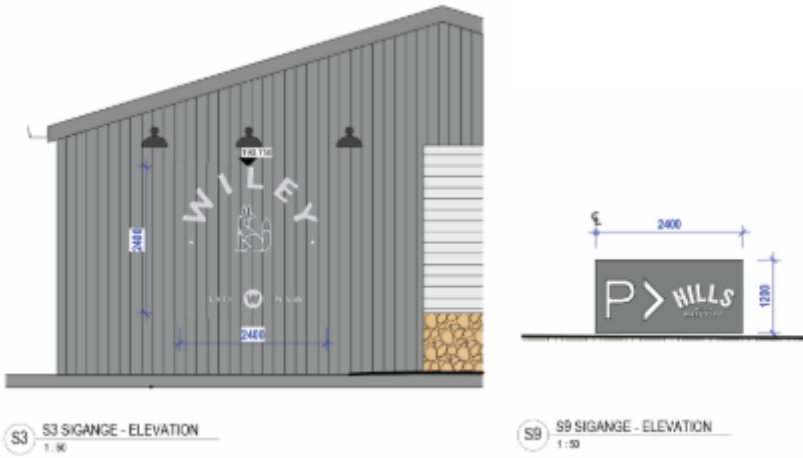
**SEPP (Industry and Employment) 2021**

Section 3.6 and 3.11 of Chapter 3 require Council to determine consistency with the objectives stipulated under Subsection 3.1 (1)(a) of the aforementioned SEPP and to assess the proposal against the assessment criteria of Schedule 5.

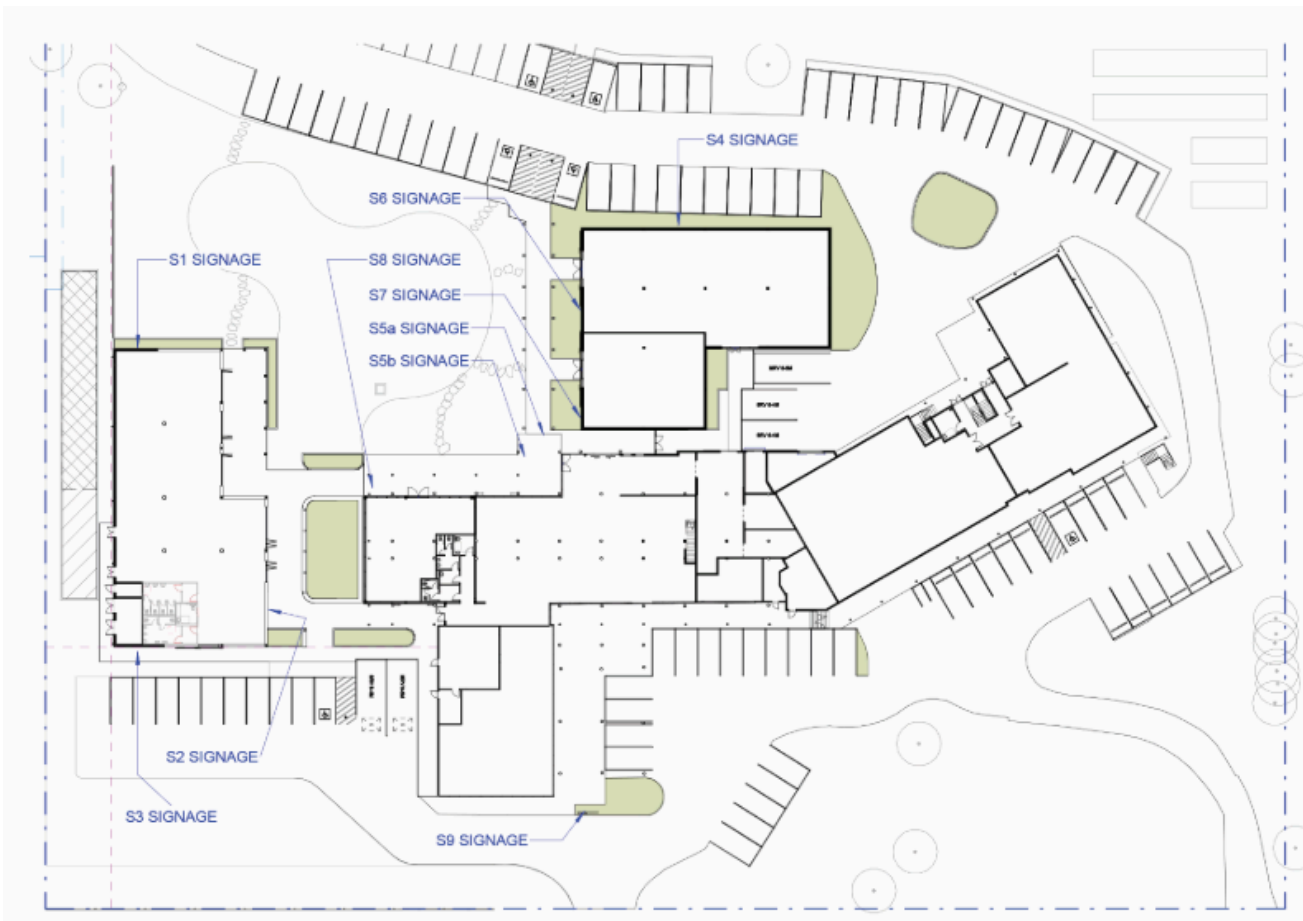
The objectives of this chapter aim to ensure that the proposed signage is compatible with the desired amenity and visual character of the locality, provides effective communication and is of high quality having regards to both design and finishes.

The proposal comprises nine (9) illuminated business identification signs associated with the businesses to operate from Hills Marketplace. This includes the installation of eight (8) new wall signs, and one (1) freestanding sign. It is noted that that the new signage largely relates to upgrading internal wayfinding signs. Proposed signage that is street facing and/or visible from any public place consists of two signs listed below:

- S3 - Wall sign for new restaurant: 2.4m (L) x 2.4m (H). Painted with external illumination.
- S9 - Freestanding building identification sign: 2.4m (L) x 1.2m (H). Not illuminated.



**Figure 1. Signage details**



**Figure 2. Signage Map**

In accordance with the provisions stipulated under Schedule 5 of Chapter 3, the following assessment is provided:

Matters for Consideration	Comment	Complies
<b>1. Character of the area</b> Is the proposal compatible with the existing or	It is considered the proposed signage is compatible with the existing and	YES

desired future character of the area or locality in which it is proposed to be located?	desired future character of the locality.	
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	The proposed signage is consistent with the theme for the site, and the signage is to identify the nature of the businesses operating within Hills Marketplace.	YES
<b>2. Special areas</b> Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	The proposed signage is not likely to detract from the amenity, or visual quality of the site. The signage is located within the site boundaries, and is not considered to impact upon any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas.	YES
<b>3. Views and vistas</b> Does the proposal obscure or compromise important views?	The proposed signage will not obscure, or comprise important views.	YES
Does the proposal dominate the skyline and reduce the quality of vistas?	The proposed signage is not of a scale that will will dominate the skyline, or reduce the quality of vistas.	YES
Does the proposal respect the viewing rights of other advertisers?	The proposed signage will not impact upon any viewing rights of other advertisers.	YES
<b>4. Streetscape, setting or landscape</b> Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	The scale, proportion of form of the proposed signage is consistent with the streetscape, setting, and landscape of the site.	YES
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The proposed signage contribute to the visual interest of the setting, and landscape. The proposed signage is located within the subject site, and therefore will not impact upon the streetscape.	YES
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	The proposed signage upgrades are considered to simplify the existing signage.	YES
Does the proposal screen unsightliness?	The proposed signage is not used as a visual screen, and does not screen unsightliness.	YES
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	The proposed signage will not protrude above buildings, or above structures or tree canopies.	YES
Does the proposal require ongoing vegetation management?	The proposed signage does not require ongoing vegetation management.	YES
<b>5. Site and building</b> Is the proposal compatible with the scale,	The proposed signage is compatible with the scale, proportion, and	YES

proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	characteristics of the site and building on which the proposed signage is to be located.	
Does the proposal respect important features of the site or building, or both?	It is considered the proposed signage will not impact upon any important features of the site or building.	YES
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The signage has been designed to respect the existing built form relationship, and complement its design by providing appropriate business identification.	YES
<b>6. Associated devices and logos with advertisements and advertising structures</b> Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	The proposed signage does not include any safety devices, or platforms.	YES
<b>7. Illumination</b> Would illumination result in unacceptable glare? Would illumination affect safety for pedestrians, vehicles or aircraft? Would illumination detract from the amenity of any residence or other form of accommodation?	The business identification signs will have a low level of illumination limited to the lettering, graphics and logos which will be controlled by a timer to turn on during the operating hours of the associated business.	YES
Can the intensity of the illumination be adjusted, if necessary?	The illumination of of the signage is low-level. In addition, given the significant distance from any residential accommodation it is not likely to result in adverse amenity impacts.	YES
Is the illumination subject to a curfew?	The signage will only be illuminated during the operating hours of the associated business.	YES
<b>8. Safety</b> Would the proposal reduce the safety for any public road, pedestrians or bicyclists?	The proposed signage would not reduce the safety for any public road, pedestrians or bicyclists given the signs are located within the site boundaries.	YES
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	The proposed signage would not reduce the safety for pedestrians including children, as there are no sightlines that are obscured as a result of the signage.	YES

Accordingly, the proposed signage is considered to be of a scale and design suitable for the locality. The proposal is therefore deemed to be consistent with the provisions of this chapter and its underlying objectives.

**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.

In response to the above requirements of Chapter 4, the applicant has submitted a Preliminary Environmental Site Investigation dated 8 November 2022 and prepared by Geo-Logix Pty Ltd. In its conclusion, the investigation states:

*The results of the assessment did not identify any conditions requiring the site to be remediated. The site is considered suitable for the proposed redevelopment.*

In this regard, Council is satisfied that the land can be made suitable for the purpose for which the development is proposed to be carried out and the recommendations included in the investigation are included as conditions in the Recommendation of this report.

### 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?	Yes
zone objectives of the LEP?	Yes

### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	8.5m	8.3m (Restaurant 1) 5.6m (Garden Centre 4) 4.0m (Rural Supplies) 3.9m (Garden Centre 3)	N/A	Yes

### Permissibility

The proposal seeks consent for a variety of uses, while also expanding upon existing uses within the site. The proposed *Food and Drink Premise* (restaurant 1), *Garden Centre* (garden centres 3 & 4), and *Landscaping Material Supplies* (rural supplies) are permissible uses pursuant to Schedule 1 of WLEP 2011, as discussed further in Section 2.5 of this report. Additionally, the proposal involves the minor expansion and reconfiguration of the existing flower shop. Since *Shops* are prohibited land use within the RU4 Primary Production Small Lots zone under WLEP 2011, this aspect has been elaborated upon in the 'Existing Use Rights' section of this report.

### Compliance Assessment

Clause	Compliance with Requirements
2.5 Additional permitted uses for particular land	Yes
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	N/A
5.3 Development near zone boundaries	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes



## Detailed Assessment

### **2.5 Additional permitted uses for particular land**

The site falls within Schedule 1 Additional Permitted Uses - Area 18 pursuant to the WLEP 2011 which reads:

*18 Use of certain land in the vicinity of Mona Vale and Myoora Roads, Terrey Hills*

*(1) This clause applies to land in the vicinity of Mona Vale and Myoora Roads, Terrey Hills, shown as "Area 18" on the Additional Permitted Uses Map.*

*(2) Development for the purposes of educational establishments, garden centres, hospitals, hotel or motel accommodation, places of public worship, recreation areas, recreation facilities (indoor), recreation facilities (outdoor), registered clubs and restaurants or cafes is permitted with consent.*

A "Garden Centre" is defined as:

*garden centre means a building or place the principal purpose of which is the retail sale of plants and landscaping and gardening supplies and equipment. It may include a restaurant or cafe and the sale of any of the following—*

- (a) outdoor furniture and furnishings, barbecues, shading and awnings, pools, spas and associated supplies, and items associated with the construction and maintenance of outdoor areas,*
- (b) pets and pet supplies,*
- (c) fresh produce.*

*Note: garden centres are a type of retail premises—see the definition of that term in this Dictionary.*

#### Comment:

The proposal's predominant use is appropriately defined as a garden centre and is therefore permitted with consent in the RU4 zone pursuant to Schedule 1. Furthermore, the proposal includes a new restaurant that incorporates an area for ancillary brewing equipment. This brewing component is viewed as supplementary to the restaurant's main function, given its small size and scale, and therefore does not constitute a large-scale production operation.

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

<b>Land use definition: WLEP 2011</b>	<b>Permitted or Prohibited</b>
<b>shop</b> means premises that sell merchandise such as groceries, personal care products, clothing, music, homewares, stationery, electrical goods or the like or that hire any such merchandise, and includes a neighbourhood shop and neighbourhood supermarket, but does not include food and drink premises or restricted premises	Prohibited

The proposal involves the minor expansion and reconfiguration of the existing flower shop. Under WLEP 2011, shops are a prohibited land use within the RU4 Primary Production Small Lots zone.

However, the application relies on existing use rights, as the shop was approved (Development Consent: DA2004/1012, dated 31 January 2006) prior to WLEP 2011 coming into force.

Refer to the detailed discussion under 'Existing Use Rights'.

As existing use rights have been established to apply to the land and the development, the proposal is therefore permissible with consent, notwithstanding the prohibition that applies in the zone.

The underlying objectives of the RU4 Primary Production Small Lots zone

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

Comment:

The retention of the existing shop is supported, and the retention of this land use is not in considered inappropriate adjacent to residential properties.

- *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 development will necessitate the employment of persons in a variety of different roles which is supported.

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

Comment:

The presence of a garden centre adjacent to various land uses on adjoining sites is not considered to generate any unreasonable conflicts - particularly noting such a relationship has existed for more than 20 years.

- *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:

It is not considered that the development will impact on long and short distance views.

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

Comment:

The proposal's enhanced landscaping design will complement the natural landscape including landform and vegetation, particularly along the Mona Vale Road frontage.

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

Comment:

The predominate uses proposed on site all fall within the definition of a garden centre and are permitted with consent in the zone. The intensity of the uses are considered to be acceptable and compatible within the immediate locality.

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

Comment:

The proposal involves substantial landscaping works to enhance the it's scenic qualities and complement the surrounding rural character.

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.

## 6.2 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 site is not mapped as being a potential location of Aboriginal or other relics.

*(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. 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	5.9m (Restaurant 1)	N/A	Yes
B4 Site Coverage	20% (4000m <sup>2</sup> )	19% (3833.1m <sup>2</sup> )	N/A	Yes
B5 Side Boundary Setbacks	7.5m - North	14.5m (Carpark)	N/A	Yes
	7.5m - South	2.5m (Underground bio-basin) 3.5m (Reversing bay) 7.5m (Restaurant 1)	66.7% 53.3% N/A	No No Yes
B9 Rear Boundary Setbacks	7.5m	5.0m (Carpark)	33.3%	No
B14 Main Roads Setback	30.0m (Buildings/signs)	30.0m (Restaurant 1) 10.8m (Signage)	N/A 64%	Yes No
	15.0m (Parking)	15.0m (Carpark)	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	70%	51.1% (10,216.7m <sup>2</sup> )	27%	No

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B4 Site Coverage	Yes	Yes
B5 Side Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	No	Yes
B14 Main Roads Setback	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	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	No	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

Clause	Compliance with Requirements	Consistency Aims/Objectives
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility and Adaptability	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D23 Signs	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

**B5 Side Boundary Setbacks**

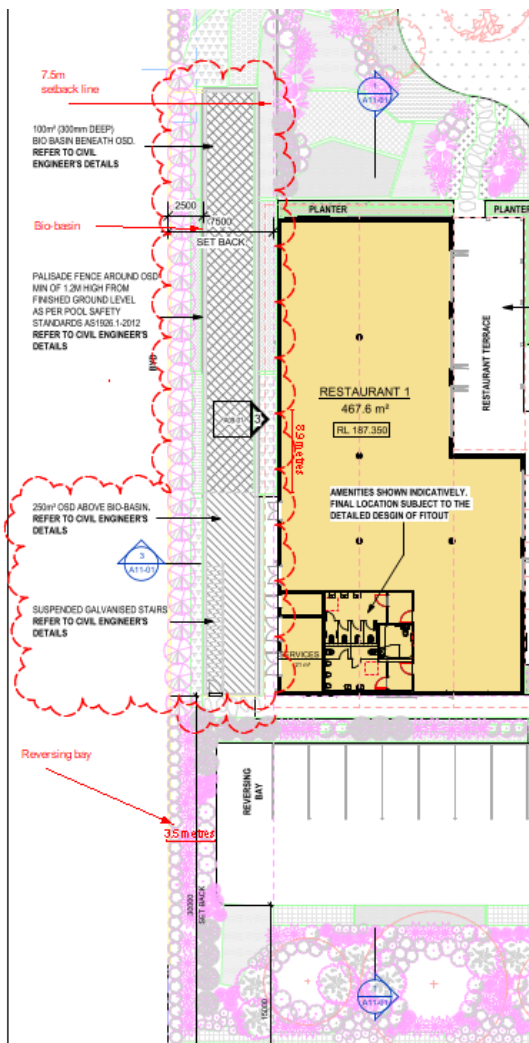
**Description of Non-compliance**

Clause B5 requires development to provide a minimum side setback of 7.5m.

The development provides a minimum side setback of 2.5m to the southern boundary, which results in a variation of 66.7% (i.e. 5.8m). The non-compliant element is an underground bio-basin, which is largely below existing ground level.

In addition, the proposed at-grade reversing bay provides a minimum southern side setback of 3.5m.

The figure below indicates the areas of non-compliance.



**Figure 3. Southern boundary side setback non-compliance**

### **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 involves a slight increase of deep soil landscaping by 6.7% (1,320.3m<sup>2</sup>).

The reduced side setback as amended is landscaped by trees and shrubbery to provide suitable screening. Therefore, the reduced setback does not limit the provision of opportunities for deep soil landscape areas.

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

#### **Comment**

The proposed encroachments within the southern side setback are consistent with the existing

and nearby developments by virtue of their location within the subject site's southwest corner. The non-compliant elements low-lying and are situated at a significant distance from the frontage and adjacent buildings. Furthermore, the amended landscape plan seeks to heavily vegetate the intervening area between these setbacks. As such, the structure will not appear visually dominant when viewed from the street or surrounding properties.

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

Comment

The non-compliant elements are low-lying such that it would not add to the scale and bulk of the development.

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

Comment

The site is adjoined by a function centre on No.48 Myoora Road that also has a reduced landscaped buffer due to the existing driveway. Notwithstanding, suitable separation between buildings is provided and the nature of the structures proposed within the side setback are not considered to give rise to any unacceptable amenity impacts.

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

Comment

The non-compliant elements are low-lying and will not obstruct existing views from or to public and private properties.

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.

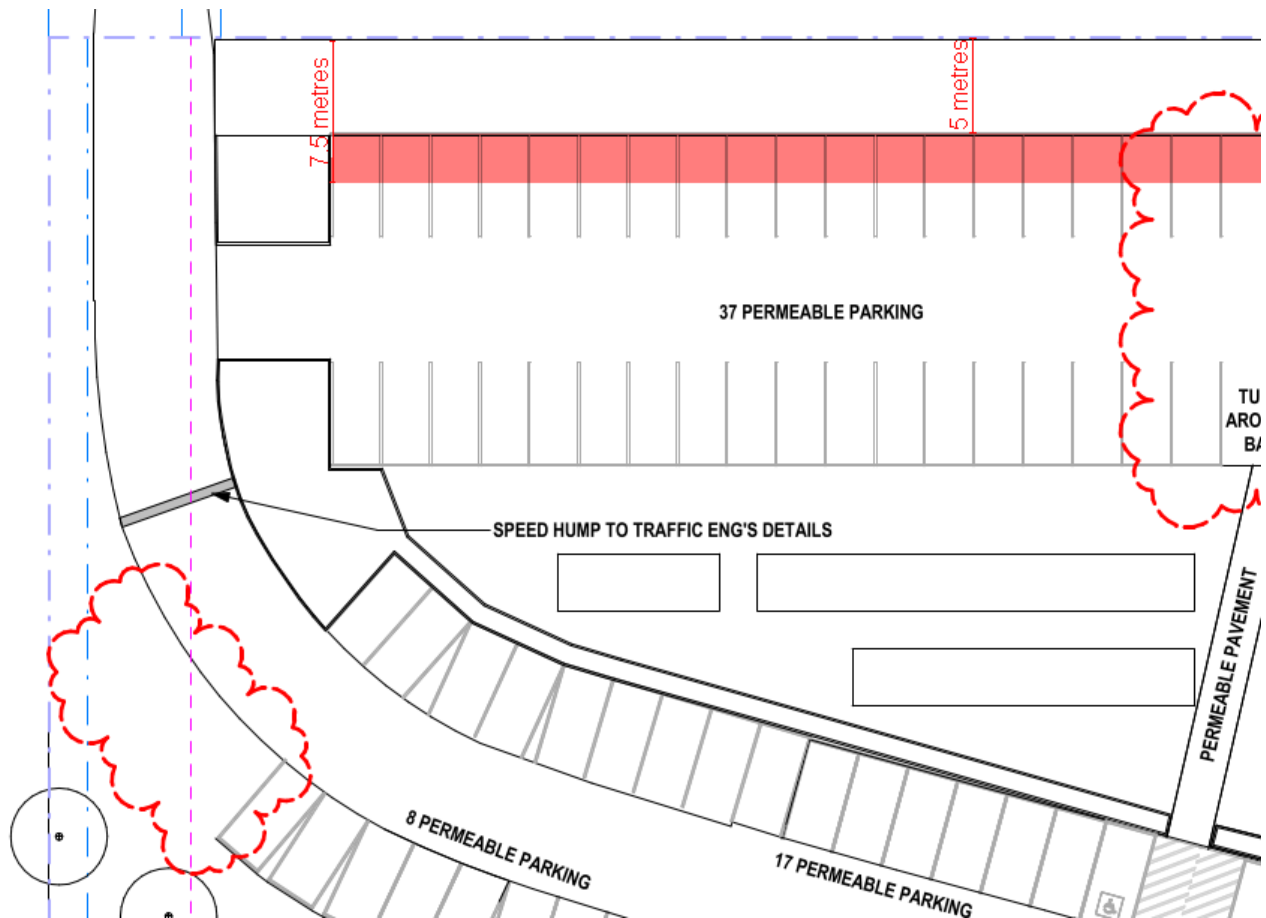
## **B9 Rear Boundary Setbacks**

### **Description of Non-compliance**

The proposed permeable parking area provides a minimum rear setback of 5.5m. The control requires a minimum rear setback 7.5m.

The non-compliance is diagrammatically displayed below:





**Figure 4. Rear setback non-compliance**

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 proposal provides a sufficient deep soil landscape area to the rear of the site.

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

Comment:

As above, the proposal being an at-grade uncovered car park represents a minor encroachment within the rear setback with the majority of areas being open and landscaped, which allows for a reasonable sense of openness within the rear yard.

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

Comment:

Adequate deep soil landscaping is proposed along the rear boundary, which will allow for suitable opportunities for the establishment of planting that is of a size and scale to screen the development from adjoining properties. In addition, the works are substantially set back from adjoining buildings, which mitigates any unacceptable visual and aural privacy impacts. Therefore, the proposal has been designed appropriately to preserve neighbourhood amenity.

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

Comment:

The proposal will not disrupt or compromise the existing visual continuity and pattern of buildings, rear gardens or landscape elements due to its minimal elevation and minor encroachment within the rear setback.

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

Comment:

As above, the proposal has been adequately designed and sited to maintain privacy between dwellings.

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

## **B14 Main Roads Setback**

### **Description of Non-compliance**

Part B14 requires that development shall be setback 30m from the boundary perpendicular to Mona Vale Road. The clause also includes an exception provision which permits ground level car parking between 15m and 30m from the road boundary, provided that views of the car park from the main road are screened by landscaping. The control also requires that no signs are to be erected in the 30m front setback area.

The proposal fails to achieve compliance with the numerical requirements of the control. A freestanding sign is proposed approximately 10.8m from the boundary.

Car parking is proposed within the area 15m to 30m from the subject site's southeast corner. This represents a significant improvement over the current car park, which is located just 4.9m from the frontage. The increased setback enables the establishment of substantial plantings to effectively screen the proposed car park.

### **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 a densely landscaped buffer between the development and the main road/s.*

Comment:

The proposal (as amended) has been designed to minimise carparking in the front setback to provide a densely landscaped buffer along the Mona Vale Road frontage. The proposed sign is located within an existing planter bed and will not require the removal of any significant vegetation. Overall, the proposal will maintain and enhance, through additional planting, the existing landscaped buffer provided between the development and Mona Vale Road.

- *To enhance the aesthetic quality of main roads.*

Comment:

As detailed above, the proposal will provide additional landscaping along the Mona Vale Road frontage which will enhance the aesthetic quality of Mona Vale Road.

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.

### **C3 Parking Facilities**

An assessment of the car parking provisions, having regard to the requirements under WDCP 2011 and the TfNSW Guide to Traffic Generating Development has been undertaken (See Traffic Referral for further comments).

In summary, the proposed development provides on-site car parking for 182 vehicles, which exceeds the parking requirement of 174 spaces for the proposed development.

### **D1 Landscaped Open Space and Bushland Setting**

#### **Description of Non-compliance**

Clause D1 requires a Landscaped Open Space (LOS) area of 70%.

The control provides the following advice, when measuring these area:

- a) Driveways, paved areas, roofed areas, tennis courts, car parking and stormwater structures, decks, etc, and any open space areas with a dimension of less than 2 metres are excluded from the calculation;*
- b) The water surface of swimming pools and impervious surfaces which occur naturally such as rock outcrops are included in the calculation;*
- c) Landscaped open space must be at ground level (finished); and*
- d) The minimum soil depth of land that can be included as landscaped open space is 1 metre.*

In this regard, the proposed permeable car parking and any open space areas with a dimension of less than 2.0m are excluded from this calculation. Consequently, the calculable area amounts to 51.1% (10,216.7 m<sup>2</sup>) of the total site area.

The proposal will increase the site's deep soil landscaped area by approximately 6.7% (1,320.3 m<sup>2</sup>),

from 44.4% (8,896.4 m<sup>2</sup>) to 51.1%.

### **Merit Consideration**

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

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

#### Comment:

Despite the breach of deep soil landscape open space requirements sufficient planting is retained and enhanced to enhance the streetscape along Mona Vale Road.

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

#### Comment:

The proposal will have no adverse impact on the topographical features and habitat for wildlife. Direct biodiversity impacts are limited to tree removal, involving the removal of 28 trees, of which 15 trees are exempt by species or height. The landscape plan proposes 15 replacement native trees, which will sufficiently offset any tree canopy loss. The proposal has also been reviewed by Council's Natural Environment departments, who raised no objections, subject to the recommended conditions of consent.

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

#### Comment:

The landscape proposal incorporates a variety of landscape treatments to the area of the development works, including tree and mass planting to the front setback zone of the property to soften the built form.

- *To enhance privacy between buildings.*

#### Comment:

The siting of the development will ensure there are no adverse visual and acoustic privacy impacts on neighbouring sites.

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

#### Comment:

The proposal will continue to provide appropriate outdoor areas that meet the needs of the patrons and staff.

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

Comment:

The proposal allows for sufficient space for the service function of the garden centre including equitable and safe access for patrons and staff.

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

Comment:

Council's Development Engineer has confirmed that there are no objections to the proposed water management subject to conditions.

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.

### **D3 Noise**

An Acoustic Assessment (dated June, 2023) of the proposed development has been carried out by Stantec and accompanies the development application.

The assessment has predicted noise impacts at the most sensitive boundary positions. The calculations show that all the relevant criteria (as provided for in the WDCP 2011 and EPA NSW Industrial Noise Policy) for noise emissions will be met.

The assessment concludes that *'the development and its proposed site are not expected to generate or be exposed to excessive noise or vibration'*.

Council's Environmental Health Officer has also reviewed the Acoustic Report and has raised no objections to approval, subject to conditions.

### **D8 Privacy**

#### **Merit Consideration**

The submission received raised privacy as a concern, particularly, with regard to the proposed restaurant located within the subject site's southeast corner.

Accordingly, the development is considered against the underlying Objectives of the Control as follows:

- *To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.*

Comment:

The proposed restaurant is single storey located 7.5m from the southern side boundary and approximately 21.0m from the nearest building, commonly known as Miramare Gardens. The

proposed restaurant and outdoor seating areas are orientated to the north, with limited openings directed toward the southern side boundary. In addition, the southern side setback is landscaped by trees and shrubbery to provide suitable screening.

The Acoustic Report dated June 2023 that accompanies the application demonstrates that the proposal will preserve an acceptable level of acoustic privacy. Council's Environmental Health Officer has also reviewed the Acoustic report. The Environmental Health officer has raised no objections to approval, subject to conditions, including additional certification of acoustic requirements.

Overall, the proposal as conditioned will provide a high level of visual and acoustic privacy for occupants and neighbours.

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

Comment:

The proposal includes a comprehensive landscape design that will enhance the presentation of the subject site within the urban environment and will provide a more scenic frontage in keeping with the rural character character of Mona Vale Road.

- *To provide personal and property security for occupants and visitors.*

Comment:

The proposal will ensure personal and property security will be maintained.

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.

## **D23 Signs**

A detailed assessment of the proposed signage has been provided earlier in the report in relation to Chapter 3 of SEPP (Industry and Employment) 2021.

The assessment indicates that the signage is appropriate and consistent with the provisions under SEPP (Industry and Employment) 2021.

Similarly, it is considered that the proposed signage is consistent with the objectives of Part D23 of the Warringah DCP 2011.

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

The proposal will not significantly affect 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**

### **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 \$97,295 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$9,729,500.

## **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, 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

## **PLANNING CONCLUSION**

In conclusion, the development application under review seeks consent for substantial alterations and additions to the existing Hills Flower Market (Garden Centre), inclusive of signage enhancements.

The application's referral to the Development Determination Panel (DDP) arises from the receipt of more than five submissions, predominantly objections, with one submission in support among the total of seven received. Concerns voiced primarily revolve around traffic and amenity impacts, specifically citing the loss of acoustic privacy, alongside considerations regarding permissibility, landscaped area, stormwater, and excavation.

Importantly, the proposal does not necessitate variations to principal development standards under the Warringah Local Environmental Plan (WLEP) 2011. Critical assessment issues, encompassing

concerns from submissions and non-compliance with various setback and landscaped area controls, have been addressed satisfactorily through the submission of amended plans.

Variations to the Development Control Plan (DCP) controls are deemed acceptable within the site's context, with significant enhancements proposed, including streetscape landscaping, building rationalisation, environmental management upgrades, and compliant parking solutions to accommodate additional floorspace/uses.

Concerns raised by Council regarding surplus parking spaces and inadequate landscaped area have been successfully mitigated through amendments, including surplus parking removal and incorporation of additional deep soil landscaping across the site.

The proposal entails the expansion and reconfiguration of tenancies within the existing Hills Flower Market, resulting in a reduction of Gross Floor Area (GFA) alongside the inclusion of a new detached restaurant. Despite this increase, the proposed use of the site aligns with zone objectives and broader locale considerations, as extensively discussed in the report.

Furthermore, the proposal seeks alterations to a *shop*, prohibited under the WLEP 2011 zoning, however, benefits from Existing Use Rights.

Following a comprehensive assessment, the proposal demonstrates consistency with the objectives of relevant standards and controls, with no substantial issues warranting refusal. Hence, this report concludes with a recommendation for the DDP to grant **APPROVAL** to the development application, contingent upon specified conditions.

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 DA2023/0803 for Alterations and additions to the existing Hills Flower Market site on land at Part Lot 1 DP 845094, 287 Mona Vale Road, TERREY HILLS, subject to the conditions printed below:

### Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

## GENERAL CONDITIONS

### 1. Approved Plans and Supporting Documentation

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan



A01-01	3	Demolition Plan - Site Plan	BN Group	24 May 2023
A01-02	3	Demolition Plan - Ground Floor Plan	BN Group	24 May 2023
A01-10	3	Demolition Plan - Roof Plan	BN Group	24 May 2023
A01-30	3	Demolition Plan - Elevations	BN Group	24 May 2023
A01-40	3	Demolition Plan - Sections	BN Group	24 May 2023
A02-01	9	Proposed - Site Plan	BN Group	22 April 2024
A02-20	8	Proposed - Ground Floor Plan	BN Group	22 April 2024
A02-21	6	Proposed - Mezzanine Plan	BN Group	22 April 2024
A02-40	6	Proposed - Roof Plan	BN Group	22 April 2024
A09-01	6	Proposed - Elevations	BN Group	22 April 2024
A11-01	6	Proposed - Sections	BN Group	22 April 2024
A60-01	3	Proposed - Signage	BN Group	24 May 2023
A70-01	3	Proposed - Material Sample Board	BN Group	24 May 2023

<b>Approved Reports and Documentation</b>			
<b>Document Title</b>	<b>Version Number</b>	<b>Prepared By</b>	<b>Date of Document</b>
Access Report	3	Morris Goding Access Consulting	26 May 2023
Arboricultural Impact Appraisal and Method Statement	A	Naturally Trees Arboricultural Consulting	15 May 2023
BCA Assessment Report	R3.0	Steve Watson and Partners	29 May 2023
Bushfire Protection Assessment	B213699 - 1	Australian Bushfire Protection Planners	20 October 2022
Detailed Site Investigation Report	V01	Geo-Logix	8 November 2022
Geotechnical Report	V03	Geo-Logix	24 November 2023
Noise Impact Assessment	004	Stantec	1 June 2023
Transport Assessment	07	Ason Group	15 June 2023

Waste Management Plan	-	Mainbrace Constructions	-
-----------------------	---	-------------------------	---

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

## 2. Compliance with Other Department, Authority or Service Requirements

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	5 June 2023
Transport for NSW	TfNSW Referral Response	17 July 2023

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au))

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

## 3. Approved Land Use

Nothing in this consent shall authorise the use of the proposed tenancies as detailed on the approved plans for any land use of the tenancy beyond the relevant definition, in accordance with the Dictionary of the Warringah Local Environmental Plan 2011, as follows:

- **Restaurant 1** - *restaurant or cafe means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided, but does not include the preparation and serving of food and drink to people that occurs as part of—*
  - (a) *an artisan food and drink industry, or*
  - (b) *farm gate premises.*
- **Garden Centre 3 & 4** - *garden centre means a building or place the principal purpose of which is the retail sale of plants and landscaping and gardening supplies and equipment. It may include a restaurant or cafe and the sale of any of the following—*
  - (a) *outdoor furniture and furnishings, barbecues, shading and awnings, pools, spas and associated supplies, and items associated with the construction and maintenance of outdoor areas,*
  - (b) *pets and pet supplies,*
  - (c) *fresh produce.*
- **Rural Supplies** - *rural supplies means a building or place used for the display, sale or hire of stockfeeds, grains, seed, fertilizers, veterinary supplies and other goods or materials used in farming and primary industry production.*

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

Reason: To ensure compliance with the terms of this consent.

**4. No Approval for any Unauthorised Signage**

No approval is granted under this Development Consent for any unauthorised signs other than exempt or signs identified on the approved plan (A60-01 - Rev 3). Any unauthorised signs must be removed or obtain the relevant approval for the erection or display of any such signs.

Reason: Control of signage.

**5. 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 Certifier 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 Certifier 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 Certifier 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.

## 6. 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) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) 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 an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) 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.
- (e) 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.

- (f) 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 \$250,000. The Long Service Levy is calculated on 0.25% 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.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) 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) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) 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.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (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 2018
  - (iv) Australian Standard AS1926 Swimming Pool Safety
  - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
  - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
  - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
  - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

## FEES / CHARGES / CONTRIBUTIONS

### 7. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$97,295.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$9,729,500.00.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

### 8. 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 are required 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, and details demonstrating payment are to be submitted to the Certifier 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.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au)).

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

## **BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE**

### **9. Amended Landscape Plan**

An amended Landscape Plan shall be issued to the Certifier prior to the issue of a Construction Certificate to include the following details:

- a) a landscape buffer along the north-eastern boundary for the full extent of the cultivation area i.e. from the north-western boundary junction to at least 3 metres beyond the last cultivation bed to the south-east. The buffer shall be a minimum width of 3 metres as measured perpendicular to the north-eastern boundary and include a range of low lying shrubs, medium high shrubs and screen planting,
- b) coordinate the plans with the planting schedule to capture all proposed species.

Certification shall be provided to the Certifier that these amendments have been documented.

Reason: Landscape amenity.

### **10. On-Site Stormwater Detention Details**

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by Henry & Hymas, drawing number 21F99\_DA\_C000 Rev 03, Dated 19/12/2023, C100 Rev 10, C101 Rev 15, C102 Rev 13 Dated 22/04/2024 and C200 Rev 04, C202 Rev 03 Dated 27/03/2024 and C201 Rev 11 Dated 30/04/24.

Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

1. Scour protection details between overflow weir of OSD basin and southern boundary.
2. Openings in southern boundary fencing to permit flows from overflow weir from OSD basin..
3. Pool style fencing around perimeter of OSD basin.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifier for approval 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.

11. **Erosion and Sediment Control Plan**

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities)
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected.
- North point and scale.

Details demonstrating compliance are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

Reason: Protection of the receiving environment.

12. **Detailed Design of Stormwater Treatment Measures - Major**

A certificate from a Civil Engineer, stating that the stormwater treatment measures have been designed in accordance with the Henry and Hymas Civil Engineering plans 21F99\_DA\_C202, 21F99\_DA\_C201, 21F99\_DA\_C101, 21F99\_DA\_C101 rev 15 22.04.2024 and Council's Water Management for Development Policy.

The certificate shall be submitted to the Certifier prior to the release of the Construction Certificate.

Reason: Protection of the receiving environment.

13. **Car Parking Standards**

The driveway/access ramp grades, access and car parking facilities must comply with the Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking. The dimensions of car parking bays and aisle widths in the car park are to comply with Australian/New Zealand Standard for Off-Street Parking AS/NZS 2890.1-2004.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifier prior to the issue of a construction certificate.

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

14. **Construction Traffic Management Plan**

As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by a TfNSW accredited person and



submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate.

Truck movements must be agreed with Council's Traffic Engineer prior to submission of the CTMP.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- Specify that, due to the proximity of the site adjacent to Terrey Hills Public School, no heavy vehicle movements or construction activities effecting vehicle and pedestrian traffic on Myoora Road are permitted in school zone hours (8:00am-9:30am and 2:30pm-4:00pm weekdays)
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments

- o such as patching at no cost to Council
- o The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
- o Proposed protection for Council and adjoining properties
- o The location and operation of any on site crane

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

#### **15. Building Code of Australia Fire Safety Requirements**

The Building Code of Australia fire safety requirements for the building as detailed and recommended in the BCA Assessment Report prepared by Steve Watson and Partners, dated 29/5/2023, Report No. 2021/1055, R3.0, including any required Performance Reviews, are to be considered as part of the assessment for any Construction Certificate. Details demonstrating compliance are to be provided to the Certifying Authority, prior to the issue of a Construction Certificate.

Reason: To ensure adequate provision is made for Health, Amenity, access and Fire safety for building occupant health and safety.

#### **16. Access and Facilities for Persons with Disabilities**

Access and facilities to and within the building are to be provided as required for Persons with a Disability in accordance with the Building Code of Australia and AS1428. In particular the DA Access Review prepared by MGAC dated 26/5/2023 is to be taken into consideration as part of the Construction Certificate assessment. Details are to be provided to the Certifying Authority prior to the issue of the Construction Certificate and be implemented prior to occupation of the building.

Reason: To ensure adequate provision is made for access to and within the building for Persons with a disability.

#### **17. Shoring of Council's Road Reserve (Temporary road anchors)**

Should the proposal require shoring to support an adjoining property or Council land, the Applicant shall provide the adjoining properties with engineering drawings, detailing the proposed shoring works for their consideration and approval.

Written approval from Council under Section 138 of the Roads Act 1993 is required if temporary ground anchors are to be used within Council’s road reserve. The Owner’s approval is to be submitted to the Principal Certifier 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.

**18. 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.

**19. External Finishes to Roof**

The external finish to the roof shall have a Solar Absorptance (SA) greater than 0.46 in accordance with the requirements of the BASIX Certificate to minimise solar reflections to neighbouring properties. Any roof with a metallic steel or reflective finish is not permitted.

Green roofs and areas where solar panels (PV) are installed are excluded from conforming to the SA range.

Details demonstrating compliance are to be submitted to the Certifier 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.

**20. Sydney Water "Tap In"**

The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifier demonstrating the works are in compliance with Sydney Water requirements.

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

- "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

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

**21. Waste and Recycling Requirements**

Details demonstrating compliance with Northern Beaches Waste Management Guidelines, are to be submitted to and approved by the Certifier prior to the issue of any Construction Certificate.

If the proposal, when compliant with the Northern Beaches Waste Management Guidelines, causes inconsistencies with other parts of the approval i.e. architectural or landscaped plans, a modification(s) to the development may be required.

Reason: To ensure adequate and appropriate waste and recycling facilities are provided.

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

22. **Project Arborist**

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged prior to any commencement of works on site to provide tree protection measures in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

a) The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, and in particular:

i) works and tree protection measures under section 4 Arboricultural Method Statement, Appendix 7, and Appendix 8.

b) All tree protection measures specified must:

i) be in place before work commences on the site, and

ii) be maintained in good condition during the construction period, and

iii) remain in place for the duration of the construction works.

The Project Arborist shall provide certification to the Certifier that all tree protection measures under AS4970-2009 have been satisfied, and the recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

Note:

Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: Tree protection.

23. **Tree Removal Within the Property**

This consent approves the removal of existing trees on the subject site as identified in the Arboricultural Impact Assessment, approved Plans, or as listed below:

a) tree 1 - *Acer palmatum*, trees 2 and 3 - *Nyssa sylvatica*, tree 5 - *Syzygium* sp., tree 10 *Betula pendula*, tree 12 - *Magnolia* sp., trees 14 and 15 - *Nyssa sylvatica*, tree 18 - *Hymenosporum flavum*, tree 20 - *Elaeocarpus reticulatus*, and trees 33, 34, and 35 - *Syzygium* sp.,

b) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised development works.

24. **Work Zones and Permits**

Prior to commencement of the associated works, the applicant shall obtain a Work Zone Permit where it is proposed to reserve an area of road pavement for the parking of vehicles associated with a construction site.

A separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane and a Roads and Maritime Services Work Zone Permit shall be obtained for State Roads.

Reason: To ensure Work zones are monitored and installed correctly.

25. **Road Occupancy Licence**

Prior to commencement of the associated works, the applicant shall obtain a Road Occupancy License from Transport Management Centre for any works that may impact on traffic flows on Mona Vale Road.

Reason: Requirement of TMC for any works that impact on traffic flow.

26. **Demolition Traffic Management Plan**

As a result of the site constraints, limited vehicle access and parking, a Demolition Traffic Management Plan (DTMP) shall be prepared by an suitably accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to commencing any demolition work.

Due to heavy traffic congestion throughout the area, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm.

The DTMP must:-

- Make provision for all construction materials to be stored on site, at all times.
- The DTMP is to be adhered to at all times during the project.
- Specify construction truck routes and truck rates. Nominated truck routes are to be distributed over the surrounding road network where possible.
- Provide for the movement of trucks to and from the site, and deliveries to the site. Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site is not permitted unless prior approval is granted by Council's Traffic Engineers.
- Specify that, due to the proximity of the site adjacent to Terry Hills Public School, no heavy vehicle movements or construction activities effecting vehicle and pedestrian traffic on Myoora Road are permitted in school zone hours (8:00am-9:30am and 2:30pm-4:00pm weekdays).
- Include a Traffic Control Plan prepared by an TfNSW accredited traffic controller for any activities involving the management of vehicle and pedestrian traffic.
- Specify that a minimum fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measures.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes, structures proposed on the footpath areas (hoardings, scaffolding or temporary shoring) and extent of tree protection zones around Council street trees.
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the DTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities. These communications must be documented and submitted to Council prior to work commencing on site.
- Specify spoil management process and facilities to be used on site.
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of demolition. At the direction of Council, the applicant is to undertake remedial treatments such as patching at no cost to Council.

The DTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS' Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council's Schedule of Fees and Charges and are to be paid at the time that the Demolition

Traffic Management Plan is submitted.

Reason: This condition is to ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems. The DTMP is intended to minimise impact of construction activities on the surrounding community, in terms of vehicle traffic (including traffic flow and parking) and pedestrian amenity adjacent to the site.

**27. Pre-Construction Dilapidation Report**

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifier prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of structures within 5.0 metres of proposed excavation and earthworks associated with the property listed below.

Property: 48 Myoora Road, Terry Hills (Part Lot 128 DP 752017)

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifier and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifier must be satisfied that the requirements of this condition have been met prior to commencement of any works. If access is denied, then no dilapidation report is required.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

## **DURING BUILDING WORK**

**28. Tree and Vegetation Protection**

a) Existing trees and vegetation shall be retained and protected, including:

- i) all trees within the site not approved for removal, including trees and vegetation nominated for retention on the approved Plans,
- ii) all trees and vegetation located on adjoining properties,
- iii) all trees and vegetation within the road reserve.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,

- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Principal Certifier,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
- ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

- c) The arboricultural works listed in a) and b) are undertaken and certified by an Arborist/Project Arborist as compliant to AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.

## 29. **Condition of Trees**

During the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to, or by seeking arboricultural advice from an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture during the works. In this regard all protected trees 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/Project 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.

30. **Wildlife Protection**

If construction activity associated with this development results in injury or displacement of a native mammal, bird, reptile or amphibian, a licensed wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife.

31. **Protection of Habitat Features**

All natural landscape features, including any rock outcrops, native vegetation and/or watercourses, are to remain undisturbed during the construction works, except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

32. **Road Reserve**

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

Reason: Public safety.

33. **Installation and Maintenance of Sediment and Erosion Controls**

Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan prepared prior to commencement of any other works on site.

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: Protection of the receiving environment.

34. **Implementation of Demolition Traffic Management Plan**

All works and demolition activities are to be undertaken in accordance with the approved Demolition Traffic Management Plan (DTMP). All controls in the DTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate TfNSW accreditation. Should the implementation or effectiveness of the DTMP be impacted by surrounding major development not encompassed in the approved DTMP, the DTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved DTMP is to be kept onsite at all times and made available to the accredited certifier or Council on request.

Reason: To ensure compliance and Council's ability to modify the approved Construction Traffic Management Plan where it is deemed unsuitable during the course of the project.

35. **Implementation of Construction Traffic Management Plan**

All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at



all times and all traffic management control must be undertaken by personnel having appropriate TfNSW accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

Reason: To ensure compliance of the developer/builder in adhering to the Construction Traffic Management procedures agreed and are held liable to the conditions of consent.

**36. Ongoing Management**

The applicant shall be responsible in ensuring that the road reserve remains in a serviceable state during the course of the demolition and building works.

Reason: To ensure public safety.

**37. Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

**38. Survey Certificate**

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier.

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

**39. Site filling - Virgin Excavated Natural Material (VENM)**

Where site fill material is necessary, fill materials must:

1. Be Virgin Excavated Natural Material (VENM) only, as defined in The Protection of the Environment Operations Act 1997.

2. Be free of slag, hazardous, contaminated, putrescibles, toxic or radioactive excavated material and soil, rock or similar material. Putrescibles and non-putrescibles solid waste (including demolition material) is not permitted.

The Applicant shall provide certification by a N.A.T.A. approved laboratory to the Principal Certifier for approval prior to importation of material.

Reason: To ensure protection of the natural environment.

40. **Waste Management During Development**

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

Details demonstrating compliance must be submitted to the Principal Certifier.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

41. **Requirement to Notify about New Contamination Evidence**

Any new information revealed during demolition works or excavation that has the potential to alter previous conclusions about site contamination or hazardous materials shall be immediately notified to the Council and the Principal Certifier.

Reason: To protect human health and the environment.

## BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

42. **Fire Safety Matters**

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and Fire and Rescue NSW.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of a part Occupation Certificate or Occupation Certificate. Each year the Owners must send to the Council and Fire and Rescue NSW, an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Parts 10, 11 & 12 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021.

43. **Hazardous Building Materials Survey**

A hazardous building materials survey is to be conducted by a suitably qualified and experienced person. The survey is to include a survey of hazardous building materials related to structures to be modified or demolished as part of this consent including but not limited to asbestos, lead, SMF and PCBs. Following the survey where hazardous materials or found, a Hazardous Building Materials Register is to be prepared for the premises providing recommendations for the safe management/removal of hazardous building material.

Reason: Protection of the environment, SEPP (Resilience and Hazards) 2021 compliance.

44. **Landscape Completion**

Landscape works are to be implemented in accordance with the approved amended

Landscape Plan(s), and inclusive of the following conditions:

- a) landscape works are to be contained within the legal property boundaries,
- b) all tree planting shall be a minimum pre-ordered planting size of 75 litres or as otherwise scheduled if greater in size; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
- c) tree, shrub and groundcover planting shall be installed as indicated on the approved Landscape Plan(s) including the required amendments,
- d) mass planting shall be installed in garden beds prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,
- e) where the property is certified Bush Fire Prone Land, any new planting may be managed in accordance with Planning for Bushfire Protection 2019.

Prior to the issue of an Occupation Certificate, details (from a landscape architect, landscape designer or qualified horticulturalist) shall be submitted to the Principal Certifier, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

**45. Condition of Retained Vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Principal Certifier, assessing the health and impact on all existing trees required to be retained on the approved Plans or as listed in the Arboricultural Impact Assessment, including the following information:

- a) compliance to any Arborist recommendations for tree protection generally and during excavation works,
- b) extent of damage sustained by vegetation as a result of the construction works,
- c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree and vegetation protection.

**46. No Weeds Imported On To The Site**

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan) are to be imported on to the site prior to or during construction works.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To reduce the risk of site works contributing to spread of Priority and environmental weeds.

**47. Certification for the Installation of Stormwater Treatment Measures**

A certificate from a Civil Engineer, who has membership to Engineers Australia and the National Engineers Register must be provided, stating that the stormwater treatment measures have been installed in accordance with approved construction certificate plan. The certificate must confirm that stormwater treatment measures are completed, online, in good condition and are not impacted by sediment. Vegetated measures must exhibit an 80 percent survival rate of plantings.

Rainwater tank to be a minimum of 8KL.

The certificate shall be submitted to the Principal Certifier prior to the release of an Occupation Certificate.

Reason: Protection of the receiving environment.

48. **Positive Covenant, Restriction as to User and Registration of Encumbrances for Stormwater Treatment Measures**

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the stormwater treatment measures in accordance with the standard requirements of Council, the manufacturer and as required by the Stormwater Treatment Measures Operation and Maintenance Plan.

A restriction as to user shall be created on the title over the stormwater treatment measures, restricting any alteration to the measures.

The terms of the positive covenant and restriction as to user are to be prepared to Council's standard requirements (available from Council) at the applicant's expense and endorsed by the Northern Beaches Council's delegate prior to lodgement with the Department of Lands. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user is to be submitted to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: To identify encumbrances on land, ensure ongoing maintenance, and ensure modification to the stormwater treatment measures is not carried out without Council's approval.

49. **Stormwater Treatment Measures Operation and Maintenance Plan**

An Operation and Maintenance Plan is to be prepared to ensure the proposed stormwater treatment measures remain effective.

The Plan must be attached to the Positive Covenant (and the community or strata management statement if applicable) and contain the following:

1. Detail on the stormwater treatment measures:
  - a) Work as executed drawings
  - b) Intent of the stormwater treatment measures including modelled pollutant removal rates
  - c) Site detail showing catchment for each device
  - d) Vegetation species list associated with each type of vegetated stormwater treatment measure
  - e) Impervious area restrictions to maintain the water balance for the site
  - f) Funding arrangements for the maintenance of all stormwater treatment measures
  - g) Identification of maintenance and management responsibilities
  - h) Maintenance and emergency contact information

2. Maintenance schedule and procedure - establishment period of one year following commissioning of the stormwater treatment measure:

- a) Activity description, and duration and frequency of visits

Additionally for vegetated devices:

- b) Monitoring and assessment to achieve an 80 percent survival rate for plantings

- c) Management of weeds, pests and erosion, with weed and sediment cover limited to a maximum of 5 percent of the total area of the stormwater treatment measure

3. Maintenance schedule and procedure - ongoing

- a) Activity description, and duration and frequency of visits

- b) Routine maintenance requirements

- c) Work Health and Safety requirements

- d) Waste management and disposal

- e) Traffic control (if required)

- f) Renewal, decommissioning and replacement timelines and activities of all stormwater treatment measures (please note that a DA may be required if an alternative stormwater treatment measure is proposed)

- g) Requirements for inspection and maintenance records, noting that these records are required to be maintained and made available to Council upon request.

Details demonstrating compliance shall be submitted to the Principal Certifier prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

#### 50. **Works as Executed Drawings - Stormwater Treatment Measures**

Works as Executed Drawings for the stormwater treatment measures must be prepared in accordance with Council's Guideline for Preparing Works as Executed Data for Council Stormwater Assets.

The drawings shall be submitted to the Principal Certifier prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

#### 51. **Signage and Linemarking - Internal**

A plan demonstrating:

1. appropriate signposting and linemarking of the entry and exit driveways to/from Mona Vale Road

2. Signposting of a No Parking restriction applying 6pm to 7pm Everyday throughout the 15 bay 90 degree parking areas denoted Zones 13 & 15 on Plan A100-20 DA-6 shall be submitted to Council's Traffic Engineer for endorsement with Council's approval provided to the Principal Certifier prior to the issue of any Occupation Certificate.

Reason: to prevent conflict between inbound and outbound traffic movements on the sites

Mona Vale Road frontage and ensure adequate space for trucks to turn on site.

**52. Loading and Service Vehicle Management Plan**

A Loading and Service Vehicle Management Plan shall be prepared by the applicant and submitted to Council's Traffic Engineer for review with an approval provided to the Principal Certifier prior to the issue of any Occupation Certificate.

The Plan will need to demonstrate how truck movements will be managed to ensure that ONLY deliveries/servicing by vehicles less than 8.8m in length will occur between the hours of 6am and 10pm with no truck movements by vehicles larger than 14.8m semi-trailers to occur at any time. The Plan to detail how the site will be managed to ensure that there will be no more than five small or medium rigid vehicles entering and exiting the site at any one time between the hours of 7am and 6pm and how safe servicing arrangements including waste collection will be undertaken without interrupting general traffic. Vehicle queuing on public road(s) is not permitted.

Reason: to ensure that truck movements are managed appropriately to minimise congestion and maximise safety for customers of the site.

**53. Disabled Parking Spaces**

Where disabled parking spaces are provided they must be in accordance with AS2890.6:2009.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of any Occupation Certificate.

Reason: To ensure compliance with Australian Standards.

**54. Shared Zone Bollard**

A bollard is to be provided at the shared zone between disabled spaces in accordance to Australian Standards AS2890.6:2009.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of any Occupation Certificate.

Reason: To ensure compliance with Australian Standards.

**55. Post-Construction Dilapidation Report**

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

- Compare the post-construction report with the pre-construction report,
- Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To maintain proper records in relation to the proposed development.

**56. Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**

The Applicant shall lodge the Legal Documents Authorisation Application with Council. The application shall include the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn in red on a copy of the approved drainage plan by registered surveyor), and Civil Engineers' certification.

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater disposal structures within this development consent. The terms of the positive covenant and restriction as to user are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgment with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user is to be submitted.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

**57. Sanitary Facilities prior to Occupation Certificate (OC) or Part Occupation**

Sanitary Facilities, prior to issue of an Occupation Certificate (OC) or Part Occupation shall comply with BCA for any operating business.

Reason: To ensure adequate sanitary facilities for any operating business.

**58. Plan of Management**

Prior to the issue of an Occupation Certificate, a Plan of Management is to be submitted to Council (Environmental Health) for approval .

Such plan shall include:

A. Measures necessary to comply with the operational measures stated in the Acoustic Assessment by Stantec (Australia) Pty Ltd (rev 004 dated 1.6.2023)

B. Measures to be taken in dealing with noisy patrons (particularly in the external areas) or vehicles on or leaving site at night time.

C. Sound levels from and music or any amplification being set by Stantec (Australia) Pty Ltd and managed by staff.

D. Actions to be taken should there be a blockage or failure (including power) of the macerator/pump to sewer system to ensure that any discharge of effluent does not occur on site or to any adjoining premises or public place. Such action/plan shall include an alarm system on site and if a significant fault, how operations will temporarily cease until resolved.

E. A register of complaints and actions (if necessary) taken by Management being maintained on site.

Reason: To ensure that wastewater is disposed of in a manner that is not harmful to the environment.

**59. Acoustic Requirements before issue of (OC) Occupation Certificate**

Certification of compliance with the assumptions, findings and recommendations Acoustic Assessment by Stantec (Australia) Pty Ltd (rev 004 dated 1.6.2023). The Plan of Management

is to incorporate measures to ensure noise nuisances are prevented.

Reason: To ensure acoustic measures are incorporated into the development.

60. **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 Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure bushland management.

61. **Garbage and Recycling Facilities**

All internal walls of the waste rooms shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

Waste room floors shall be graded and drained to an approved Sydney Water drainage system.

Waste rooms shall be clear of any other services or utilities infrastructure such as gas, electricity air-conditioning, plumbing, piping ducting or equipment.

Reason: To prevent pollution of the environment, provide a safe workplace for contractors and residents and to protect the amenity of the area.

62. **Waste Management Confirmation**

Prior to the issue of an Occupation Certificate, evidence / documentation must be submitted to the Principal Certifier that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

63. **Waste and Recycling Facilities Certificate of Compliance**

The proposal shall be constructed in accordance with the Northern Beaches Waste Management Guidelines.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure waste and recycling facilities are provided.

## ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

64. **Acoustic Requirements - On-going**

Compliance with the recommendations within the Acoustic Assessment by Stantec (Australia) Pty Ltd (rev 004 dated 1.6.2023) and any additional requirements at OC review stage.

Reason: To prevent a noise nuisance to any neighbouring receiver.

65. **Landscape Maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be



planted under this consent are to be mulched, watered and fertilised as required at the time of planting. If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved amended Landscape Plan(s) and any conditions of consent.

The approved landscaped area shall in perpetuity remain as planting under the development consent.

Reason: To maintain local environmental amenity.

**66. Maintenance of Stormwater Treatment Measures**

Stormwater treatment measures must be maintained at all times in accordance with the Stormwater Treatment Measure Operation and Maintenance Plan, manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

Vegetated stormwater treatment measures must maintain an 80 percent survival rate of plantings and limit weed cover to no more than 10 percent of the total area of the stormwater treatment measure.

Where replacement cartridges or other necessary components for the system become unavailable, an alternative system is required to be retrofitted into the development to achieve an equivalent pollutant reduction outcome. Evidence supporting the replacement must be retained on site and made available to Council as required.

Northern Beaches Council reserves the right to enter the property and carry out appropriate maintenance of the device at the cost of the property owner.

Reason: Protection of the receiving environment.

**67. Implementation of Loading & Service Vehicle Management Plan**

All loading and service vehicle ingress and/or egress activities are to be undertaken in accordance with the approved Loading and Service Vehicle Management Plan. Vehicle queuing on public road(s) is not permitted.

Reason: To allow for vehicular access.

**68. Plan of Management**

The approved Plan of Management is to be complied with on-going and updated as needed.

Reason: To ensure guidance for Staff and Management and to eliminate potential nuisances

**69. Hours of Operation**

The hours of operation of 'Restaurant 1' are to be restricted to:

- Sunday to Wednesday - 7am - 10pm
- Thursday to Saturday - 7am – 12am
- Public Holidays - 7am - 10pm

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

Reason: Information to ensure that amenity of the surrounding locality is maintained.

70. **Commercial Waste Collection**

Waste and recyclable material, generated by this premises, must not be collected between the hours of 10pm and 6am on any day.

Reason: To protect the acoustic amenity of surrounding properties.

71. **Loading And Service Vehicle Access**

1. That trucks accessing the development site be limited to vehicles up to 8.8m in length between the hours of 6am and 10pm.

2. Trucks in excess of 8.8m in length but of no more than 14.8m in length are only permitted to access the site to/from Myoora Road and only between the hours of 10pm and 6am

Reason: to minimise conflict between trucks and passenger vehicles/pedestrians