

WAVERLEY COUNCIL

Notice of determination of a development application

issued under *the Environmental Planning and Assessment Act 1979*
section 4.18 (1) (a)



Details of the applicant

Waverley Council
C/- Emily Scott, Sharon Cassidy & Genevieve Wilson
PO Box 9
BONDI JUNCTION NSW 1355

Details of the land to be developed

Site:	Diamond Bay Reserve, Diamond Bay Road, Vaucluse NSW 2030 & Waverley Clifftop Walk
Development application no:	DA-378/2021
Description of the development:	Upgrade works to Diamond Bay Reserve and Waverley Clifftop Walk including replacing and extending existing boardwalk structure, new additional viewing platforms, seating, bins, signage, fencing and landscaping PAN-136929

Decision of the consent authority

Consent is **granted** subject to the conditions listed in **Attachment A**.

Conditions have been placed on the consent for the reasons outlined in Attachment A:

Date of this decision:	8 December 2021
Date from which the consent operates:	8 December 2021
Date the consent lapses:	8 December 2026

Information attached to this decision

- Conditions of the consent listed in **Attachment A**.

Waverley Council
PO Box 9, Bondi Junction NSW 1355
DX 12006, Bondi Junction
Customer Service Centre
55 Spring Street, Bondi Junction NSW 2022
ABN: 12 502 583 608

Contact us
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facebook.com/whatsonwaverley
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www.youtube.com/user/WavCouncil

Other approvals

The following approvals will be granted, consistent with this consent, if the applicant applies to the state agencies listed within 3 years of the date of this decision:

- N/A

The following approvals have been granted under the *Local Government Act 1993*:

- N/A

A Commission of Inquiry has been held: No

Signature

For this notice to be valid, it must be signed by the consent authority.



Bridget McNamara
Manager, Development Assessment

Dated: 21 December 2021

Rights of appeal

You can appeal against this decision in the Land and Environment Court. Any appeal must be lodged within the prescribed period. You cannot appeal, however, if a Commission of Inquiry was held and the development is designated development or state significant development.

Right of Review

If you are dissatisfied with this decision you may make an application to Council for a review of the determination. You must give your reasons for this request and pay the prescribed fee for this review. **The review must be submitted within 2 months of the date of the decision notice so it can be determined within the prescribed period.**

Modification of consent

If you are dissatisfied with a condition attached to this consent, you may apply to Council to have the condition removed or varied. This process may be undertaken in the form of an application to modify the development consent under Section 4.55 of the Environmental Planning & Assessment Act. You should give reasons or supply such additional information that supports your application.

Enquiries

Contact person: Peggy Wong
Telephone: 02 9083 8074

Email: peggy.wong@waverley.nsw.gov.au

Attachment A
Conditions of the development consent

DA-378/2021

A. APPROVED DEVELOPMENT**1. APPROVED PLANS AND DOCUMENTATION**

The development must be in accordance with:

- (a) Architectural Plans prepared by Thompson Berrill Landscape Design Pty Ltd including the following:

Plan Number and Revision	Plan description	Plan Date	Date received by Council
CWU-DD-04, Rev V2	Context Analysis Plan	03/09/2021	15/09/2021
CWU-DD-05-A, Rev V2	General Layout Plan A	03/09/2021	15/09/2021
CWU-DD-05-B, Rev V2	General Layout Plan B	03/09/2021	15/09/2021
CWU-DD-05-C, Rev V2	General Layout Plan C	03/09/2021	15/09/2021
CWU-DD-05-D, Rev V2	General Layout Plan D	03/09/2021	15/09/2021
CWU-DD-05-E, Rev V2	General Layout Plan E	03/09/2021	15/09/2021
CWU-DD-05-F, Rev V2	General Layout Plan F	03/09/2021	15/09/2021
CWU-DD-06, Rev V2	Landscape Plan	03/09/2021	15/09/2021
CWU-DD-08-A, Rev V2	Elevated Boardwalk Typical Cross Section	03/09/2021	15/09/2021
CWU-DD-08-B, Rev V2	Informal Pedestrian Access Typical Cross Section	03/09/2021	15/09/2021
CWU-DD-08-C, Rev V2	Low Boardwalk Typical Cross Section	03/09/2021	15/09/2021

- (b) Soil & water Management Plan, Drawings Nos. CWU-DD-07-A to CWU-DD-07-F inclusive, prepared by Thompson Berrill Landscape Design Pty Ltd dated 03/09/2021
- (c) Flora and Fauna Assessment Report prepared by Thompson Berrill Landscape Design dated 31/08/2021, and received by Council on 15/09/2021
- (d) Public Safety Risk Assessment Report prepared by Thompson Berrill Landscape Design dated 31/08/2021, and received by Council on 15/09/2021
- (e) DDA & Access Review Report prepared by Funktion dated 02/08/2021 and received by Council on 15/09/2021

- (f) Preliminary Site Investigation Report prepared by Douglas Partners dated September 2021, and received by Council on 07/10/2021
- (g) Geotechnical Assessment Reports A to C inclusive, prepared by Douglas Partners dated 27/04/2021, and received by Council 15/09/2021
- (h) The Site Waste and Recycling Management Plan (SWRMP) Part 1.

Except where amended by the following conditions of consent.

2. GENERAL MODIFICATIONS

To reduce impacts on surrounding properties and from public spaces, the following amendments are to be made:

- (a) Delete the proposed 1.5-metre-wide concrete pedestrian path extending from the bottom of Oceanview Avenue into the reserve
- (b) Delete the timber bench seating with sandstone paving and sandstone block retaining wall at the end of the proposed path from the bottom of Oceanview Avenue.
- (c) Relocate the accessible seating to the eastern end of Oceanview Avenue.
- (d) Maintain the access to Eastern Reserve from George Street while ensuring that the remnant vegetation and nearby Aboriginal archaeological site are protected.
- (e) The proposed new low vegetation adjoining the clifftop coastal fence be no wider than 1 metre.
- (f) Remove reference to all tree planting of heath-leaved banksia and scrub she-oak to the northwest of Eastern Reserve and replace with low vegetation.
- (g) The proposed native vegetation on the western boundary of Eastern Reserve be no wider than 1.5 metres.
- (h) Detailed landscape documentation plans must be submitted for the approval of Council's Open Space Planning Team once further developed at 80% and 100% design review prior to tender and construction packages for the landscape component. Detailed landscape plans are to address the following:
 - i. Plantings immediately adjacent to the clifftop fence are to consist of only low height vegetation and the vegetation area is to be no greater than 1 metre in width.
 - ii. New sandstone terracing/steps in Eastern Reserve to accommodate sandstone log terracing with planting at the edge of the stair where possible to treat erosion on slope to match the treatment of existing stairs and terracing.
 - iii. Future revisions of the landscape plans to provide details on tree placement with number of plants to manage views and provide shade to seating and walkers.

- (i) The native vegetation area on the western side of Eastern Reserve and adjacent to the eastern side boundary of 22 Bulga Road is to be designed so that existing pedestrian access from the side gate to Eastern Reserve is adequately maintained.
- (j) Detailed design and location of any bench seating at lookout points are to be sufficiently setback from the coastal fence to minimise safety risk to the public whilst not impeding on standing room.
- (k) Detailed design and location of the accessible bench seating to be located in Eastern Reserve adjacent to Oceanview Avenue is to be shown on amended plans.
- (l) Interpretive signage detailing the geological, archaeological, and historical aspects of the stone portal and cliff stairs in Diamond Gully should be provided along the clifftop walk in locations that are in proximity and view of the stone portal and cliff stairs. Details of interpretive signage are to be submitted to Council's Heritage Advisor for approval.

The amendments are to be approved by the **Executive Manager, Development Assessment (or delegate)** prior to the issue of any Construction Certificate. An electronic copy of the amended plans or additional information (see website for electronic document requirements) addressing this condition, including a covering letter shall be provided to Council for review.

2A. SCHEDULE OF MATERIALS AND FINISHES

- a) Materials and finishes are to be consistent with the palette used elsewhere along the coastal walk to provide a cohesive experience of Public open space for example Waverley Cemetery coastal walk.
- b) Durable materials to be explored should include composite materials and high-grade marine quality stainless steel.

The materials are to be approved by the **Executive Manager, Development Assessment or delegate** prior to the issue of any Construction Certificate. An electronic copy of the amended plans or additional information (see website for electronic document requirements) addressing this condition, including a covering letter shall be provided to Council for review.

3. LANDSLIDE RISK ASSESSMENT

A landslide risk assessment is to be prepared by a geotechnical engineer prior to the construction of the new boardwalk along the Eastern Boardwalk in accordance with the Australian Geomechanics Society's Practise Note Guidelines for Landslide Risk Management to determine the alignment and any required structural requirements for the boardwalk.

B. PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

The requirements outlined in this section are to be provided to the satisfaction of the Principal Certifying Authority in all instances, except where a condition explicitly specifies that the approval of Council or a Council Officer is required.

GENERAL REQUIREMENTS

4. NO BUILDING OR DEMOLITION WORKS PRIOR TO RELEASE OF CONSTRUCTION CERTIFICATE

The building work, or demolition work, must not be commenced until:

- (a) a Construction Certificate has been obtained from Council or an Accredited Certifier in accordance with the *Environmental Planning and Assessment Act 1979*;
- (b) a Principal Certifying Authority has been appointed and Council has been notified of the appointment in accordance with the *Environmental Planning and Assessment Act 1979* and *Environmental Planning and Assessment Regulation 2000*; and
- (c) Council is given at least two days' notice in writing of the intention to commence the building works.

5. LONG SERVICE LEVY

A long service levy, as required under section 34 of the *Building and Construction Industry Long Service Payments Act, 1986*, is to be paid in respect of this building work. Evidence that the levy has been paid is to be submitted to the Principal Certifying Authority prior to the issue of any Construction Certificate.

Note: Council acts as an agent for the Long Service Payment Corporation and the levy may be paid at Council's office. The levy rate is 0.35% of building work costing \$25,000 or more.

CONSTRUCTION & SITE MATTERS

6. PRELIMINARY SITE ASSESSMENT REPORT RECOMMENDATIONS

The recommendations as outlined in the Preliminary Site Assessment carried out by Douglas Partners (project no: 203383.02) and dated 29 September 2021 shall be implemented.

A report/certificate prepared by a suitably qualified Environmental consultant is to be submitted to the Principal Certifying Authority and the Council, certifying that all recommendations (made in above report) have been satisfied and the site is suitable for the intended use;

Or

If Remedial work is required a Site Audit Statement (SAS) prepared by an accredited NSW EPA Site Auditor clearly stating that the site is suitable for the intended use must be submitted.

Conditions on the SAS must form part of the conditions of consent of the Notice of Determination.

Where the Site Audit Statement is subject to conditions that require ongoing review by the Auditor or Council these conditions should be discussed with Council before the Site Audit Statement is issued.

7. HOARDING

To ensure the site is contained during construction, a hoarding is required for the approved works, which is to be designed and constructed in accordance with the requirements of Safe Work NSW. Where the hoarding is to be erected over the footpath or any public place, the approval of Council's Compliance Unit must be obtained and the applicable fees paid, prior to the erection of the hoarding.

8. EROSION & SEDIMENT CONTROL

A Soil and Water Management Plan (SWMP), also known as an Erosion and Sediment Control Plan must be prepared in accordance with Waverley Council's Water Management Technical Manual.

The SWMP must be approved by the Principal Certifying Authority prior to the issue of a Construction Certificate. A copy of the SWMP must be kept on site at all times and made available to Council officers upon request.

The recommendations of the SWMP must be implemented and maintained during all construction activities and until the site is fully stabilised following construction.

9. ENGINEERING DETAILS

Structural details are to be prepared and certified by a practicing Structural Engineer in connection with all structural components of the approved works, prior to the issue of the relevant Construction Certificate.

TRAFFIC MANAGEMENT

10. CONSTRUCTION TRAFFIC MANAGEMENT PLAN (CTMP)

The applicant is to submit a Construction Traffic Management Plan (CTMP) for the approval of Council's Executive Manager, Infrastructure Services, or delegate, prior to the issue of any Construction Certificate. For further information on what is required in the CTMP, please refer to Council's website at:

https://www.waverley.nsw.gov.au/building/development_applications/post_determination/development_applications_-_conditions_of_consent

WASTE

11. SITE WASTE AND RECYCLING MANAGEMENT PLAN

A *Site Waste and Recycling Management Plan (SWRMP) - Part 2* is to be submitted to the Principal Certifying Authority prior to the issue of the relevant Construction Certificate, which outlines materials to be reused and/or recycled as a result of demolition and construction works. At least one copy of the *SWRMP Part 2* is to be available on site at all times during

construction. Copies of demolition and construction waste docket that verify the facility that received the material for recycling or disposal and the quantity of waste received, must be retained on site at all times during construction.

C. COMPLIANCE PRIOR TO WORK COMMENCING AND DURING CONSTRUCTION

The requirements outlined in this section are to be provided to the satisfaction of the Principal Certifying Authority in all instances, except where a condition explicitly specifies that the approval of Council or a Council Officer is required.

PRIOR TO ANY WORKS

12. CONSTRUCTION SIGNS

Prior to commencement of any works on the site and during construction a sign shall be erected on the main frontage of the site detailing the name, address and contact details (including a telephone number) of the Principal Certifying Authority and principal contractor (the coordinator of the building works). The sign shall be clearly legible from the adjoining street/public areas and maintained throughout the building works.

DEMOLITION & EXCAVATION

13. CONTROL OF DUST ON CONSTRUCTION SITES

The following requirements apply to demolition and construction works on site:

- (a) Hazardous dust is not to be allowed to escape from the site. The use of fine mesh dust proof screens or other measures are recommended. Any existing accumulations of dust (e.g. ceiling voids and wall cavities) must be removed by the use of an industrial vacuum fitted with a high efficiency particle air (HEPA) filter. All dusty surfaces and dust created from work are to be suppressed by a fine water spray. Water must not be allowed to enter the street and stormwater systems. Demolition is not to be performed during adverse winds, which may cause dust to spread beyond the site boundaries.
- (b) All contractors and employees directly involved in the removal of hazardous dusts and substances are to wear protective equipment conforming to Australian Standard AS1716 Respiratory Protective Devices.

CONSTRUCTION MATTERS

14. CONSTRUCTION HOURS

Demolition and building work must only be undertaken between the hours of 7am and 5pm on Mondays to Fridays and 8am to 3pm on Saturdays with no work to be carried out on:

- (a) Sundays and public holidays.
- (b) Excavation works involving the use of heavy earth movement equipment, including rock breakers and the like, must only be undertaken between the hours of 7am and 5pm on

Mondays to Fridays, with no such work to be carried out on Saturday, Sunday or a public holiday.

Noise from construction activities shall comply with the Protection of the Environment Operations (Noise Control) Regulation 2017.

15. STOCKPILES, STORAGE OF MATERIALS AND LOCATION OF BUILDING OPERATIONS

All building materials and any other items associated with the development are to be stored within the property. No materials are to be stored on Council's footpath, nature strip, or road reserve without prior Council approval.

16. CLASSIFICATION OF WASTE/ DISPOSAL OF EXCAVATED SOILS

Prior to the exportation of waste (including fill or soil) from the site the material must be classified in accordance with the provisions of the Protection of the Environment Operations Act, 1997 and the NSW EPA Waste classification guidelines 2014.

TREE PROTECTION AND REMOVAL

17. TREE PROTECTION

All trees on site and adjoining properties, including street trees, are to be retained and protected in accordance with AS4970-2009 'Protection of Trees on Construction Sites' and to be certified by an Arborist with AQF level 5 qualification or above, unless approved to be removed in this development consent.

18. PROTECTION OF VEGETATION

- (a) Prior to the commencement of construction work, vegetation protection measures are to be adopted in accordance with the recommendations contained in the Flora and Fauna Assessment prepared by Thompson Berrill Landscape Design dated 31 August 2021 including the following:
- (i) Vegetation protection measures should be installed around all vegetation that is to be retained. This will assist in the prevention of unnecessary damage occurring to any vegetation that will not be removed. Examples of vegetation protection measures could include:
 - Installing physical barriers that would prevent machinery and personnel from entering areas that will not require vegetation removal;
 - Demarcation of vegetation to be retained by using flagging tape or hi-vis flagging rope; and
 - Installing tree guard protection around the larger shrubs and small trees that are to be retained.
 - (ii) Landscaping proposed as part of the works should be comprised of native species which form part of the vegetation communities known from the study area and surrounds.

(b) For the duration of construction works, measures to protect vegetation are to be undertaken as follows:

- (i) Ensure all equipment and machinery are washed down prior to entering and leaving the construction site in order to minimise the introduction of exotic flora species and soil pathogens.
- (ii) Thoroughly clean all equipment of soil and weed propagules prior to entry into the study area.
- (iii) Bag and remove all weed propagules offsite, preferably the same day and dispose of at designated green waste facility.

19. REMNANT VEGETATION

Works associated with the boardwalk upgrade must not damage remnant vegetation, whether by removal of plants, flattening of plants or dumping of soil or other materials onto plants. This must be monitored by Council's Project Manager, and any issues reported to Council's Urban Ecology Team.

D. PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE OR SUBDIVISION CERTIFICATE

The requirements outlined in this section are to be provided to the satisfaction of the Principal Certifying Authority in all instances, except where a condition explicitly specifies that the approval of Council or a Council Officer is required, prior to the issue of an Occupation Certificate or Subdivision Certificate, whichever applies.

20. FINAL OCCUPATION CERTIFICATE

Prior to occupation or use of the development, an Occupation Certificate must be obtained.

The Principal Certifying Authority must be satisfied that the requirements of the *Environmental Planning & Assessment Act 1979* have been satisfied including all critical stage inspections. Documentary evidence of all required inspections is to be submitted to Council.

21. CERTIFICATION OF PUBLIC INFRASTRUCTURE WORKS

To ensure public infrastructure works required under the consent are completed to Council's satisfaction a final inspection of the completed works is required from Council's Executive Manager, Infrastructure Services, or delegate. The Occupation Certificate shall not be issued until certification has been obtained from Council confirming the public infrastructure works have been constructed to Council's satisfaction.

E. ADVISORY MATTERS

The following advisory matters are provided as additional information to ensure compliance with the relevant legislation and requirements. You must also check other Commonwealth and NSW Acts and Regulations which may apply to the works or use approved in this application.

AD1. POST CONSENT CONDITIONS REQUIRING COUNCIL INPUT

Various conditions require further input, review or approval by Council in order to be satisfied following the determination of the application (that is, post consent). In those instances, please adhere to the following process to avoid delays:

- Please read your conditions carefully.
- Information to be submitted to Council should be either via email to info@waverley.nsw.gov.au or via the NSW Planning Portal (if required).
- Attention the documentation to the relevant officer/position of Council (where known/specified in condition).
- Include DA reference number.
- Include condition number/s seeking to be addressed.
- Where multiple conditions need Council input, please try to group the documentation / email/s into relevant subjects (multiple emails for various officers may be necessary, for example).
- Information to be submitted in digital format – refer to ‘Electronic lodgement guidelines’ on Council’s website. Failure to adhere to Council’s naming convention may result in documentation being rejected.
- Where files are too large for email, the digital files should be sent to Council via CD/USB. Council does not support third party online platforms (data in the cloud) for receipt of information.
- Please note, in some circumstances, additional fees and/or additional documents (hard copy) may be required.
- Council’s standard for review (from date the relevant officer receives documentation) is 14 days. Times may vary or be delayed if information is not received in this required manner.

AD2. DIAL BEFORE YOU DIG

Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets please contact Dial Before You Dig at www.1100.com.au or telephone on 1100 before excavating or erecting structures (this is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial Before You Dig service, an

amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial Before You Dig service in advance of any construction or planning activities.