

SYDNEY EASTERN CITY PLANNING PANEL DEVELOPMENT APPLICATION ASSESSMENT REPORT

FILE No.	DA223/2020/1
ADDRESS	Nielsen Park, Vacluse Road, aka 6 Steele Point Road, Vacluse
ZONING	E1 National Parks and Nature Reserves
TYPE OF CONSENT	Integrated Development
PROPOSAL	Coastal protection works involving the demolition of the existing seawall, the construction of a new seawall, alterations and additions to the existing promenade and associated site works, landscaping and stormwater management works at Shark Beach
COST OF WORKS	\$6,713,993
DATE LODGED	30/06/2020 original lodgement 18/08/2020 amended application 11/11/2020 additional information
APPLICANT	Department of Planning, Industry & Environment (National Parks & Wildlife Service NSW)
OWNER	Crown Land NSW
AUTHOR	Mr D Booth
TEAM LEADER	Mr M Moratelli
SUBMISSIONS	One (in support of the proposal)
RECOMMENDATION	Conditional approval

1. NECESSITY FOR DEVELOPMENT CONSENT AND REASON FOR DETERMINATION BY THE SYDNEY EASTERN CITY PLANNING PANEL

NPWS has advised that development consent is required for the proposed works on the basis that Schedule 7, Clause 8A(b) of State Environmental Planning Policy (State and Regional Development) 2011 stipulates:

development for the purpose of coastal protection works carried out by or on behalf of a public authority (other than development that may be carried out without development consent under Clause 19(2)(a) of State Environmental Planning Policy (Coastal Management) 2018) is regionally significant development.

Clause 19(2)(a) of State Environmental Planning Policy (Coastal Management) 2018) states:

- (2) *Coastal protection works by public authority Development for the purpose of coastal protection works may be carried out on land to which this Policy applies by or on behalf of a public authority—*
 - (a) *without development consent—if the coastal protection works are—*
 - (i) *identified in the relevant certified coastal management program, or*
 - (ii) *beach nourishment, or*

- (iii) *the placing of sandbags for a period of not more than 90 days, or*
- (iv) *routine maintenance works or repairs to any existing coastal protection works, or*

(b) ***with development consent—in any other case.***

The Statement of Environmental Effects (SEE) submitted with the subject development application states that the subject proposal does not qualify for the works permitted without development consent on the basis that *there is no certified coastal management program in place for the site*. Accordingly, a development consent is required for the subject coastal protection works.

The SEE provides the following explanation as to why the proposal is to be determined by the Sydney Eastern City Planning Panel.

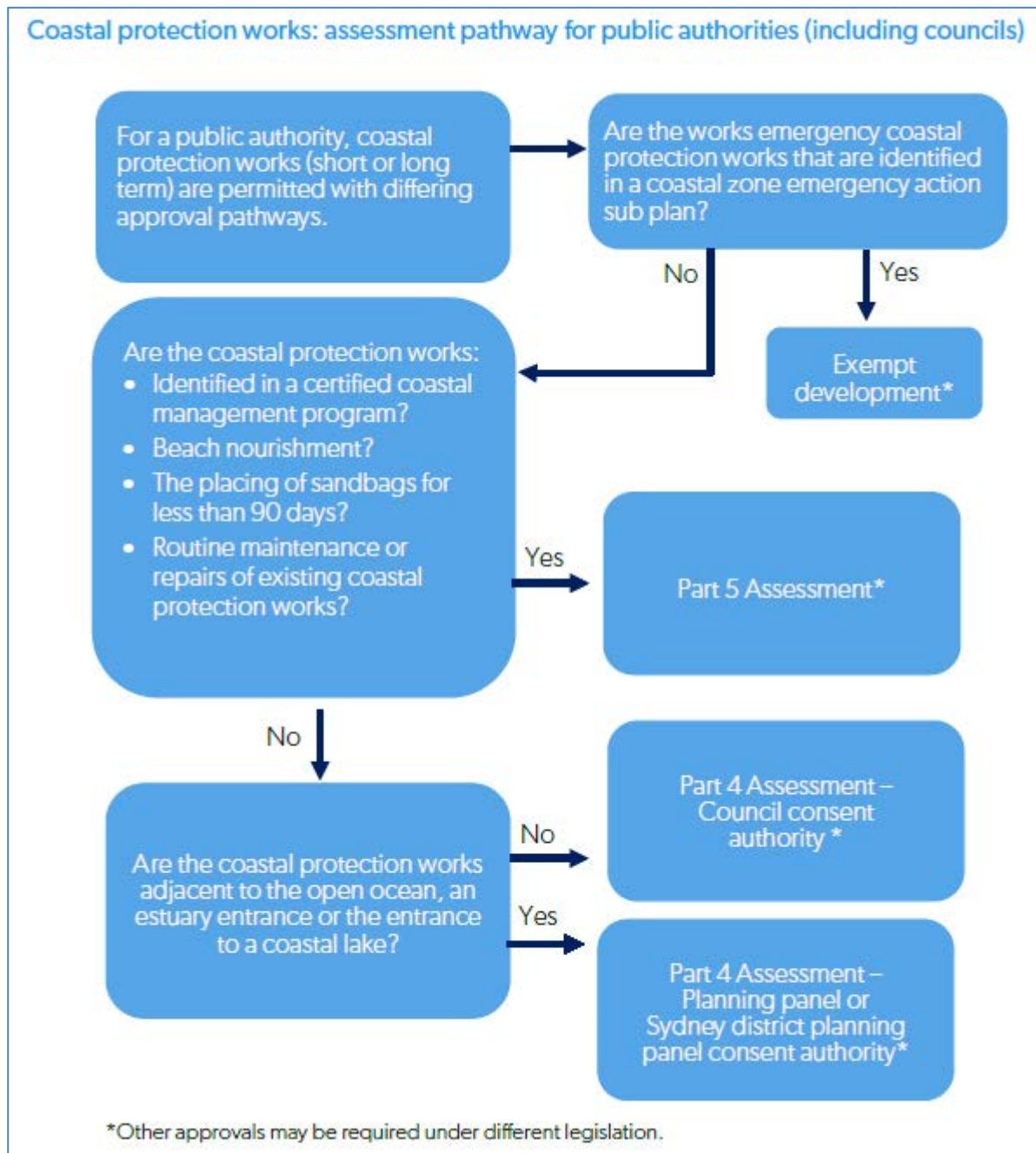
National Parks & Wildlife Service NSW (NPWS) is part of the Department of Planning, Industry and Environment and is a “public authority” under the Environmental Planning and Assessment Act (EP&A Act). Accordingly, the application has been submitted to Woollahra Council as a Crown development application pursuant to Division 4.6 of the EP&A Act.

Clause 4 of Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011 identifies development carried out by or on behalf of the Crown that has a capital investment value of more than \$5 million as being regionally significant development. The proposed development has a capital investment value of \$6,713,993.

The DA is submitted to Woollahra Council for assessment and presentation to the Sydney Eastern City Planning Panel for determination.

Further, the *Coastal Management State Environmental Planning Policy Fact sheet 3: Coastal protection works* published by the Department of Planning and Environment, states that *the regional planning panel or Sydney district planning panel exercise development consent functions for applications for coastal protection works by private landowners and public authorities where the works are not exempted by clause 19(2) of the Coastal Management SEPP.*

The following flow chart taken from the above-mentioned fact sheet summarises why development consent is required for the subject coastal protection works and the level of delegation required to determine the subject development application.



2. REASONS FOR RECOMMENDATION

The application has been assessed within the framework of the matters for consideration under section 4.15(1) of the Environmental Planning and Assessment Act 1979 and is recommended for approval because:

- the proposal is considered to be satisfactory with all relevant legislation, including all relevant environmental planning instruments and policies, subject to conditions;
- it is considered that the proposal will not have any significant adverse impacts upon the local environment, subject to conditions;
- it is considered that the proposal will not have any significant social or economic impacts;

- the site is considered to be suitable for the proposed development, as conditioned; and
- the proposal is considered to be in the public interest.

3. DESCRIPTION OF THE PROPOSED DEVELOPMENT

On 18 August 2020, the documentation of the proposal was amended in terms of the submission of Demolition, General Arrangement and Planting Plans indicating the proposed works in colour, documenting the Mean High Water Mark (MHW) and deleting reference to the *featured paving* to the mid-terrace. Additional sections were also provided.

On 6 November 2020, an amended construction traffic management plan was submitted to Council in order to address concerns raised by Council's Traffic Engineer.

On 11 November 2020, an addendum to the arboricultural impact assessment report, an amended Planting Plan L-500 Issue D3 documenting the proposed planting species and an amended General Arrangement Plan L-301 Issue D3 documenting the proposed altered levels in the vicinity of Tree 13 were submitted to Council in order to address issues raised by Council's Tree Management Officer.

The proposal involves the following coastal protection works:

- The demolition of the existing seawall including upper and lower bleaches separated by a mid-level terrace, the vehicular access ramp located at the eastern end and the northern 1m of the promenade so as to be narrowed to a width of 3.3m.
- The construction of a new, concrete seawall up to approximately 1m higher than existing to mitigate future sea level rise inundation of Nielsen Park incorporating upper and lower bleachers separated by a mid-level terrace. Five sets of access stairs, a wheelchair accessible pedestrian ramp at the eastern end and a new vehicular ramp at the eastern end are proposed. Sandstone is proposed to be used in the construction of the eastern landscaped area and the pedestrian and vehicular ramps. Stainless steel balustrades are proposed.
- The construction of a concrete kerb and bench to the northern alignment of the retained promenade.
- The restoration of the eastern sandstone retaining wall.
- Landscaping works involving the commensurate raising of the landscaped section between the seawall and the promenade, removal of 12 existing trees, the planting of 17 new trees, ground covers, grasses and shrubs.
- The reconstruction of the eastern shark net post and the removal of the adjacent support that extends to the existing seawall.
- Stormwater works including the installation of a new wastewater pipe at the eastern end of the proposed seawall.

The SEE submitted with the subject development application provides the following detailed description of the proposed development.

The underlying principles which have guided the proposed design include:

- *Improved accessibility and safety for users of the Park and beach.*
- *Improved amenity for beach users.*
- *Improved operational function – maintenance, access and circulation for emergency vehicles, vehicular access to the sand as may be required.*
- *Enhance vegetation/ landscape treatment, including replacement planting for 12 trees which require removal due to their existing condition and the need to raise the level of the bleacher structure and lawn terrace. A total of 17 new trees are proposed.*
- *Improved aesthetics – reduce visual clutter and provide a simple form and alignment of the seawall.*
- *Respect the heritage and character of the area, including the preservation and restoration of the existing sandstone walls at the eastern end of the beach.*

Seawall/ Bleachers

The seawall structure has been designed to mimic the existing sea wall/ bleachers, however with minor modifications in form to improve spatial arrangements, functionality, amenity and also to better respond to future sea level rise.

The height of the seawall structure has been lifted to achieve a high point of 5.5 AHD, across most of the length of the wall which aims to manage wave over-topping risks and the protection of assets behind, while also ensuring the seawall amenity will remain useable in the future when the coast will succumb to a predicted sea level rise of 0.9m in 100 years.

While the proposed design includes raising the wall, the optimal level to manage the risk of wave overtopping is 6.5 AHD which, if implemented, could drastically change the character and use of Nielsen Park and would also impinge on views from the Park to the harbour. Accordingly, the proposal is to lift raise the level of the wall to 5.5 AHD. It should be noted however, the design can accommodate a further build-up of walls, or seating elements above the proposed 5.5 AHD, which would assist with wave over-topping as well as act as wave breaks as conditions worsen in the future.

The proposed form of the bleachers, in particular the profiles that are seaward facing, is designed to assist with wave deflection and breaks, in addition to user comfort.

The seawall/ bleacher design seeks to eliminate current obstacles and hazards along the mid-terrace to allow safe and unobstructed access from promenade to mid-terrace and to the beach.

The dimensions of the seawall/ bleacher have also been adjusted to ensure that in raising the level of the seawall that the beach and sand area as well as the lawn area is not further compromised, as building up often results in building out.

The width of the promenade has been reduced by 1 metre from the seaward edge, as well as reducing the mid-terrace width by 1.2 metres. The resultant width of the new promenade is 3.3 metres and the new mid-terrace width is 2.5 metres. These dimensions provide comfortable widths that do not impede pedestrian circulation and movement.

The form of the wall in plan view has also been modified, introducing a slight curve, set on a consistent radius along its entire length, from which the bleachers are offset, reinforcing simplicity, and a clean form that can stand as a statement from Nielsen Park without compromising its character. These modifications have resulted in the simplification of form, providing safe, easy and free flowing access which is expected to assist in the management of crowd movement.

The new seawall is also proposed to be concrete construction, in acknowledgment of the modern history of Nielsen Park and maintaining the essence of its character.

The concrete bleachers are intended to be built insitu, identified as being the most suitable method of construction for the proposed design and desired outcome.

Sandstone will be used at the eastern end of the beach, where the pedestrian and vehicle ramps are proposed, consistent with the existing sandstone walls. Sandstone is another significant material which is commonly used / present in the Park as seen in the surrounding buildings and walls.

Landscape Treatment

While some trees are proposed to be removed due to their existing condition as well as the need to raise up the bleacher structure and lawn terrace, seventeen (17) new trees will be planted within the lawn terrace.

This project affords the opportunity to select the right and appropriate tree species for the prevailing conditions as well as trees that will add to the character and create legacy for future generations, building upon the heritage value of the beach and environs.

Opportunities for dense native planting have also been created to soften the hard elements and draw in the character of the native surrounding vegetation of the area and enhance aesthetics.

*The planting palette is included in **Annexure 2**. The species selection responds to the surrounding natural environment and extreme coastal conditions to which they will be exposed. The predominantly native, hardy palette is intended to be densely planted to ensure good plant coverage and instant effect, with a combination of ground covers, grasses and shrubs.*

*Trees in the palette are native to the area, robust species, front-line salt tolerant, with both the *Banksia integrifolia* and *Cupaniopsis* being species that currently exist on site. In addition to their responsiveness to the site conditions, the arrangement of these trees on the lawn terrace, will provide shade to both the lawn and promenade as well as seating areas. Their informal arrangement seeks to replicate the natural bushland context in which the site resides.*

Promenade

The width of the promenade is proposed to be reduced by 1 metre to assist in preserving lawn and beach areas.

A concrete seating wall has been included along the full length of the seaward edge of the promenade.

Earthworks

The proposed development will necessitate some earthworks/ excavation in the order of approximately 4200m³ of material, associated with the following:

- *Excavation of trenches for footings for seawall and pedestrian ramp,*
- *Bulk excavation for bleachers sub base in sand, and*
- *Backfill with compacted recycled crushed concrete material.*

Where possible excess sand will be spread across the beach. Should surplus sand remain, it will be removed from the site.

Stormwater Control Measures

To allow for future planning and growth it is proposed to install a new stormwater pipe coordinated with the infrastructure proposed for this project. This pipe will then be capped and left unused within the ground, next to the existing stormwater line, to be later connected as part of future works.

The promenade drainage strategy utilises existing overland flow paths and site features to drain the site. Where feasible and to prevent water from crossing access points, new grates are proposed to be installed to capture and control the stormwater.

The below photomontages of the proposal are provided:

DEVELOPMENT APPLICATION VIEW # 1 - EASTERN BEACH AREA LOOKING SOUTH WEST



DEVELOPMENT APPLICATION VIEW # 2 - THE PROMENADE



DEVELOPMENT APPLICATION VIEW # 3 - WESTERN BEACH AREA LOOKING EAST ACROSS BLEACHERS



4. DESCRIPTION OF THE SITE AND LOCALITY



Nielsen Park is a 20 hectare area of foreshore open space located on the southern side of Sydney Harbour and is part of the Sydney Harbour National Park.

Part of the northern frontage of Nielsen Park is Shark Beach which is approximately 230m long and includes a shark netted swimming enclosure and an approximately 155m long seawall which defines the southern extent of the beach.

The existing seawall is predominantly concrete with a sandstone eastern section. The majority of the structure consists of a lower bleacher of 3 tiered benches, a mid-terrace and an upper bleacher of 2 tiered benches. Several access stairs to the beach are incorporated along the length of the structure. A landscaped strip adjoins the top of the seawall. A concrete promenade adjoins the landscaped strip to the south.

Below are images of the existing seawall structure, landscaped strip and promenade.

The photo below of the existing seawall is facing toward the west



The photo below is facing toward the east, existing promenade at right



An amenity building adjoins the seawall to the east. A café and amenity building adjoins the promenade to the south.

Nielsen Park experiences high volumes of people who use the area for swimming, passive recreation, walking and sightseeing.

The western end of the promenade provides access to the Hermitage Trail, a coastal walking track, which is popular with locals and international visitors.

5. REFERRALS

Referral	Summary of Referral Response	Annexure
Development Engineer	Satisfactory, subject to conditions	4
Traffic Engineer	Satisfactory, subject to conditions	5
Drainage Engineer	Satisfactory, subject to conditions	6
Trees and Landscaping	Satisfactory, subject to conditions	7
Council's Heritage Officer	Satisfactory, subject to conditions	8
Environmental Health	Satisfactory, subject to conditions	9
Parks and Open Space	The subject site is not Council owned land and is not the subject of any Council Plan of Management	10
Environment and Sustainability	Satisfactory, subject to conditions	11
Foreshores Committee	No objection raised	12
Sydney Water	Post consent approval is required (conditioned)	13
Heritage NSW Amended GTA	Satisfactory, subject to conditions	14
Heritage NSW Aboriginal Cultural Heritage Regulation Original GTA	Satisfactory, subject to conditions	15
Heritage NSW Aboriginal Cultural Heritage Regulation Amended advice	No change to original GTA	16

A referral response from the Department of Primary Industries Land and Water was not required on the basis that a controlled activity approval under the provisions of the Water Management Act 2000 is not required when work is proposed by a public authority (NPWS) pursuant to Cl 41 of the *Water Management (General) Regulation 2018*.

ENVIRONMENTAL ASSESSMENT UNDER SECTION 4.15

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979 include the following:

1. The provisions of any environmental planning instrument.
2. The provisions of any proposed instrument that is/has been the subject of public consultation.
3. The provisions of any development control plan.
4. Any planning agreement that has been entered into.
5. Any draft planning agreement that a developer has offered to enter into.
6. The regulations.
7. Any coastal zone management plan.
8. The likely impacts of that development:
 - i) Environmental impacts on the natural and built environments
 - ii) Social and economic impacts.
9. The suitability of the site.
10. Any submissions.
11. The public interest.

6. ADVERTISING AND NOTIFICATION

6.1. Submissions

The application including the amended documentation submitted to Council on 18 August 2020 was advertised and notified from 02/09/2020 to 01/10/2020. The only submission received was a submission in support of the proposal from B Bland of 1/20 Ian Street, Rose Bay on behalf of the 'Nielsen Park Regulars'.

The amended documents submitted to Council on 11 November 2020 providing additional information addressing issues raised by Council's Tree Management Officer were not re-notified on the basis that they did not involve any potential adverse amenity impacts upon the locality.

6.2. Statutory Declaration

The applicant has completed a statutory declaration declaring that the site notice was erected and maintained during the notification period.

7. STATE ENVIRONMENTAL PLANNING POLICY 55-REMEDIATION OF LAND

As required Under Clause 7 (1) (a) of SEPP 55-Remediation of Land, consideration has been given as to whether the land is contaminated.

The site of the subject works is **not** identified on Council's potential contamination map.

Council's Environmental Health Officer has reviewed the *Preliminary Contamination and Acid Sulfate Soil Screening report* submitted with the development application and provided the following comments in this regard.

The results of the soil contamination screening did not record concentrations of contaminants above the respective SAC adopted for this screening. Considering these results and the observations made during the site inspection, JK Environments are of the opinion that there is low potential for site contamination.

Based on the results of the screening and at the time of reporting, the fill material is assigned a preliminary classification of General Solid Waste (non-putrescible). This classification should be confirmed by additional sampling, analysis and waste classification assessment prior to off-site disposal. The anticipated waste quantities should also be confirmed at that time and documented in the report.

Based on the results of the preliminary screening, JK Environments are of the opinion that the natural soil at the site is likely to meet the definition of virgin excavated natural material (VENM) for off-site disposal or re-use purposes. This classification should be confirmed by additional sampling, analysis and waste classification assessment prior to off-site disposal.

The above-mentioned recommendation is addressed by a recommended condition of consent.

The proposal, as conditioned, is considered to be satisfactory with regard to the relevant provisions of the SEPP 55-Remediation of Land.

8. STATE ENVIRONMENTAL PLANNING POLICY (COASTAL MANAGEMENT) 2018

SEPP (Coastal Management) 2018 gives effect to the objectives of the Coastal Management Act 2016 from a land use planning perspective, by specifying how development proposals are to be assessed if they fall within the Coastal Zone.

As discussed above under section *1 Necessity for Development Consent and Reason for Determination by the Sydney Eastern City Planning Panel*, development consent for the proposed coastal protection works is required under the provisions of Clause 19(2) of the SEPP.

Whilst the subject land is located within the Coastal Environment Area (Clause 13) and the Coastal Use Area (Clause 14), subclauses 13(3) and 14(2) both state:

This clause does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

The subsequent section of this report contains an environmental assessment of the proposal against the relevant provisions of SREP (Sydney Harbour Catchment) 2005 and Sydney Harbour Foreshores and Waterways Area DCP.

On the basis that the subject land is located within the Foreshores and Waterways Area pertaining to SREP (Sydney Harbour Catchment) 2005, it is only the following aim of the policy that is relevant to the subject development application:

- a) managing development in the coastal zone and protecting the environmental assets of the coast.*

The proposal, as conditioned, is considered to be satisfactory with regard to the relevant provisions of the SEPP (Coastal Management) 2018.

9. SYDNEY REGIONAL ENVIRONMENTAL PLAN (SYDNEY HARBOUR CATCHMENT) 2005

The following provisions of SREP (Sydney Harbour Catchment) 2005 are relevant to the proposal.

9.1. Consent authority

The proposed new seawall and waterfront access stairs (bleachers) located wholly above the MHWL are defined as *land-based development*. Clause 5 states that Council (in this case the Sydney Eastern City Planning Panel) is the consent authority for *land-based development*.

9.2. Clause 21 Biodiversity, ecology and environment protection

Flora and Fauna Impacts

The SEE provides the following assessment of this issue.

The Flora and Fauna Assessment did not identify any threatened flora or fauna species on the site.

No Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) listed threatened flora were identified in the study area during field survey. The study area was considered unlikely to provide habitat for any threatened flora species. Therefore, Significant Impact Criteria were not applied.

The study area was considered to have the potential to provide foraging habitat for Pteropus poliocephalus (Grey-headed Flying-fox). No Grey-headed Flying-fox camps will be affected by the proposed development. Significant Impact Criteria were applied and concluded that the activity is unlikely to constitute a significant impact on this species.

The highly mobile threatened species Haliaeetus leucogaster (White-bellied Sea-Eagle), which is listed as Marine under the EPBC Act, may occasionally pass over the study area on foraging forays, however significant foraging resources are not considered present. Furthermore, no roosting or breeding habitat for this, or any other, threatened fauna species is available in the study area. Therefore, Significant Impact Criteria were not applied for this species.

The Flora and Fauna Assessment includes a series of recommendations designed to reduce the potential and indirect impacts on vegetation and habitat outside the immediate works zone, as follows:

- Delineate exclusion areas at the edges of the construction site to prevent encroachment into offsite vegetation to be retained.*
- Prepare and implement an Erosion and Sediment Control Plan that includes sediment control fencing to be installed at the bounds of the construction area to prevent impacts to adjacent native vegetation and marine areas.*
- Secure storage of materials and equipment to minimise risk of pollution and adverse impact to the marine ecosystem of Sydney Harbour.*
- Management of weeds in accordance with Greater Sydney Regional Strategic Weed Management Plan 2017 – 2022 (LLS 2017).*

Having regard to the preceding assessment, it is considered that the proposed development will not have any significant impact on flora and fauna, subject to implementation of the recommendations of the specialist report outlined above.

The above-mentioned recommendations have been incorporated into the recommended conditions of consent.

Council's Senior Environment and Sustainability Officer has provided the following additional comments that are relevant to this clause.

The principles outlined in the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 require developments to protect natural features and protect and improve the catchment. This project largely replaces an aging structure with a fit for purpose updated design of the existing structure.

Coast stability has been considered in the provided Coastal Studies which consider a range of coastal scenario assessments.

The landscape planting schedule incorporates a range of native species that will provide vertical layering.

The planting proposed will assist with landscape connection with the larger site where considerable biodiversity is present.

The works are limited to a small portion of the site and there is no removal of high value biodiversity vegetation.

This project largely replaces an aging structure with a fit for purpose updated design of the existing structure. Coast stability has been considered in the provided Coastal Studies which consider a range of coastal scenario assessments.

Removed trees are being replaced and additional planting will be provided. Considerable mature trees exist, and will continue to, within the National Park site. This will assist in maintaining canopy cover while planted species are able to establish.

Council's Senior Environment and Sustainability Officer considers the proposal to be satisfactory in terms of biodiversity, ecology and environment protection species protection subject to recommended conditions of consent.

Impacts upon Existing Vegetation/ Proposed Plantings

Council's Tree Management Officer has provided the following landscaped based assessment.

Proposed tree removal

The majority of those trees proposed to be removed within the works zone are small Tuckeroo trees being approximately 3- 4 metres in height and planted within the last 5 years. The amenity that these trees currently provide can be replaced almost immediately through the planting of advanced tree stock, as proposed.

One Lophostemon confertus tree (2 metres in height) is proposed to be removed to accommodate vehicle access into the Holding Bay area 3 (tree referenced 2HB). This is a very small tree and is structurally poor due to a previously failed trunk. There are no issues with the removal of the tree.

The largest trees to be removed as part of the proposal are 2 Banksia integrifolia trees (referenced Trees 7 & 9). It is unlikely either tree is part of the original planting of the promenade and park area which is dominated by Lophostemon and Cupaniopsis trees. Despite both specimens being in good condition I do not consider the retention of either tree to be feasible. Unless considerable design changes were made, the proposed changes to ground levels within the vicinity of the trees would have a negative effect on their root function. In this instance it is also likely that the planting of advanced tree stock can replace the amenity the trees currently provide within the short to medium term (5 - 15 years).

Tree 8 is an over mature specimen in poor condition and identified as having a short useful life expectancy of less than 5 years.

Planting Plan

The proposed tree and plant species listed within the submitted plant schedule are highly suitable for coastal environments. The number of replacement trees depicted on the planting plan is also considered a satisfactory quantity. All trees listed have the potential to grow large enough to provide shade and other amenity to the site.

Potential development impacts to trees to be retained

The submitted arboricultural assessment identifies several minor encroachments within the Tree Protection zone radius of several trees to be retained. With the implementation of proper protection methods and arborist supervision these are not likely to have any major impact on these trees.

The Major encroachment identified within the TPZ radius of Tree 13 includes a regrade of existing levels and refurbishment of the promenade surface at this location on the Northern side of the tree. The General arrangement plan supplied by Oculus illustrates that the changes to levels within the TPZ of the tree is slight and unlikely to have any major impact on the tree.

Proposed pruning of trees within the Holding Bay area

Within the proposed Holding Bay, 4 trees are identified as requiring pruning works to provide adequate clearance for work vehicles and machinery. Appendix 3 of the submitted Tree IQ Tree Protection specification dated 11th of November 2020 provides details (including photos) of those branches. The loss of these branches is unlikely to be detrimental to the health and structure of these trees or result in any significant loss of amenity within this area of the park.

Council's Tree Management Officer considers the proposal to be satisfactory in terms of landscaping impacts subject to recommended conditions of consent.

Heritage NSW has recommended the following requirements within under part 5 of the General Terms of Approval:

New replacement plantings following removal of the existing Tuckeroo plantings along the foreshore must be of the same species as existing.

Reason: To ensure that the significant character of the foreshore plantings is maintained.

The above does involve a degree of inconsistency with the proposed planting plan in terms of the number and location of *Tuckeroo* plantings. In this regard, 6 *Tuckeroo* plantings are proposed whilst there are 8 existing.

The inconsistency has been addressed by amending the recommended replacement planting condition provided by Council's Tree Management Officer.

9.3. Clause 22 Public access to, and use of, foreshores and waterways

Clause 22 of SREP (Sydney Harbour Catchment) 2005 requires Council to consider impacts upon public pedestrian access along the foreshore and access to the harbour for recreational purposes.

The proposal will facilitate improved public access to the waterway in particular by providing a wheelchair accessible ramp at the eastern end of the promenade.

9.4. Clause 24 Interrelationship of waterway and foreshore uses

Clause 24 of SREP (Sydney Harbour Catchment) 2005 requires Council to consider issues of equitable use of the waterway including use by passive recreation craft, minimising congestion of traffic along the foreshore and minimising conflict between the various uses along the foreshore.

The proposal is considered to be satisfactory in this regard.

9.5. Clause 23 Maintenance of a working harbour

Clause 23 of SREP (Sydney Harbour Catchment) 2005 requires Council to consider potential impacts upon adjoining industrial and commercial maritime purposes which is not considered to be relevant to the subject proposal.

9.6. Clause 25 Foreshore and waterways scenic quality

Clause 25 of SREP (Sydney Harbour Catchment) 2005 requires Council to consider the visual impact that a development proposal will have upon Sydney Harbour and adjoining foreshore areas.

The SEE contains the following design/materials explanation/ justification for the proposal.

Seawall/ Bleachers

The seawall structure has been designed to mimic the existing sea wall/ bleachers, however with minor modifications in form to improve spatial arrangements, functionality, amenity and also to better respond to future sea level rise.

Whilst the optimal seawall level to manage the risk of wave overtopping is 6.5 AHD (approximately 2 m higher than existing), this could drastically change the character of Nielsen Park. Accordingly, the proposal is to lift raise the level of the wall to 5.5 AHD. It should be noted however, the design can accommodate a further build-up of walls, or seating elements above the proposed 5.5 AHD, which would assist with wave over-topping as well as act as wave breaks as conditions worsen in the future.

The proposed form of the bleachers, in particular the profiles that are seaward facing, is designed to assist with wave deflection and breaks, in addition to user comfort.

The seawall/ bleacher design seeks to eliminate current obstacles and hazards along the mid-terrace to allow safe and unobstructed access from promenade to mid-terrace and to the beach.

The form of the wall in plan view has also been modified, introducing a slight curve, set on a consistent radius along its entire length, from which the bleachers are offset, reinforcing simplicity, and a clean form that can stand as a statement from Nielsen Park without compromising its character. This results in the simplification of form, providing safe, easy and free flowing access which is expected to assist in the management of crowd movement.

The new seawall is proposed to be concrete construction, in acknowledgment of the modern history of Nielsen Park and maintaining the essence of its existing character.

Sandstone will be used at the eastern end of the beach, where the pedestrian and vehicle ramps are proposed, consistent with the existing sandstone walls. Sandstone is another significant material which is commonly used / present in the Park as seen in the surrounding buildings and walls.

The proposal is considered to be satisfactory in terms of visual impacts upon Sydney Harbour and adjoining foreshore areas with the built form incorporating curved cornered terraced elements, a vertically terraced form punctuated horizontally by 5 sets of stairs including a centrally located feature stair. Adequate landscaped areas are incorporated.

The proposal involves unpainted concrete bleachers, benches, kerbing, paths and stairs, sandstone walls to the eastern landscaped area and ramps and stainless steel balustrades. Heritage NSW & Council's Heritage Officer consider the proposal to be satisfactory in terms of visual impacts, subject to requirements contained within the Heritage NSW stipulated General Terms of Approval.

Potential lighting impacts upon the harbour are addressed by a recommended condition of consent.

It is considered that the proposal, as conditioned, will not have any significant adverse visual amenity impacts upon the harbour and foreshore.

9.7. Clause 26 Maintenance, protection and enhancement of views

Clause 26 of SREP (Sydney Harbour Catchment) 2005 requires Council to consider the impact that a development proposal will have upon available views to and from Sydney Harbour.

The SEE contains the following view impact assessment of the proposal.

Whilst the optimal seawall level to manage the risk of wave overtopping is 6.5 AHD (approximately 2m higher than existing), this would impinge on views from the Park to the harbour. Accordingly, the proposal is to lift raise the level of the wall to 5.5 AHD (an increase of approximately 1m).

Whilst the proposed increased height of the seawall of up to approximately 1m from that as existing will result in the partial obstruction of public harbour/foreshore views from Nielsen Park, this is considered to be inevitable and justifiable in terms of necessary protection of the park from future sea level rise/ wave impacts.

9.8. Clause 29 Consultation required for certain development applications

Clause 29 of SREP (Sydney Harbour Catchment) 2005 requires Council to take into consideration any submission received from the Foreshores and Waterways Planning and Development Advisory Committee in relation to the proposal.

On 5 November 2020, the Foreshores and Waterways Planning and Development Advisory Committee advised Council as follows in relation to the application:

The Foreshores and Waterways Planning and Development Advisory Committee (the Committee) has reviewed the referral in accordance with Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (the SREP), and considers the proposed development to be a 'Category 2' matter.

In referring the proposal to the Committee, Woollahra Municipal Council, as the consent authority, has satisfied its statutory obligation as required under the SREP. The Committee raises no specific issues in relation to the proposed development and as such does not wish to make any further comment concerning this matter.

9.9. Clause 55 Protection of heritage items

The subject site is listed as Heritage Item No. 62 *Shark Beach promenade and amenities*. The relevant provisions of Clause 55 state:

- (4) Before granting development consent as required by this clause, the consent authority must assess the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item concerned.*
- (5) The assessment must include consideration of a heritage impact statement that addresses at least the following issues (but is not to be limited to assessment of those issues, if the heritage significance concerned involves other issues):*
 - (a) the heritage significance of the item as part of the environmental heritage of the land to which this Part applies, and*
 - (b) the impact that the proposed development will have on the heritage significance of the item and its setting, including any landscape or horticultural features, and*
 - (c) the measures proposed to conserve the heritage significance of the item and its setting, and*
 - (d) whether any archaeological site or potential archaeological site would be adversely affected by the proposed development, and*
 - (e) the extent to which the carrying out of the proposed development would affect the form of any historic subdivision.*

Heritage NSW as delegate of the Heritage Council of NSW has issued General Terms of Approval including the requirement for Section 60 approval which has been incorporated into the recommended conditions of consent. The complete referral response is attached as **Annexure 14**.

Council's Heritage Officer has provided the following heritage assessment in relation to this issue:

The subject property is a listed State Heritage Register (SHR) and Woollahra LEP 2014 (LEP) (and SREP (Sydney Harbour Catchment) 2005) heritage item. The full heritage listing statements of significance are included in the HIS (heritage impact statement submitted as part of the subject development application).

The following statement of significance is taken from the HIS:

“The heritage significance of the Nielsen Park Seawall predominantly relates to the historical, social and representative significance of Nielsen Park Beach as part of the 20th Century public recreation landscape of Nielsen Park. While the fabric of the Seawall has been modified, altered, reconstructed and repaired since its initial construction in the c1920s, the presence and alignment of the Seawall in this location is what has facilitated the public use of the Beach, serving as a supporting structure to the beach promenade (Notting Parade), facilitating safe access to the sand, and helping to protect the Bay itself from additional storm damage. The overall presence and alignment of the Nielsen Park Seawall in its current location is of high heritage significance.

The western sandstone sections of the Wall (i.e. Sections One and Two as described in the physical analysis section above), predate the main concrete bleachers section (i.e. Section Three, c.1930s), and are likely part of the first (or earlier) Seawall constructed at the site, around 1918.

The eastern sandstone section of the Seawall (i.e. Section Four) also likely predates the concrete bleachers, however it is likely that this section of the wall has been modified, reconstructed and/or rebuilt over time, particularly during integration with the 1930s concrete bleachers and works to the SLSC/Toilet block. While there is the possibility that some of the sandstone blocks of Section Four remain in situ from the earliest Seawall, it is also possible that the fabric of the original wall has been repurposed in this section of wall, and/or supplemented during later modifications and repairs.

Therefore, the fabric of Sections One and Two of the Seawall has moderate to high heritage significance as most likely being remnant fabric from the earliest Seawall constructed in this location. Further, the western sections of the wall (i.e. Sections One and Two) are potentially associated with the 1916 construction of the ferry wharf and jetty (demolished in 1979). While the fabric of the eastern section of the Seawall (i.e. Section Four) potentially dates to the earliest iterations of the Seawall in this location, it has likely been repurposed and modified over time, and therefore this fabric is considered to be of moderate significance.

Conversely, while Section Three of the Seawall (i.e. 1930s concrete bleachers) has heritage significance for its aesthetic form, orientation and function as part of the Nielsen Park Seawall and public beach facilities, the physical fabric of this section of the wall is of low heritage significance.”

The proposal has been designed to minimise impacts on significant fabric, with works mostly concentrated on areas of low significance (1930s concrete bleachers). The proposal will not adversely impact significant views to and from the heritage item. The proposal will have a positive heritage outcome by allowing the area to be accessible and to ensure the continued use of the area, enabling more people to appreciate the heritage item.

The HIS has assessed the potential impact of the proposal and has concluded that the overall impact will have a neutral heritage impact. The assessment is deemed to be accurate.

Overall, the proposal will not have an adverse impact on the heritage significance of Shark Beach promenade and Amenities and will not impact on significant views or the setting of the heritage item.

The proposal is generally acceptable, subject to conditions.

The proposal, as conditioned, is considered to be satisfactory with regard to the provisions of Clause 55 of SREP (Sydney Harbour Catchment) 2005.

10. STATE ENVIRONMENTAL PLANNING POLICY (STATE AND REGIONAL DEVELOPMENT) 2011

The SEE submitted with the subject development application provides the following assessment of the application under the following relevant provision of this planning instrument.

Schedule 7, Clause 8A(b) of the SEPP provides that development for the purpose of coastal protection works carried out by or on behalf of a public authority (other than development that may be carried out without development consent under clause 19(2)(a) of the Coastal Management SEPP) is regionally significant development.

Having regard to the above, the development application for this project will be submitted to Woollahra Council as a Crown DA pursuant to Division 4.6 of the EP&A Act.

The determining authority for the application will be the Sydney Eastern City Planning Panel.

11. SYDNEY HARBOUR FORESHORES AND WATERWAYS AREA DEVELOPMENT CONTROL PLAN

The following provisions of Sydney Harbour Foreshores and Waterways Area Development Control Plan (the DCP) are relevant to the proposal.

11.1. Part 2 Ecological Assessment

The subject site is classified as a *grassland terrestrial ecological community* (Map 12 of the DCP). Section 2 of the DCP stipulates the conservation status for this type of ecological community as *low*.

Council's Senior Environment and Sustainability Officer has provided the following assessment of the proposal.

The SEE states that 17 new trees will be planted as part of the works, while 12 trees are proposed to be removed. Various shrub and ground cover species (referred to as mass planting) are also to be planted as part of the proposed development.

The landscape planting schedule and incorporates a range of native species that will provide some vertical layering along the planted southern section. Ongoing management of the plantings will be required to ensure continued ecological function within the landscape.

The proposed development and proposed planting schedule will meet the above control as the planting proposed will assist with landscape connection with the larger site where considerable biodiversity is present.

The proposal, as conditioned, is considered to be satisfactory with regard to impacts upon the local ecology.

11.2. Part 3 Landscape Assessment

The subject site is located within *Landscape Character Type 2* (Map 12 of the DCP) for which the *Statement of Character and Intent* states:

This landscape forms the entry to Sydney Harbour. Development should ensure that the natural features which characterise the entry to Sydney Harbour are maintained. It should be sited so that the view of these natural features and landmarks are preserved. Development should be designed to complement existing features so that the contrast between the built and natural environs is minimised.

The intent in this area is to encourage development that:

- *enhances the maritime and heritage significance of the Harbour through the protection of land uses that contribute to this character;*
- *maintains and preserves the dramatic natural entry into the Harbour; and*
- *has a direct relationship with the entry to the Harbour.*

The proposal is considered to be consistent with the above.

The statement of environmental effects addresses the performance criteria for *Landscape Character Type 2* as follows.

- *Natural elements including cliffs, rock shelves and beaches are retained and views of these features are not obscured.*

The proposed structure replaces an existing seawall and is comparable in terms of size, scale and materiality.

The height of the seawall structure has been lifted to achieve a high point of 5.5 AHD, (a rise of up to approximately 1m) in an effort to mitigate wave over-topping risks and the protection of assets within Nielsen Park, while also ensuring the seawall / bleacher will remain use-able in the future when the coast will succumb to a predicted sea level rise of 0.9m in 100 years.

It should be noted that the optimal level required to manage the risk of wave over-topping is 6.5 AHD however, the additional height is not proposed because of the potential impacts on the character and use of Nielsen Park and views to and from Shark Beach.

As such it is considered unlikely that it will interfere with the scenic quality of the natural landscape or built environment at Shark Beach in Nielsen Park as viewed from Sydney Harbour.

- *Native vegetation on cliff lines, ridgelines and along the shoreline is protected.*

The proposed development will not impact vegetation on cliff lines or ridgelines. An Arboricultural Assessment has been prepared which addresses the impact on existing vegetation located along the promenade at the top of the existing seawall which is required to be removed (12 trees to be removed).

It should be noted that a total of 17 new trees will be planted, drawn from an appropriate coastal planting palette.

- *Rooflines are below the tree canopy to maintain the prominence of the skyline of trees along the headlands.*

Not applicable.

- *Built elements have a direct relationship with the entry to the Harbour, port, defence, tourism or recreation.*

The reconstructed seawall has a direct and functional relationship with Sydney Harbour, tourism and recreation.

- *Overall colours should match native vegetation and geological features as closely as possible with trim colours drawn from natural elements such as tree trunks and stone.*

The proposed materiality of the new seawall / bleachers is concrete, consistent with the existing seawall.

However, in cognisance of the prominence of sandstone in this coastal environment and elsewhere in Nielsen Park (both as a natural resource and incorporated into buildings and walls), the proposal includes new sandstone walls to the eastern section and the restoration of the sandstone wall at the eastern end of the seawall.

Having regard to the preceding assessment it is considered that the proposed development is consistent with the relevant provisions of the DCP.

The above-mentioned assessment is concurred with subject to conditions recommended by Council's Tree Management Officer and Heritage NSW.

11.3. Part 5 Design Guidelines for Land Based Developments

Sea walls and waterfront access stairs are defined as land-based development. The following provisions of part 5 of the DCP are relevant.

11.3.1 Foreshore access

The Harbour, Parramatta River and their tributaries, are for everyone's enjoyment and public access to the foreshores is fundamentally important. Foreshore access is to be encouraged and wherever possible, public access to and along the foreshore including the inter-tidal zone should be secured or improved.

The proposal will improve access to the foreshore by providing improved stair access and wheelchair accessible access. The proposal is considered to be satisfactory in terms of facilitating foreshore access.

11.3.2 Siting of buildings and structures

The following criteria should be observed when siting buildings and structures:

- *where there is existing native vegetation, buildings should be set back from this vegetation to avoid disturbing it;*
- *buildings should address the waterway;*
- *buildings should not obstruct views and vistas from public places to the waterway;*
- *buildings should not obstruct views of landmarks and features identified on the maps accompanying this DCP; and*
- *where there are cliffs or steep slopes, buildings should be sited on the top of the cliff or rise rather than on the flat land at the foreshore.*

Where a council has not set a foreshore building line, buildings should be sited having regard to:

- *the above criteria;*
- *minimising loss of views; and*
- *the siting of the buildings on adjoining properties.*

The subject site is not affected by Council's foreshore building line.

The proposal, as conditioned, will adequately protect retained existing vegetation.

Whilst the proposed increased height of the seawall of approximately 1m from that as existing will result in the partial obstruction of public harbour/foreshore views from Nielsen Park, this is considered to be inevitable and justifiable in terms of necessary protection of the park from future sea level rise/ wave impacts.

No loss of private views are envisaged by the proposal.

The proposal addresses the waterway.

Adjoining development is located beyond the physical context of the subject proposal.

The proposal is considered to be satisfactory in terms of its siting.

11.3.3 Built form

Buildings and other structures should generally be of a sympathetic design to their surroundings; well-designed contrasts will be considered where they enhance the scene. Many councils have development controls governing built form and the heights of buildings. The following guidelines are designed to reinforce the local requirements:

- *where buildings would be of a contrasting scale or design to existing buildings, care will be needed to ensure that this contrast would enhance the setting;*
- *where undeveloped ridgelines occur, buildings should not break these unless they have a backdrop of trees;*
- *while no shapes are intrinsically unacceptable, rectangular boxy shapes with flat or skillion roofs usually do not harmonise with their surroundings. It is preferable to break up facades and roof lines into smaller elements and to use pitched roofs;*
- *walls and fences should be kept low enough to allow views of private gardens from the waterway;*
- *bright lighting and especially floodlighting which reflects on the water, can cause problems with night navigation and should be avoided. External lights should be directed downward, away from*

the water. Australian Standards AS/NZ1158.3: 1999 Pedestrian Area (Category P) Lighting and AS4282: 1997 Control of the Obtrusive Effects of Outdoor Lighting should be observed;

- *use of reflective materials is minimised and the relevant provisions of the Building Code of Australia are satisfied;*
- *colours should be sympathetic with their surrounds and consistent with the colour criteria, where specified, for particular landscape character types in Part 3 of this DCP;*
- *the cumulative visual impact of a number of built elements on a single lot should be mitigated through bands of vegetation and by articulating walls and using smaller elements; and*
- *the cumulative impact of development along the foreshore is considered having regard to preserving views of special natural features, landmarks or heritage items.*

The proposal is considered to be satisfactory in terms of visual impacts upon Sydney Harbour and adjoining foreshore areas with the built form incorporating curved cornered terraced elements, further articulated by 5 sets of stairs including a centrally located feature stair. Adequate landscaped areas are incorporated.

The proposal involves unpainted concrete bleachers, benches, kerbing, paths and stairs, sandstone walls to the eastern landscaped area and ramps and stainless steel balustrades. Heritage NSW & Council's Heritage Officer consider the proposal to be satisfactory in terms of visual impacts, subject to requirements contained within the Heritage NSW stipulated General Terms of Approval.

Potential lighting impacts upon the harbour are addressed by a recommended condition of consent.

It is considered that the proposal, as conditioned, will not have any significant adverse visual amenity impacts upon the harbour and foreshore.

The proposal will adequately maintain the views of natural features, landmarks and adjoining heritage items.

The proposal, as conditioned, is considered to be satisfactory with the above-mentioned criteria.

11.3.4 Planting

Vegetation in the form of bushland, remnant native species and cultural planting has important ecological and landscape values that require protection and enhancement. The following criteria should be addressed when providing landscaping for developments:

- *appropriate species from those found in the surrounding landscape should be incorporated;*
- *endemic native species should be used in areas where native vegetation is present or has the potential to be regenerated;*
- *exotic species that have the potential to spread into surrounding bushland should be avoided;*
- *existing mature trees should be retained where possible and incorporated into the design of new developments;*
- *vegetation along ridgelines and on hillsides should be retained and supplemented with additional planting to provide a backdrop to the waterway; and*
- *a landscape plan is to be submitted with any land-based development proposal showing existing and proposed changes in contours, surface and sub-surface drainage, existing trees to be retained and removed, measures to protect vegetation during construction, and proposed planting including species and common names.*

The proposed plant schedule adequately incorporates appropriate native species. Whilst couch grass is included as lawn elements, the potential for this to spread into adjoining bushland will be mitigated by the contained lawn areas.

Council's Tree Management Officer and Heritage NSW consider the proposed landscaping works to be satisfactory subject to conditions.

11.3.4 Inclinator, stairs and driveways

Where inclinator, stairs or driveways are required to provide access, the objectives are to:

- *minimise the visual intrusion; and*
- *minimise disturbance to topography and vegetation.*

To meet these objectives the following criteria, in addition to controls included in council environmental planning instruments, should be met:

- *inclinator and driveways should be sited as close as possible to natural ground level;*
- *stairs should be a maximum of 1.2 metres wide;*
- *stairs should be constructed in timber, masonry or stone. Galvanised stairs will only be permitted where they are painted in colours that blend with their setting;*
- *inclinator, stairs and driveways should be sited to maintain privacy of adjacent dwellings;*
- *inclinator, stairs and driveways should not obscure or break a view line of a rock or cliff face;*
- *the implementation of soil erosion measures; and*
- *encourage shared use of access facilities in environmentally or visually sensitive locations.*

It is considered that the proposed access stairs, wheelchair accessible ramp and vehicular ramp are appropriately integrated into the seawall structure. Sandstone walls are proposed to the wheelchair accessible ramp, the vehicular ramp and the eastern landscaped area. The concrete stairs and bleachers replace existing concrete structures and are considered to be necessarily practically functional.

The proposal involves acceptable alterations to the existing topography.

Whilst the proposed stairs are wider than the prescribed 1.2m (2.3-9m are proposed), such widths are considered to be appropriate for publicly accessible stairs.

Council's Tree Management Officer considers the proposal to be satisfactory in terms of tree impacts subject to conditions.

11.3.5 Seawalls

Whilst the requirements for seawalls are included under *Part 4 Design Guidelines for Water Based and Land/Water Interface Developments* of the DCP even though they are listed as land-based development, they are obviously relevant to the proposal.

Seawalls can be required to protect the land from the sea or to stop accelerated erosion of the shoreline. However, where the foreshore is in its natural state, seawalls will generally be discouraged. Where seawalls are permitted the following requirements must be met:

- *the development application must address the impact of the sea wall on wave and current patterns, potential erosion and the resuspension of contaminants;*
- *the top of the seawall should be 2.6 metres above ZFDTG (1.675 AHD);*
- *natural sandstone blocks or sandstone facing over concrete walls are preferable to other materials. Cement rendered masonry wall with integral yellow oxide render of light tone is acceptable. The use of shotcrete or unrendered off form concrete will not be encouraged;*
- *where existing sandstone seamwalls are being extended or upgraded, similar sandstone coursing to match existing walls should be used;*
- *rubble walls should be avoided and, if possible, existing rubble walls replaced; and*
- *high walls and long unbroken lengths of walls are best avoided. If these already exist, they should be broken by steps or vegetation to relieve their visual monotony.*

Whilst the proposed 4.5-5.5 AHD height of the proposed seawall exceeds the above-mentioned restriction, the application states that the proposed increased height (up to approximately 1m) is necessary to mitigate against wave overtopping risks due to climate change/sea level rise. Council's drainage engineer considers the proposal to be satisfactory in this regard, subject to conditions.

The proposal is considered to be satisfactory in terms of visual impacts upon Sydney Harbour and adjoining foreshore areas with the built form incorporating curved cornered terraced elements, a vertically terraced form punctuated horizontally by 5 sets of stairs including a centrally located feature stair. Adequate landscaped areas are incorporated.

The proposal involves unpainted concrete bleachers, benches, kerbing, paths and stairs, sandstone walls to the eastern landscaped area and ramps and stainless steel balustrades.

Heritage NSW & Council's Heritage Officer consider the proposal to be satisfactory in terms of visual impacts, subject to requirements contained within the Heritage NSW stipulated General Terms of Approval.

The concrete stairs and bleachers replace existing concrete structures are considered to be necessarily practically functional.

It is considered that the proposal, as conditioned, will not have any significant adverse environmental impacts upon Sydney Harbour and adjoining foreshore areas and is considered to be satisfactory in terms of the applicable provisions of the Sydney Harbour Foreshores and Waterways Area DCP 2005.

12. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014

The provisions of Woollahra LEP 2014 relate to all of the proposed works as they are wholly located above the mean high water mark.

12.1. Part 1.2: Aims of Plan

The proposal, as conditioned, is considered to be consistent with the aims in Part 1.2(2) of Woollahra LEP 2014.

12.2. Land Use Table

The subject site is located within Zone E1 National Parks and Nature Reserves. Whilst uses authorised under the National Parks and Wildlife Act 1974 are permissible without consent, there are no uses stipulated that are permissible with consent.

However, as discussed above under section *1 Necessity for Development Consent and Reason for Determination by the Sydney Eastern City Planning Panel*, development consent for the proposed coastal protection works is required under the provisions of Clause 19(2) of SEPP (Coastal Management) 2018, and the proposal is permissible under that Clause.

12.3. Objectives of the zone

The subject site is located within Zone E1 National Parks and Nature Reserves. The objectives of the zone are:

- *To enable the management and appropriate use of land that is reserved under the National Parks and Wildlife Act 1974 or that is acquired under Part 11 of that Act.*
- *To enable uses authorised under the National Parks and Wildlife Act 1974.*
- *To identify land that is to be reserved under the National Parks and Wildlife Act 1974 and to protect the environmental significance of that land.*

The proposal is considered to be consistent with the above-mentioned objectives.

12.4. Part 5.10: Heritage Conservation

Parts 5.10(2) and 5.10(4) require Council to consider the effect of works proposed to a heritage item, building, work, relic or tree, within a heritage conservation area or new buildings or subdivision in a conservation area or where a heritage item is located.

The subject site is listed as heritage item No. 391 *Shark Beach promenade and amenities*.

A heritage related assessment in terms of the above-mentioned heritage items has been provided under section 9.9 *Clause 55 Protection of heritage items* as part of the assessment of the proposal against the provisions of SREP (Sydney Harbour Catchment) 2005.

The subject site is also located in the vicinity of the heritage listed Greycliff House (heritage item No. 364) and Steele (Shark) Point Battery (heritage item No. 392).

Council's Heritage Officer has provided the following heritage assessment in relation to this issue:

There are no listed heritage items in close proximity that would be adversely affected by the proposal.

The proposal, as conditioned, is considered to be satisfactory with regard to the provisions of Part 5.10 of Woollahra LEP 2014.

12.5. Part 6.1: Acid Sulfate Soils

Part 6.1 requires Council to consider any potential acid sulfate soil affectation so that it does not disturb, expose or drain acid sulfate soils and cause environmental damage.

The site of the subject works is located within a Class 5 area as specified on the Acid Sulfate Soils Map (the lowest risk category).

Council's Environmental Health Officer has reviewed the *Preliminary Contamination and Acid Sulfate Soil Screening report* submitted with the development application and has provided the following comments:

The results of the field tests and other laboratory results identified acidic conditions greater than the action criteria. However, these results are considered to be indicative of acid soils associated with organic/humic material rather than ASS materials as significant concentrations of oxidisable sulfur, demonstrated by the low SCR% results, were not encountered in the samples.

As such, and considering the information reviewed for this assessment (risk maps, subsurface conditions etc), potential acid sulphate soil conditions that would be expected to pose a risk to the environment if disturbed during the proposed development works described in Section 1.1 of the screening report have not been identified. On this basis an Acid Sulfate Soils Management Plan is not required for the proposed development.

The proposal is considered to be satisfactory with regard to the provisions of Clause 6.1 of Woollahra LEP 2014.

12.6. Part 6.2: Earthworks

Part 6.2(1) requires Council to ensure that any earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land. In deciding whether to grant consent for earthworks, the consent authority must consider the following matters:

- (a) *The likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development*
- (b) *The effect of the development on the likely future use or redevelopment of the land*
- (c) *The quality of the fill or the soil to be excavated, or both*
- (d) *The effect of the development on the existing and likely amenity of adjoining properties*
- (e) *The source of any fill material and the destination of any excavated material*
- (f) *The likelihood of disturbing relics*
- (g) *The proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area*
- (h) *Any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

The SEE provides the following description of the proposed earthworks.

The proposed development will necessitate some earthworks / excavation in the order of approximately 4200m³ of material, associated with the following:

- *Excavation of trenches for footings for seawall and pedestrian ramp,*
- *Bulk excavation for bleachers sub base in sand, and*
- *Backfill with compacted recycled crushed concrete material.*

Where possible excess sand will be spread across the beach. Should surplus sand remain, it will be removed from the site.

Council's Team Leader -Development Engineering, Senior Environment and Sustainability Officer, Tree Management Officer, Heritage NSW and Council's Heritage Officer have raised no objection to the proposed earthworks subject to conditions.

The proposal, as conditioned, is considered to be acceptable with regard to the provisions of Part 6.2 of Woollahra LEP 2014.

12.7. Part 6.3: Flood Planning

Part 6.3 seeks to minimise the flood risk to life and property development, allow development on land that is compatible, consider projected changes as a result of climate change and avoid significant adverse impacts on flood behaviour and the environment in flood prone areas.

Council's Drainage Engineer has raised no objection to the proposal in this regard subject to a condition of consent.

The proposal, as conditioned, is considered to be acceptable with regard to the provisions of Part 6.3 of Woollahra LEP 2014.

13. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015

Section A1.1.4 *Development to which this plan applies* states:

This plan applies to development requiring consent under the Woollahra Local Environmental Plan 2014 (Woollahra LEP 2014).

As stated under section 12.2 *Land Use Table*, the subject site is located within Zone E1 National Parks and Nature Reserves under Woollahra LEP 2014. Whilst uses authorised under the National Parks and Wildlife Act 1974 are permissible without consent, there are no uses stipulated that are permissible with consent.

Development consent for the proposed coastal protection works as required under the provisions of Clause 19(2) of State Environmental Planning Policy (Coastal Management) 2018).

As such, further consideration of Woollahra DCP 2015 is not required.

14. OTHER APPLICABLE ACTS, PLANS OF MANAGEMENT & REGULATIONS

14.1. Coastal Management Act 2016

The SEE provides the following assessment of the application under the relevant provisions of this act of legislation.

The proposed reconstruction of the seawall at Nielsen Park constitutes “coastal protection works” under the provisions of the Coastal Management Act 2016, defined as:

- “(a) Beach nourishment activities or works, and*
- (b) Activities or works to reduce the impact of coastal hazards on land adjacent to tidal waters, including (but not limited to) seawalls, revetments and groynes.”*

Objects of the Act

The stated objects of the Coastal Management Act are set out in section 3, as follows:

“... to manage the coastal environment of New South Wales in a manner consistent with the principles of ecologically sustainable development for the social, cultural and economic well-being of the people of the State, and in particular:

- (a) to protect and enhance natural coastal processes and coastal environmental values including natural character, scenic value, biological diversity and ecosystem integrity and resilience, and*
- (b) to support the social and cultural values of the coastal zone and maintain public access, amenity, use and safety, and*
- (c) to acknowledge Aboriginal peoples’ spiritual, social, customary and economic use of the coastal zone, and*
- (d) to recognise the coastal zone as a vital economic zone and to support sustainable coastal economies, and*
- (e) to facilitate ecologically sustainable development in the coastal zone and promote sustainable land use planning decision-making, and*
- (f) to mitigate current and future risks from coastal hazards, taking into account the effects of climate change, and*
- (g) to recognise that the local and regional scale effects of coastal processes, and the inherently ambulatory and dynamic nature of the shoreline, may result in the loss of coastal land to the sea (including estuaries and other arms of the sea), and to manage coastal use and development accordingly, and*
- (h) to promote integrated and co-ordinated coastal planning, management and reporting, and*
- (i) to encourage and promote plans and strategies to improve the resilience of coastal assets to the impacts of an uncertain climate future including impacts of extreme storm events, and*
- (j) to ensure co-ordination of the policies and activities of government and public authorities relating to the coastal zone and to facilitate the proper integration of their management activities, and*
- (k) to support public participation in coastal management and planning and greater public awareness, education and understanding of coastal processes and management actions, and*
- (l) to facilitate the identification of land in the coastal zone for acquisition by public or local authorities in order to promote the protection, enhancement, maintenance and restoration of the environment of the coastal zone, and*
- (m) to support the objects of the Marine Estate Management Act 2014.”*

The proposed reconstruction of the seawall is considered to be wholly consistent with the objects of the Act.

Development Consent Requirements

Clause 27 provides the circumstances for granting of development consent relating to coastal protection works, as follows:

- (1) Development consent must not be granted under the Environmental Planning and Assessment Act 1979 to development for the purpose of coastal protection works, unless the consent authority is satisfied that:*
 - (a) the works will not, over the life of the works:*
 - (i) unreasonably limit or be likely to unreasonably limit public access to or the use of a beach or headland, or*
 - (ii) pose or be likely to pose a threat to public safety, and*
 - (b) satisfactory arrangements have been made (by conditions imposed on the consent) for the following for the life of the works:*
 - (i) the restoration of a beach, or land adjacent to the beach, if any increased erosion of the beach or adjacent land is caused by the presence of the works,*
 - (ii) the maintenance of the works.*

The submission of this development application satisfies the provisions of section 27 of the Coastal Management Act.

The above-mentioned requirements of Clause 27(1)(b) are addressed by a recommended condition of consent.

The proposal, as conditioned, is considered to be satisfactory with regard to all relevant provisions of this act of legislation.

14.2. Heritage Act 1977

The SEE provides the following assessment of the application under the relevant provisions of this act of legislation.

The seawall and promenade are located within Nielsen Park, which is listed on the State Heritage Register and therefore is subject to the provisions of the NSW Heritage Act 1977.

The NSW Heritage Council is the approval authority under the Heritage Act for works to an item on the State Heritage Register. Section 57(1) of the Heritage Act requires Heritage Council approval if the work involves any of the following:

- (a) Demolishing the building or work*
- (b) Damaging or despoiling the place, precinct or land, or any part of the place, precinct or land*
- (c) Moving, damaging or destroying the relic or movable object*
- (d) Excavating any land for the purpose of exposing or moving the relic*

- (e) *Carrying out any development in relation to the land on which the building, work or relic is situated, the land that comprises the place, or land within the precinct*
- (f) *Altering the building, work, relic or movable object*
- (g) *Displaying any notice or advertisement on the place, building, work, relic, movable object or land, or in the precinct*
- (h) *Damaging or destroying any tree or other vegetation on, or remove any tree or other vegetation from the place, precinct or land.*

Application for an approval in accordance with Section 57(1) will be sought via a Section 60 Application to the NSW Heritage Division. The requirement for a Section 60 approval also applies to archaeological relics within an SHR site.

Council's Heritage Officer has provided the following assessment in relation to this issue:

The subject site is listed as a heritage item on the State Heritage Register, Nielsen Park and the Hermitage Foreshore Reserve, SHR Item No. 1988.

A heritage impact statement (HIS) has been prepared by Curio Projects. The proposal has been assessed to have a neutral heritage impact.

The subject site is not likely to contain relics as per the Heritage Act 1977 definition.

The proposed works require approval under Section 57 of the Heritage Act 1977 by the Heritage Council of NSW. An application under Section 60 is to be made.

Heritage NSW reviewed the application and provided general terms of approval. Appropriate conditions of consent will be applied accordingly.

The proposal, as conditioned, is considered to be satisfactory with regard to all relevant provisions of this act of legislation.

14.3. Biodiversity Conservation Act 2016

The SEE provides the following assessment of the application under the relevant provisions of this act of legislation.

The Biodiversity Conservation Act 2016 (BC Act) requires that a Biodiversity Development Assessment Report (BDAR) be submitted with a development application when the BOS is triggered. There are four potential triggers which have been examined in the Flora and Fauna Assessment Report submitted with the development application.

The thresholds for the Biodiversity Offsets Scheme (BOS) and application of the Biodiversity Assessment Method (BAM) are not triggered by the proposed development such that a BDAR is not required to be submitted in respect of this development application.

Council's Senior Environment and Sustainability Officer has provided the following assessment of the proposal under the relevant provisions of the BC Act.

NSW Biodiversity Offset Scheme

In regards to the Biodiversity Offset Scheme (BOS), entry requirements as set out under the NSW Biodiversity Conservation Act 2016 the proposed development was evaluated and found to:

- *NOT be mapped on the Biodiversity Values Map published by the Environment Agency Head.*
- *NOT trigger the native vegetation clearing area thresholds.*
- *NOT significantly affect threatened species.*

The Flora and Fauna Assessment Report provided reviews the potential for the project to affect threatened species. The Report includes a likelihood of occurrence and determines which species require a Test of Significance. A Test of Significance has been completed for those species identified. It was determined that there was no significant impact.

Protected Species

All relevant protected species have been identified within the Flora and Fauna Assessment Report which demonstrates how the works will not impact on the species identified on site.

Key Threatening Process

Loss of hollow bearing trees is as a Key Threatening Processes under the Biodiversity Conservation Act 2016.

“Tree hollows are cavities formed in the trunk or branches of a living or dead tree. Hollows are usually more characteristic of older, mature to over mature trees. Hollows may develop in the trunk and branches of trees as a result of wind breakage, lightning strikes, fire and/or following the consumption and decay of internal heartwood by fungi and invertebrates, primarily termites. Hollow entrances are more common in larger trunks and branches because damage is less likely to be covered by growth of external sapwood.”

NSW Biodiversity Conservation Act 2016, Schedule 4. Loss of Hollow-bearing trees – Key Threatening Process Listing, Gazetted 5th October, 2007.

The proposal has been reviewed by Council’s Tree and Management Officer to retain trees that have suitable form.

Council’s Senior Environment and Sustainability Officer has recommended the following condition of consent in terms of species protection:

Trees being removed must be searched for hollows prior to removal. Any hollows identified are to be collected and reused on site.

Any trees to be removed are to be searched for any fauna present before removal. Fauna is to be removed by a trained wildlife carer or ecologist and relocated to a safe location with suitable habitat.

The proposal, as conditioned, is considered to be satisfactory with regard to all relevant provisions of this act of legislation.

14.4. National Parks and Wildlife Act 1974

The SEE provides the following assessment of the application under the relevant provisions of this act of legislation.

The National Parks and Wildlife Act 1974 (NPW Act) is administered by the Aboriginal Heritage Planning Section of the Environment, Energy and Science (EES) and is the primary legislation that provides statutory protection for all 'Aboriginal objects' (Part 6, Section 90) and 'Aboriginal places' (Part 6, Section 84) in NSW.

An Aboriginal object is defined through the NPW Act as:

“any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of the area that comprises New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains.”

The NPW Act provides the definition of 'harm' to Aboriginal objects and places as:

“...any act or omission that:

- (a) destroys, defaces or damages the object or place, or*
- (b) in relation to an object-moves the object from the land on which it had been situated, or*
- (c) is specified by the regulations, or*
- (d) causes or permits the object or place to be harmed in a manner referred to in paragraph (a), (b) or (c),“*

The NPW Act also establishes penalties for 'harm' to Aboriginal objects and declared Aboriginal places, as well as defences and exemptions for harm. One of the main defences against the harming of Aboriginal objects and cultural material is to seek an Aboriginal Heritage Impact Permit (AHIP) under Section 90 of the NPW Act, under which disturbance to Aboriginal objects could be undertaken, in accordance with the requirements of an approved AHIP.

Council's Heritage Officer has provided the following assessment in relation to this issue:

An Aboriginal Cultural Heritage Assessment was prepared by Coast History and Heritage. The report found:

- There are no registered Aboriginal sites within the study area and we have been able to establish that no registered sites in surrounding areas will be affected by the proposal.*
- The existing seawall sits largely in front of the original dune which was once present along the back of Shark Beach, although this has been impacted by wave damage and later construction.*

- *None of this sandy material has the potential to contain in situ Aboriginal archaeological remains.*
- *However, it is possible that this sandy fill contains sparse and discontinuous remains such as shells or stone artefacts that may have been excavated out of nearby sites during original construction works in the 1920s and 1930s.*

The report recommended that an ACHAR be prepared and an AHIP applied for to cover any unexpected finds.

Heritage NSW reviewed the application. Heritage NSW has issued an Aboriginal Heritage Impact Permit (AHIP) for the proposed Nielsen Park Seawall Project. The AHIP (No. 4670) was issued to the National Parks and Wildlife Service on 10 November 2020 for a period of two years.

Heritage NSW provided general terms of approval. Appropriate conditions of consent will be applied accordingly.

The proposal, as conditioned, is considered to be satisfactory with regard to all relevant provisions of this act of legislation.

14.5. Disability Discrimination Act 1992

The SEE provides the following assessment of the application under the relevant provisions of this act of legislation.

The (accessibility) report concludes that the design of the proposed seawall and associated landscape works can provide suitable access for people with a disability. The report further notes that the finer details with respect to compliance with relevant access requirements can be finalised during the developed Design and Construction phases of the project.

Council's standard advising relating to the provisions of Disability Discrimination Act 1992 has been included.

14.6. Sydney Harbour National Park Plan of Management 2012

The SEE provides the following assessment of the application under the provisions of this plan of management (PoM).

The PoM describes the Nielsen Park and Hermitage Foreshore Precinct as being "characterised by a strong tradition of recreational uses, notably picnicking and swimming but also small-scale celebrations".

The Management Plan identified aims and outcomes for the management of the precinct, which includes the following outcome specifically of relevance to the proposed reconstruction of the seawall and associated recreational activities and public use of the beach (Outcome 4—Provide enriching and memorable experiences in the park), which includes the aim to "Provide and maintain visitor infrastructure and services that support the traditional passive recreation opportunities of the precinct".

It is considered that the proposed development is not inconsistent with the Sydney Harbour National Park Plan of Management 2012.

14.7. Nielsen Park Conservation Management Plan 2013

The SEE submitted with the subject development application provides the following assessment of the application under the provisions of this conservation management plan.

The Nielsen Park Conservation Management Plan (CMP) was prepared prior to the gazettal of the Park on the State Heritage Register in 2017, therefore some of the statutory context and policies in the CMP are no longer applicable in the current statutory context of the site. Notwithstanding the context and policies of the CMP as they relate to Shark Beach and the seawall have been considered in the preparation of the development application.

The Shark Beach precinct of the Park is described as follows:

The beach zone represents a major destination in the Park and highlights the recreational values of the place. The relationship of the rows of Tuckeroos and Brushbox trees to the concrete promenade and the articulation of the concrete benches giving access to the beach form a distinctive sense of place. This is an introduced landscape setting that contrasts strongly with the adjacent wooded headlands.

These landscape elements are set around a group of recreational buildings and features including the kiosk, the underground access to the Dressing Pavilion and the Pavilion itself, smaller beach structures and the swimming net located in the harbour. The dense stands of Tuckeroos to the rear of the promenade create a distinctive landscape form that is a key aspect of the significance of the place as a recreational area.

It is noted that the CMP assesses the “concrete sea wall and terracing at beach” to be of low significance.

The CMP provides a series of action statements for the Shark Beach Precinct. Of particular relevance to the current proposal:

- Retain and maintain the built elements of the precinct as identified in specific building policies.*
- Retain existing plantings and undertake replacement plantings of avenue trees when required.*
- The Tuckeroo and Brushbox trees are to be maintained.*
- Trees will be under-pruned where necessary to ensure clear sight lines through the area.*
- The park like grassed areas between and under trees is to be retained without new introduced gardens or plantings.*

Notwithstanding the removal of 12 trees along the southern edge of the seawall that is required to facilitate its reconstruction, the proposal is considered that the proposed seawall / bleacher reconstruction is considered to be consistent with these action statements for the following reasons:

- (i) *The seawall will be reconstructed to a comparable form, bulk and scale and using the same materiality as the existing structure;*
- (ii) *Replacement planting will be drawn from an appropriate coastal planting palette. The species selection will preserve sightlines between the Park and the Harbour; and*
- (iii) *The grassed areas between and under trees along the new promenade will be reinstated.*

Council concurs with the above-mentioned assessment subject to the conditions recommended by Council's Tree Management Officer and Heritage NSW.

14.8. Woollahra Biodiversity Conservation Strategy

Council's Senior Environment and Sustainability Officer has provided the following assessment of the proposal with regard to this document.

The Woollahra Biodiversity Conservation Strategy 2015-2025 has several references to the proposed development site. It notes that it is located within the Sydney Harbour National Park which is not managed by Council. It notes that the site is a Key Habitat Area and that it is:

- *The most extensive patch of remnant vegetation in the LGA.*
- *The largest area of foreshore bushland south of Sydney Harbour.*
- *Characterised by sandstone woodland and heathland vegetation habitat on slopes, gullies and coastal headlands.*
- *Home to the endangered plants, *Acacia terminalis* subsp. *terminalis* and *Allocasuarina portuensis*.*
- *Habitat for and the vulnerable Powerful Owl and Sooty Oystercatcher and a number of regionally significant flora and fauna species.*

The works are limited to a small portion of the site and there is no removal of high value biodiversity vegetation. A summary of this has been outlined in the Flora and Fauna Report provided by the applicant.

14.9. Eastern City District Plan

Council's Senior Environment and Sustainability Officer has provided the following assessment of the proposal with regard to this document.

The Eastern City District Plan contains the planning priorities and actions for implementing the Greater Sydney Region Plan at a district level and is a bridge between regional and local planning. It is to inform local strategic planning statements and local environmental plans, the assessment of planning proposals as well as community strategic plans and policies.

As such the following planning policies have been considered in the review of the proposed development application.

- *Planning Priority E17 – Increasing urban tree canopy cover and delivering Green Grid connections.*
 - o *Objective 30 – Urban tree canopy cover is increased.*

Planning Priority E17 has been identified as a Premiers Priority.

Urban heat island mapping provided by Department of Planning, Infrastructure and Environment (formally OEH) for the subject site indicates temperature is 0-3 degrees warmer than baseline for the majority of the site and 'cooler than baseline' for the remainder.

Planning Priority E17 is met by the application as removed trees are being replaced and additional planting is being completed. Considerable mature trees exist, and will continue to, within the National Park site. This will assist in maintaining canopy cover while planted species are able to establish.

14.10. Clause 92 of the EPA Regulation 2000

Clause 92 of the EPA Regulation 2000 requires Council to take into consideration Australian Standard AS 2601-1991: The demolition of structures. This requirement is addressed by recommended condition of consent.

15. THE LIKELY IMPACTS OF THE PROPOSAL

Potential environmental impacts associated with the proposed development that have been not addressed previously are addressed as follows.

15.1. Sustainability

Council's Senior Environment and Sustainability Officer has provided the following assessment of the proposal.

It would be preferable to use materials that have lower embodied energy i.e. using recycled materials and/or supplementing cementing materials (above industry standard), use of recycled steel and reuse and/or recycle demolition material where possible. These will assist in reducing the carbon footprint of these works. This align with the aims of both Council and NSW National Parks and Wildlife Service both of which acknowledge climate change and encourage action to mitigate and address this.

Council's Senior Environment and Sustainability Officer has recommended a condition of consent addressing the above.

15.2. Construction noise

Council's Environmental Health Officer has provided the following assessment of this issue.

A noise impact assessment for the demolition and construction phase of the works will be conducted in accordance with the EPA's 'Interim Construction Noise Guideline' (ICNG). The construction works will be undertaken in one stage and will consist of demolition of the existing concrete bleacher structure in full, crushing of concrete on site (to then be re-used as backfill), piling works down to bedrock on the beach, and the new concrete sea wall will be constructed using insitu concrete. The construction period is expected to be approximately 8 months, commencing on 1 March 2021 and completed by 30 November 2021.

Assessment – Construction Noise

The noise sensitive receivers Residential) were identified from site visits and aerial photography of the area to be the nearest affected receiver locations. Refer to Table 2.1 of the report. The proposed construction hours are as follows:

7:00am to 5:00pm – Monday to Friday

7:00am to 12:00pm – Saturday

No work on Sunday & Public Holidays

To quantify the existing ambient noise environment, long-term (unattended) noise monitoring was conducted at Location L1 between Tuesday 2nd June and Tuesday 9th June 2020. The noise monitor was installed at Greycliff House away from the building façade. Existing background and ambient noise levels are presented in Table 3.2 of the report. The noise monitor was positioned outdoors in the 'free-field' (i.e. away from building facades). Construction noise from the site is assessed in the free-field at the potentially most affected receiver boundaries and therefore, the representative noise levels are listed in Table 3.2 of the report.

The NSW 'Interim Construction Noise Guideline' (ICNG, 2009) provides guidelines for assessing noise generated during the construction phase of developments. As stated in the ICNG, a noise mitigation measure is feasible if it is capable of being put into practice and is practical to build given the project constraints. The ICNG provides two methods for assessment of construction noise, being either a quantitative or a qualitative assessment. A quantitative assessment is recommended for major construction projects of significant duration, and involves the measurement and prediction of noise levels, and assessment against set criteria. Given the length of the construction works proposed, a quantitative assessment is carried out herein, consistent with the ICNG requirements.

Refer to Table 4.2 – Construction Noise Management Levels (NML) at Residential Receivers, dB(A) & Table 4.3 – Noise management levels at other noise sensitive land uses of the report. Table 4.4 of the report lists typical plant and equipment likely to be used by the contractor to carry out the necessary construction works for the project and their corresponding sound power levels.

A noise modelling computer program was used to predict the noise sources, receiver locations, topographical features of the intervening area, and possible noise control treatments. Table 4.4 of the report presents construction noise levels likely to be experienced at the nearby affected receivers based on the construction activities and plant and equipment associated with the subject site.

Based on the construction noise levels presented in the table above, the construction management levels at all receivers would typically be exceeded when the construction works are conducted at the closest proximity to the receivers. Furthermore, construction noise levels for receivers R4 and R6 are predicted to be greater than the highly noise affected level of 75dB(A) for operation of the noisier plant and equipment items and when the three noisiest plant and equipment items are used concurrently and at the closest point to the relevant receiver location.

Conclusion

Environmental Health Services Section is in agreement with the in-principle recommendations that are provided in Section 4.4 of the report to limit the potential impact of noise generated by

construction activities to acceptable levels. Construction traffic noise impacts on the surrounding road network have been reviewed and were determined to comply with the relevant traffic noise criteria and not contribute to the existing traffic noise levels experienced by the affected residences.

Council's Environmental Health Officer has recommended a condition of consent in relation to the above.

15.3. Operational noise

The SEE submitted with the subject development application provides the following assessment of this issue.

Upon completion, the new seawall and associated works are not expected to intensify the use of Nielsen Park or Shark Beach and as such will not alter the existing noise environment associated with these facilities.

Council's Environmental Health Officer has not raised any objection to the proposal in this regard.

Council's standard condition relating to the control of offensive noise has been recommended.

15.4. Traffic, access and parking

On 6 November 2020, an amended construction traffic management plan (CTMP) was submitted to Council in order to address concerns raised by Council's Traffic Engineer. Council's Traffic Engineer has reviewed the amended CTMP and has provided the following assessment.

Council's Traffic Section does not raise any objection in principle to the proposed development. Several issues have been identified that are to be addressed when a formal CMP application is lodged at construction certificate stage, including:

- 1. Hours of Work: Considering the proposed vehicle routes and several schools along the route, heavy vehicle movements along Vacluse Road or any other routes when a school is involved should avoid the peak pick-up and drop-off hours between 7.30am-9.30am, and 2.30pm-4.30pm;*
- 2. Parking Arrangement: It should be noted that no designated parking spaces will be provided for construction workers, public transportation should be utilised to minimise impacts on the surrounding road network.*
- 3. Access/Egress Manoeuvre: The indicative manoeuvre demonstrated in swept path analysis is considered acceptable, however when such manoeuvre is not achievable due to site constraints, a reverse-in and forward-out manoeuvre should be adopted, and a TCP should be developed by an approved RMS Red or Orange Card Holder to manage the temporary change.*
- 4. Vehicle Route: Please clarify that during school pick-up and drop-off hours between 7.30am-9.30am and 2.30pm-4.30pm, whether the proposed alternative routes are for light vehicles, or heavy vehicles are also included.*

Council's Traffic Engineer has recommended conditions of consent requiring the approval of/ compliance with a CMP and a works (construction) zone.

15.5. Stormwater and flood management

The SEE submitted with the subject development application provides the following description of the proposed stormwater and flood control measures.

Water Management

The Overland Flow and Flooding Investigation Report identifies that the site drainage generally consists of overland sheet flow across the promenade as well as identifying an existing storage basin south of the dressing pavilion.

In a 1% AEP ocean surge and storm event, Nielsen Park promenade will experience minor inundation of water. This inundation is a result of the seawall overtopping and upstream external catchments. It is expected that the combined events will result in 60L/s/m of sheet flow across the promenade, equating to a depth of approximately 80mm. For the purpose of pedestrian safety this is considered a low risk.

The overland flow review suggests that there is a significant safety hazard for pedestrians using the existing tunnel to vacate the beach. However by having the overland flow concentrated into one path the remaining access points and promenade remain relatively safe.

Proposed Stormwater Control Measures

To allow for future planning and growth within the region RBG has proposed to install a new stormwater pipe coordinated with the infrastructure proposed for this project. This pipe will then be capped and left unused within the ground, next to the existing stormwater line, to be later connected as part of future works.

The drainage behind the dressing pavilion forms a detention basin which in return has resulted in flooding occurring near the pavilion. Woollahra Council's Stormwater Management Guidelines provides controls that are to be followed for above ground detention basins. It should be noted that the subject site is within the OSD exemption area and as a consequence the controls do not apply. Notwithstanding, RBG has assessed the proposal against those design controls.

In order to satisfy the DCP requirements, it is proposed to install and coordinate an additional 900mm diameter pipe as part of the site infrastructure. As indicated above, this will remain dormant until required as part of future works within Nielsen Park.

Promenade Drainage Upgrade

The promenade drainage strategy utilises existing overland flow paths and site features to drain the site. Where feasible and to prevent water from crossing access points, new grates are proposed to be installed to capture and control the stormwater.

Western End of the Promenade

Stormwater within the footpath is directed west due to the locality of a raised landscape area. To capture this water two grated drains are proposed. This arrangement will prevent this water from crossing the existing beach access as well as the proposed sea wall access.

Central Portion of the Promenade

The existing building located at the centre of the promenade currently has a roof gutter discharge to the footpath. This results in additional overland flow directed towards the beach.

It is proposed to install a new grated drain at the top of the stairs to prevent this water this from flowing over and down the new stairs. This grated drain is then connected into an infiltration pit to prevent the need for an additional discharge through the sea wall.

Eastern Promenade Drainage

The eastern drainage utilises the existing inlet pit located at the shower junction as well as overland flow paths down the vehicle and pedestrian access ramps.

Council's Drainage Engineer and Team Leader - Development Engineering consider the proposal to be satisfactory in terms of stormwater and flood management subject to conditions.

16. THE SUITABILITY OF THE SITE

The site is considered suitable for the proposed development as conditioned.

17. THE PUBLIC INTEREST

In determining whether or not the proposal is in the public interest, both the wider public interest (in this instance the improved protection of Nielsen Park from sea level rise inundation and improved public access to the waterway including for persons with disabilities) and the sectionalised public interest (residential amenity, construction parking and traffic related impacts, tree impacts, heritage impacts, public view loss impacts etc.) must be taken into consideration. In the event that the wider public interest outweighs sectionalised public interests, the proposal can be determined to be in the public interest.

Conditions of development consent have been recommended that are aimed to mitigate all identified potential impacts upon the environment. Subject to these conditions, it is considered that the protection of Nielsen Park from sea level rise inundation and improved public access substantially outweighs any potential residual adverse environmental impacts.

Accordingly, the proposal as conditioned is considered to be in the public interest.

18. CONCLUSION

This assessment has considered the application in terms of the relevant matters under Section 4.15 of the Environmental Planning and Assessment Act and other relevant considerations and the amended proposal is considered to be satisfactory in this regard, subject to conditions.

19. DISCLOSURE STATEMENTS

Under Section 10.4 of the Environmental Planning and Assessment Act, 1979 there have been no disclosure statements regarding political donations or gifts made to any Councillor or gifts made to any council employee submitted with this development application by either the applicant or any person who made a submission.

20. RECOMMENDATION: PURSUANT TO SECTION 4.16 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

THAT the Sydney Eastern City Planning Panel, exercising the functions of Council as the consent authority, grant development consent to DA223/2020/1 for coastal protection works involving the demolition of the existing seawall, the construction of a new seawall, alterations and additions to the existing promenade and associated site works, landscaping and stormwater management works at Shark Beach on land at Nielsen Park, Vacluse Road, aka 6 Steele Point Road, Vacluse, subject to the following conditions:

A. General Conditions

A.1 Conditions

Consent is granted subject to the following conditions imposed pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979* (“the *Act*”) and the provisions of the *Environmental Planning and Assessment Regulation 2000* (“the *Regulation*”) such conditions being reasonable and relevant to the development as assessed pursuant to section 4.15 of the *Act*.

A.2 Definitions

Unless specified otherwise, words have the same meaning as defined by the *Act*, the *Regulation* and the *Interpretation Act 1987* as in force at the date of consent.

Applicant means the applicant for this consent.

Approved Plans mean the plans endorsed by Council referenced by this consent as amended by conditions of this consent.

AS or ***AS/NZS*** means Australian Standard® or Australian/New Zealand Standard®, respectively, published by Standards Australia International Limited.

BCA means the Building Code of Australia as published by the Australian Building Codes Board as in force at the date of issue of any Construction Certificate.

Council means Woollahra Municipal Council

Court means the Land and Environment Court

Local native plants means species of native plant endemic to Sydney’s eastern suburbs (see the brochure titled “Local Native Plants for Sydney’s Eastern Suburbs” published by the Southern Sydney Regional Organisation of Councils).

Stormwater drainage system means all works, facilities and documentation relating to:

- the collection of stormwater,
- the retention of stormwater,
- the reuse of stormwater,
- the detention of stormwater,
- the controlled release of stormwater; and
- connections to easements and public stormwater systems.

Owner means the owner of the *site* and successors in title to the *site*.

Owner-builder has the same meaning as in the *Home Building Act 1989*.

PC means the Principal Certifier under the *Act*.

Principal Contractor has the same meaning as in the *Act*, or where a Principal Contractor has not been appointed by the Owner of the land being developed Principal Contractor means the Owner of the land being developed.

Professional engineer has the same meaning as in the BCA.

Public place has the same meaning as in the *Local Government Act 1993*.

Road has the same meaning as in the *Roads Act 1993*.

Site means the land being developed subject to this consent.

Work for the purposes of this consent means:

- the use of land in connection with development,
- the subdivision of land,
- the erection of a building,
- the carrying out of any work,
- the use of any site crane, machine, article, material, or thing,
- the storage of waste, materials, site crane, machine, article, material, or thing,
- the demolition of a building,
- the piling, piercing, cutting, boring, drilling, rock breaking, rock sawing or excavation of land,
- the delivery to or removal from the *site* of any machine, article, material, or thing, or
- the occupation of the *site* by any person unless authorised by an occupation certificate.

Note: Interpretation of conditions - Where there is any need to obtain an interpretation of the intent of any condition this must be done in writing to Council and confirmed in writing by Council.

A.3 Approved Plans and Supporting Documents

Those with the benefit of this consent must carry out all work and maintain the use and works in accordance with both the architectural plans to which is affixed a Council stamp

“Approved” and supporting documents listed below as submitted by the Applicant unless modified by any following condition.

Where the plans relate to alterations or additions only those works shown in colour or highlighted are approved.

Reference	Description	Author/Drawn	Date(s)
L-200 Issue D2 L-201 Issue D2 L-202 Issue D2 L-203 Issue D2	Demolition Plans	Oculus	18/08/2020
L-300 Issue D2 L-301 Issue D3 L-302 Issue D2 L-303 Issue D2	General Arrangement Plans	Oculus	18/08/2020 (D2) 27/10/2020 (D3)
L-500 Issue D3 L-501 Issue D2 L-502 Issue D2 L-503 Issue D2	Planting Plans	Oculus	18/08/2020 (D2) 27/10/2020 (D3)
L-600 Issue D2 L-601 Issue D2 L-602 Issue D2	Sections	Oculus	18/08/2020
OC – L – O25 (Rev.B)	Indicative Plant schedule and palette	Oculus	18/8/2020
NIEL/PARK/AIA/B	Arboricultural Impact Assessment Report (Revision B)	Tree IQ	23/06/2020
	Addendum to Arboricultural Impact Assessment Report (Revision B) & Tree Protection plan (appendix 2)- Proposed Holding Bay	Tree IQ	11/11/2020
311015-00051-001	Coastal Studies	Advisian P/L	June 2020
19587-P01	Overland Flow & Flooding Investigation	Robert Bird Group P/L	03.06.20
29837ZRppt	Geotechnical Report	JK Geotechnics	15 November 2016
19587	Structural Design Report	Robert Bird Group P/L	29 June 2020
19587 RBG-ZZ-XX-DR-CV-80-000-P03 RBG-ZZ-XX-DR-CV-80-005-P03 RBG-ZZ-XX-DR-CV-81-001-P02 RBG-ZZ-XX-DR-CV-83-000-P03 RBG-ZZ-XX-DR-CV-83-001-P03 RBG-ZZ-XX-DR-CV-83-002-P03 RBG-ZZ-XX-DR-CV-83-003-P03 RBG-ZZ-XX-DR-CV-83-010-P02 RBG-ZZ-XX-DR-CV-83-015-P02 RBG-ZZ-XX-DR-CV-86-010-P02	Civil Drawings	Robert Bird Group P/L	29/06/2020 29/06/2020 24/06/2020 29/06/2020 29/06/2020 29/06/2020 29/06/2020 24/06/2020 24/06/2020 24/06/2020
E29837BrptRev1	Preliminary Contamination & ASS Screening Report	JK Environments	25/06/2020
TL502-01F02	Acoustic Report	Renzo Tonin & Associates	23/06/2020
14421 Version number 2	Flora and Fauna Assessment Report	Ecological Australia P/L	28 May 2020

Where any inconsistency exists between the Civil Drawings and the amended General Arrangement Plans referenced above, the latter prevails.

Note: Warning to Accredited Certifiers – You should always insist on sighting the original Council stamped approved plans. You should not rely solely upon the plan reference numbers in this condition. Should the Applicant not be able to provide you with the original copy Council will provide you with access to its files so you may review our original copy of the approved plan.

Note: These plans and supporting documentation may be subject to conditions imposed under section 4.17(1)(g) of the *Act* modifying or amending the development (refer to conditions which must be satisfied prior to the issue of any *Construction Certificate*.)

A.4 General Terms of Approval – *Heritage Act 1977* (Heritage NSW as delegate of the Heritage Council of NSW)

In accordance with Section 4.47 of the Environmental Planning and Assessment Act 1979, the following revised general terms of approval are granted:

APPROVED DEVELOPMENT

1. Development must be in accordance with:
 - a. Drawings, prepared by Oculus, as listed below:

Dwg No	Dwg Title	Date	Rev
Project Name: Nielsen Park Seawall Redevelopment, Development Application			
L-100	Cover Sheet	18.08.20	D2
L-101	Existing Condition Plan	18.08.20	D1
L-200	Demolition Plan	18.08.20	D2
L-201	Demolition Plan – Sheet 1 of 3	18.08.20	D2
L-202	Demolition Plan – Sheet 2 of 3	18.08.20	D2
L-203	Demolition Plan – Sheet 3 of 3	18.08.20	D2
L-300	General Arrangement Plan	18.08.20	D2
L-301	General Arrangement Plan Sheet 1 of 3	18.08.20	D2
L-302	General Arrangement Plan Sheet 2 of 3	18.08.20	D2
L-303	General Arrangement Plan Sheet 3 of 3	18.08.20	D2
L-500	Planting Plan	27.10.20	D3
L-501	Planting Plan Sheet 1 of 3	18.08.20	D2
L-502	Planting Plan Sheet 2 of 3	18.08.20	D2
L-503	Planting Plan Sheet 3 of 3	18.08.20	D2
L-600	Sections	18.08.20	D2
L-601	Sections	18.08.20	D2
L-602	Sections	18.08.20	D2

- b. Drawings, prepared by Oculus, as listed below:

Dwg No	Dwg Title	Date	Rev
Project Name: Nielsen Park Seawall Redevelopment, Development Application			
OC - L - 001	Table of contents	18.08.20	B

OC - L - 002	Introduction	18.08.20	B
OC - L - 003	Project Area	18.08.20	B
OC - L - 004	Beach Character Evolution: Sheet 1 of 3	18.08.20	B
OC - L - 005	Beach Character Evolution: Sheet 2 of 3	18.08.20	B
OC - L - 006	Beach Character Evolution: Sheet 3 of 3	18.08.20	B
OC - L - 007	Key Areas & Character Analysis: Sheet 1 of 2	18.08.20	B
OC - L - 008	Key Areas & Character Analysis: Sheet 2 of 2	18.08.20	B
OC - L - 009	Design Principles: Sheet 1 of 2	18.08.20	B
OC - L - 010	Design Principles: Sheet 2 of 2	18.08.20	B
OC - L - 011	Seawall Design Approach	18.08.20	B
OC - L - 012	Key Plan	18.08.20	B
OC - L - 013	Concept Plan	18.08.20	B
OC - L - 014	Concept Detail Plan: Sheet 1 of 3	18.08.20	B
OC - L - 015	Concept Detail Plan: Sheet 2 of 3	18.08.20	B
OC - L - 016	Concept Detail Plan: Sheet 3 of 3	18.08.20	B
OC - L - 017	Perspective: View # 1	18.08.20	B
OC - L - 018	Perspective: View # 2	18.08.20	B
OC - L - 019	Perspective: View # 3	18.08.20	B
OC - L - 020	Indicative Sections – AA & BB	18.08.20	B
OC - L - 021	Indicative Sections – CC & DD	18.08.20	B
OC - L - 022	Indicative Sections – EE	18.08.20	B
OC - L - 023	Indicative Elevations – FF & GG: Sheet 1 of 2	18.08.20	B
OC - L - 024	Indicative Elevations – FF & GG: Sheet 2 of 2	18.08.20	B
OC - L - 025	Indicative Plant Schedule & Palette	18.08.20	B
OC - L - 029	Indicative Demolition Plan: Sheet 1 of 2	18.08.20	B
OC - L - 030	Indicative Demolition Plan: Sheet 2 of 2	18.08.20	B
OC - L - 027	Draft Construction Management Plan	18.08.20	B
OC - L - 028	Draft Construction Management Plan	18.08.20	B
OC - L - 026	Indicative Material's Pallet	18.08.20	B

- c. Civil drawings, prepared by Robert Bird Group, as listed below:

Dwg No	Dwg Title	Date	Rev
Project Name: Nielsen Park Sea Wall, Nielsen Park, Vacluse New South Wales 2030			
19587-RBG- ZZ-XX-DR- CV-80-000	Cover Sheet, Sheet List and Locality Map	29.06.2020	P03

19587-RBG-ZZ-XX-DR-CV-80-005	Site Layout Plan	29.06.2020	P03
19587-RBG-ZZ-XX-DR-CV-83-015	Typical Site Sections – Sheet 1	24.06.2020	P02
19587-RBG-ZZ-XX-DR-CV-83-001	General Arrangement Plan – Sheet 1 of 3	29.06.2020	P03
19587-RBG-ZZ-XX-DR-CV-83-002	General Arrangement Plan – Sheet 2 of 3	29.06.2020	P03
19587-RBG-ZZ-XX-DR-CV-83-003	General Arrangement Plan – Sheet 3 of 3	29.06.2020	P03
19587-RBG-ZZ-XX-DR-CV-83-010	CML Details	24.06.2020	P02
19587-RBG-ZZ-XX-DR-CV-86-010	Stormwater Details	24.06.2020	P02
19587-RBG-ZZ-XX-DR-CV-81-001	Erosion and Sediment Control Plan	24.06.2020	P02
19587-RBG-ZZ-XX-DR-CV-83-000	General Arrangement Index Plan	29.06.2020	P03

Where any inconsistency exists between the Civil Drawings and the amended General Arrangement Plans referenced above, the latter prevails.

- d. Report titled *Nielsen Park Seawall Upgrade Revised Final Heritage Impact*, prepared by Curio Projects, dated 25 June 2020.
- e. Report titled *Statement of Environmental Effects, Reconstruction of Existing Seawall & Promenade, Nielsen Park Vacluse*, prepared by Helen Mulcahy Urban Planning, dated June 2020.
- f. Report titled *Structural Design Report Nielsen Park Seawall, Issue D – Structural Typical Section Updated*, prepared by Robert Bird Group, dated 29 June 2020.
- g. Email, *Nielsen Park Seawall DA* dated 28 January 2021 by James Lawton, Senior Project Officer, NSW National Parks & Wildlife Service.

EXCEPT AS AMENDED by the following general terms of approval:

FURTHER INFORMATION

- 2. Details of the fixing methodology of the eastern DDA ramp to the heritage fabric of the eastern sandstone wall shall be submitted for approval to the Heritage Council (or its delegate) with the section 60 application.

Reason: To ensure that works have minimal visual and physical impact on the wall.

3. Proposed location for the additional stormwater drainage outlet at the western end of the beach shall be amended to avoid impact on significant fabric. Amended drawings showing alternate location shall be submitted for approval to the Heritage Council (or its delegate) with the section 60 application.

Reason: To minimise impact on significant fabric and views.

4. Details of the modified/replacement pylon to support the shark net structure shall be submitted for approval to the Heritage Council (or its delegate) with the section 60 application.

Reason: To ensure the works have minimal visual impact.

5. New replacement plantings following removal of the existing *Tuckeroo* plantings along the foreshore must be of the same species as existing.

Reason: To ensure that the significant character of the foreshore plantings is maintained.

HERITAGE CONSULTANT

6. A suitably qualified and experienced heritage consultant must be nominated for this project. The nominated heritage consultant must provide input into the detailed design, provide heritage information to be imparted to all tradespeople during site inductions, and oversee the works to minimise impacts to heritage values. The nominated heritage consultant must be involved in the selection of appropriate tradespersons and must be satisfied that all work has been carried out in accordance with the conditions of this consent.

Reason: So that appropriate heritage advice is provided to support best practice conservation and ensure works are undertaken in accordance with this approval.

SPECIALIST TRADESPERSONS

7. All work to, or affecting, significant fabric shall be carried out by suitably qualified tradespersons with practical experience in conservation and restoration of similar heritage structures, materials and construction methods.

Reason: So that the construction, conservation and repair of significant fabric follows best heritage practice.

SITE PROTECTION

8. Significant built and landscape elements are to be protected during site preparation and the works from potential damage. Protection systems must ensure significant fabric, including landscape elements, is not damaged or removed.

Reason: To ensure significant fabric including vegetation is protected during construction.

PHOTOGRAPHIC ARCHIVAL RECORDING

9. A photographic archival recording of the affected areas must be prepared prior to the commencement of works, during works and at the completion of works. This recording must be in accordance with the Heritage NSW publication 'Photographic Recording of Heritage Items using Film or Digital Capture' (2006). The digital copy of the archival record must be provided to Heritage NSW, Department of Premier and Cabinet.

Reason: To capture the condition and appearance of the place prior to, and during, modification of the site which impacts significant fabric.

UNEXPECTED HISTORICAL ARCHAEOLOGICAL RELICS AND MARITIME RELICS (INCLUDING HISTORIC SHIPWRECKS)

10. The applicant must ensure that if unexpected archaeological deposits or relics (including Shipwrecks as defined by the *Heritage Act 1977*) not identified and considered in the supporting documents for this approval are discovered, work must cease in the affected area(s) and the Heritage Council of NSW must be notified. Additional assessment and approval may be required prior to works continuing in the affected area(s) based on the nature of the discovery.

Reason: This is a standard condition to identify to the applicant how to proceed if historical archaeological deposits or relics are unexpectedly identified during works.

ABORIGINAL OBJECTS

11. Should any Aboriginal objects be uncovered by the work which is not covered by a valid Aboriginal Heritage Impact Permit, excavation or disturbance of the area is to stop immediately and Heritage NSW is to be informed in accordance with the *National Parks and Wildlife Act 1974* (as amended). Works affecting Aboriginal objects on the site must not continue until Heritage NSW has been informed and the appropriate approvals are in place. Aboriginal objects must be managed in accordance with the *National Parks and Wildlife Act 1974*.

Reason: This is a standard condition to identify to the applicant how to proceed if Aboriginal objects are unexpectedly identified during works.

COMPLIANCE

12. If requested, the applicant and any nominated heritage consultant may be required to participate in audits of Heritage Council of NSW approvals to confirm compliance with conditions of consent.

Reason: To ensure that the proposed works are completed as approved.

SECTION 60 APPLICATION

13. An application under section 60 of the *Heritage Act 1977* must be submitted to, and approved by, the Heritage Council of NSW (or delegate), prior to work commencing.

Reason: To meet legislative requirements.

Advice

Section 148 of the *Heritage Act 1977* (the Act), allows people authorised by the Minister to enter and inspect, for the purposes of the Act, with respect to buildings, works, relics, moveable objects, places or items that is or contains an item of environmental heritage. Reasonable notice must be given for the inspection.

Right of Appeal

If you are dissatisfied with this determination, section 70A of the Act gives you the right of appeal to the Land and Environment Court.

If you have any questions regarding these general terms of approval, please contact Shikha Jhaldiyal, Senior Heritage Assessment Officer, at Heritage NSW, on 9873 8545 or Shikha.Jhaldiyal@environment.nsw.gov.au.”

Attached to the above was the following written advice dated 27 November 2020 (confirmed on 1 February 2021) provided by the Senior Team Leader, Aboriginal Cultural Heritage Regulation-South Heritage NSW:

“An AHIP has been issued for these works

Heritage NSW has issued an Aboriginal Heritage Impact Permit (AHIP) for the proposed Nielsen Park Seawall Project. The AHIP (No. 4670) was issued to the National Parks and Wildlife Service on 10 November 2020 for a period of two years.

General Terms of Approval for Aboriginal cultural heritage

- All works must be in accordance with Aboriginal Heritage Impact Permit No. 4670 issued on 10 November 2020.
- No harm to Aboriginal objects may occur through the proposed works unless they are covered by a valid Aboriginal Heritage Impact Permit.
- If human skeletal remains that are likely to be Aboriginal Ancestral remains are identified the find must be reported immediately to Heritage NSW by telephone: 131 555 or email: info@environment.nsw.gov.au.

Heritage NSW should be informed if the development footprint changes

If the development footprint changes from that shown in the information provided with this referral, Heritage NSW must be further consulted to determine whether our GTAs need to be modified.

If any required works cannot comply with the conditions of AHIP No. 4670, the applicant must either apply to Heritage NSW to vary AHIP No. 4670 or apply for a new AHIP to cover those works. Further advice from Heritage NSW should be sought if this occurs.

Please note: the above comments relate only to Aboriginal cultural heritage regulation matters pursuant to the *National Parks and Wildlife Act 1974*. Please contact Heritage NSW separately if Council requires advice in relation to matters under the *Heritage Act 1977*.

If you have any questions regarding these GTAs, please contact me on (02) 6229 7089 or via email jackie.taylor@environment.nsw.gov.au.”

Note: These conditions have not been imposed by Council but are required to be incorporate as conditions of development consent. Where there is any inconsistency between these general terms of approval and other conditions of this consent the more onerous requirement prevails.

A.5 Tree Preservation & Approved Landscaping Works

All landscape works shall be undertaken in accordance with the approved landscape plan, arborist report, tree management plan and transplant method statement as applicable.

a) The following trees may be removed:

Council Ref No.	Species	Location	Dimensions
1	<i>Cupaniopsis anacardioides</i> (Tuckeroo)	Refer to Concept Plan Revision B referenced OC-L-013, dated 17/8/2020	2 x 1 metres
2	<i>Cupaniopsis anacardioides</i> (Tuckeroo)	Refer to Concept Plan Revision B referenced OC-L-013, dated 17/8/2020	4 x 4 metres
2HB	<i>Lophostemon confertus</i> (Brushbox)	Refer to Appendix 2 of the submitted Tree IQ Tree Protection specification (Holding Bay) dated 11 November 2020.	2 x 1 metres
3	<i>Cupaniopsis anacardioides</i> (Tuckeroo)	Refer to Concept Plan Revision B referenced OC-L-013, dated 17/8/2020	4 x 4 metres
4	<i>Cupaniopsis anacardioides</i> (Tuckeroo)	Refer to Concept Plan Revision B referenced OC-L-013, dated 17/8/2020	4 x 4 metres
5	<i>Cupaniopsis anacardioides</i> (Tuckeroo)	Refer to Concept Plan Revision B referenced OC-L-013, dated 17/8/2020	4 x 4 metres
6	<i>Melaleuca armillaris</i> (Bracelet Honey Myrtle)	Refer to Concept Plan Revision B referenced OC-L-013, dated 17/8/2020	5 x 5 metres
7	<i>Banksia integrifolia</i> (Coastal Banksia)	Refer to Concept Plan Revision B referenced OC-L-013, dated 17/8/2020	8 x 6 metres
8	<i>Cupaniopsis anacardioides</i> (Tuckeroo)	Refer to Concept Plan Revision B referenced OC-L-013, dated 17/8/2020	7 x 5 metres
9	<i>Banksia integrifolia</i> (Coastal Banksia)	Refer to Concept Plan Revision B referenced OC-L-013, dated 17/8/2020	7 x 6 metres
10	<i>Cupaniopsis anacardioides</i> (Tuckeroo)	Refer to Concept Plan Revision B referenced OC-L-013, dated 17/8/2020	1 x 1 metre

12	<i>Cupaniopsis anacardioides</i> (Tuckeroo)	Refer to Concept Plan Revision B referenced OC- L-013, dated 17/8/2020	3 x 2 metres
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Note: Tree/s to be removed shall appear coloured red on the construction certificate plans.

*This species is exempt from the WMC DCP Chapter E.3 - Tree Management and can be removed without consent.

- b) The following trees shall be pruned in accordance with *Australian Standard Pruning of Amenity Trees* (AS 4373) and *Workcover NSW Code of Practice Amenity Tree Industry*, to the minimum extent necessary to provide clearance to the new development:

Council Ref No.	Species	Location	Approved pruning (extent of pruning)
1HB	<i>Lophostemon confertus</i> (Brushbox)	Refer to Appendix 2 of the submitted Tree IQ Tree Protection specification (Holding Bay) dated 11 November 2020.	Prune only those branches identified within Appendix 3 of the submitted Tree IQ Tree Protection specification (Holding Bay) dated 11 November 2020. Maximum branch diameter to be pruned shall not exceed 150 mm in diameter at final cut.
3HB	<i>Lophostemon confertus</i> (Brushbox)	Refer to Appendix 2 of the submitted Tree IQ Tree Protection specification (Holding Bay) dated 11 November 2020.	Prune only those branches identified within Appendix 3 of the submitted Tree IQ Tree Protection specification (Holding Bay) dated 11 November 2020. Maximum branch diameter to be pruned shall not exceed 200 mm in diameter at final cut.
16HB	<i>Lophostemon confertus</i> (Brushbox)	Refer to Appendix 2 of the submitted Tree IQ Tree Protection specification (Holding Bay) dated 11 November 2020.	Prune only those branches identified within Appendix 3 of the submitted Tree IQ Tree Protection specification (Holding Bay) dated 11 November 2020. Maximum branch diameter to be pruned shall not exceed 125 mm in diameter at final cut.
19HB	<i>Melaleuca quinquenervia</i> (Broad-leaved Paperbark)	Refer to Appendix 2 of the submitted Tree IQ Tree Protection specification (Holding Bay) dated 11 November 2020.	Prune only those branches identified within Appendix 3 of the submitted Tree IQ Tree Protection

			specification (Holding Bay) dated 11 November 2020. Maximum branch diameter to be pruned shall not exceed 100 mm in diameter at final cut.
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Note: The tree/s required to be pruned should appear coloured blue on the construction certificate plans.

A.6 Ancillary Aspects of Development (section 4.17(2) of the Act)

The Owner must procure the repair, replacement or rebuilding of all road pavement, kerb, gutter, footway, footpaths adjoining the site or damaged as a result of work under this consent or as a consequence of work under this consent. Such work must be undertaken to Council's satisfaction in accordance with Council's *Specification for Roadworks, Drainage and Miscellaneous Works* (2012) unless expressly provided otherwise by these conditions at the Owner's expense.

Note: This condition does not affect the Principal Contractor's or any sub-contractors obligations to protect and preserve public infrastructure from damage or affect their liability for any damage that occurs.

B. Conditions which must be satisfied prior to the demolition of any building or construction

B.1 Certification Required Prior to Any Demolition

Where demolition is associated with an altered portion of, or an extension to an existing building the demolition of any part of a building is "commencement of erection of building" pursuant to section 6.6 of the *Act*.

In such circumstance all conditions in Part C and Part D of this consent must be satisfied prior to any demolition work. This includes, but is not limited to, the issue of a certification of Crown Building works, appointment of a Principal Certifier, and Notice of Commencement under the *Act*.

Note: See *Over our Dead Body Society Inc v Byron Bay Community Association Inc* [2001] NSWLEC 125.

B.2 Public Road Assets Prior to Any Work/Demolition

To clarify the condition of the existing public infrastructure prior to the commencement of any development (including prior to any demolition), the Applicant or Owner must submit to Council a full record of the condition of the public road infrastructure adjacent to the development site.

The report must be submitted to Council **prior to the commencement of any work** and include photographs showing current condition and any existing damage fronting and adjoining the site to the:

- road pavement,
- kerb and gutter,
- footway including footpath pavement and driveways,

- retaining walls within the footway or road, and
- drainage structures/pits.

The reports are to be supplied in both paper copy and electronic format in Word. Photographs are to be in colour, digital and date stamped.

If the required report is not submitted then Council will assume there was no damage to any infrastructure in the immediate vicinity of the site prior to the commencement of any work under this consent.

Note: If the Applicant or Owner fails to submit the asset condition report required by this condition and damage is occasioned to public assets adjoining the site, Council will deduct from security any costs associated with remedying, repairing or replacing damaged public infrastructure. Nothing in this condition prevents Council making any claim against security held for this purpose

B.3 Establishment of Tree Protection Zone (TPZ) Fence

Tree Protection Zones shall be established around all trees to be retained and in accordance with Section 4 of the *Australian Standard Protection of Trees on Development Sites* (AS 4970-2009). Tree protection zones must also comply with the following requirements;

a) Tree Protection Zone areas

Council Ref No.	Species	Tree Location	Specification
13	<i>Lophostemon confertus</i> (Brush Box)	Refer to Concept Plan Revision B referenced OC-L-013, dated 17/8/2020	Erect Tree protection zone fencing as depicted on Concept Plan 1.2 within the Tree IQ Arboricultural Impact Assessment Report and Tree Protection Specification
14	<i>Lophostemon confertus</i> (Brush Box)	Refer to Concept Plan Revision B referenced OC-L-013, dated 17/8/2020	Erect Tree protection zone fencing as depicted on Concept Plan 1.2 within the Tree IQ Arboricultural Impact Assessment Report and Tree Protection Specification
15	<i>Lophostemon confertus</i> (Brush Box)	Refer to Concept Plan Revision B referenced OC-L-013, dated 17/8/2020	Erect Tree protection zone fencing as depicted on Concept Plan 1.2 within the Tree IQ Arboricultural Impact Assessment Report and Tree Protection Specification
15HB	<i>Lophostemon confertus</i> (Brush Box)	Refer to Appendix 2 of the submitted Tree IQ Tree Protection specification (Holding Bay) dated 11 November 2020.	Erect Tree protection zone fencing as depicted within Appendix 2 of the submitted Tree IQ Tree Protection specification (Holding Bay) dated 11 November 2020.
16	<i>Lophostemon confertus</i> (Brush Box)	Refer to Concept Plan Revision B referenced OC-L-013, dated 17/8/2020	Erect Tree protection zone fencing as depicted on Concept Plan 1.2 within the Tree IQ Arboricultural Impact Assessment Report and Tree Protection Specification

16HB	<i>Lophostemon confertus</i> (Brush Box)	Refer to Appendix 2 of the submitted Tree IQ Tree Protection specification (Holding Bay) dated 11 November 2020.	Erect Tree protection zone fencing as depicted within Appendix 2 of the submitted Tree IQ Tree Protection specification (Holding Bay) dated 11 November 2020.
17	<i>Lophostemon confertus</i> (Brush Box)	Refer to Concept Plan Revision B referenced OC-L-013, dated 17/8/2020	Erect Tree protection zone fencing as depicted on Concept Plan 1.2 within the Tree IQ Arboricultural Impact Assessment Report and Tree Protection Specification.
17HB	<i>Eucalyptus robusta</i> (Swamp Mahogany)	Refer to Appendix 2 of the submitted Tree IQ Tree Protection specification (Holding Bay), dated 11 November 2020.	Erect Tree protection zone fencing as depicted within Appendix 2 of the submitted Tree IQ Tree Protection specification (Holding Bay) dated 11 November 2020.
18	<i>Lophostemon confertus</i> (Brush Box)	Refer to Concept Plan Revision B referenced OC-L-013, dated 17/8/2020	Erect Tree protection zone fencing as depicted on Concept Plan 1.2 within the Tree IQ Arboricultural Impact Assessment Report and Tree Protection Specification
18HB	<i>Corymnia citriodora</i> (Lemon scented gum)	Refer to Appendix 2 of the submitted Tree IQ Tree Protection specification (Holding Bay), dated 11 November 2020.	Erect Tree protection zone fencing as depicted within Appendix 2 of the submitted Tree IQ Tree Protection specification (Holding Bay) dated 11 November 2020.
19	<i>Lophostemon confertus</i> (Brush Box)	Refer to Concept Plan Revision B referenced OC-L-013, dated 17/8/2020	Erect Tree protection zone fencing as depicted on Concept Plan 1.2 within the Tree IQ Arboricultural Impact Assessment Report and Tree Protection Specification
19HB	<i>Melaleuca quinquenervia</i> (Broad-leaved Paperbark)	Refer to Appendix 2 of the submitted Tree IQ Tree Protection specification (Holding Bay), dated 11 November 2020.	Erect Tree protection zone fencing as depicted within Appendix 2 of the submitted Tree IQ Tree Protection specification (Holding Bay) dated 11 November 2020.
20	<i>Lophostemon confertus</i> (Brush Box)	Refer to Concept Plan Revision B referenced OC-L-013, dated 17/8/2020	Erect Tree protection zone fencing as depicted on Concept Plan 1.2 within the Tree IQ Arboricultural Impact Assessment Report and Tree Protection Specification
20HB	<i>Melaleuca quinquenervia</i> (Broad-leaved Paperbark)	Refer to Appendix 2 of the submitted Tree IQ Tree Protection specification (Holding Bay), dated 11 November 2020.	Erect Tree protection zone fencing as depicted within Appendix 2 of the submitted Tree IQ Tree Protection specification (Holding Bay) dated 11 November 2020.
21	<i>Lophostemon confertus</i> (Brush Box)	Refer to Concept Plan Revision B referenced OC-L-013, dated 17/8/2020	Erect Tree protection zone fencing as depicted on Concept Plan 1.2 within the Tree IQ Arboricultural Impact

			Assessment Report and Tree Protection Specification
21HB	<i>Melaleuca quinquenervia</i> (Broad-leaved Paperbark)	Refer to Appendix 2 of the submitted Tree IQ Tree Protection specification (Holding Bay), dated 11 November 2020.	Erect Tree protection zone fencing as depicted within Appendix 2 of the submitted Tree IQ Tree Protection specification (Holding Bay) dated 11 November 2020.
22	<i>Cupaniopsis anacardioides</i> (Tuckeroo)	Refer to Concept Plan Revision B referenced OC-L-013, dated 17/8/2020	Erect Tree protection zone fencing as depicted on Concept Plan 1.2 within the Tree IQ Arboricultural Impact Assessment Report and Tree Protection Specification
23	<i>Cupaniopsis anacardioides</i> (Tuckeroo)	Refer to Concept Plan Revision B referenced OC-L-013, dated 17/8/2020	Erect Tree protection zone fencing as depicted on Concept Plan 1.2 within the Tree IQ Arboricultural Impact Assessment Report and Tree Protection Specification
24	<i>Cupaniopsis anacardioides</i> (Tuckeroo)	Refer to Concept Plan Revision B referenced OC-L-013, dated 17/8/2020	Erect Tree protection zone fencing as depicted on Concept Plan 1.2 within the Tree IQ Arboricultural Impact Assessment Report and Tree Protection Specification
25	<i>Cupaniopsis anacardioides</i> (Tuckeroo)	Refer to Concept Plan Revision B referenced OC-L-013, dated 17/8/2020	Erect Tree protection zone fencing as depicted on Concept Plan 1.2 within the Tree IQ Arboricultural Impact Assessment Report and Tree Protection Specification
26	<i>Cupaniopsis anacardioides</i> (Tuckeroo)	Refer to Concept Plan Revision B referenced OC-L-013, dated 17/8/2020	Erect Tree protection zone fencing as depicted on Concept Plan 1.2 within the Tree IQ Arboricultural Impact Assessment Report and Tree Protection Specification
27	<i>Lophostemon confertus</i> (Brush Box)	Refer to Concept Plan Revision B referenced OC-L-013, dated 17/8/2020	Erect Tree protection zone fencing as depicted on Concept Plan 1.2 within the Tree IQ Arboricultural Impact Assessment Report and Tree Protection Specification
28	<i>Eucalyptus robusta</i> (Swamp Mahogany)	Refer to Concept Plan Revision B referenced OC-L-013, dated 17/8/2020	Erect Tree protection zone fencing as depicted on Concept Plan 1.2 within the Tree IQ Arboricultural Impact Assessment Report and Tree Protection Specification
29	<i>Cupaniopsis anacardioides</i> (Tuckeroo)	Refer to Concept Plan Revision B referenced OC-L-013, dated 17/8/2020	Erect Tree protection zone fencing as depicted on Concept Plan 1.2 within the Tree IQ Arboricultural Impact Assessment Report and Tree Protection Specification

Note: Where this condition relates to street trees and the fence cannot be placed at the specified radius, the fencing shall be positioned so that the entire verge (nature strip) area in front of the subject property, excluding existing driveways, footpaths and bus stops is protected.

Note: Where this condition relates to trees on private property the radial distance of fencing shall be positioned only within the subject property.

- b) Tree Protection Zones shall be fenced with a 1.8 metre high chainmesh or weldmesh fence and secured to restrict access. The fence shall be established prior to any materials being bought onto the site and before the commencement of works including demolition. The area within the fence shall be mulched and maintained to a depth of 75mm. The soil within the TPZ shall be kept in a moist condition for the duration of the construction works. Unless approved by the site arborist there shall be no access within the TPZ.
- c) Trunk protection shall be installed around the trunks of the following trees:

Council Ref No.	Species
1HB	<i>Lophostemon confertus</i> (Brush Box)
3HB	<i>Lophostemon confertus</i> (Brush Box)
25HB	<i>Corymbia maculata</i> (Spotted Gum)
13	<i>Lophostemon confertus</i> (Brush Box)
14	<i>Lophostemon confertus</i> (Brush Box)
15	<i>Lophostemon confertus</i> (Brush Box)
16	<i>Lophostemon confertus</i> (Brush Box)
17	<i>Lophostemon confertus</i> (Brush Box)
18	<i>Lophostemon confertus</i> (Brush Box)
19	<i>Lophostemon confertus</i> (Brush Box)
20	<i>Lophostemon confertus</i> (Brush Box)
21	<i>Lophostemon confertus</i> (Brush Box)
22	<i>Cupaniopsis anacardioides</i> (Tuckeroo)
23	<i>Cupaniopsis anacardioides</i> (Tuckeroo)
24	<i>Cupaniopsis anacardioides</i> (Tuckeroo)
25	<i>Cupaniopsis anacardioides</i> (Tuckeroo)
26	<i>Cupaniopsis anacardioides</i> (Tuckeroo)
27	<i>Lophostemon confertus</i> (Brush Box)
28	<i>Eucalyptus robusta</i> (Swamp Mahogany)
29	<i>Cupaniopsis anacardioides</i> (Tuckeroo)

Trunk protection shall consist of a padding material such as hessian or thick carpet underlay wrapped around the trunk. Hardwood planks (50mm x100mm or similar) shall be placed over the padding and around the trunk of the tree at 150mm centres. The planks shall be secured with 8 gauge wire at 300mm spacing. Trunk protection shall extend a minimum height of 2 metres or to the maximum possible length permitted by the first branches.

- d) A sign identifying the Tree Protection Zone shall be erected on each side of the protection fence indicating the existence of a TPZ. Signage must be visible from within the development site.
- e) No excavation, construction activity, grade changes, storage of materials, stockpiling, siting of works sheds, preparation of mixes or cleaning of tools is permitted within Tree Protection Zones, unless specified in this condition of consent.
- f) Establishment of Ground protection

Ground protection shall be established within the specified radius from the trunks of the following trees.

Council Ref No.	Species	Tree Location	Radius from Centre of Trunk (Metres)
1HB	<i>Lophostemon confertus</i> (Brush Box)	Refer to Appendix 2 of the submitted Tree IQ Tree Protection specification (Holding Bay), dated 11 November 2020.	Across entire temporary access Road located within the 8.9 metre TPZ radius of the tree
3HB	<i>Lophostemon confertus</i> (Brush Box)	Refer to Appendix 2 of the submitted Tree IQ Tree Protection specification (Holding Bay), dated 11 November 2020.	Across entire temporary access Road located within the 6.8 metre TPZ radius of the tree
25HB	<i>Corymbia maculata</i> (Spotted Gum)	Refer to Appendix 2 of the submitted Tree IQ Tree Protection specification (Holding Bay), dated 11 November 2020.	Across entire temporary access Road within the 9.3 metre TPZ radius of the tree.

Ground protection shall consist of geotech fabric placed directly over the ground surface with 100mm mulch / aggregate / rumble boards strapped over mulch / steel plating over 10mm mulch layer / retention of existing surface.

- g) Temporary access within the TPZ for pedestrian and machinery movements shall only be permitted with the approval of the site arborist or unless specified in this consent.

- h) The site foreman must be made aware of all tree protection requirements associated with these conditions of consent by the project arborist. Any subsequent site personnel and contractors to the site must be made aware of all tree protection requirements by the site foreman.
- i) The project arborist shall provide written certification of compliance with the above condition.

B.4 Arborists Documentation and Compliance Checklist

The site arborist shall provide written certification that all tree protection measures and construction techniques relevant to this consent have been complied with. Documentation for each site visit shall include:

- A record of the condition of trees to be retained prior to and throughout development;
- Recommended actions to improve site conditions and rectification of non-compliance; and
- Recommendations for future works which may impact the trees

All compliance certification documents shall be kept on site by the Site Foreman.

As a minimum the following intervals of site inspections must be made:

Stage of arboricultural inspection	Action (Compliance documentation and photos shall be included)
Installation of all tree protection located within the works zone area and the holding bay areas (including fencing, trunk and ground protection).	<p>Compliance with tree protection conditions of consent and Appendix 5 of the submitted Tree IQ Arboricultural Impact Assessment and Tree Protection Plan.</p> <p>Compliance with the submitted Tree IQ Tree Protection Plan and specification, dated 11th of November 2020.</p>
Pruning works to trees referenced 1HB, 3HB, 16HB & 19HB	<p>Ensure only those branches identified within the submitted Tree IQ Tree Protection specification (Holding Bay), dated 11 November 2020 are pruned.</p> <p>Ensure all pruning works are undertaken in accordance with Australian Standard AS 4373 – Pruning of amenity trees.</p>
Demolition of existing promenade within the TPZ area of Trees 13 – 21, 27 & 28.	All works are to be undertaken in accordance with Section 3.5 of the submitted Tree IQ Arboricultural Impact Assessment and Tree Protection Plan.
Installation of stormwater within 7.2 metres of Tree 13	<p>All excavation is carried out using small hand tools such as mattocks or using compressed air or water jetting only;</p> <p>Pipes and pits are positioned to avoid tree roots greater than 50 mm in diameter</p>

Prior to the issue of a Final Occupation Certificate	Supervise the dismantling of tree protection measures
------------------------------------------------------	-------------------------------------------------------

Inspections and compliance documentation shall be made by an arborist with AQF Level 5 qualifications.

Additional site visits shall be made when required by site arborist and/or site foreman for ongoing monitoring/supervisory work.

B.5 Aboriginal Heritage – Induction

Prior to any ground disturbance works commencing on site, all construction staff and contractors must be made aware of their statutory obligations for Aboriginal heritage under the National Parks and Wildlife Act 1974. This must be implemented as a heritage induction programme provided by a heritage consultant with Aboriginal heritage expertise.

B.6 Protection of Adjacent Vegetation

As recommended in the Flora and Fauna Assessment Report submitted with the development application, exclusion areas at the edges of the construction site are to be delineated to prevent encroachment into off-site vegetation to be retained.

C. Conditions which must be satisfied prior to the commencement of works

C.1 Tree Management Plan

The plans and specifications forming part of the certification of Crown building work shall show the following information:

- a) Trees to be numbered in accordance with these conditions:
 - shaded green where required to be retained and protected
 - shaded red where authorised to be removed
 - shaded yellow where required to be transplanted
 - shaded blue where required to be pruned
- b) References to applicable tree management plan, arborists report or transplant method statement.

This plan shall be kept on site until completion of the works.

Note: The effect of this condition is that it requires design changes and/or further information to be provided with the drawings and specifications forming part of the certification of Crown building work to address specific issues identified during assessment under section 4.15 of the *Act*.

C.2 Payment of Long Service Levy, Security, Contributions and Fees

The Certifying Authority must not issue any certificates under section 6.4 of the *Act* until provided with the original receipt(s) for the payment of all of the following levy, security, contributions, and fees prior to the commencement of works, as will apply.

Description	Amount	Indexed	Council Fee Code
LONG SERVICE LEVY under <i>Building and Construction Industry Long Service Payments Act 1986</i>			
Long Service Levy www.longservice.nsw.gov.au/bci/levy/other-information/levy-calculator	Contact LSL Corporation or use online calculator	No	
SECURITY under section 4.17(6) of the <i>Environmental Planning and Assessment Act 1979</i>			
Property Damage Security Deposit -making good any damage caused to any property of the Council (S138)	\$161,910	No	T115

Building and Construction Industry Long Service Payment

The long service levy under section 34 of the *Building and Construction Industry Long Service Payment Act 1986*, must be paid and proof of payment provided to the Certifying Authority prior to the issue of any certification of Crown building work. The levy can be paid directly to the Long Service Corporation or to Council. Further information can be obtained from the Long Service Corporation website www.longservice.nsw.gov.au or the Long Service Corporation on 131 441.

How must the payments be made?

Payments must be made by:

- cash deposit with Council,
- credit card payment with Council, or
- bank cheque made payable to Woollahra Municipal Council.

The payment of a security may be made by a bank guarantee where:

- the guarantee is by an Australian bank for the amount of the total outstanding contribution,
- the bank unconditionally agrees to pay the guaranteed sum to the Council on written request by Council on completion of the development or no earlier than 12 months from the provision of the guarantee whichever occurs first [NOTE: a time limited bank guarantee or a bank guarantee with an expiry date is not acceptable],
- the bank agrees to pay the guaranteed sum without reference to the Applicant or landowner or other person who provided the guarantee and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development in accordance with the development consent,
- the bank guarantee is lodged with the Council prior to the issue of certification of Crown building work, and
- the bank's obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.

C.3 Structural Adequacy of Existing Supporting Structures

A certificate from a professional engineer (structural engineer), certifying the adequacy of the existing supporting structure to support the additional loads proposed to be imposed by the development, must be submitted to the Certifier.

Note: This condition is imposed to ensure that the existing structure is able to support the additional loads proposed.

C.4 Professional Engineering Details

Detailed professional engineering plans and/or specifications for all structural, electrical, hydraulic, hydrogeological, geotechnical, mechanical and civil work complying with this consent, approved plans, the statement of environmental effects and supporting documentation are to be submitted to the Certifier.

Note: This does not affect the right of the developer to obtain staged certification of Crown building work.

C.5 Soil and Water Management Plan – Submission and Approval

The Principal Contractor or Owner-builder must submit to the Certifying Authority a soil and water management plan complying with the Erosion and Sediment Control Measures proposed in the *Overland Flow and Flooding Investigation* (Section 6) submitted with the development application.

The Certifying Authority must be satisfied that the soil and water management plan complies with the above prior to issuing any certification of Crown building works.

Note: This condition has been imposed to eliminate potential water pollution and dust nuisance.

Note: The International Erosion Control Association – Australasia www.austieca.com.au lists consultant experts who can assist in ensuring compliance with this condition. Where erosion and sedimentation plans are required for larger projects it is recommended that expert consultants produce these plans.

Note: The “*Do it Right On Site, Soil and Water Management for the Construction Industry*” publication can be downloaded from www.woollahra.nsw.gov.au, and *The Blue Book* is available at www.environment.nsw.gov.au/stormwater/publications.htm.

Note: Pursuant to clause 161(1)(a)(5) of the *Regulation* an Accredited Certifier may be satisfied as to this matter.

C.6 Geotechnical and Hydrogeological Design, Certification and Monitoring

A Geotechnical / Hydrogeological Monitoring Program is required to be submitted to the Certifier, together with civil and structural engineering details for foundation retaining walls, footings, basement tanking, and subsoil drainage systems, as applicable, prepared by a professional engineer, who is suitably qualified and experienced in geotechnical and hydrogeological engineering.

These details must be certified by the professional engineer to:

- a) Provide appropriate support and retention to ensure there will be no ground settlement or movement, during excavation or after construction, sufficient to cause an adverse impact on adjoining property or public infrastructure.
- b) Provide appropriate support and retention to ensure there will be no adverse impact on surrounding property or infrastructure as a result of changes in local hydrogeology (behaviour of groundwater).
- c) Provide foundation tanking prior to excavation such that any temporary changes to the groundwater level, during construction, will be kept within the historical range of natural groundwater fluctuations. Where the historical range of natural groundwater fluctuations is unknown, the design must demonstrate that changes in the level of the natural water table, due to construction, will not exceed 0.3m at any time.

- d) Provide tanking of all below ground structures to prevent the entry of all ground water such that they are fully tanked and no on-going dewatering of the site is required.
- e) Provide a Geotechnical and Hydrogeological Monitoring Program that:
 - will detect any settlement associated with temporary and permanent works and structures,
 - will detect deflection or movement of temporary and permanent retaining structures (foundation walls, shoring bracing or the like),
 - will detect vibration in accordance with AS 2187.2-1993 Appendix J including acceptable velocity of vibration (peak particle velocity),
 - will detect groundwater changes calibrated against natural groundwater variations,
 - details the location and type of monitoring systems to be utilised,
 - details the pre-set acceptable limits for peak particle velocity and ground water fluctuations,
 - details recommended hold points to allow for the inspection and certification of geotechnical and hydrogeological measures by the professional engineer, and
 - details a contingency plan.

C.7 Stormwater Discharge to Existing Stormwater Drainage System

Plans and specifications must detail:

- a) the location of the existing Stormwater Drainage System including all pipes, inspection openings, surface drains, pits and their discharge location,
- b) the state of repair of the existing Stormwater Drainage System,
- c) any remedial works required to upgrade the existing Stormwater Drainage System to comply with the BCA,
- d) any remedial works required to upgrade the existing Stormwater Drainage System crossing the footpath and any new kerb outlets,
- e) any new Stormwater Drainage System complying with the BCA,
- f) interceptor drain(s) at the site boundary to prevent stormwater flows from the site crossing the footpath,
- g) any rainwater tank (see Note below) required by BASIX commitments including their overflow connection to the Stormwater Drainage System, and
- h) general compliance with the Woollahra DCP 2015 Chapter E2 – Stormwater and Flood Risk Management.

Where any new Stormwater Drainage System crosses the footpath area within any road, separate approval under section 138 of the *Roads Act 1993* must be obtained from Council for those works prior to the issue of any certification of Crown building works.

All Stormwater Drainage System work within any road or public place must comply with Woollahra Municipal Council's *Specification for Roadworks, Drainage and Miscellaneous Works* (2012).

Note: Clause F1.1 of Volume 1 and Part 3.1.2 of Volume 2 of the BCA provide that stormwater drainage complying with AS/NZS 3500.3 Plumbing and drainage - Part 3: Stormwater drainage is deemed-to-satisfy the BCA. Council's specifications apply in relation to any works with any road or public place.

Note: The collection, storage and use of rainwater is to be in accordance with *Standards Australia HB230-2008 "Rainwater Tank Design and Installation Handbook"*.

Note: Stormwater Drainage Systems must not discharge to any Sewer System. It is illegal to connect stormwater pipes and drains to the sewerage system as this can overload the system and cause sewage

overflows. For more information go to the Sydney Water website www.sydneywater.com.au/SW/plumbing-building-developing/index.htm or call 1300 082 746.

Note: Woollahra Municipal Council's *Specification for Roadworks, Drainage and Miscellaneous Works* dated January 2003 and the Woollahra DCP 2015 Chapter E2 – Stormwater and Flood Risk Management can be downloaded from Council's website www.woollahra.nsw.gov.au

C.8 Flood Protection

The Construction Certificate plans and specifications, required by clause 139 of the *Regulation*, must include a Flood Risk Management Plan on the basis of the Flood Planning Level (FPL) detailing:

- a. A permanent flood risk management plan shall be installed in a prominent area of the toilet/change room area.
- b. Permanent brass plaques are to be fixed on the seawall in a prominent location indicating the current extreme max sea level (RL2.94m AHD) and the 2100 extreme max sea level (RL3.77m AHD) the plaques are to include the warning "This area is subject to inundation during storm events and high seas, please avoid this area during these times."
- c. Flood compatible materials shall be used for all flood exposed construction.
- d. All flood exposed electrical wiring and equipment is to be waterproofed.

Note: The revised driveway profile, gradients and transitions must be in accordance with Australian Standard 2890.1 – 2004, Part 1: *Off-street car parking*. The driveway profile submitted to Council must contain all relevant details: reduced levels, proposed grades and distances. Council will not allow alteration to existing reduced levels within the road or any other public place to achieve flood protection.

C.9 Sydney Water Building Plan Approval

The approved plans must be submitted to Sydney Water Tap In™ online service to determine whether the development will affect any Sydney Water wastewater and water mains, stormwater drains and/or easement, and any requirements need to be met.

The Tap In™ service provides 24/7 access to a range of services, including:

- building plan approvals
- connection and disconnection approvals
- diagrams
- trade waste approvals
- pressure information
- water meter installations
- pressure boosting and pump approvals
- changes to an existing service or asset, e.g. relocating or moving an asset.

Sydney Water's Tap in™ online service is available at: <https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm>

C.10 Building Materials Carbon Footprint Minimisation

In order to assist in reducing the carbon footprint of the works, the use of materials that have lower embodied energy i.e. using recycled materials and/or supplementing cementing materials (above industry standard), use of recycled steel and reuse and/or recycle demolition material are to be utilised where possible.

C.11 Adjoining Buildings Founded on Loose Foundation Materials

The Principal Contractor must ensure that a professional engineer determines the possibility of any adjoining buildings founded on loose foundation materials being affected by piling, piers or excavation. The professional engineer (geotechnical consultant) must assess the requirements for underpinning any adjoining or adjacent buildings founded on such soil on a case by case basis and the Principal Contractor must comply with any reasonable direction of the professional engineer.

Note: A failure by contractors to adequately assess and seek professional engineering (geotechnical) advice to ensure that appropriate underpinning and support to adjoining land is maintained prior to commencement may result in damage to adjoining land and buildings. Such contractors are likely to be held responsible for any damages arising from the removal of any support to supported land as defined by section 177 of the *Conveyancing Act 1919*.

C.12 Construction Management Plan

As a result of the site constraints, limited space and access a Construction Management Plan (CMP) is to be submitted to Council. Also, due to lack of on-street parking a Work Zone may be required during construction.

The Principal Contractor or Owner must submit an application for approval of the CMP by Council's Traffic Engineer and pay all fees associated with the application.

The CMP must be submitted as a self-contained document that outlines the nature of the construction project and as applicable, include the following information:

- a) Detail the scope of the works to be completed including details of the various stages, e.g. demolition, excavation, construction etc. and the duration of each stage.
- b) Identify local traffic routes to be used by construction vehicles.
- c) Identify ways to manage construction works to address impacts on local traffic routes.
- d) Identify other developments that may be occurring in the area and identify ways to minimise the cumulative traffic impact of these developments. Should other developments be occurring in close proximity (500m or in the same street) to the subject site, the developer/builder is to liaise fortnightly with the other developers/builders undertaking work in the area in order to minimise the cumulative traffic and parking impacts of the developments.
- e) Detail how construction workers will travel to and from the site and parking arrangements for those that drive.
- f) Identify any proposed road closures, temporary traffic routes, loss of pedestrian or cyclist access or reversing manoeuvres onto a public road and provide Traffic Control Plans (TCPs) prepared by an accredited RMS Red or Orange card holder to manage these temporary changes.
- g) Detail the size (including dimensions), numbers and frequency of arrival of the construction vehicles that will service the site for each stage of works.
- h) Provide for the standing of vehicles during construction.
- i) If construction vehicles are to be accommodated on the site, provide a scaled drawing showing where these vehicles will stand and the vehicle swept path to show that these vehicles can access and egress the site in a forward direction (including dimensions and all adjacent traffic control devices, such as parking restrictions, pedestrian facilities, kerb extensions, etc.).

- j) If trucks are to be accommodated on Council property, provide a scaled drawing showing the location of any proposed Works Zone (including dimensions and all adjacent traffic control devices, such as parking restrictions, pedestrian facilities, kerb extensions, etc.).
- k) Show the location of any site sheds and any anticipated use of cranes and concrete pumps and identify the relevant permits that will be required.
- l) If a crane/s are to be accommodated on site, detail how the crane/s will be erected and removed, including the location, number and size of vehicles involved in the erection/removal of the crane/s, the duration of the operation and the proposed day and times, any full or partial road closures required to erect or remove the crane/s and appropriate Traffic Control Plans (TCPs) prepared by an approved RMS Red or Orange Card holder.
- m) Make provision for all materials, plant, etc. to be stored within the development site at all times during construction.
- n) State that any oversized vehicles proposed to operate on Council property (including Council approved Works Zones) will attain a Permit to Stand Plant on each occasion (Note: oversized vehicles are vehicles longer than 7.5m or heavier than 4.5T.)
- o) Show the location of any proposed excavation and estimated volumes.
- p) When demolition, excavation and construction works are to be undertaken on school days, all vehicular movements on Vacluse Road associated with this work shall only be undertaken between the hours of 9.30am and 2.30pm, in order to minimise disruption to the traffic network during school pick up and drop off times.
- q) Show the location of all Tree Protection (Exclusion) zones (Note: storage of building materials or access through Reserve will not be permitted without prior approval by Council).

Council's traffic engineer has recommended that the CMP address the following issues:

1. Hours of Work: Considering the proposed vehicle routes and several schools along the route, heavy vehicle movements along Vacluse Road or any other routes when a school excluding arterial roads is involved should avoid the peak pick-up and drop-off hours between 7.30am-9.30am, and 2.30pm-4.30pm;
2. Parking Arrangement: It should be noted that no designated parking spaces will be provided for construction workers. Public transportation should be facilitated to minimise impacts on the surrounding road network.
3. Access/Egress Manoeuvre: The indicative manoeuvre demonstrated in swept path analysis is considered acceptable, however when such manoeuvre is not achievable due to site constraints, a reverse-in and forward-out manoeuvre should be adopted and a TCP should be developed by an approved RMS Red or Orange Card Holder to manage the temporary change.
4. Clarification for the school pick-up and drop-off hours between 7.30am-9.30am and 2.30pm-4.30pm, as to whether the proposed alternative routes are for light vehicles, or heavy vehicles are also included.

Note: Work must not commence until the Construction Management Plan is approved. Failure to comply with this condition may result in fines and proceedings to stop work.

C.13 Works (Construction) Zone – Approval and Implementation

A Works Zone may be required for this development. The Principal Contractor or Owner can apply for a works zone. If the works zone is approved the Principal Contractor or Owner must pay all fees for this Works Zone before it can be installed.

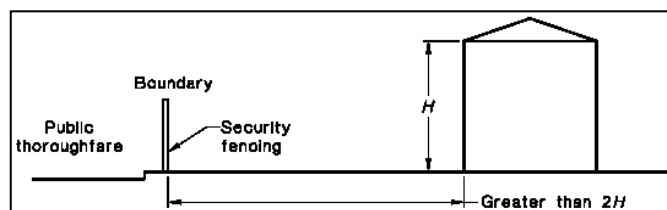
The Principal Contractor must pay all fees associated with the application and occupation and use of the road as a Works Zone. All Works Zone signs must have been erected by Council to permit enforcement of the Works Zone by Council's Rangers and NSW Police before commencement of any work. Signs are not erected until full payment of works zone fees.

Note: The Principal Contractor or Owner must allow not less than four to six weeks (for routine applications) from the date of making an application to the Traffic Committee (Woollahra Local Traffic Committee) constituted under the clause 22 of the *Transport Administration (General) Regulation 2000* to exercise those functions delegated by the Roads and Maritime Services under section 50 of the *Transport Administration Act 1988*.

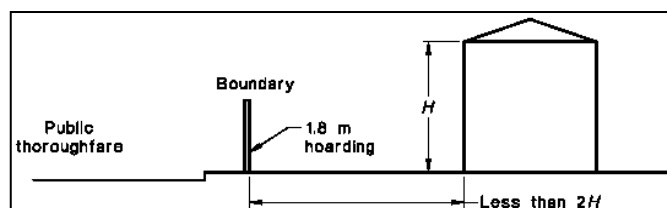
Note: The enforcement of the works zone is at the discretion of Council's Rangers and the NSW Police Service. The Principal Contractor must report any breach of the works zone to either Council or the NSW Police Service.

C.14 Security Fencing, Hoarding and Overhead Protection

Security fencing must be provided around the perimeter of the development site, including any additional precautionary measures taken to prevent unauthorised entry to the site at all times during the demolition, excavation and construction period. Security fencing must be the equivalent 1.8m high chain wire as specified in AS 1725.



Where the development site adjoins a public thoroughfare, the common boundary between them must be fenced for its full length with a hoarding, unless the least horizontal distance between the common boundary and the nearest parts of the structure is greater than twice the height of the structure. The hoarding must be constructed of solid materials (chain wire or the like is not acceptable) to a height of not less than 1.8m adjacent to the thoroughfare.

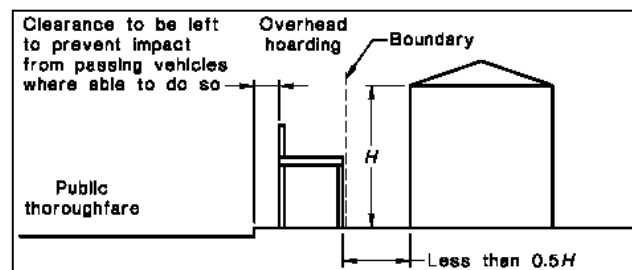


Where a development site adjoins a public thoroughfare with a footpath alongside the common boundary then, in addition to the hoarding required above, the footpath must be covered by an overhead protective structure and the facing facade protected by heavy-duty scaffolding, unless either:

- a) the vertical height above footpath level of the structure being demolished is less than 4.0m; or
- b) the least horizontal distance between footpath and the nearest part of the structure is greater than half the height of the structure.

The overhead structure must consist of a horizontal platform of solid construction and vertical supports, and the platform must:

- a) extend from the common boundary to 200mm from the edge of the carriageway for the full length of the boundary,
- b) have a clear height above the footpath of not less than 2.1m,
- c) terminate 200mm from the edge of the carriageway (clearance to be left to prevent impact from passing vehicles) with a continuous solid upstand projecting not less than 0.5m above the platform surface, and
- d) together with its supports, be designed for a uniformly distributed live load of not less than 7 kPa.



The Principal Contractor or Owner-builder must pay all fees associated with the application and occupation and use of the road (footway) for required hoarding or overhead protection.

The Principal Contractor or Owner-builder must ensure that overhead protective structures are installed and maintained in accordance with the NSW “*Code of Practice - Overhead Protective Structures 1995*”. This is code available at www.safework.nsw.gov.au/_data/assets/pdf_file/0008/52883/Overhead-protective-structures-Code-of-practice.pdf

Security fencing, hoarding and overhead protective structure must not obstruct access to utilities services including but not limited to man holes, pits, stop valves, fire hydrants or the like.

Note: The Principal Contractor or Owner must allow not less than two (2) weeks from the date of making a hoarding application for determination. Any approval for a hoarding or overhead protection under the *Roads Act 1993* will be subject to its own conditions and fees.

C.15 Site Signs

The Principal Contractor or Owner-builder must ensure that the sign/s required by clauses 98A and 227A of the *Regulation* is/are erected and maintained at all times.

Clause 98A of the *Regulation* provides:

Erection of signs

- For the purposes of section 4.17(11) of the *Act*, the requirements of subclauses (2) and (3) are prescribed as conditions of a development consent for development that involves any building work, subdivision work or demolition work.
- 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:
 - a. showing the name, address and telephone number of the Principal Certifier for the work, and
 - b. 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
 - c. 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.
- This clause does not apply in relation to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.
- This clause does not apply in relation to Crown building work that is certified, in accordance with section 6.28 of the *Act*, to comply with the Building Code of Australia.

Clause 227A of the *Regulation* provides:

Signs on development sites

If there is a person who is the Principal Certifier or the Principal Contractor for any building work, subdivision work or demolition work authorised to be carried out on a site by a development consent or complying development certificate:

- Each such person **MUST** ensure that a rigid and durable sign showing the person's identifying particulars so that they can be read easily by anyone in any public road or other public place adjacent to the site is erected in a prominent position on the site before the commencement of work, and is maintained on the site at all times while this clause applies until the work has been carried out.

Note: Clause 227A imposes a penalty exceeding \$1,000 if these requirements are not complied with.

Note: If Council is appointed as the Principal Certifier it will provide the sign to the Principal Contractor or Owner-builder who must ensure that the sign is erected and maintained as required by clause 98A and clause 227A of the *Regulation*.

C.16 Toilet Facilities

Toilet facilities are to be provided, at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.

Each toilet provided:

- a) must be a standard flushing toilet, and
- b) must be connected to a public sewer, or
- c) if connection to a public sewer is not practicable, to an accredited sewage management facility approved by the Council, or
- d) if connection to a public sewer or an accredited sewage management facility is not practicable, to some other sewage management facility approved by the Council.

The provision of toilet facilities in accordance with this condition must be completed before any other work is commenced.

In this condition:

accredited sewage management facility means a sewage management facility to which Division 4A of Part 3 of the *Local Government (Approvals) Regulation 1993* applies, being a sewage management facility that is installed or constructed to a design or plan the subject of a certificate of accreditation referred to in clause 95B of the *Local Government (Approvals) Regulation 1993*.

approved by the Council means the subject of an approval in force under Division 1 of Part 3 of the *Local Government (Approvals) Regulation 1993*.

public sewer has the same meaning as it has in the *Local Government (Approvals) Regulation 1993*.

sewage management facility has the same meaning as it has in the *Local Government (Approvals) Regulation 1993*.

Note: This condition does not set aside the requirement to comply with SafeWork NSW requirements.

C.17 Erosion and Sediment Controls – Installation

The Principal Contractor or Owner-builder must install and maintain water pollution, erosion and sedimentation controls in accordance with the Soil and Water Management Plan required under this consent. Erosion and Sediment Control Measures proposed in the Overland Flow and Flooding Investigation (Section 6) are to be in place to ensure no construction material (including solid or liquid) enters the harbour.

Note: The International Erosion Control Association – Australasia (www.austieca.com.au/) lists consultant experts who can assist in ensuring compliance with this condition. Where Soil and Water Management Plan is required for larger projects it is recommended that this be produced by a member of the International Erosion Control Association – Australasia.

Note: The “Do it Right On Site, Soil and Water Management for the Construction Industry” publication can be downloaded from www.woollahra.nsw.gov.au and *The Blue Book* is available at www.environment.nsw.gov.au/stormwater/publications.htm

Note: A failure to comply with this condition may result in penalty infringement notices, prosecution, notices and orders under the *Act* and/or the *Protection of the Environment Operations Act 1997* **without any further warning**. It is a criminal offence to cause, permit or allow pollution.

Note: Section 257 of the *Protection of the Environment Operations Act 1997* provides inter alia that “the occupier of premises at or from which any pollution occurs is taken to have caused the pollution”

Warning: Irrespective of this condition any person occupying the site may be subject to proceedings under the *Protection of the Environment Operations Act 1997* where pollution is caused, permitted or allowed as the result of their occupation of the land being developed.

C.18 Protection of adjacent vegetation

As recommended in the Flora and Fauna Assessment Report submitted with the development application, exclusion areas at the edges of the construction site are to be delineated to prevent encroachment into offsite vegetation to be retained.

C.19 Building - Appointment of Principal Certifier, Appointment of Principal Contractor and Notice of Commencement (Part 6, Division 6.3 of the *Act*)

The erection of the building in accordance with this development consent must not be commenced until:

- a) Certification of the Crown building work has been issued by the accredited Certifier, and
- b) The person having the benefit of the development consent has:
 - appointed a Principal Certifier for the building work, and
 - notified the Principal Certifier that the person will carry out the building work as an Owner-builder, if that is the case, and
- c) The Principal Certifier has, no later than 2 days before the building work commences:
 - notified the consent authority and the Council (if the Council is not the consent authority) of his or her appointment, and

- notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- d) The person having the benefit of the development consent, if not carrying out the work as an Owner-builder, has:
 - appointed a Principal Contractor for the building work who must be the holder of a contractor licence if any residential building work is involved, and
 - notified the Principal Certifier of any such appointment, and
 - unless that person is the Principal Contractor, notified the Principal Contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
 - given at least 2 days' notice to the Council of the person's intention to commence the erection of the building.

Note: *building* has the same meaning as in section 1.4 of the *Act* and includes part of a building and any structure or part of a structure.

Note: *new building* has the same meaning as in section 6.1 of the *Act* and includes an altered portion of, or an extension to, an existing building.

Note: The commencement of demolition works associated with an altered portion of, or an extension to, an existing building is considered to be the commencement of building work requiring compliance with section 6.6(2) of the *Act* (including the need for a Construction Certificate) prior to any demolition work. See: *Over our Dead Body Society Inc v Byron Bay Community Association Inc* [2001] NSWLEC 125.

Note: Construction Certificate Application, PC Service Agreement and Notice of Commencement forms can be downloaded from Council's website www.woollahra.nsw.gov.au

Note: It is an offence for any person to carry out the erection of a *building* in breach of this condition and in breach of section 6.6(2) of the *Act*.

D. Conditions which must be satisfied during any development work

D.1 Compliance with the Building Code of Australia

For the purposes of section 4.17(11) of the *Act*, the following condition is prescribed in relation to a development consent for development that involves any building work:

- a) that the work must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

This condition does not apply:

- a) to the extent to which an exemption is in force under clause 187 or 188, subject to the terms of any condition or requirement referred to in clause 187 (6) or 188 (4) of the *Regulation*, or
- b) to the erection of a temporary building.

In this clause, a reference to the BCA is a reference to that Code as in force on the date the application for the relevant certification of Crown building work is made.

Note: All new guttering is to comply with the provisions of Part 3.5.2 of the Building Code of Australia.

D.2 Compliance with Australian Standard for Demolition

Demolition of buildings and structures must comply with Australian Standard AS 2601—2001: *The Demolition of Structures*.

D.3 Compliance with Construction Management Plan

All development activities and traffic movements must be carried out in accordance with the approved Construction Management Plan (CMP). All controls in the CMP must be maintained at all times. A copy of the CMP must be kept on-site at all times and made available to the Principal Certifier or Council on request.

Note: Irrespective of the provisions of the Construction Management Plan the provisions of traffic and parking legislation prevails.

D.4 Public Footpaths – Safety, Access and Maintenance

The Principal Contractor or Owner-builder and any other person acting with the benefit of this consent must:

- a) Not erect or maintain any gate or fence swing out or encroaching upon the road or the footway.
- b) Not use the road or footway for the storage of any article, material, matter, waste or thing.
- c) Not use the road or footway for any *work*.
- d) Keep the road and footway in good repair free of any trip hazard or obstruction.
- e) Not stand any plant and equipment upon the road or footway.
- f) Provide a clear safe pedestrian route a minimum of 1.5m wide.
- g) Protect heritage listed street name inlays in the footpath which are not to be removed or damaged during development.

This condition does not apply to the extent that a permit or approval exists under the section 148B of the *Road Transport Act 2013*, section 138 of the *Roads Act 1993* or section 68 of the *Local Government Act 1993* except that at all time compliance is required with:

- a) Australian Standard AS 1742 (Set): *Manual of uniform traffic control devices* and all relevant parts of this set of standards.
- b) Australian Road Rules.

Note: Section 73 of the *Road Transport (Safety and Traffic Management) Act 1999* allows the NSW Police to close any road or road related area to traffic during any temporary obstruction or danger to traffic or for any temporary purpose.

Note: Section 138 of the *Roads Act 1993* provides that a person must not:

- erect a structure or carry out a work in, on or over a public road, or
- dig up or disturb the surface of a public road, or
- remove or interfere with a structure, work or tree on a public road, or
- pump water into a public road from any land adjoining the road, or
- connect a road (whether public or private) to a classified road, otherwise than with the consent of the appropriate roads authority.

Note: Section 68 of the *Local Government Act 1993* provides that a person may carry out certain activities only with the prior approval of the Council including:

- Part C Management of waste:
 - a. For fee or reward, transport waste over or under a public place
 - b. Place waste in a public place
 - c. Place a waste storage container in a public place.

- Part E Public roads:
 - a. Swing or hoist goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway
 - b. Expose or allow to be exposed (whether for sale or otherwise) any article in or on or so as to overhang any part of the road or outside a shop window or doorway abutting the road, or hang an article beneath an awning over the road.

D.5 Maintenance of Environmental Controls

The Principal Contractor or Owner-builder must ensure that the following monitoring, measures and controls are maintained:

- a) erosion and sediment controls,
- b) dust controls,
- c) dewatering discharges,
- d) noise controls,
- e) vibration monitoring and controls,
- f) ablutions.

D.6 Compliance with Geotechnical / Hydrogeological Monitoring Program

Excavation must be undertaken in accordance with the recommendations of the Geotechnical / Hydrogeological Monitoring Program and any oral or written direction of the supervising professional engineer.

The Principal Contractor and any sub-contractor must strictly follow the Geotechnical / Hydrogeological Monitoring Program for the development including, but not limited to:

- a) the location and type of monitoring systems to be utilised,
- b) recommended hold points to allow for inspection and certification of geotechnical and hydrogeological measures by the professional engineer, and
- c) the contingency plan.

Note: The consent authority cannot require that the author of the geotechnical/hydrogeological report submitted with the development application to be appointed as the professional engineer supervising the work however, it is the Council's recommendation that the author of the report be retained during the construction stage.

D.7 Support of Adjoining Land and Buildings

A person must not do anything on or in relation to the site (the supporting land) that removes the support provided by the supporting land to any other land (the supported land) or building (the supported building).

For the purposes of this condition, supporting land includes the natural surface of the site, the subsoil of the site, any water beneath the site, and any part of the site that has been reclaimed.

Note: This condition does not authorise any trespass or encroachment upon any adjoining or supported land or building whether private or public. Where any underpinning, shoring, soil anchoring (temporary or permanent) or the like is considered necessary upon any adjoining or supported land by any person the Principal Contractor or Owner-builder must obtain:

- a. the consent of the owners of such adjoining or supported land to trespass or encroach, or
- b. an access order under the *Access to Neighbouring Land Act 2000*, or
- c. an easement under section 88K of the *Conveyancing Act 1919*, or
- d. an easement under section 40 of the *Land and Environment Court Act 1979* as appropriate.

- Note:** Section 177 of the *Conveyancing Act 1919* creates a statutory duty of care in relation to support of land. Accordingly, a person has a duty of care not to do anything on or in relation to land being developed (the supporting land) that removes the support provided by the supporting land to any other adjoining land (the supported land).
- Note:** Clause 20 of the *Roads Regulation 2008* prohibits excavation in the vicinity of roads as follows:
“**Excavations adjacent to road** - A person must not excavate land in the vicinity of a road if the excavation is capable of causing damage to the road (such as by way of subsidence) or to any work or structure on the road.” Separate approval is required under the *Roads Act 1993* for any underpinning, shoring, soil anchoring (temporary) or the like within or under any road. Council will not give approval to permanent underpinning, shoring, soil anchoring within or under any road.
- Note:** The encroachment of work or the like is a civil matter of trespass or encroachment and Council does not adjudicate or regulate such trespasses or encroachments except in relation to encroachments upon any road, public place, Crown land under Council’s care control or management, or any community or operational land as defined by the *Local Government Act 1993*.

D.8 Vibration Monitoring

Vibration monitoring equipment must be installed and maintained, under the supervision of a professional engineer with expertise and experience in geotechnical engineering, between any potential source of vibration and any *building* identified by the professional engineer as being potentially at risk of movement or damage from settlement and/or vibration during the excavation and during the removal of any excavated material from the land being developed.

If vibration monitoring equipment detects any vibration at the level of the footings of any adjacent building exceeding the peak particle velocity adopted by the professional engineer as the maximum acceptable peak particle velocity an audible alarm must activate such that the Principal Contractor and any sub-contractor are easily alerted to the event.

Where any such alarm triggers all excavation works must cease immediately. Prior to the vibration monitoring equipment being reset by the professional engineer and any further work recommencing the event must be recorded and the cause of the event identified and documented by the professional engineer.

Where the event requires, in the opinion of the professional engineer, any change in work practices to ensure that vibration at the level of the footings of any adjacent building does not exceed the peak particle velocity adopted by the professional engineer as the maximum acceptable peak particle velocity these changes in work practices must be documented and a written direction given by the professional engineer to the Principal Contractor and any sub-contractor clearly setting out required work practice.

The Principal Contractor and any sub-contractor must comply with all work directions, verbal or written, given by the professional engineer.

A copy of any written direction required by this condition must be provided to the Principal Certifier within 24 hours of any event.

Where there is any movement in foundations such that damaged is occasioned to any adjoining *building* or such that there is any removal of support to *supported land* the professional engineer, Principal Contractor and any sub-contractor responsible for such work must immediately cease all work, inform the owner of that *supported land* and take immediate action under the direction of the professional engineer to prevent any further damage and restore support to the *supported land*.

Note: *professional engineer* has the same mean as in clause A1.1 of the BCA.

Note: *building* has the same meaning as in section 1.4 of the *Act* i.e. “*building* includes part of a building and any structure or part of a structure....”

Note: *supported land* has the same meaning as in the *Conveyancing Act 1919*.

D.9 Erosion and Sediment Controls – Maintenance

The Principal Contractor or Owner-builder must maintain water pollution, erosion and sedimentation controls in accordance with the Erosion and Sediment Control Measures proposed in the Overland Flow and Flooding Investigation (Section 6) are to be maintained throughout the duration of the project to ensure no construction material (including solid or liquid) enters the harbour.

Note: A failure to comply with this condition may result in penalty infringement notices, prosecution, notices and orders under the *Act* and/or the *Protection of the Environment Operations Act 1997* without any further warning. It is a criminal offence to cause, permit or allow pollution.

Note: Section 257 of the *Protection of the Environment Operations Act 1997* provides that “the occupier of premises at or from which any pollution occurs is taken to have caused the pollution”.

Warning: Irrespective of this condition any person occupying the site may be subject to proceedings under the *Protection of the Environment Operations Act 1997* where pollution is caused, permitted or allowed as the result of the occupation of the land being developed whether or not they actually cause the pollution.

D.10 Disposal of Site Water During Construction

The Principal Contractor or Owner-builder must ensure:

- a) Prior to pumping any water into the road or public stormwater system that approval is obtained from Council under section 138(1)(d) of the *Roads Act 1993*.
- b) That *water pollution*, as defined by the *Protection of the Environment Operations Act 1997*, does not occur as the result of the discharge to the road, public stormwater system or other place or any site water.
- c) That stormwater from any roof or other impervious areas is linked, via temporary downpipes and stormwater pipes, to a Council approved stormwater disposal system immediately upon completion of the roof installation or work creating other impervious areas.

Note: This condition has been imposed to ensure that adjoining and neighbouring land is not adversely affected by unreasonable overland flows of stormwater and that site water does not concentrate water such that they cause erosion and water pollution.

D.11 Check Surveys - boundary location, building location, building height, stormwater drainage system and flood protection measures relative to Australian Height Datum

The Principal Contractor or Owner-builder must ensure that a registered surveyor carries out check surveys and provides survey certificates confirming the location of the building(s), ancillary works, flood protection works and the stormwater drainage system relative to the boundaries of the site and that the height of buildings, ancillary works, flood protection works and the stormwater drainage system relative to Australian Height Datum complies with this consent at the following critical stages.

The Principal Contractor or Owner-builder must ensure that work must not proceed beyond each of the following critical stages until compliance has been demonstrated to the Principal Certifier's satisfaction:

- a) Upon the completion of foundation walls prior to the laying of any floor or the pouring of any floor slab and generally at damp proof course level.
- b) Upon the completion of formwork for floor slabs prior to the laying of any floor or the pouring of any concrete and generally at each storey.
- c) Upon the completion of formwork or framework for the roof(s) prior to the laying of any roofing or the pouring of any concrete roof.
- d) Upon the completion of formwork and steel fixing prior to pouring of any concrete for any ancillary structure, flood protection work, swimming pool or spa pool or the like.
- e) Upon the completion of formwork and steel fixing prior to pouring of any concrete for driveways showing transitions and crest thresholds confirming that driveway levels match Council approved driveway crossing levels and minimum flood levels.
- f) Stormwater drainage Systems prior to back filling over pipes confirming location, height and capacity of works.
- g) Flood protection measures are in place confirming location, height and capacity.

Note: This condition has been imposed to ensure that development occurs in the location and at the height approved under this consent. This is critical to ensure that building are constructed to minimum heights for flood protection and maximum heights to protect views and the amenity of neighbours.

D.12 Placement and Use of Skip Bins

The Principal Contractor or Owner-builder must ensure the following requirements are complied with in relation to waste storage containers, including but not limited to skip bins:

- a) Activity Approval has been issued by Council under section 68 of the *Local Government Act 1993* to place the waste storage container in a public place; and
- b) where located on the road it is located only in a positions where a vehicle may lawfully park in accordance with the Australian Road Rules.

Note: Waste storage containers must not be located on the footpath without a site specific activity approval. Where such site specific activity approval is granted a 1.5m wide clear path of travel is maintained free of any trip hazards.

D.13 Dust Mitigation

Dust mitigation must be implemented in accordance with "*Dust Control - Do it right on site*" published by the Southern Sydney Regional Organisation of Councils.

This generally requires:

- a) Dust screens to all hoardings and site fences.
- b) All stockpiles or loose materials to be covered when not being used.
- c) All equipment, where capable, being fitted with dust catchers.
- d) All loose materials being placed bags before placing into waste or skip bins.
- e) All waste and skip bins being kept covered when not being filled or emptied.
- f) The surface of excavation work being kept wet to minimise dust.

- g) Landscaping incorporating trees, dense shrubs and grass being implemented as soon as practically possible to minimise dust.

Note: “Dust Control - Do it right on site” can be downloaded from Council’s website www.woollahra.nsw.gov.au or obtained from Council’s office.

Note: Special precautions must be taken when removing asbestos or lead materials from development sites. Additional information can be obtained from www.safework.nsw.gov.au and www.epa.nsw.gov.au. Other specific conditions and advice may apply.

Note: Demolition and construction activities may affect local air quality and contribute to urban air pollution. The causes are dust, smoke and fumes coming from equipment or activities, and airborne chemicals when spraying for pest management. Precautions must be taken to prevent air pollution.

D.14 Hours of Work –Amenity of the Neighbourhood

- a) No *work* must take place on any Sunday or public holiday.
- b) No *work* must take place before 7am or after 5pm any weekday.
- c) No *work* must take place before 7am or after 1pm any Saturday.
- d) The following *work* **must not** take place before 7.30am or after 5pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday:
- (i) piling,
 - (ii) piercing,
 - (iii) rock or concrete cutting, boring or drilling,
 - (iv) rock breaking,
 - (v) rock sawing,
 - (vi) jack hammering, or
 - (vii) machine excavation.
- e) No loading or unloading of material or equipment associated with the activities listed in part d) above must take place before 7.30am or after 5pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday.
- f) No operation of any equipment associated with the activities listed in part d) above must take place before 7.30am or after 5pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday.

This condition has been imposed to mitigate the impact of work upon the amenity of the neighbourhood. Impact of work includes, but is not limited to, noise, vibration, dust, odour, traffic and parking impacts.

Note: The use of noise and vibration generating plant and equipment and vehicular traffic, including trucks in particular, significantly degrade the amenity of neighbourhoods and more onerous restrictions apply to these activities. This more invasive work generally occurs during the foundation and bulk excavation stages of development. If you are in doubt as to whether or not a particular activity is considered to be subject to the more onerous requirement (9am to 4pm weekdays and 9am to 1pm Saturdays) please consult with Council.

Note: Each and every breach of this condition by any person may be subject to a separate penalty infringement notice or prosecution.

Note: The delivery and removal of plant, equipment and machinery associated with wide loads subject to RMS and NSW Police restrictions on their movement outside the approved hours of work will be considered on a case by case basis.

Note: Compliance with these hours of work does not affect the rights of any person to seek a remedy to offensive noise as defined by the *Protection of the Environment Operations Act 1997*, the *Protection of the Environment Operations (Noise Control) Regulation 2017*.

Note: NSW EPA Noise Guide is available at www.epa.nsw.gov.au/noise/nglg.htm

D.15 Noise Control – Construction Works

The Construction Noise Mitigation and Management Measures detailed in Section 4.4 of the *Acoustic Report prepared by Renzo Tonin & Associates, Document Reference No. TL502-01F02 dated 23 June 2020* to limit the potential impact of noise generated by construction activities to acceptable levels shall be fully implemented during all construction works.

D.16 Waste Classification – Removal of Soils

All fill material that was assigned a preliminary classification of General Solid Waste (non-putrescible) in the *Preliminary Contamination & Acid Sulfate Soils Screening Report: prepared by JK Environments. Document Reference No. E29837BrptRev1. Dated 25 June 2020* shall be confirmed by additional sampling, analysis and waste classification assessment prior to off-site disposal. The anticipated waste quantities should also be confirmed at that time and documented in the report.

All natural soil at the site is likely to meet the definition of VENM for off-site disposal or re-use purposes. The classification of VENM should be confirmed by additional sampling, analysis and waste classification assessment prior to off-site disposal. The anticipated waste quantities should also be confirmed at that time and documented in the report.

D.17 Tree Preservation

All persons must comply with Council's Development Control Plan (DCP) 2015, Chapter E.3 Tree Management other than where varied by this consent. The DCP applies to any tree with a height greater than 5 metres or a diameter spread of branches greater than 3 metres.

General Protection Requirements

- a) The TPZ must be maintained during all development work unless otherwise specified within these conditions of consent.
- b) Excavation must cease where tree roots with a diameter exceeding 50mm are exposed. The *principal contractor* must procure an inspection of the exposed tree roots by an arborist with a minimum AQF Level 5 qualification. Excavation must only recommence with the implementation of the recommendations of the arborist.
- c) Where there is damage to any part of a tree the *principal contractor* must procure an inspection of the tree by a qualified arborist immediately. The *principal contractor* must immediately implement treatment as directed by the arborist. The arborist is to supply a detailed report to the appointed certifier.

Note: Trees must be pruned in accordance with Australian Standard AS 4373 "Pruning of Amenity Trees" and WorkCover NSW Code of Practice Amenity Tree Industry.

D.18 Replacement/Supplementary trees which must be planted

Any replacement or supplementary tree shall be grown in accordance with Tree stock for landscape use (AS 2303:2018). The replacement tree shall be planted in a *deep soil landscaped area* and maintained in a healthy and vigorous condition. If the replacement tree is found to be faulty, damaged, dying or dead before it attains a size whereby it is protected by Council's Tree Preservation Order, it must be replaced with another of the same species which complies with the criteria outlined below.

Species/Type	Planting/Location	Container Size/Size of Tree (at planting)	Minimum Dimensions at Maturity (metres)
2 x <i>Angophora costata</i> (Sydney Pink Gum)	As plotted on the submitted Oculus Planting Plan Drawing L-500 (dated 27/10/2020).	400 litre	9 x 7
5 x <i>Banksia integrifolia</i> (Coastal Banksia)	As plotted on the submitted Oculus Planting Plan Drawing L-500 (dated 27/10/2020).	400 litre	7 x 5
8 x <i>Cupaniopsis anacardioides</i> (Tuckeroo)	As plotted on the submitted Oculus Planting Plan Drawing L-500 (dated 27/10/2020) and as amended by requirement 5 of the Heritage NSW/Heritage Council Terms of Approval	400 litre	8 x 5
3 x <i>Eucalyptus obstans</i> (Port Jackson Mallee) or 3 x <i>Banksia serratta</i> (Old Man Banksia)	As plotted on the submitted Oculus Planting Plan Drawing L-500 (dated 27/10/2020).	200 litre	4 x 4

Where there is conflict/consistency between the above-mentioned requirements and requirement 5 of the Heritage NSW/Heritage Council Terms of Approval (i.e. *new replacement plantings following removal of the existing Tuckeroo plantings along the foreshore must be of the same species as existing*), the latter prevails.

The project arborist shall document compliance with the above condition.

D.19 Hand excavation within tree root zones

Excavation undertaken within the specified radius from the trunks of the following trees shall be hand dug.

Council Ref No.	Species	Location	Radius from centre of trunk
13	<i>Lophostemon confertus</i> (Brushbox)	Refer to Concept Plan Revision B referenced OC-L-013, dated 17/8/2020	7.2 metres
14	<i>Lophostemon confertus</i> (Brushbox)	Refer to Concept Plan Revision B referenced OC-L-013, dated 17/8/2020	5.4 metres
15	<i>Lophostemon confertus</i> (Brushbox)	Refer to Concept Plan Revision B	

		referenced OC-L-013, dated 17/8/2020	7.8 metres
16	<i>Lophostemon confertus</i> (Brushbox)	Refer to Concept Plan Revision B referenced OC-L-013, dated 17/8/2020	6 metres
17	<i>Lophostemon confertus</i> (Brushbox)	Refer to Concept Plan Revision B referenced OC-L-013, dated 17/8/2020	7.8 metres
18	<i>Lophostemon confertus</i> (Brushbox)	Refer to Concept Plan Revision B referenced OC-L-013, dated 17/8/2020	6 metres
20	<i>Lophostemon confertus</i> (Brushbox)	Refer to Concept Plan Revision B referenced OC-L-013, dated 17/8/2020	7.2 metres
22	<i>Cupaniopsis anacardioides</i> (Tuckeroo)	Refer to Concept Plan Revision B referenced OC-L-013, dated 17/8/2020	7.8 metres
24	<i>Cupaniopsis anacardioides</i> (Tuckeroo)	Refer to Concept Plan Revision B referenced OC-L-013, dated 17/8/2020	6 metres
25	<i>Cupaniopsis anacardioides</i> (Tuckeroo)	Refer to Concept Plan Revision B referenced OC-L-013, dated 17/8/2020	7.8 metres
26	<i>Cupaniopsis anacardioides</i> (Tuckeroo)	Refer to Concept Plan Revision B referenced OC-L-013, dated 17/8/2020	6.6 metres
28	<i>Eucalyptus robusta</i> (Swamp Mahogany)	Refer to Concept Plan Revision B referenced OC-L-013, dated 17/8/2020	6 metres

Small hand tools such as mattocks or using compressed air or water jetting only shall be used. Roots with a diameter equal to or in excess of 50mm shall not be severed or damaged unless approved in writing by the project arborist.

Mechanical excavation is permitted beyond this radius when root pruning by hand along the perimeter line is completed. Exposed roots to be retained shall be covered with mulch or a geotextile fabric and kept in a moist condition and prevented from drying out.

All root pruning must be undertaken in accordance with the Australian Standard 4373 “Pruning of Amenity Trees” and carried out by a qualified Arborist (minimum qualification of Australian Qualification Framework Level 5 or recognised equivalent).

The project arborist shall document compliance with the above condition.

D.20 Protection of Adjacent Vegetation

As recommended in the Flora and Fauna Assessment Report submitted with the development application, exclusion areas at the edges of the construction site are to be delineated to prevent encroachment into offsite vegetation to be retained.

D.21 Protection of the Aquatic Environment

As recommended in the Flora and Fauna Assessment Report submitted with the development application, materials and equipment are to be securely stored to minimise risk of pollution and adverse impact upon the marine ecosystem of Sydney Harbour.

D.22 Native Fauna Protection

Trees being removed must be searched for hollows prior to removal. Any hollows identified are to be collected and reused on site.

Any trees to be removed are to be searched for any native fauna present before removal. Native fauna is to be removed by a trained wildlife carer or ecologist and relocated to a safe location with suitable habitat.

E. Conditions which must be satisfied prior to any occupation or use of the building (Part 4A of the Act and Part 8 Division 3 of the Regulation)

E.1 Commissioning and Certification of Systems and Works

The Principal Contractor or Owner-builder must submit to the satisfaction of the Principal Certifier works-as-executed (WAE) plans, Compliance Certificates and evidence of suitability in accordance with the BCA confirming that the works, as executed and as detailed, comply with the requirement of this consent, the *Act*, the *Regulations*, any relevant construction certificate, the BCA and relevant Australian Standards.

Works-as-executed plans, Compliance Certificates and evidence of suitability in accordance with the BCA must include but may not be limited to:

- a) Certification from the supervising professional engineer that the requirement of the Geotechnical/Hydrogeological conditions and report recommendations were implemented and satisfied during development work.
- b) All flood protection measures.
- c) All garage/car park/basement car park, driveways and access ramps comply with Australian Standard AS 2890.1: *Off-Street car parking*.
- d) All stormwater drainage and storage systems.
- e) All mechanical ventilation systems.

- f) All hydraulic systems.
- g) All structural work.
- h) All acoustic attenuation work.
- i) All waterproofing.
- j) Such further matters as the Principal Certifier may require.

Note: This condition has been imposed to ensure that systems and works as completed meet development standards as defined by the *Act*, comply with the BCA, comply with this consent and so that a public record of works as executed is maintained.

Note: The PC may require any number of WAE plans, certificates, or other evidence of suitability as necessary to confirm compliance with the *Act*, *Regulation*, development standards, BCA, and relevant Australia Standards. As a minimum WAE plans and certification is required for stormwater drainage and detention, mechanical ventilation work, hydraulic services (including but not limited to fire services).

Note: The PC must submit to Council, with any Occupation Certificate, copies of WAE plans, Compliance Certificates and evidence of suitability in accordance with Part A2.2 of the BCA upon which the PC has relied in issuing any Occupation Certificate.

F. Conditions which must be satisfied prior to the issue of any subdivision certificate

Nil

G. Conditions which must be satisfied prior to the completion of works

G.1 Removal of Ancillary Works and Structures

The Principal Contractor or Owner must remove from the land and any adjoining public place:

- a) the site sign,
- b) ablutions,
- c) hoarding,
- d) scaffolding, and
- e) waste materials, matter, article or thing.

Note: This condition has been imposed to ensure that all ancillary matter is removed prior to the issue of the Final Occupation Certificate.

G.2 Landscaping

The *principal contractor* or *owner* must provide to *PCA* a works-as-executed landscape plan and certification from a qualified landscape architect/designer, horticulturist and/or arborist as applicable to the effect that the works comply with this consent.

Note: This condition has been imposed to ensure that all Landscaping work is completed prior to the completion of works.

H. Conditions which must be satisfied during the ongoing use of the development

H.1 Coastal Management Act 2016 requirements

In accordance with the requirements of Clause 27(1)(b) of the Coastal Management Act 2016, the following shall be undertaken for the life of the works:

- (i) the restoration of a beach, or land adjacent to the beach, if any increased erosion of the beach or adjacent land is caused by the presence of the works; and
- (ii) the maintenance of the works.

H.2 Weed Control

As recommended in the Flora and Fauna Assessment Report submitted with the development application, weeds are to be managed in accordance with Greater Sydney Regional Strategic Weed Management Plan 2017 – 2022 (LLS 2017).

H.3 Outdoor Lighting

Any external lighting should be directed downward, away from the water. Australian Standards (AS4282-1997) Guidelines for Outdoor Lighting and Pedestrian Area (Category P) Lighting (AS/NZ 1158.3-1999) shall be observed.

H.4 Noise Control

The use of the premises must not give rise to the transmission of *offensive noise* to any place of different occupancy. *Offensive noise* is defined in the *Protection of the Environment Operations Act 1997*.

Note: This condition has been imposed to protect the amenity of the neighbourhood.

Note: Council will generally enforce this condition in accordance with the *Noise Guide for Local Government* (www.epa.nsw.gov.au/your-environment/noise/regulating-noise/noise-guide-local-government) and the *NSW Industrial Noise Policy* (www.epa.nsw.gov.au/your-environment/noise/industrial-noise) published by the NSW Environment Protection Authority. Other State Government authorities also regulate the *Protection of the Environment Operations Act 1997*.

Useful links:

Community Justice Centres—free mediation service provided by the NSW Government
www.cjc.nsw.gov.au.

NSW Environment Protection Authority— see “noise” section www.environment.nsw.gov.au/noise.
NSW Government legislation- access to all NSW legislation, including the *Protection of the Environment Operations Act 1997* and the *Protection of the Environment Noise Control Regulation 2000* is available at www.legislation.nsw.gov.au.

Australian Acoustical Society—professional society of noise related professionals www.acoustics.asn.au.
Association of Australian Acoustical Consultants—professional society of noise related professionals
www.aaac.org.au.

Liquor and Gaming NSW—www.liquorandgaming.nsw.gov.au.

I. Miscellaneous Conditions

Nil

J. Advisings

J.1 Criminal Offences – Breach of Development Consent & Environmental laws

Failure to comply with this development consent and any condition of this consent is a **criminal offence**. Failure to comply with other environmental laws is also a criminal offence. Where there is any breach Council may without any further warning:

- a) Issue Penalty Infringement Notices (On-the-spot fines);
- b) Issue notices and orders;
- c) Prosecute any person breaching this consent; and/or
- d) Seek injunctions/orders before the courts to restrain and remedy any breach.

Warnings as to potential maximum penalties

Maximum Penalties under NSW Environmental Laws include fines up to \$1.1 Million and/or custodial sentences for serious offences.

Warning as to enforcement and legal costs

Should Council have to take any action to enforced compliance with this consent or other environmental laws Council's policy is to seek from the Court appropriate orders requiring the payments of its costs beyond any penalty or remedy the Court may order. his consent and this specific advice will be tendered to the Court when seeking costs orders from the Court where Council is successful in any necessary enforcement action.

Note: The payment of environmental penalty infringement notices does not result in any criminal offence being recorded. If a penalty infringement notice is challenged in Court and the person is found guilty of the offence by the Court, subject to section 10 of the *Crimes (Sentencing Procedure) Act 1999*, a criminal conviction is recorded. The effect of a criminal conviction beyond any fine is serious. You can obtain further information from the following web sites:
<http://www.theshopfront.org/documents/ConvictionsCriminalRecords.pdf> and the Attorney General's www.agd.nsw.gov.au.

J.2 Dial before you dig

The *principal contractor, owner builder* or any person digging may be held financially responsible by the asset owner should they damage underground pipe or cable networks. Minimise your risk and Dial 1100 Before You Dig or visit www.dialbeforeyoudig.com.au. When you contact Dial Before You Dig, you will be sent details of all Dial Before You Dig members who have underground assets in the vicinity of your proposed excavation.

J.3 Builders Licences and Owner Builders Permits

Section 81A of the *Act* requires among other matters that the person having the benefit of the development consent, if not carrying out the work as an **owner-builder**, must appointed a *principal contractor* for residential building work who must be the holder of a contractor licence. Further information can be obtained from the NSW Office of Fair Trading website about how you obtain an owner builders permit or find a principal contractor (builder): <http://www.dft.nsw.gov.au/building.html>. The Owner(s) must appoint the PCA. The PCA must check that Home Building Act insurance is in place before the commencement of building work. The Principal Contractor (Builder) must provide the Owners with a certificate

of insurance evidencing the contract of insurance under the Home Building Act 1989 for the residential building work.

J.4 Building Standards - Guide to Standards and Tolerances

The PCA does not undertake detailed quality control inspections and the role of the PCA is primarily to ensure that the development proceeds in accordance with this consent, Construction Certificates and that the development is fit for occupation in accordance with its classification under the Building Code of Australia. Critical Stage Inspections do not provide the level of supervision required to ensure that the minimum standards and tolerances specified by the “Guide to Standards and Tolerances©” ISBN 0 7347 6010 8 are achieved. The quality of any development is a function of the quality of the *principal contractor’s* or *owner builder’s* supervision of individual contractors and trades on a daily basis during the development. The PCA does not undertake this role. The NSW Office of Fair Trading have published a “Guide to Standards and Tolerances©” ISBN 0 7347 6010 8. The guide can be obtained from the Office of Fair Trading by calling 13 32 20 or by Fax: 9619 8618 or by post to: Marketing Branch, PO Box 972, Parramatta NSW 2124. The Guide can be down loaded from: <http://www.fairtrading.nsw.gov.au/pdfs/corporate/publications/dft242.pdf> Council, as the PCA or otherwise, does not adjudicate building contract disputes between the *principal contractor*, contractors and the owner.

J.5 Workcover requirements

The *Occupational Health and Safety Act 2000 No 40* and subordinate regulations, codes of practice and guidelines control and regulate the development industry.

Note: Further information can be obtained from Workcover NSW’s website: <http://www.workcover.nsw.gov.au/Industry/Construction/default.htm> or through their head office: Location: Workcover NSW, 92-100 Donnison Street, GOSFORD 2250 Postal address: WorkCover NSW, Locked Bag 2906, LISAROW 2252, Phone (02) 4321 5000, Fax (02) 4325 4145.

J.6 Asbestos Removal, Repair or Disturbance

Anyone who removes, repairs or disturbs bonded or a friable asbestos material must hold a current removal licence from Workcover NSW. Before starting work, a work site-specific permit approving each asbestos project must be obtained from Workcover NSW. A permit will not be granted without a current Workcover licence. All removal, repair or disturbance of or to asbestos material must comply with:

- a) The Occupational Health and Safety Act 2000;
- b) The Occupational Health and Safety Regulation 2001;
- c) The Code of Practice for the Safe Removal of Asbestos [NOHSC: 2002 (1998)];
- d) The Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998)] <http://www.nohsc.gov.au/>];
- e) The Workcover NSW Guidelines for Licensed Asbestos Removal Contractors.

Note: The Code of Practice and Guide referred to above are known collectively as the Worksafe Code of Practice and Guidance Notes on Asbestos. They are specifically referenced in the Occupational Health and Safety Regulation 2001 under Clause 259. Under the Occupational Health and Safety Regulation 2001, the Worksafe Code of Practice and Guidance Notes on Asbestos are the minimum standards for asbestos removal work. Council does not control or regulate the Worksafe Code of Practice and

Guidance Notes on Asbestos. You should make yourself aware of the requirements by visiting www.workcover.nsw.gov.au or one of Workcover NSW's offices for further advice.

J.7 Pruning or Removing a Tree Growing on Private Property

Woollahra Municipal Development Control Plan (DCP) 2015, Chapter E.3 Tree Management may require that an application be made to Council prior to pruning or removing any tree. The aim is to secure the amenity of trees and preserve the existing landscape within our urban environment.

Before you prune or remove a tree, make sure you read all relevant conditions. You can obtain a copy of the DCP from Council's website www.woollahra.nsw.gov.au or you may contact Council on 9391-7000 for further advice.