

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

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| <b>Application Number:</b> | DA2023/0278 |
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|-------------------------------------------|-----------------------------------------------------------------------------------------|
| <b>Responsible Officer:</b>               | Claire Ryan                                                                             |
| <b>Land to be developed (Address):</b>    | Lot 1 DP 949656, 3 Pavilion Street QUEENSCLIFF NSW 2096                                 |
| <b>Proposed Development:</b>              | Alterations and additions to a dwelling house including construction of a swimming pool |
| <b>Zoning:</b>                            | Warringah LEP2011 - Land zoned R2 Low Density Residential                               |
| <b>Development Permissible:</b>           | Yes                                                                                     |
| <b>Existing Use Rights:</b>               | No                                                                                      |
| <b>Consent Authority:</b>                 | Northern Beaches Council                                                                |
| <b>Delegation Level:</b>                  | DDP                                                                                     |
| <b>Land and Environment Court Action:</b> | No                                                                                      |
| <b>Owner:</b>                             | Fiona Turner                                                                            |
| <b>Applicant:</b>                         | Fiona Turner                                                                            |

|                                  |                                         |
|----------------------------------|-----------------------------------------|
| <b>Application Lodged:</b>       | 21/03/2023                              |
| <b>Integrated Development:</b>   | No                                      |
| <b>Designated Development:</b>   | No                                      |
| <b>State Reporting Category:</b> | Residential - Alterations and additions |
| <b>Notified:</b>                 | 27/03/2023 to 10/04/2023                |
| <b>Advertised:</b>               | Not Advertised                          |
| <b>Submissions Received:</b>     | 4                                       |
| <b>Clause 4.6 Variation:</b>     | 4.3 Height of buildings: 13.53%         |
| <b>Recommendation:</b>           | Approval                                |

|                                 |                 |
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| <b>Estimated Cost of Works:</b> | \$ 2,135,836.75 |
|---------------------------------|-----------------|

### EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a dwelling house.

The application is referred to the Development Determination Panel (DDP) due to the variation to the height of 13.53%.

Concerns raised in the objections relate to geotechnical stability with reference to the cliff location and a nearby site of Aboriginal heritage significance, and loss of light due to rear extensions. The plans originally submitted with the application included works beyond the coastal cliffs setback line and

beyond the rear building line of the existing dwelling house, including extension of the existing terraces, and construction of a new swimming pool. The plans were amended to remove these works (though the plans still include demolition of the existing swimming pool in the rear and minor extensions within the existing built-upon footprint) in response to the concerns raised. The plans are supported by an updated geotechnical report demonstrating acceptable risk with the associated works.

The critical assessment issues related to non-compliance with height of buildings, wall heights, setbacks, and side boundary envelope controls. The non-compliant elements are acceptable on merit as detailed throughout this report.

The 4.6 request for the non-compliance with height standard arises due to existing excavation, resulting in an existing ground level lower than the natural ground, and due to the existing building height. The proposal results in a 13.53% variation, reaching a maximum of 9.6 metres in height. Based on extrapolated natural ground levels, the height would be measured at a maximum of approximately 8.3 metres, which is compliant with the development standard.

This report concludes with a recommendation that the DDP grant approval to the development application, subject to conditions.

## **PROPOSED DEVELOPMENT IN DETAIL**

The proposal seeks consent for alterations and additions to the existing dwelling house, as follows:

- Lower ground alterations, including extension to the south-west (front) for the purpose of a car hoist, lift, kitchenette, living and dining room, laundry, gym, toilet, lift and stairs;
- Ground level reconfiguration and minor additions;
- First floor reconfiguration and minor additions;
- Construction of a roof terrace and garden; and
- Removal of the existing pool in the rear yard.

The plans originally submitted with the application included works beyond the coastal cliffs setback line and beyond the rear building line of the existing dwelling house, including extension of the existing terraces, and construction of a new swimming pool. The plans were amended to remove these works (though the plans still include demolition of the existing swimming pool in the rear and minor extensions within the existing built-upon footprint) in response to concerns raised about cliff stability and potential damage to an item Aboriginal heritage significance. The plans are supported by an updated geotechnical report demonstrating acceptable risk with the associated works. In accordance with the Community Participation Plan, the amended plans did not require public notification as they result in a lesser environmental impact than the original plans.

## **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 - 4.3 Height of buildings

Warringah Local Environmental Plan 2011 - 6.2 Earthworks

Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land

Warringah Development Control Plan - B1 Wall Heights

Warringah Development Control Plan - B3 Side Boundary Envelope

Warringah Development Control Plan - B5 Side Boundary Setbacks

Warringah Development Control Plan - B7 Front Boundary Setbacks

Warringah Development Control Plan - D8 Privacy

## SITE DESCRIPTION

|                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
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| <b>Property Description:</b>      | Lot 1 DP 949656 , 3 Pavilion Street QUEENSCLIFF NSW 2096                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Detailed Site Description:</b> | <p>The subject site consists of one allotment located on the eastern side of Pavilion Street, Queenscliff.</p> <p>The site is irregular in shape with a frontage of 18.29 metres along Pavilion Street and a maximum depth of 45.72 metres. The site has a surveyed area of 802.9m<sup>2</sup>.</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a three-storey detached dwelling house with swimming pool.</p> <p>The site is relatively level within the front yard, then steeply slopes down approximately 28 metres to the east (rear), by way of a cliff.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by multi-storey dwelling houses and residential flat buildings. To the east of the site is the ocean (Tasman Sea).</p> |

Map:



## SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

- DA2010/0682 for alterations and additions to a dwelling house and construction of a swimming pool and fencing was approved by Council staff on 5 November 2010.
- Mod2012/0182 for modification of Development Consent No. DA2010/0682 was approved by Council staff on 13 November 2012.
- DA2017/0726 for subdivision of one lot into two and alterations and additions to a dwelling house to create two semi-detached dwellings was withdrawn by the Applicant on 6 November 2017.

## 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                            | Warringah Development Control Plan applies to this proposal.           |

| Section 4.15 Matters for Consideration                                                                                                                                             | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
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| control plan                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| Section 4.15 (1) (a)(iia) – 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>Clause 29</u> of the EP&amp;A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information with regard to the geotechnical assessment and treatment of the site with reference to the cliff was requested and adequately provided by the Applicant on 14 August 2023.</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>Clauses 62 and/or 64</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</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 clause is not relevant to this application.</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><br/>The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b><br/>The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b><br/>The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |

| Section 4.15 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 | No submissions have been received in relation to this application.                                                  |
| Section 4.15 (1) (e) – the public interest                                             | No matters have arisen in this assessment that would justify the refusal of the application in the public interest. |

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 27/03/2023 to 10/04/2023 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 4 submission/s from:

| Name:                                             | Address:                                    |
|---------------------------------------------------|---------------------------------------------|
| Mr Robert John Callaghan<br>Pamela Anne Callaghan | 10 / 41 Ocean View Road FRESHWATER NSW 2096 |
| Mr Robert Douglas Winton                          | PO Box 768 FRESHWATER NSW 2096              |
| Mr Michael James Dover                            | 112 Crescent Road NEWPORT NSW 2106          |
| Ms Elyane Joy Messara                             | 9 Pavilion Street QUEENSCLIFF NSW 2096      |

The following issues were raised in the submissions:

- Concern about rock/cliff stability in consideration of the method of excavation used, the works beyond the coastal cliffs setback, and the nearby site of Aboriginal heritage significance.
- Concern that the excavation will encounter groundwater.
- Loss of light to 1/1 Pavilion Street due to rear extension works.

The above issues are addressed as follows:

### Rock/Cliff Stability

#### Comment:

The amended plans received on 14 August 2023 delete the works in the rear coastal cliffs setback area of the site. The proposed development will not extend any further seaward beyond the existing built-upon footprint. The proposal still includes removal of the existing pool, though does not propose a new pool. The amended plans are supported by an updated geotechnical report, demonstrating acceptably low risk in the context of the site. The amended plans have been reviewed by Council's Development Engineer, Coast & Catchments Team and Heritage Advisor, as well as the Aboriginal Heritage Office. All referral bodies are supportive of the amended development, subject to conditions of consent, which have been included in the recommendation of this report.

## Groundwater

### Comment:

The submitted geotechnical report confirms that the groundwater table will not be intersected by the lower ground floor excavation.

## Rear Extension Works

### Comment:

The amended plans received on 14 August 2023 delete the majority of the works in the rear portion of the site. The amendments to the rear include columns to the lower ground floor southern terrace and northern Sunroom/Bed 5, filling in of the central terrace area at the ground floor, and a 400 millimetre eastern extension of the existing terrace adjoining the Study at the ground floor. However, the proposed development does not extend any further seaward beyond the existing built-upon footprint.

## REFERRALS

| Internal Referral Body           | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|----------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Landscape Officer                | <p>The proposal is supported with regard to landscape issues.</p> <p>The application is assessed by Landscape Referral against Warringah Local Environmental Plan 2011 and the following Warringah Development Control Plan 2011 controls (but not limited to):</p> <ul style="list-style-type: none"> <li>• D1 Landscaped Open Space and Bushland Setting</li> <li>• E1 Preservation of Trees or Bushland Vegetation</li> </ul> <p>Some area of the front setback landscaped open space will be above the laundry/cellar below which therefore cannot be included in the landscaped open space calculations as the required soil depth is not met (as shown on the sections). The rear setback of the property is dominated by the coastal cliffs which can be included in the landscaped open space calculations, and as such with the inclusion of the proposed compliant landscaped open space in the front setback no concerns are raised with the total landscaped open space.</p> <p>Should the development application be approved, all neighbouring trees and vegetation shall be protected during works. A Landscape Plan shall be submitted prior to issuing a Construction Certificate in accordance with the requirements outlined in the conditions of consent. All on slab landscaping shall meet Council's minimum soil depth requirements.</p> |
| NECC (Bushland and Biodiversity) | The proposal seeks approval for alterations and additions to a dwelling house including construction of a swimming pool.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |

| Internal Referral Body      | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
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|                             | <p>The comments in this referral relate to the following applicable biodiversity controls:</p> <ul style="list-style-type: none"> <li>• Warringah DCP Clause E2 Prescribed Vegetation</li> <li>• Warringah DCP Clause E4 Wildlife Corridor</li> <li>• Warringah DCP Clause E5 Native Vegetation</li> <li>• Warringah DCP Clause E6 Retaining unique environmental features</li> </ul> <p>The site on which the proposed development would take place is highly disturbed and it is unlikely that native flora and fauna would be impacted. However, conditions will apply to ensure landscaping is compliant with WDCP Controls.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| NECC (Coast and Catchments) | <p><b>Original Comments (31 May 2023):</b></p> <p>The DA has been assessed in consideration of the:</p> <ul style="list-style-type: none"> <li>• Plans, reports and other documents submitted in support of the application;</li> <li>• Coastal Management Act 2016;</li> <li>• State Environmental Planning Policy (Resilience and Hazards) 2021; and</li> <li>• the coastal relevant provisions of Warringah LEP 2011 and Warringah DCP 2011.</li> </ul> <p><u>Coastal Management Act 2016</u><br/>The subject site has been identified as being within the coastal zone and therefore the Coastal Management Act 2016 is applicable to the DA.<br/>The proposed development is generally consistent with the objects, as set out under Part 1 Section 3 of the Coastal Management Act 2016.</p> <p><u>State Environmental Planning Policy (Resilience and Hazards) 2021</u><br/>The proposed development site has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience and Hazards) 2021 (RH SEPP). Hence, Divisions 3, 4 and 5 of the RH SEPP apply to this DA. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by BBF Town Planners, dated March 2023, the DA satisfies requirements under Divisions 3, 4 and 5 of the RH SEPP.<br/>As such, it is considered that the application does comply with the provisions of State Environmental Planning Policy (Resilience and Hazards) 2021, subject to conditions.</p> <p><u>Warringah LEP 2011 and Warringah DCP 2011</u><br/>The subject site is included in part as Area C (slopes greater than 25 degrees) on the Warringah Landslip Risk Map in Warringah LEP 2011.</p> |



| Internal Referral Body                          | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|-------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                 | <p>Part E, Section E10 Landslip Risk of Warringah DCP 2011 requires that "iii) For land identified as being in Area C or Area E: A geotechnical report, prepared by a suitably qualified and experienced geotechnical engineer/ engineering geologist, must be submitted with the development application.</p> <p>Also, a hydrological assessment of stormwater discharge and subsurface flow conditions, prepared by a suitably qualified geotechnical/ hydrological engineer, must be submitted with the development application.</p> <p>iv) When a geotechnical report is required to be submitted, (determined in accordance with i) to iii) above), the report must include a risk assessment of landslip in relation to both property and life. The risk assessment must have regard to any guidelines published by the Australian Geomechanics Society."</p> <p>A Preliminary Geotechnical Assessment by GK Geotechnics, dated 10 February 2022 has been submitted in support of the DA for a concept stage development only. The Report recommends that further investigations are required to be undertaken to assess the stability of problematic parts of the site. Further, the Geotechnical Assessment does not incorporate the Coastal Assessment Report by Royal HaskoningDHV, dated 1 March 2023, nor address its findings. A hydrological assessment of stormwater discharge and subsurface flow conditions must also be included.</p> <p>Until such time that the recommended further geotechnical assessment is undertaken and resubmitted as a Geotechnical Report in accordance with the requirements of Section E10 Landslip Risk, Council is unable to complete the assessment of this DA.</p> <p><b>Updated Comments (5 September 2023)</b></p> <p>An updated Geotechnical Assessment report by GK Geotechnics, dated 11 August 2023, has been submitted in support of the subject development proposal. The Assessment assigns risk levels to both life and property and recommends measures to reduce risks to appropriate levels in accordance with Australian Geomechanics Society guidelines and best practice engineering. As such the proposed development is considered to satisfy the requirements of the E10 Landslip Risk control subject to conditions.</p> |
| NECC (Development Engineering)                  | The proposed development is in Region 2. The site is a low level property and an existing system will be utilised for stormwater disposal. A geotechnical report has been provided. Vehicle crossing construction is proposed. I have no objections to the proposed development                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Parks, reserves, beaches, foreshore             | The property adjoins Harbord Headland Reserve downslope. All development works must ensure that surface sediment runoff and/or erosion is controlled, managed and contained within the site boundaries.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Strategic and Place Planning (Heritage Officer) | <b>HERITAGE COMMENTS</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|                                                 | Discussion of reason for referral                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |

| Internal Referral Body | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |    |                       |
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|                        | <p>This application has been referred as the site adjoins a heritage conservation area, being <b>Area C13 - Coastal Cliffs, southern side of Freshwater Beach to Queenscliff</b>, listed in Schedule 5 of Warringah LEP 2011. While this conservation area is mapped only outside private properties, the heritage conservation area listing is clearly intended to apply to the extent of the coastal cliffs in this area, whether on private or public land.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |    |                       |
|                        | Details of heritage items affected                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |    |                       |
|                        | <p>Details of this heritage item as contained within the heritage inventory, are:</p> <p><b>C13 - Coastal Cliffs, southern side of Freshwater Beach to Queenscliff</b></p> <p><u>Statement of Significance</u></p> <p>The Queenscliff-Freshwater headland cliffs have existence value as a major coastline promontory, protecting adjacent beaches and estuarine lagoon and providing dramatic landforms and viewing points. The Freshwater View Reserve on its northern face is a former landscaped garden with heritage significance. The headland’s associated rock platform is host to an ocean swimming bath on the Queenscliff side, and these combined with the cliffs’ high aesthetic qualities have a high level of community esteem.</p> <p><u>Physical Description</u></p> <p>The Queenscliff-Freshwater Cliffs are high, steep, and much sheared, with substantial talus deposits on the rock platform at their base. They are higher and steeper on their northern side, where they abut deep water, and lower and more benched on the Queenscliff side. This southern face of the headland has borne the brunt of the most severe storms, which usually come from the south-east. The ridgetop contains very little of the original heath cover, as the greater part of the ridge/crest has been built upon. At the base of the southern face of the headland is the outlet to the Manly Lagoon, separating it from North Steyne beach. A tunnel was constructed through the headland in 1908 making easy access between its northern and southern faces. A section of the northern (Freshwater) face of the headland was developed in the period 1910-1920 by Arthur Costin as an elaborate terraced garden and following acquisition by Council, has recently been re-landscaped to form Freshwater View Reserve. Most of the land on the top of the headland has been subdivided into lots of varying sizes, and many homes and apartment blocks have been built close to the cliff edge. This is well illustrated by the aerial photographs at the end of this inventory.</p> |    |                       |
|                        | Other relevant heritage listings                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |    |                       |
|                        | SEPP (Biodiversity and Conservation) 2021                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | No | Comment if applicable |
|                        | Australian Heritage Register                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | No |                       |

| Internal Referral Body | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |    |  |
|------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|--|
|                        | NSW State Heritage Register                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | No |  |
|                        | National Trust of Aust (NSW) Register                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | No |  |
|                        | RAIA Register of 20th Century Buildings of Significance                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | N0 |  |
|                        | Other                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | No |  |
|                        | Consideration of Application                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |    |  |
|                        | <p><b>Amended Plans and Geotechnical Assessment - 14 August 2023</b></p> <p>This application is for alterations and additions to an existing multi storey dwelling. Original plans included the construction of a new pool at the existing cliff edge, but this element has been deleted on the amended plans. A comprehensive geotechnical assessment by JKGeotechnics, dated 11 August 2023 was also submitted. It is noted that the sheer cliff in this location, commences on the property itself. Other works are largely confined to the Pavilion Street frontage, however involve excavation under the existing house.</p> <p>It is considered that these proposed works will not have an adverse visual impact upon the Coastal Cliffs heritage conservation area. Subject to all recommendations of the geotechnical assessment being adopted (to ensure cliff stability during construction), it is considered that this application will not have an impact upon the heritage significance of the Coastal Cliffs. The potential impact upon an Aboriginal heritage site located in a cave under the cliff will be assessed by the Aboriginal Heritage Office.</p> <p><b>Therefore, no objection is raised on heritage grounds and no conditions required.</b></p> <p><u>Consider against the provisions of CL5.10 of WLEP 2011:</u><br/> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? N/A<br/> Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? N/A</p> |    |  |

| External Referral Body                                    | Comments                                                                                                                                                                                                                                                                     |
|-----------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48 | 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. |
| Aboriginal Heritage Office                                | <b>Original Referral Comments:</b>                                                                                                                                                                                                                                           |

| External Referral Body | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                        | <p>An Aboriginal site that is in the process of being registered sits below the rock ledge at the rear of 3 Pavilion Road, Queenscliff. It is understood that there are Geotech concerns with the proposal and potential impacts to the cliff below which the Aboriginal site is situated. The Aboriginal Heritage Office (AHO) would like further advice from Council or specialists with structural engineering expertise in relation to potential risks to the shelter and whether any further Aboriginal heritage assessment is required. If there is significant risk that the proposed development may cause direct or indirect impact to the overhang, then the site may need to be assessed by an independent qualified Aboriginal heritage professional, including consideration for subsurface archaeological testing. If the site would be impacted, then an Aboriginal Heritage Impact Permit (AHIP) would be required from Heritage NSW and the DA would become an Integrated Development under the EP&amp;A Act. If it is considered that there would be no impact to the overhang and no impacts, then there would be no further Aboriginal heritage issues.</p> <p><b>Updated Referral Comments - Amended Plans:</b></p> <p>There are known Aboriginal sites in the area and one site is recorded on the current lot. An inspection of the property by the Aboriginal Heritage Office (23 November 2022) confirmed the location of the recorded site. No other Aboriginal sites or areas of potential were identified in the proposed development area. If the area around the recorded site is not impacted then the Aboriginal Heritage Office would not foresee any further Aboriginal heritage issues on the current proposal. Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.</p> <p><u>Assessing Officer's Comment:</u></p> <p>The amended plans received on 14 August 2023 demonstrate deletion of all proposed works beyond the existing rear building line, with the exception of demolition of the existing swimming pool. The amended plans and supporting geotechnical assessment have been reviewed by Council's Development Engineer and Heritage Advisor (in addition to the Aboriginal Heritage Office), who are supportive of the proposed works and no longer raise concern with respect to protection of the site of Aboriginal heritage significance. A condition of consent has been included in the recommendation with respect to uncovering of any items of significance during works.</p> |

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 (Building Sustainability Index: BASIX) 2004**

A BASIX certificate has been submitted with the application (see Certificate No. A483181\_02 dated 7 February 2023). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

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

##### Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

##### Comment:

The proposal was referred to Ausgrid who 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.

#### **SEPP (Resilience and Hazards) 2021**

##### Chapter 2 – Coastal Management

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

##### **Division 3 Coastal environment area**

##### **2.10 Development on land within the coastal environment area**

- 1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
- a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
  - b) *coastal environmental values and natural coastal processes,*
  - c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
  - d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
  - e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
  - f) *Aboriginal cultural heritage, practices and places,*
  - g) *the use of the surf zone.*

Comment:

The proposed development is supported by a geotechnical assessment report prepared by a suitably qualified geotechnical engineer, and a coastal report prepared by a suitably qualified coastal engineer. The recommendations of these reports are included in the recommended conditions of consent for this application. These reports demonstrate that the proposed works will not result in adverse impact to the matters at (1) (a) and (b). The proposed development is fully on private land and will not impact upon the matters at (1) (c), (d), (e) and (g). The proposed development has been reviewed by the Aboriginal Heritage Office, who is supportive of the proposed development, subject to conditions of consent. The proposed development is therefore satisfactory with respect to (1) (f).

- 2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
- a) *the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or*
  - b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
  - c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment:

Given the above, the proposed development is demonstrably designed, sited and will be managed to avoid an adverse impact to the matters at (1) .

## **Division 4 Coastal use area**

### **2.11 Development on land within the coastal use area**

- 1) *Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:*
- a) *has considered whether the proposed development is likely to cause an adverse impact on the following:*
    - i) *existing, safe access to and along the foreshore, beach, headland or rock*
    - ii) *platform for members of the public, including persons with a disability,*
    - iii) *overshadowing, wind funnelling and the loss of views from public places to*
    - iv) *foreshores,*
    - v) *the visual amenity and scenic qualities of the coast, including coastal headlands,*

*Aboriginal cultural heritage, practices and places,  
cultural and built environment heritage, and*

- b) *is satisfied that:*
- i) the development is designed, sited and will be managed to avoid an*
  - ii) adverse impact referred to in paragraph (a), or*
  - iii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or if that impact cannot be minimised—the development will be managed to mitigate that impact, and*
- c) *has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*

Comment:

The proposed development is fully located on private land, so does not cause adverse impact upon public foreshore, beach, headland or rock platform land. The proposed development does not cause adverse impact on persons with a disability as it does not alter public access. The proposed development is supported by shadow diagrams that demonstrate acceptable overshadowing impact. The proposed development is designed such that it does not increase wind funnelling or unreasonably impact upon view sharing to, from, or between public or private land. The proposed development has been reviewed by the Aboriginal Heritage Office, who is supportive of the proposed development, subject to conditions of consent. In this way, the proposed development is demonstrably designed, sited and will be managed to avoid adverse impact. The bulk and scale of the proposed development has been considered throughout this assessment.

## **Division 5 General**

### **2.12 Development in coastal zone generally—development not to increase risk of coastal hazards**

*Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.*

Comment:

The proposed development is demonstrably designed and sited so as not to cause increased risk of coastal hazard on the subject site or surrounding land.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

## **Chapter 4 – Remediation of Land**

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

## **Warringah Local Environmental Plan 2011**

|                                                                                                            |     |
|------------------------------------------------------------------------------------------------------------|-----|
| Is the development permissible?                                                                            | Yes |
| After consideration of the merits of the proposal, is the development consistent with:<br>aims of the LEP? | Yes |

|                             |     |
|-----------------------------|-----|
| zone objectives of the LEP? | Yes |
|-----------------------------|-----|

#### Principal Development Standards

| Standard             | Requirement | Proposed | % Variation | Complies |
|----------------------|-------------|----------|-------------|----------|
| Height of Buildings: | 8.5m        | 9.65m    | 13.53%      | No       |

#### Compliance Assessment

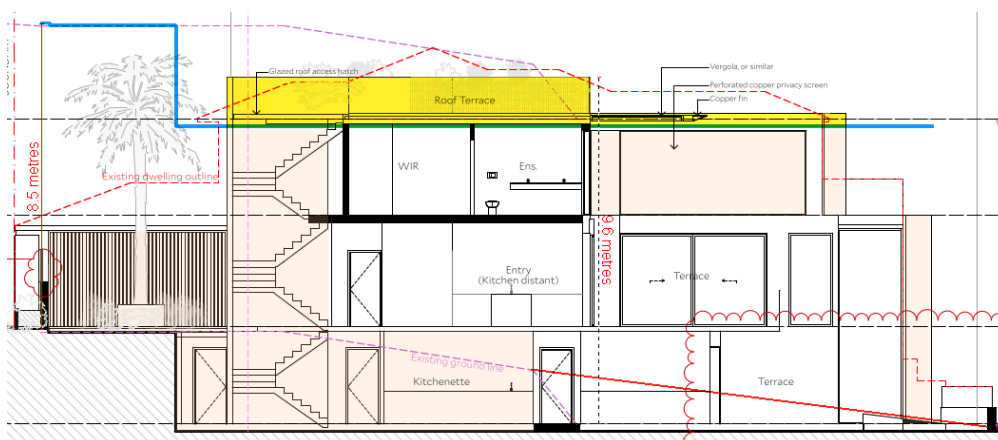
| Clause                                  | Compliance with Requirements              |
|-----------------------------------------|-------------------------------------------|
| 2.7 Demolition requires consent         | Yes                                       |
| 4.3 Height of buildings                 | No<br>(see detail under Clause 4.6 below) |
| 4.6 Exceptions to development standards | Yes                                       |
| 5.10 Heritage conservation              | Yes                                       |
| 6.2 Earthworks                          | Yes                                       |
| 6.4 Development on sloping land         | Yes                                       |

#### Detailed Assessment

#### 4.6 Exceptions to development standards

##### Description of non-compliance:

|                                      |                     |
|--------------------------------------|---------------------|
| Development standard:                | Height of buildings |
| Requirement:                         | 8.5m                |
| Proposed:                            | 9.6m                |
| Percentage variation to requirement: | 13.53%              |



Above: The extent of the building height non-compliance, marked in yellow.

##### Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 Height of Buildings has taken into



consideration the judgements contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

Clause 4.6 Exceptions to development standards:

*(1) The objectives of this clause are as follows:*

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

*(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Comment:

Clause 4.3 Height of Buildings is not expressly excluded from the operation of this clause.

*(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

*(4) Development consent must not be granted for development that contravenes a development standard unless:*

*(a) the consent authority is satisfied that:*

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Secretary has been obtained.*

**Clause 4.6 (4)(a)(i) (Justification) Assessment:**

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

Comment:

The Applicant's written request has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard. In doing so, the Applicant's written request has adequately demonstrated that compliance with the development

standard is unreasonable or unnecessary in the circumstances of this case as required by Clause 4.6(3)(a).

*(b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

Comment:

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

*'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'*

Section 1.3 of the EPA Act reads as follows:

*1.3 Objects of Act(cf previous s 5)*

*The objects of this Act are as follows:*

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The Applicant's written request argues, in part:

*"The proposal satisfies not only the relevant objectives of clause 4.3 for the HoB development standard but that the proposal also complies with the general aims of the WLEP 2011 and the objectives of zone R2, in which the site is located.*

*The application of the development standard is unnecessary because the proposal meets all the relevant objectives in the LEP in spite of the breach of the height of building by a maximum of 1035mm. If all the relevant objectives are met, the numerical development standard has no further work to do and is thus unnecessary. Additionally, as all the relevant objectives are met, it is also unreasonable to apply the development standard in this case, as the impact is negligible and arises only as a consequence of the slope along and across the site. Compliance with the relevant standard is, therefore, both unreasonable and unnecessary for the purposes of clause 4.6(3)(a) of the LEP.*

*As to whether or not compliance is unreasonable, the development is well below the required height from street level, and all views over the site are preserved with building height less than the of the existing dwelling.*

*The bulk and scale of the proposal are in keeping with the future character of the area to the extent that the planning controls reflect such character. Considering that the bulk and scale are largely consistent with dwellings in its vicinity, the proposal presents an acceptable design and demonstrates compliance with the first test under Wehbe...*

...

*One element of the breach of the height control results from the provision of a green roof. The proposal accords with planning changes underway at Northern Beaches Council, where the reduction of heat island effects has become an emerging concern.*

*Part of the breach arises from an existing, excavated lower ground floor. But for that excavation, the ground level would have been higher. It is well established that where the existing ground level has been excavated, it is reasonable to disregard the excavated level (Bettar v City of Sydney [2014] NSW LEC 1070).*

*The lack of any material or discernible adverse impact resulting from the minor non-compliance of the proposal with the height control must be counted as a positive environmental planning ground.*

*The non-compliance is less than that of the existing building, as shown in Figures 2 and 3, leading to positive outcomes for adjoining buildings in terms of views.*

*With respect to the impact on solar access, the proposal complies with the solar access provisions contained in the WDCP, meaning the height variation does not contribute to an unreasonable overshadowing impact.*

*The lack of any material or discernible adverse impact resulting from the minor non-compliance of the proposal with the height control must be counted as a positive environmental planning ground (Randwick v Micaul Holdings [2016] NSW LEC 7).*

*The considerations above provide strong environmental grounds in favour of justification of the contravention of the height of building standard to the small degree proposed."*

The Applicant's justification for the variation to the development standard is agreed with. The variation arises due to the calculation of building height being from existing ground level, whether disturbed or undisturbed, in accordance with recent NSW Land and Environment Court (*Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582). If the extrapolated natural ground level were used to calculate building height, the development would be compliant with the development standard. The proposed development is designed and sited so as not to result in any unreasonable impacts to the subject site or adjoining sites. The proposed development is consistent with the objectives of both the height of buildings development standard and the zone in which the subject site it located (as detailed below).

In this regard, the Applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying Objects (c) and (g) of Clause 1.3 of the EPA Act. Therefore, the Applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by Clause 4.6 (3)(b). Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3).

#### **Clause 4.6 (4)(a)(ii) (Public Interest) Assessment:**

Clause 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

*(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development*

*is proposed to be carried out*

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

**Objectives of Development Standard**

The underlying objectives of the standard of Clause 4.3 Height of Buildings are addressed as follows:

*a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*

Comment:

The existing dwelling house on the site presents a maximum building height of 10.4 metres. The proposed development reduces the maximum building height to 9.4 metres. The subject site is surrounded by a variety of residential development types, which present a variety of building heights. To the immediate south, 1 Pavilion Street is developed with a dwelling house of a similar height and scale to the proposed development. To the immediate north, at 5 Pavilion Street, the residential flat building house presents a significantly greater building height (approximately 10 metres higher). To the west across the road at 2A Pavilion Street is another residential flat building of greater height than the proposed development. There are a number of other dwellings along Pavilion Street of comparable or greater building height. This context demonstrates the proposed development is compatible with, and comparable to, the height and scale of surrounding and nearby development.

*b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*

Comment:

The proposed development, despite its non-compliance with the height of buildings development standard, is designed and sited so as to minimise visual impact, disruption of views, loss of privacy, and loss of solar access. The proposed development generally retains the existing building envelope, with the inclusion of a roof terrace being the predominant cause of the development standard breach. The location of the roof terrace is such that it does not result in disruption of views across the site from adjoining properties or the public domain. The roof terrace is established as acceptable with respect to visual privacy in the section of this report relating to Part D8 Privacy of the WDCP. The proposal results in a minor increase to overshadowing to the adjoining property to the south (1 Pavilion Street), though retains compliance with the requirements of Part D6 Access to Sunlight of the WDCP for the subject site and 1 Pavilion Street.

*c) to minimise adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*

Comment:

The proposed development provides an updated presentation for the existing dwelling house, thereby improving its visual quality in the streetscape. The proposed development is of a suitable design and style to complement, and minimise impact to, the scenic quality of the area.

*d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities,*

Comment:

The proposed development is most visible from Pavilion Street. The site is also visible from the ocean adjoining Freshwater Beach, though given the site's cliff-side setting, it would be viewed from the ocean at quite a distance. The presentation to the streetscape is improved by way of an architectural

update. The proposal does not include unreasonable bulk to the front setback are (as addressed in the section of this report relating to Part B7 Front Boundary Setbacks).

### **Objectives of the Zone**

The underlying objectives of the R2 Low Density Residential zone are:

*To provide for the housing needs of the community within a low density residential environment.*

Comment:

The proposed development retains the single residential use of the subject site.

*To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment:

Not applicable. The proposed development retains the single residential use of the subject site.

*To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Comment:

The proposed development retains the existing low density residential use and landscaped setting of the site.

### **Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:**

Clause 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS20-002 dated 5 May 2020, issued by the NSW Department of Planning & Infrastructure, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, and in accordance with correspondence from the Deputy Secretary on 2 November 2021, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the height of buildings development standard associated with a single dwelling house (Class 1 building).

### **6.2 Earthworks**

The objectives of Clause 6.2 Earthworks require development:

*(a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, and*

*(b) to allow earthworks of a minor nature without requiring separate development consent.*

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

*(f) the likelihood of disturbing relics*

Comment:

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

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

Comment:

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

## **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**

| <b>Built Form Control</b>                           | <b>Requirement</b>               | <b>Proposed</b>                         | <b>% Variation*</b> | <b>Complies</b> |
|-----------------------------------------------------|----------------------------------|-----------------------------------------|---------------------|-----------------|
| B1 Wall height                                      | Max. 7.2m                        | NW: Max. 8.2m                           | 13.8%               | No              |
|                                                     |                                  | SE: Max. 7.9m                           | 9.72%               | No              |
| B3 Side Boundary Envelope                           | 5m                               | NW: Max. 1.2m outside envelope          | 17.65%              | No              |
|                                                     |                                  | SE: Max. 2.9m outside envelope          | 49.15%              | No              |
| B5 Side Boundary Setbacks                           | NW: Min. 900mm                   | Lower Ground: 0m to new works           | 100%                | No              |
|                                                     |                                  | Ground: 0m                              | 100%                | No - Existing   |
|                                                     |                                  | First: 1.8m                             | -                   | Yes             |
|                                                     | SE: Min. 900mm                   | Lower Ground: 900mm to new works        | -                   | Yes             |
|                                                     |                                  | Ground: 0m to stairs                    | 100%                | No - Existing   |
|                                                     |                                  | Ground: 900mm to dwelling               | -                   | Yes             |
|                                                     |                                  | First: 900mm                            | -                   | Yes             |
| B7 Front Boundary Setbacks                          | Min. 6.5m                        | Garage: 0m                              | 100%                | No              |
|                                                     |                                  | Lower Ground: Garage: 0m Dwelling: 4.5m | 100%<br>30.8%       | No<br>No        |
|                                                     |                                  | Ground: Min. 5.9m                       | 9.23%               | No              |
|                                                     |                                  | First: Min. 5.9m                        | 9.23%               | No              |
| B13 Coastal Cliffs Setback                          | Max. 25m from front boundary     | Max. 24.7m                              | -                   | Yes             |
| D1 Landscaped Open Space (LOS) and Bushland Setting | Min. 40% (321.16m <sup>2</sup> ) | 49.5% (397.7m <sup>2</sup> )            | -                   | Yes             |

## Compliance Assessment

| Clause                                                                 | Compliance with Requirements | Consistency Aims/Objectives |
|------------------------------------------------------------------------|------------------------------|-----------------------------|
| A.5 Objectives                                                         | Yes                          | Yes                         |
| B1 Wall Heights                                                        | No                           | Yes                         |
| B3 Side Boundary Envelope                                              | No                           | Yes                         |
| B5 Side Boundary Setbacks                                              | No                           | Yes                         |
| B7 Front Boundary Setbacks                                             | No                           | Yes                         |
| B13 Coastal Cliffs setback                                             | Yes                          | Yes                         |
| C2 Traffic, Access and Safety                                          | Yes                          | Yes                         |
| C3 Parking Facilities                                                  | Yes                          | Yes                         |
| C4 Stormwater                                                          | Yes                          | Yes                         |
| C6 Building over or adjacent to Constructed Council Drainage Easements | Yes                          | Yes                         |
| C7 Excavation and Landfill                                             | Yes                          | Yes                         |
| C8 Demolition and Construction                                         | Yes                          | Yes                         |
| C9 Waste Management                                                    | Yes                          | Yes                         |
| D1 Landscaped Open Space and Bushland Setting                          | Yes                          | Yes                         |
| D2 Private Open Space                                                  | Yes                          | Yes                         |
| D3 Noise                                                               | Yes                          | Yes                         |
| D6 Access to Sunlight                                                  | Yes                          | Yes                         |
| D7 Views                                                               | Yes                          | Yes                         |
| D8 Privacy                                                             | Yes                          | Yes                         |
| D9 Building Bulk                                                       | Yes                          | Yes                         |
| D10 Building Colours and Materials                                     | Yes                          | Yes                         |
| D11 Roofs                                                              | Yes                          | Yes                         |
| D12 Glare and Reflection                                               | Yes                          | Yes                         |
| D14 Site Facilities                                                    | Yes                          | Yes                         |
| D20 Safety and Security                                                | Yes                          | Yes                         |
| D21 Provision and Location of Utility Services                         | Yes                          | Yes                         |
| D22 Conservation of Energy and Water                                   | Yes                          | Yes                         |
| E1 Preservation of Trees or Bushland Vegetation                        | Yes                          | Yes                         |
| E2 Prescribed Vegetation                                               | Yes                          | Yes                         |
| E4 Wildlife Corridors                                                  | Yes                          | Yes                         |
| E5 Native Vegetation                                                   | Yes                          | Yes                         |
| E6 Retaining unique environmental features                             | Yes                          | Yes                         |
| E7 Development on land adjoining public open space                     | Yes                          | Yes                         |
| E10 Landslip Risk                                                      | Yes                          | Yes                         |

## Detailed Assessment



## **B1 Wall Heights**

The proposed development includes maximum wall heights of 8.2 metres to the north-western elevation and 7.9 metres to the south-eastern elevation, where a maximum of 7.2 metres is allowable under this control. With regard to the consideration for a variation, the development is considered against the underlying objectives of the control as follows:

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

Comment:

The portions of the development that cause the breach to the wall height control are to the rear of the dwelling and are therefore not visible from the street.

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

Comment:

The proposed development, despite its non-compliance with the wall height control, is of a height below that would be consistent with a tree canopy level. However, it should be noted that there are no canopy trees in the vicinity of the subject site due to the general building lines and the lack of rear yards, being located on the cliff.

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

Comment:

Despite the non-compliance with the wall height control, the proposed development retains reasonable and equitable sharing of views, in that the siting of the dwelling house remains relatively unchanged.

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

Comment:

The proposed development is designed and sited so as not to result in any unreasonable impact on adjoining or nearby properties. The proposal results in a negligible increase to overshadowing to the south, and is designed to reasonably respect privacy with well-considered (or unchanged) windows and balconies.

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

Comment:

The proposed development includes gentle stepping down with the landform, in a similar way to the existing dwelling house. The proposal includes additional excavation at the lower ground level, though this does not contribute to the non-compliant wall heights.

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

Comment:

The proposal includes a flat roof so as to incorporate a roof terrace. This is innovative design in that it allows for provision of private open space for the site, given the topographical constraints to the rear yard (being a cliff face), where private open space would ordinarily be provided.

## **B3 Side Boundary Envelope**

The proposed development includes breaches to the north-western and south-eastern side boundary envelopes of maximum 1.2 metres and 2.9 metres, respectively. With regard to the consideration for a variation, the development is considered against the underlying objectives of the control as follows:

*To ensure that development does not become visually dominant by virtue of its height and bulk.*

Comment:

The proposed development generally retains the existing building envelope, with a reconfiguration of the upper level walls, which increases the development's numerical non-compliance with the side boundary setback control. The proposal is generally compliant with the side setback controls, with non-compliant elements remaining unchanged, or being acceptable on merit. In this way, the breaches to the side boundary envelope control is generally due to the site's sloping topography. The resultant bulk and scale does not create unreasonable visual dominance to adjoining properties, and is as anticipated for this locality.

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

Comment:

The proposed development is designed and sited so as not to result in any unreasonable impact on adjoining or nearby properties. The proposal results in a negligible increase to overshadowing to the south, and is designed to reasonably respect privacy with well-considered (or unchanged) windows and balconies.

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

Comment:

The proposed development includes gentle stepping down with the landform, in a similar way to the existing dwelling house. The proposal includes additional excavation at the lower ground level, though this does not contribute to the non-compliant side boundary envelope.

## **B5 Side Boundary Setbacks**

The existing development includes some non-compliant elements, though these are not exacerbated. The proposed development introduces a new non-compliant side setback element, with the inclusion of new works at the lower ground level immediately at the north-western boundary. 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 new non-compliant element is located in the same place as the existing garage, so does not remove any deep soil area. The proposed development remains compliant with the required landscaped area.

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

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

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

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

Comment:

The new non-compliant built element is set below the ground level, so does not result in any visual dominance or additional bulk and scale. The non-compliant element does not impact upon privacy, amenity or solar access, and does not result in any obstruction of views.

## **B7 Front Boundary Setbacks**

The proposed development introduces variations to the front boundary setback control, where 6 metres is the minimum required by this control. The non-compliant elements include:

- a double garage at the ground level (with car hoist below at the lower ground) immediately at the front boundary,
- the lower ground level of the dwelling 4.5 metres from the front boundary, and
- the ground and first floors 5.9 metres from the front boundary.

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

*To create a sense of openness.*

Comment:

The proposed development is set behind the existing 2.3 metre front fence, so the non-compliant elements are generally not visible from the street and do not impact upon the sense of openness from the street. From inside the property, the proposed development is not vastly different to the existing dwelling house with reference to openness in the front yard.

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

Comment:

Pavilion Street is generally significantly developed with built elements extending into the front setback areas commonly along the street. The proposed development is consistent with and complementary to the existing pattern of buildings and landscape elements along the street.

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

Comment:

The proposed development is set behind the existing 2.3 metre front fence. In this way, a significant portion of the development is obscured from view. The proposed development provides an updated presentation to the dwelling house, which enhances and contributes to the visual quality of the streetscape.

*To achieve reasonable view sharing.*

Comment:

The proposed development retains reasonable and equitable view sharing, despite the elements that are not compliant with this control.

## **D8 Privacy**

The proposed development includes a rooftop terrace. Given this inclusion, the development is considered against the underlying objectives of this privacy 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 rooftop terrace is centrally located on the upper level of the altered dwelling house. The terrace is set 3.4 metres from the north-western side boundary, and 2.9 metres from the south-eastern side boundary. In order to provide a suitable design and amenity response, a condition of consent has been included in the recommendation of the report reducing the size of the roof terrace to provide setbacks of 6 metres to both the north-western and south-eastern side boundaries. This provides suitable separation and amenity to adjoining properties while allowing a place of outdoor recreation for occupants of the subject site. While the terrace is an area of outdoor recreation, the modified terrace is suitable with respect to privacy given the context of the subject site and adjoining sites. The location of the development on a cliff face lends significant valuable beach, ocean and headland views to the site and adjoining properties, across side and rear boundaries. To enable this, very little in the way of boundary fencing and privacy features are provided across these sites. That is to say, as it currently stands, the sites promote overlooking for the benefit of views. To the north of the site, 5 Pavilion Street is developed

with a residential flat building. In this way, the subject site is overlooked, rather than doing the overlooking. To the south, 1 Pavilion Street includes a comparable terrace to that in the proposal, as modified by the recommended condition of consent.

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

Comment:

The proposed roof terrace is innovative design in that it allows for provision of private open space for the site in a suitable location, given the topographical constraints to the rear yard (being a cliff face), where private open space would ordinarily be provided.

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

Comment:

As modified by the recommended condition of consent, the inclusion of the rooftop terrace does not adversely impact upon the security of the occupants and visitors for the subject site and adjoining sites.

## **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 \$21,358 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,135,837.

## **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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

- a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
- b) There are sufficient environmental planning grounds to justify the contravention.

2) The proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

## **PLANNING CONCLUSION**

This proposal, for alterations and additions to a dwelling house has been referred to the Development Determination Panel (DDP) due to the variation to the height of buildings development standard of 13.53%.

The concerns raised in the objections have been addressed and resolved by amended plans and further geotechnical assessment, demonstrating acceptable risk.

The critical assessment issues related to non-compliance with height of buildings, wall heights, setbacks, and side boundary envelope controls. The non-compliant elements are acceptable on merit as detailed throughout this report.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.

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

## **RECOMMENDATION**

That Northern Beaches Council as the consent authority permits a contravention of Clause 4.3 Height of Building development standard pursuant to clause 4.6 of the WLEP 2011, as the Applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2023/0278 for Alterations and additions to a dwelling house including construction of a swimming pool on land at Lot 1 DP 949656, 3 Pavilion Street, QUEENSCLIFF, 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     |
| 338_DA_111     | C               | Site Plan          | Collins and Turner | 11 August 2023   |
| 338_DA_131     | C               | Excavation Plan    | Collins and Turner | 11 August 2023   |
| 338_DA_140     | C               | Lower Ground Floor | Collins and Turner | 11 August 2023   |
| 338_DA_141     | C               | Ground Floor       | Collins and Turner | 11 August 2023   |
| 338_DA_142     | C               | First Floor        | Collins and Turner | 11 August 2023   |
| 338_DA_143     | C               | Roof Terrace       | Collins and Turner | 11 August 2023   |
| 338_DA_201     | C               | Elevations         | Collins and Turner | 11 August 2023   |
| 338_DA_202     | C               | Elevations         | Collins and Turner | 11 August 2023   |
| 338_DA_310     | C               | Sections           | Collins and Turner | 11 August 2023   |
| 338_DA_311     | C               | Sections           | Collins and Turner | 11 August 2023   |
| SW01           | B               | Stormwater Plan    | Hyve Designs       | 22 December 2022 |
| SW02           | B               | Stormwater Plan    | Hyve Designs       | 22 December 2022 |

|      |   |                            |              |                  |
|------|---|----------------------------|--------------|------------------|
| SW03 | B | Stormwater Plan            | Hyve Designs | 22 December 2022 |
| SW04 | B | Stormwater Plan            | Hyve Designs | 22 December 2022 |
| SW05 | B | Stormwater Details         | Hyve Designs | 22 December 2022 |
| SE01 | B | Sediment & Erosion Plan    | Hyve Designs | 22 December 2022 |
| SE02 | B | Sediment & Erosion Details | Hyve Designs | 22 December 2022 |

| Approved Reports and Documentation |                |                  |                  |
|------------------------------------|----------------|------------------|------------------|
| Document Title                     | Version Number | Prepared By      | Date of Document |
| BASIX Certificate No. A483181_02   | -              | Efficient Living | 7 February 2023  |
| Geotechnical Assessment            | 34660AFrpt     | JK Geotechnics   | 11 August 2023   |

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

In the event of any inconsistency with 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                                | 2023/221817 Ausgrid Referral Response | 5 April 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. **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.

#### 4. **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 sewerred areas or managed on-site in unsewerred areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

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

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

## **FEES / CHARGES / CONTRIBUTIONS**

### **5. Policy Controls**

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$21,358.37 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 \$2,135,836.75.

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.

### **6. 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**

**7. Landscape Plan**

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

- i) the front setback landscaped open space on deep soil, to the south of the pedestrian entry, shall be used for growing plants, lawn or trees, but shall not include hard paved area,
- ii) proposed planting scheme for the roof terrace,
- iii) the roof terrace planter area, adjacent to the southern boundary, shall include species capable of attaining a height of 800mm.

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

Reason: Landscape amenity.

**8. On Slab Landscape Works**

Details shall be submitted to the Principal Certifier prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided. Landscape treatment details shall be submitted to the Principal Certifier prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, and services connections.

The following soil depths are required to support landscaping:

- i) 300mm for groundcovers, perennials, and grasses,
- ii) 600mm for shrubs.

Design certification shall be submitted to the Certifier by a qualified Structural Engineer, that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

Reason: To ensure appropriate soil depth for planting and secure waterproofing and drainage is installed.

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

The applicant is to demonstrate how stormwater from the new development within this consent shall be disposed of to an existing approved system or in accordance with Northern Beaches Council's "Warringah Water Management Policy PL 850" in particular the Stormwater Drainage from Low Level Properties Technical Specification. Details demonstrating that the existing approved system can accommodate the additional flows or compliance with the Northern Beaches Council's "Warringah Water Management Policy PL 850" are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

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

**10. Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**

The recommendations identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the construction certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

**11. Vehicle Crossings Application**

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing a maximum of 4 metres wide on the kerb line and a maximum of 6 metres wide on the property boundary in accordance with Northern Beaches Council Standard Drawing A4/3330/3 NL in accordance with Section 138 of the Roads Act 1993.

Note, driveways are to be in plain concrete only.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

A Council approval is to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

**12. Amendments to the Approved Plans**

The proposed roof terrace shown on the plan titled Roof Terrace Drawing Number 338\_DA\_143 Revision C dated 11 August 2023 is to be reduced in size so as to be set 6 metres from the north-western and south-eastern side boundaries. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development.

**13. Structural Adequacy and Excavation Work**

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

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

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

Reason: To provide public and private safety.

**14. 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 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.

**15. Pre-commencement Dilapidation Report - Public Land**

The applicant must prepare and submit a pre-commencement dilapidation report providing an accurate record of the existing condition adjoining public property and public infrastructure (including roads, gutter, footpaths, etc). A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties.

The pre-construction / demolition dilapidation report must be submitted to Council for written approval and the written approval is then to be submitted to the Certifier prior to the issue of the Construction Certificate and the commencement of any works including demolition.

Note: A dilapidation report can comprise of video footage and photos of adjacent public infrastructure and relevant structures on adjoining properties.

Reason: Protection of adjoining properties and Council's infrastructure during construction.

**16. Coastal Bluff Engineering Assessment Implementation**

The advice and recommendations contained in the approved Coastal Engineering Assessment report prepared by Haskoning Australia PTY LTD, dated 1 March 2023, must be addressed as necessary through the Geotechnical Risk Management Report prepared in support of the development application and must be incorporated as required into construction plans and structural specifications for the development.

Reason: To ensure potential hazards associated with development on a Coastal Bluff are minimised.

**17. Engineers Certification of Plans**

The structural design shall be prepared by and each plan/sheet signed by, a registered professional civil or structural engineer with chartered professional status (CP Eng) who has an appropriate level of professional indemnity insurance and shall be submitted to the Certifier prior to the release of the Construction Certificate.

Reason: To ensure structural engineering is prepared by an appropriately qualified professional

**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 Certifier prior to the issue of the Construction Certificate.

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

**19. 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.

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

### **20. Pre-Construction Dilapidation Report - Adjoining Properties**

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):

- 1 Pavilion Street, Queenscliff
- 5 Pavilion Street, Queenscliff

The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

The dilapidation reports are to be prepared by a suitably qualified person. Copies of the reports 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 reports 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.

### **21. Public Liability Insurance - Works on Public Land**

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

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

**22. Geotechnical Hazards**

The subject property is located within a Potential Geotechnical Landslip Hazard area. Due to the works proposed, the additional geotechnical assessments and investigations recommended in the Geotechnical Assessment report prepared by GK Geotechnics, dated 11 August 2023, are required to be completed prior to the commencement of works.

Reason: To ensure that the proposed works will not have any detrimental impacts within the potential geotechnical landslip hazard area or on environmentally or culturally sensitive areas.

**23. Installation and Maintenance of Sediment and Erosion Control**

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site 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 the site is sufficiently stabilised with vegetation.

Reason: To protect receiving waters from the effects of sedimentation and erosion from the site.

## **DURING BUILDING WORK**

**24. Protection of Rock and Sites of Significance**

All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.

Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: Preservation of significant environmental features.

**25. 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/Project 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.

## 26. **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.

## 27. **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.

28. **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.

29. **Protection of Council's Public Assets**

Any damage to Council's public assets shall be made good by the applicant, and/or the contractor, to the satisfaction of Council.

Council's public assets include, but is not limited to, the following: road, kerb and gutters, crossovers, crossings, paths, grass verge, open space and associated elements such as furniture, recreational facilities and the like, within the meaning of the Local Government Act 1993.

Existing trees shall be protected in accordance with AS4970-2009 Protection of Trees on Development Sites, with particular reference to Section 4, with no ground intrusion into the tree protection zone and no trunk, branch nor canopy disturbance.

Reason: To protect and/or restore any damaged public asset.

30. **Geotechnical Requirements**

All recommendations (if any) included in the Geotechnical Report referenced in Condition 1 of this consent are required to be complied with during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

31. **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.

32. **Property Boundary Levels**

The Applicant is to maintain the property boundary levels. No approval is granted for any change to existing property alignment levels to accommodate the development.

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

Reason: To maintain the existing profile of the nature strip/road reserve.

**33. Stockpiling Materials**

During construction, all construction materials, waste and debris associated with works are to be contained at source, covered and must be within the construction area. All waste and debris are to be removed off site and disposed of according to the approved Waste Management Plan and applicable regulations. The property is to be kept clean and any building waste and debris removed as frequently as required to ensure no materials enter receiving waters.

Reason: To ensure pollution control measures are effective to protect the aquatic habitats within receiving waters throughout the construction period.

**34. Aboriginal Heritage**

If in undertaking excavations or works any Aboriginal site or object is, or is thought to have been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Officer for Northern Beaches Council, and the Cultural Heritage Division of the Department of Planning and Environment.

Any work to a site that is discovered to be the location of an Aboriginal object, within the meaning of the National Parks and Wildlife Act 1974, requires a permit from the Director of the Department of Planning and Environment.

Reason: Aboriginal Heritage Protection.

## BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

**35. Landscape Completion**

Landscape works are to be implemented in accordance with the approved Landscape Plan and inclusive of the following conditions:

- a) landscape works are to be contained within the legal property boundaries,
- b) mass planting shall be installed at minimum 1 metre intervals for shrubs of a minimum 200mm container size at planting, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch.

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.

**36. Native Landscaping**

Any new landscaping is to incorporate locally native species in order to retain and enhance native vegetation and the ecological functions of wildlife corridors. Species are to be consistent with the relevant section of the Native Planting Guide available on Council's website.

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

Reason: To ensure compliance with the requirement to retain and protect native planting on the site.

**37. Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are to

be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

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

**38. Post-Construction Dilapidation Reports - Adjoining Properties**

Post-construction dilapidation reports for the properties listed in the condition titled 'Pre-Construction Dilapidation Report - Adjoining Properties' must be submitted after the completion of works., The reports must:

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

Copies of the reports must be given to the property owners referred to in the condition titled 'Pre-Construction Dilapidation Report - Adjoining Properties'. 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.

**39. Geotechnical Certification Prior to Occupation Certificate**

A Geotechnical Engineer or Engineering Geologist is to provide written confirmation that they have inspected the site during construction or reviewed information relating to the construction and that they are satisfied that development referred to in the development consent has been constructed in accordance with the intent of the Geotechnical Report referenced in Condition 1 of this consent. Written certification is to be provided to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

**40. Reinstatement of Kerb**

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

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

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

**41. Certification Elevated Parking Facility Work**

The Applicant shall submit a Structural Engineers' certificate certifying that the elevated parking facility was constructed in accordance within this development consent and the provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical controls. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: Compliance with this consent.

42. **Retaining wall**

The retaining wall works shall be certified as compliant with all relevant Australian Standards and Codes by a Structural Engineer. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: Public and Private Safety

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

43. **Landscape Maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. 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 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 Landscape Plan(s) and any conditions of consent.

A maintenance activity schedule for on-going maintenance of planters on slab shall be incorporated to monitor and replenish soil levels as a result of soil shrinkage over time.

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

Reason: To maintain local environmental amenity.

44. **Geotechnical Recommendations**

Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

45. **No Approval for Secondary Dwelling**

No approval is granted or implied under this Development Consent for the use of any part of the dwelling house for the purpose of a secondary dwelling or separate occupancy. Built in cooking facilities are not permitted to be installed, other than those shown in the designated kitchen areas.

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