

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2021/1229
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<b>Responsible Officer:</b>	Catriona Shirley
<b>Land to be developed (Address):</b>	Lot 1 DP 900658, 7 Pavilion Street QUEENSCLIFF NSW 2096
<b>Proposed Development:</b>	Alterations and additions to a dwelling house
<b>Zoning:</b>	Warringah LEP2011 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	James David O'Leary Megan Oi Qwan Chan O'Leary
<b>Applicant:</b>	James David O'Leary

<b>Application Lodged:</b>	26/07/2021
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	06/08/2021 to 20/08/2021
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	6
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 95,000.00
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### PROPOSED DEVELOPMENT IN DETAIL

This proposal seeks approval for construction of a privacy screen and roofing attached to the existing dwelling.

The privacy screening is proposed to be located within the southern side boundary, and then protrude forward of the building line into the rear setback over the approved decked area.

The works consist as follows:

- Extend existing timber screen structure to the square up the screen to a height of existing RL36.74 on the southern elevation.

- Proposed lattice, 660mm in height adjoining the existing screen on the southern elevation.
- Louvred privacy screen along the southern boundary with a height of 2.1m above existing ground level and continue on a 39 degree pitch to a height of 4.03m.

During the assessment period significant concerns were raised in regards to the proposed design, and view loss created by the proposed structure. An amended design was received to resolve the view loss concerns.

The amended design works consist as follows:

- Extend existing timber screen structure to the square up the screen to a height of existing RL36.74 on the southern elevation.
- Proposed lattice, 660mm in height adjoining the existing screen on the southern elevation.
- Proposed louvered privacy screen with a height of 2.1m above existing ground level and continue on a 39 degree pitch to a height of 2.9m.
- Horizontal louvered awning element over the existing deck area.

As a result, the screening is to be erected on the lower side of the existing retaining wall which is on the adjoining property and the face of the wall is on the boundary. The design is such that it will form a roofed and enclosed side setback and a roofed section within the rear setback area (area south of the swimming pool).

Consistent with the Northern Beaches Council Community Participation Plan the proposal was of a lesser environmental impact and was therefore not required to be re-notified. However, the amended plans were provided to the adjoining properties where the view loss was identified. As a result of the amended plans no further submissions were received.

As a result, the amended plans have been utilised in the assessment report below.

## **ASSESSMENT INTRODUCTION**

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

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

## SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 5.10 Heritage conservation  
 Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land  
 Warringah Development Control Plan - B5 Side Boundary Setbacks  
 Warringah Development Control Plan - D3 Noise  
 Warringah Development Control Plan - D7 Views  
 Warringah Development Control Plan - D9 Building Bulk  
 Warringah Development Control Plan - D15 Side and Rear Fences

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 1 DP 900658 , 7 Pavilion Street QUEENSCLIFF NSW 2096
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the north-eastern side of Pavilion Street.</p> <p>The site is irregular in shape with an angled frontage of 17.33m along Pavilion Street and a depth of 43.18m along the northern boundary and 50.54 along the southern boundary. The site has a surveyed area of 910.4m<sup>2</sup>.</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a dwelling house and swimming pool.</p> <p>The site falls by an average of 18% from west to east, before a sheer cliff into the water. The lower portion of the site below the coastal cliff is identified as Heritage Conservation Area No. C13 'Coastal cliffs' pursuant to the WLEP 2011.</p> <p>The site has some planter boxes, shrubbed areas and a small garden area along the southern boundary.</p> <p>Adjoining and surrounding development is characterised by other dwelling houses with multiple different architectural styles, residential flat buildings and dual occupancies.</p>

Map:



## SITE HISTORY

A search of Council's records has revealed the following relevant development application history:

- Development Application **DA2010/1007** for the alterations & additions to a dwelling house approved 28 July 2010.
- Development Application **DA2010/1194** for the alterations and additions to a dwelling house, construction of a swimming pool and new front fencing approved 12 October 2010.
- Development Application **DA2017/0040** for the alterations and additions to existing dwelling house was withdrawn from Council.
- Development Application **DA2018/0612** for the alterations and additions to a dwelling house approved 23 August 2018.
- Development Application **DA2018/1892** for the demolition works and construction of a swimming pool approved 18 March 2019.
- Modification Application **Mod2019/0173** for the modification of Development Consent **DA2018/0612** granted for the alterations and additions to a dwelling house approved 31 May 2019.

A Pre-lodgment meeting was held on the 19 March 2021 in regards to the proposed works as part of this application. The notes concluded that the privacy screen was supported in principle due to the excessive overlooking from the apartments in the adjoining RFB. However, the design required revision to address specific view and visual impact concerns.

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

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning	See discussion on “Environmental Planning Instruments” in this report.

Section 4.15 Matters for Consideration	Comments
instrument	
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p>



Section 4.15 Matters for Consideration	Comments
	(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 06/08/2021 to 20/08/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 6 submission/s from:

Name:	Address:
Alternative Conveyancing	55/5 Inglewood Place BAULKHAM HILLS NSW 2153
Stephanie Jayne Degiorgio	1 / 5 Pavilion Street QUEENSCLIFF NSW 2096
Ms Ingeborg Maria Bekker	5 / 5 Pavilion Street QUEENSCLIFF NSW 2096
Mr Cameron Matthew Johnstone	34 Elton Road LINDFIELD NSW 2070
Mr Shahan Mekertichian	73 Bower Street MANLY NSW 2095
Mr Michael David Vanderfield Ms Fiona Strickland Seaton Planning Progress	2 B Pavilion Street QUEENSCLIFF NSW 2096

The following issues were raised in the submissions and each have been addressed below:

- **Views**
- **Bulk and Scale**
- **Side Setbacks**
- **Privacy/Safety**
- **Visual impact to the street**

The matters raised within the submissions are addressed as follows:

- ***Concern that the proposal will impact views toward Freshwater beach and toward the northern end of Freshwater Beach and headland area from Unit 1/No.5 Pavilion Street and No.2B Pavilion Street.***

Comment:

This matter is addressed in detail under the heading Part D7 - Views within this report.

Site inspections of each the sites and surrounds have been undertaken to determine the extent of view loss. The privacy screen/roofing proposal will create view impacts on Unit 1/No.5 Pavilion Street and No.2B Pavilion Street. Influencing factors have been identified, including the differences in adjacent floor / site levels, setbacks and building configurations / design, and existing development pattern.

In summary, it was found that the amended design achieves a satisfactory outcome after having been assessed in detail against the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd v Warringah Council (2004) NSWLEC 140. In summary the extent of qualitative impact upon view sharing is considered to be "minor" and the amended design (more skillful design) provides better view sharing opportunities.

This issue warrants the refusal of the application.

- ***Concern is raised in regards to the bulk and scale of the proposed works within the side setback.***

Comment:

The proposal has been amended to reduce building bulk and scale and address non-compliances previously identified with the Built Form Controls.

The amended design of the privacy screening/roofing area has been reduced in height from 4.03m to 2.9m, with a flat louvered roof over the decking area to provide building articulation and minimise non-compliances with the side boundary setbacks. The proposal will maintain compliance with landscaped open space (LOS), front boundary setbacks and side boundary envelope.

In summary, the privacy screen/roofing structure includes variation in types of materials to provide articulation and elements to break up the structure and reduce impacts of building bulk. Overall, the scale and bulk of the building is consistent with the surrounding pattern of other walled structures within side setbacks in the vicinity of the site.

This issue does not warrant refusal of the application.

- ***Concern is raised with the proposal being located within the side setback area.***

Comment:

A detailed merit consideration of non-compliance with the built form controls is provided under the relevant heading section within this report including Part B5 Side Boundary Setback. In summary the extent of non-compliance is considered reasonable and do not create unreasonable impacts that warrant refusal of the application, subject to conditions.

- ***Concern is raised that the proposal is to achieve a level of privacy when the occupants were aware of the privacy impacts before the constructed the new pool, and safety is***

***irrelevant as there is a locked gate on site No. 5 Pavilion Street to stop pedestrian movement across the sites.***

Comment:

Whilst the Statement of Environment (SEE) lists privacy as a reason for the proposed works, it is acknowledged that the privacy levels between the subject site and adjoining properties have been in existence for a long period of time. However, site inspections to the subject site and surrounding residential dwellings identified that improvement to the existing levels of direct overlooking could be undertaken whilst minimising the impacts to neighbouring sites.

In summary, the proposal has addressed privacy requirements by the use of fitted privacy screens/ louvered roof placement in order to obtain an improved level of amenity whilst not giving rise to unreasonable view loss or bulk and scale impacts for adjacent land in the context of urban living within a residential area.

The SEE also states the proposal is to improve safety for the subject site. This reasoning is in reference to the younger occupants of the site having the ability to easily climb onto the side garden area of No. 5 Pavilion Street, behind the locked gate. This area, which adjoins the coastal cliff area, is not fenced, and concern is raised that younger occupants could climb into this area and fall from the high elevation to the cliff area below.

In conclusion, it is considered that the proposal is a balanced approach to provide improve the security and privacy for the subject and surrounding dwellings occupants and their visitors.

This issue does not warrant refusal of the application.

- ***Concern that the roof material and colour will be dark and visually unattractive.***

Comment:

This issue has been considered in the assessment and the amended design of the proposal. Suitable conditions are provided to ensure medium to dark natural colours are used (to avoid unnecessary glare from white / silver roof colours). In this regard "proposed charcoal colour" is a mid-dark colour that is commonly used and has been selected to blend in with the existing dwelling.

This issue is addressed by conditions and does not warrant refusal of the application.

## REFERRALS

Internal Referral Body	Comments
NECC (Coast and Catchments)	<p>A current and relevant geotechnical report is required to adequately assess the DA.</p> <p>The applicant has submitted a geotechnical report (by JK Geotechnics) dated 17 April 2019. This report references previous additions/alterations undertaken at the property and does not support the proposed works outlined in the Statement of Environmental Effects.</p> <p>As such the supplied information is insufficient to support.</p> <p><u>Planners Comment:</u> A Preliminary Geotechnical Assessment is required as the subject site</p>



Internal Referral Body	Comments
	<p>is located within Area A &amp; B of the Landslip Risk Assessment Map within the Warringah Local Environmental Plan 2011. The works require no excavation, with the privacy screening/roofing to be attached to the existing side boundary walls, and existing dwelling house. Therefore, it is not anticipated that there would be adverse impacts to the surrounding properties resulting from the proposal on sloping land. However, a condition will be imposed to ensure a Geotechnical Assessment of site conditions is prepared, with any recommendations to be incorporated into the Construction Certificate plans and submitted to the Certifying Authority prior to the issue of the Construction Certificate.</p> <p>The application has been assessed in consideration of the Coastal Management Act 2016, the State Environmental Planning Policy (Coastal Management) 2018 and against requirements of the Warringah LEP 2011 and Warringah DCP 2011. On internal assessment, the application satisfies requirements under clauses 13 and 15 of the CM SEPP, the State Environmental Planning Policy (Coastal Management) 2018 and the relevant coastal clauses of the Warringah LEP 2011 and Warringah DCP 2011.</p>

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

## State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

### SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

### SEPP (Coastal Management) 2018

Portions of the site are located within the Coastal Use Area and Coastal Environment Area as identified by State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP), and the provisions of this policy are applicable in relation to the proposal. Following detailed assessment of the proposed development, the consent authority can be satisfied of the following:

- The proposal is not likely to cause an adverse impact upon the matters listed in clause 13(1) of the CM SEPP
- The proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 13(1) of the CM SEPP
- The proposal is not likely to cause an adverse impact upon the matters listed in clause 14(1) of the CM SEPP
- The proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 14(1) of the CM SEPP
- The proposal is not likely to cause increased risk of coastal hazards on the site or other land.

As such, the proposal is considered to be consistent with the provisions of the CM SEPP, including the matters prescribed by clauses 13, 14 and 15 of this policy.

### Warringah Local Environmental Plan 2011

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	2.1m - 2.9m privacy screen/awning	-	Yes

### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
6.4 Development on sloping land	Yes
Schedule 5 Environmental heritage	Yes

### Detailed Assessment

#### 5.10 Heritage conservation

The landscape heritage conservation area "C13" is not proposed to be encroached on at all, as the screening will not extend beyond the alignment of the existing building to the north eastern boundary.

No excavation work is proposed as part of the application that would impact the heritage significance or the geological stability of the cliffs (heritage conservation area), nor negatively impact the flora and fauna, or the ecological functioning of the wildlife corridor which contribute to the Coastal Cliffs conservation area "C13."

In conclusion, given the nature and location of the proposed privacy screening, the proposed works are considered acceptable from a heritage perspective

and will not have an impact on the significance of the heritage item in the vicinity, being landscape conservation area C13 "Coastal Cliffs – Queenscliff to Freshwater Beach (south)"

Therefore, no objections are raised to this application on heritage grounds and no conditions are required.

#### 6.4 Development on sloping land

A Geotechnical Assessment is required as the subject site is located within Area A & B of the Landslip Risk Assessment Map within the Warringah Local Environmental Plan 2011.

The works require no excavation, with the privacy screening/roofing to be attached to the existing side boundary walls, and existing dwelling house. Therefore, there is no adverse impacts to the surrounding properties resulting from the proposal on sloping land.

However, to ensure compliance with the clause, and Clause E10 Landslip Risk of the Warringah Development Control Plan a condition will be imposed to ensure a Geotechnical Assessment of site conditions is prepared, with any recommendations to be incorporated into the Construction Certificate plans and submitted to the Certifying Authority prior to the issue of the Construction Certificate.

#### Warringah Development Control Plan

##### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B3 Side Boundary Envelope	5m	No encroachment	-	Yes
	4m/5m	No encroachment	-	Yes
B5 Side Boundary Setbacks	0.9m Southern	0.0m Privacy Screen 0.0m Lattice Screen	100%	No
B13 Coastal Cliffs Setback	A distance of 25 metres perpendicular to the street frontage property boundary.	No encroachment	-	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	No Change	-	Yes

##### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	No	Yes
B13 Coastal Cliffs setback	Yes	Yes
C4 Stormwater	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	No	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D15 Side and Rear Fences	No	Yes
D20 Safety and Security	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

#### Detailed Assessment

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

##### Description of non-compliance

The Warringah DCP 2011 requires buildings be setback 0.9m from the side boundary. The proposal includes variation to the setback for the privacy screen/roofing structure that will essentially enclose the southern side setback entry path and provide increased privacy screening, safety and weather protection along the southern boundary.

##### Merit consideration

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

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

##### Comment:

The proposal makes no change to the existing deep soil landscape areas in the front setback of the site, or the minor landscape zones where the natural bedrock is retained. The existing site also contains areas of exposed / excavated bare bedrock that is acceptable as a natural part of the landscape environment in Warringah. Council's assessment has concluded that the site continues to provide adequate opportunities for deep soil landscaping and landscape area retained will be of quality dense mixed native planting.

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

Comment:

The proposal will be minimal in overall height, and is to be constructed in colours corresponding to the darker tones of the dwelling house. Therefore, the proposed screening/roofing elements will not be visually identifiable from the streetscape due to the existing front fencing or dominate when viewed from the southern adjoining residential flat building. Whilst the structure is to be located over the existing pathway along the southern elevation the proposal is a low profile structure with architectural louvres installed to provide privacy protection from elevated apartments in the RFB and still provide visual relief and a sympathetic design that will not detract from the character of the space and its aesthetic. As such, the development is not visually dominant from Pavilion Street and is well landscaped toward the more elevated frontage of Pavilion Street.

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

Comment:

The dwelling is generally compliant with the 900mm side setback to the southern boundary with the proposal following the existing southern boundary wall with no additional excavation. The bulk and scale of the building is broken up along the side planes to address this objective by the use of variations in the screening/roofing treatments with skylights to break up the screening in the mid section. While the proposal sections of variation to the side setbacks for the screening/roofing elements, the use of articulation, building height and a mix of screening structures assists to ensure the visual impact of the scale and bulk of the building is minimised.

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

Comment:

The proposed development will result in adequate building separation, allowing the occupants of the subject site and those of adjoining properties a reasonable degree of privacy, amenity and solar access.

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

Comment:

The proposed development will accommodate a reasonable sharing of views to and from public and private properties.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

### **D3 Noise**

The subject site currently locates mechanical plant and equipment, such as air conditioner and swimming pool filters and pumps etc, within the southern side setback area as shown in the photo below.





**Photo 4.** Existing mechanical plant equipment in the existing southern boundary.

As a result, the privacy screening roofing will provide greater aural protection for the residential unit complex adjoining the south boundary and is supported in this instance.

## D7 Views

A view loss objection was received from the owners of No.2B Pavilion Street, which is located opposite the subject site to the west. There is also potential view loss from Unit 1 which is located in the residential flat building development to the south. All other apartments within the building at No. 5 Pavilion Street are located at a higher elevation, whereby the works do not impact their existing view lines.

A submission was also received from No. 9 Pavilion street that listed view loss as a result of the proposal. However, after further discussion on the telephone the view loss listed is in regards to the roofed pergola/blinds/BBQ area located within the north-east corner of the subject site, not the works proposed under this application. As a result a view loss inspection was not required to be undertaken.

To determine the reasonableness of the development with regards to views, the following assessment is provided:

### Merit consideration

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

- To allow for the reasonable sharing of views.

Comment:

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, are applied to the proposal.

**1. Nature of the views affected**

*"The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured".*

Comment to Principle 1:

Unit 1 No. 5 Pavilion Street

A site visit of the subject property, demonstrates the views enjoyed across the rear of site are broad coastal views including the ocean, Freshwater Beach, coastal headland and the ocean. The focal area is in an easterly direction toward the Freshwater Beach and the ocean horizon. The district views along the coastline also form part of the periphery north east and urban district views to the north. The view are unobstructed.

No.2B Pavilion Street

The views enjoyed are of Freshwater Headland and ocean water views which are obtained through view corridors between the existing buildings, and over the roof areas of the existing buildings towards the eastern direction.

**2. What part of the affected property are the views obtained**

*"The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic".*

Comment to Principle 2:

Unit 1 No. 5 Pavilion Street

The Unit is located on the eastern side of the residential Unit complex. As a result, the views enjoyed from are principally from the bedroom/kitchen/living areas across the northern side boundary and rear setback area at an acute viewing angle toward the east and north-east. Broad alternate views of the Freshwater urban hinterland are also obtainable from the rear balcony and lounge room windows (facing north). The ability to maintain ocean views from a sitting and standing position (in the kitchen, living area and rear balcony) are impacted due to the various height of windows.



**Photo 1:** *Expansive view lines to the east. (Source: Realestate.com.au)*



**Photo 2:** *Extensive view lines to the north.*



**Photo 3:** *Extensive view lines to the south.*

#### No.2B Pavilion Street

The views that will be affected from both properties are obtained from the private open space area (balcony) and the living room and bedroom windows. The view impacts are from both sitting and standing positions.



**Photo 4:** *View corridor through the subject site and No. 5 Pavilion street side setbacks.*

### 3. Extent of impact

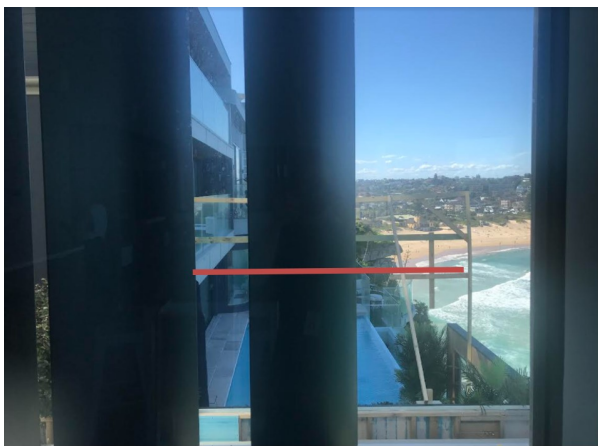
*“The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating”.*

Comment to Principle 3:

***\*Note: The height pole structure is reflective of the initial and subsequent proposal, not the amended proposal being assessed as part of the application.***

#### Unit 1 No. 5 Pavilion Street

The proposal will partly encroach into the north-eastern side view corridor and impact the area of water views and a small amount of beach sand views available from the bedroom, kitchen/lounge room windows. All significant Freshwater Beach and headland views will be retained.



***Photo 5: Water views impacted directly to the north from the lounge window.***



***Photo 6: Water views impacted to the north-east from the lounge window.***



**Photo 7.** Water views impacted to the north-east from the lounge window.

The view lines from the rear balcony will not be impacted as the balcony is forward of the proposed privacy/roofing screen.

In this regard, the view loss is considered to be "minor", based on the side boundary view lines to be impacted and the retention of all significant areas, such as Freshwater Beach and Headland.

#### No.2B Pavilion Street

The views that will be affected is a very minor area of ocean water, through the view corridor between the subject site and No. 5 Pavilion Street, from the private open space area (balcony) and the living room and bedroom windows.

In this regard, the view loss is considered to be "minor", based on the view corridors to be impacted and the loss of water view with the view lines to Freshwater Headland are maintained.

#### **4. Reasonableness of the proposal that is causing the impact**

*"The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable."*

#### Comment to Principle 4:

As indicated above, the view loss is a direct result of the proposed introduction of the privacy screening/roofing structure, as this structure will result in a new non-compliance with the side setback provision. Accordingly, the proposal has been amended to a more skillful design to retain the significant and valued Freshwater Beach and Headland areas. As a result, the bulk, scale and height of the proposal is assessed as presenting reasonable view loss.

Therefore, the proposal is considered to be satisfactory with regard to this element of the planning principle.

Conclusion



The current view lines from Unit 1 No. 5 Pavilion Street, over the north-eastern side boundary are extremely vulnerable to any form of development on the subject property. The amended proposal displays a more acceptable height with design features such as a louvered privacy screening assisting to maintain a reasonable view sharing corridor with the additional view loss considered to be reasonable and view sharing acceptable.

Therefore an amendment or refusal of the application is not warranted in this particular circumstances.

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

Comment:

The proposal has been amended to a more innovative roof profile to retain elements of the water view and address the submissions made in respect of view sharing.

- *To ensure existing canopy trees have priority over views.*

Comment:

There are no trees within subject land that will obstruct or form part of the view line.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## **D9 Building Bulk**

Clause D9 requires buildings to have a visual bulk and an architectural scale that is consistent with structures on adjoining or nearby land.

The assessment has revealed that although the privacy screening and associated awning roofing is located over existing pathway and decking areas, and in terms of safety for the occupants will be a better outcome in comparison to the existing situation.

The height has been minimised and the use of louvers and skylights provides adequate articulation, especially when viewed from the southern boundary or Queenscliff cliff top area. The works are also concealed from the front setback as a result of the front boundary fencing.

In essence, the proposal seeks to enclose the southern side setback which is not out of character with the surrounding locality. However, any further departure from the current building envelope that increases the impact beyond the existing situation is not supported.

In this regard, the proposed development does not create unreasonable impact to adjoining properties, specifically in relation to solar access, visual privacy and view impacts and is supported in this instance.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## **D15 Side and Rear Fences**

The fence proposed along the northern side boundary is up to 3.9m in height.

### Merit consideration

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

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

### Comment:

Although the fence along the southern boundary is higher than the 1.8m maximum permitted by the control, the extra height proposed will provide screening between the residential flat building and front setback and utility area. This fence will display an height of RL37.40, and due to the topography of the site is at a lower level than the adjacent elevated garden area of a residential flat building which displays an height of RL35.20. As a result, the fence will visually look like a 2.2m fence, smaller than the existing side wall it will adjoin at RL37.77. The fence cannot be visually identified from the Pavilion streetscape, and does not impact on the amenity of any living areas of the southern adjoining neighbours.

The proposed mixed style of timber slats and proposed lattice combined with incorporated landscaped zones provides a design solution for safety and security for the occupants, whilst improving the overall outlook of the built environment.

Therefore, the proposed fence upgrades the site side setback, and allows for increased privacy to the site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

## **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

## **POLICY CONTROLS**

### **Northern Beaches Section 7.12 Contributions Plan 2021**

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this application.

## **CONCLUSION**

The site has been inspected and the application assessed having regard to all documentation

submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

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

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

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

## RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2021/1229 for Alterations and additions to a dwelling house on land at Lot 1 DP 900658, 7 Pavilion Street, QUEENSCLIFF, subject to the conditions printed below:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

#### 1. Approved Plans and Supporting Documentation

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

##### a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DWG No. 2107A Floor Plan/South Elevation	29/11/2021	Peter Formosa
DWG No. 2107A Rear Section/East Elevation	29/11/2021	Peter Formosa
DWG No. 2107A Rear/East Elevation	29/11/2021	Peter Formosa

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

## 2. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
  - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
  - (i) in the case of work for which a principal contractor is required to be appointed:
    - A. the name and licence number of the principal contractor, and
    - B. the name of the insurer by which the work is insured under Part 6 of that Act,
  - (ii) in the case of work to be done by an owner-builder:
    - A. the name of the owner-builder, and
    - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
  - (i) protect and support the adjoining premises from possible damage from the excavation, and

- (ii) where necessary, underpin the adjoining premises to prevent any such damage.
- (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

### 3. **General Requirements**

- (a) Unless authorised by Council:  
Building construction and delivery of material hours are restricted to:
  - 7.00 am to 5.00 pm inclusive Monday to Friday,
  - 8.00 am to 1.00 pm inclusive on Saturday,
  - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative



change. The applicable fee at the time of payment of the Long Service Levy will apply.

- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
  - i) Building/s that are to be erected
  - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
  - iii) Building/s that are to be demolished
  - iv) For any work/s that is to be carried out
  - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
  - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by

Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

## **FEES / CHARGES / CONTRIBUTIONS**

### **4. Security Bond**

A bond (determined from cost of works) of \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au)).

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

## **CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE**

### **5. Geotechnical Report and its Recommendations have been Incorporated into Designs and Structural Plans**

The subject site is located within Warringah Local Environment Plan, Landslip Risk Map, Area A & B. Therefore, a Preliminary Geotechnical Assessment Report is to be completed and submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

The hazards as identified in the Geotechnical Assessment and its recommendations are to be incorporated into the construction plans.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

**6. Compliance with Standards**

The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

**7. External Finishes to Privacy Screening and Louvered Roofing**

The external finish to the Privacy Screening and Awning Roofing have a medium to dark range in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development.

**8. Waste Management Plan**

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

Details demonstrating compliance must be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

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

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

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site

## **CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**

**10. Survey Certificate**

A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements, floor levels and the finished roof/ridge height are in accordance with the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To demonstrate the proposal complies with the approved plans.

11. **Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifying Authority.

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

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

**Signed**



**Catriona Shirley, Planner**

The application is determined on 14/12/2021, under the delegated authority of:



**Rodney Piggott, Manager Development Assessments**