

STATEMENT OF ENVIRONMENTAL EFFECTS

7 PAVILION STREET, QUEENSCLIFF

PROPOSED PRIVACY SCREEN

**PREPARED ON BEHALF OF
Mr James O'Leary**

May 2021

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1. INTRODUCTION

This application seeks approval for the construction of a privacy screen ancillary to the existing dwelling upon land at Lot 1 in DP 900658 which is known as **No.7 Pavilion Street, Queenscliff**.

In preparation of this development application consideration has been given to the following:

- Environmental Planning & Assessment Act, 1979.
- Warringah Local Environmental Plan 2011.
- Warringah Development Control Plan 2011.

The following details and documents have been relied upon in the preparation of this document:

- Survey Plan prepared by Bee & Lethbridge Pty Ltd. DWG No 8927A, Date 20 May 2010.
- Boundary Ident Survey prepared by Bee & Lethbridge Pty Ltd, Ref No. 8927 and dated 23/11/2020.
- Architectural Plans prepared by Peter Formosa and dated 12 May 2021.

This Statement describes the subject site and the surrounding area, together with the relevant planning controls and policies relating to the site and the type of development proposed. It provides an assessment of the proposed development against the heads of consideration as set out in Section 4.15 of the Environmental Planning and Assessment Act 1979. As a result of that assessment it is concluded that the development of the site in the manner proposed is considered to be acceptable and is worthy of the support of the Council.

2. BACKGROUND

A Pre-lodgement Meeting (PLM 2021/0049) was held with Council on 19 March 2021 to discuss the proposed privacy screen. A summary of the issues discussed is provided below:

View Analysis: The PLM notes provide in this regard:

The DA will need to be accompanied by a Views Analysis and address the View Sharing provisions of the DCP and step through the Tenacity v Warringah Council LEC Planning Principle.

The lowest apartment in the adjoining RFB will be the most affected and so you should seek to determine the likely impact and how the impact can be minimised. The view from the street (public domain) is also to be considered in the analysis, and the associated LEC Planning Principle.

Comment: A View Analysis has been included in the Statement of Environmental Effects.

Proposed Privacy/Safety/Security Screen: The PLM notes provide:

Any design solution should be minimalist in its height and bulk. It should be enough to serve its purpose as privacy protection, but not be excessive in area and extent. It must also be consistent with the objectives of the side and rear setback controls under WDCP 2011.

Comment: The proposed privacy screen has been designed to ensure it is not unreasonable in terms of bulk and scale. The proposal complies with Council's building height plane and is provided with a low pitching point to reduce its height at the boundary. An assessment of the proposal against the side setback controls has been included in this Statement. The proposal complies with the rear setback provisions and the Coastal Cliff Setback stipulated in the DCP.

Need & Option Analysis

The DA is to be accompanied by a Privacy Screen Needs Analysis which addresses the issue, the need for a solution, the different options that were investigated and why the chosen option is preferred. The option that is chosen needs to demonstrate that it is proportionate to the problem it is seeking to resolve and has minimised the visual impact and view impacts.

Comment: The subject site adjoins a large residential flat building to its south. The property to the south, known as No. 5 Pavilion Street, comprises 6 levels of residential units with the ground level unit being substantially higher than the ground level of the rear private open space of the subject site. In this regard the balcony of Unit 1 has a level of RL36.45 which is approximately 2.94m above the ground level

and pool area of the subject site. An elevated garden at No. 5 Pavilion Street extends to the common boundary with the subject site and is approximately 1.7m above the ground level of the subject site. There are currently direct views from the Units, their balconies and 'ground level' garden at No. Pavilion Street into the pool area, private open space, living areas, bedrooms, laundry and lower level bathroom of the subject site. Currently there is no private area in the rear yard of the No. 7 Pavilion Street that is not subjected to overlooking from the adjoining property. Further the internal living areas and bedrooms of No. 7 Pavilion Street have reduced privacy as views from the adjoining flat building extend into these areas also.

The photo below depicts the change in levels existing between the garden area and ground floor level unit of No. 5 Pavilion Street and the subject site. Note the black slat privacy screen in the photo which was agreed upon by both parties and installed by No. 5 Pavilion Street has since been removed by the residents/strata of No. 5 Pavilion Street.



Aerial photo depicting the adjoining residential flat building and elevated garden area.

A fence erected along the top edge of the garden wall associated with No. 5 Pavilion Street would serve to act as both a balustrade and provide privacy to No. 7 Pavilion Street. However a 1.2m or 1.8m along this edge would extend some 3m above the rear paved area of No. 7 Pavilion Street and being visible from both the public road (Pavilion Street) and be a bulky structure when viewed from No. 7 Pavilion Street. This structure would also further impact views from the bedroom and oblique views from the balcony of the Level 1 unit at No. 5 Pavilion Street. This is not considered an appropriate option.

Providing a pergola style structure over the paved area at the southeast corner of the dwelling on the subject site would not serve to improve privacy to the pool area or internal living areas of the dwelling of the subject site. It would only provide some privacy to the small paved area. Further, this approach would not provide safety from falls or prevent access from the raised garden bed at No. 5 into the subject site. This is not considered an appropriate option.

The proposed structure which extends only 450mm above the height of the existing garden wall of No. 5 Pavilion Street and projects in on a 39 degree pitch ensures that the structure does not have unreasonable height when viewed from the adjoining property. The pitch ensures that views into the pool area and living room of the subject site will be obscured whilst having minimal impact on views from the adjoining property towards Freshwater Beach. The pitched structure will also ensure the safety of residents and others using/accessing the garden area at No. 5 Pavilion Street as it acts as a barrier to prevent falls and access from No. 5 into the subject site. It will also prevent any risk of persons (particularly children) from No. 7 climbing up onto the garden area of No. 5. The owner of No. 7 has 5 children and this is genuine concern. It is therefore considered that the proposed privacy screen submitted with this application, is the most appropriate outcome for the constraints and circumstances of the site.

3. SITE DESCRIPTION AND LOCALITY

The site is identified as Lot 1 in DP 900658 which is known as No. 7 Pavilion Street, Queenscliff. The site is irregular shaped allotment located on the eastern side of Pavilion Street. The site has a street frontage of 18.325m to Pavilion Street with a total site area of 910.4m². The locality is depicted in the following map:



Site Location Map

The site is on top of a coastal cliff with a steep vertical drop off to Freshwater Beach. As such the rear portion of the site is inaccessible. The upper site of the block slopes from Pavilion Street to the rear of the site at the edge of the coastal cliff.

The subject site currently comprises a 3 storey brick house with aluminium roof with an attached garage. The garage is located forward of the dwelling with a nil setback to the street frontage and northern side boundary. A paved driveway adjacent to the southern boundary provides vehicular access to the site.

There is no significant vegetation located on site.

The site is depicted in the following photographs:

View of Subject Site from Pavilion Street

View of Existing Dwelling

The existing surrounding development comprises a mix of two storey detached residential dwellings and multi-storey residential apartments on similar size allotments to the subject site. More recent developments comprise larger multi-storey dwellings of modern appearance and multi storey residential apartments.

Of particular note is a large 6 storey residential flat building, known as No. 5 Pavilion Street and located immediately adjacent to the south of the subject site. An elevated landscaped garden located on No. 5 Pavilion Street abuts the common boundary with the subject site and is elevated up to approximately 1.95m above existing ground level on the subject site. This elevated garden as well as the balconies and windows of the building at No. 5 Pavilion Street have direct views into the rear yard, pool area and internal habitable areas (living rooms and bedrooms) of the subject site. Further, there is no protection, such as a handrail or other barrier, to prevent falls or access from No. 5 into No. 7. This application seeks to provide a screen to assist in improving privacy to the residents of No. 7 Pavilion Street.

The existing surrounding development is depicted in the following aerial photograph:



Aerial Photograph of Locality

4. THE DEVELOPMENT PROPOSAL

This proposal seeks approval for construction of a privacy screen ancillary to the existing dwelling. The screening is proposed to improve privacy and safety to the residents of the subject site and the adjoining property.

The privacy screen is proposed adjacent to the southern side boundary as depicted in the architectural plans prepared by Peter Formosa, dated 12 May 2021 and submitted with the application. In summary these plans provide for:

- Lattice screen panel on top of existing screen towards western end of southern boundary. Lattice to have a height of 660mm. This panel will extend 800mm further to the east than the existing panel.
- Louvred privacy to extend 2.1m above existing ground level and continue on a 39 degree pitch attaching to the existing residence.

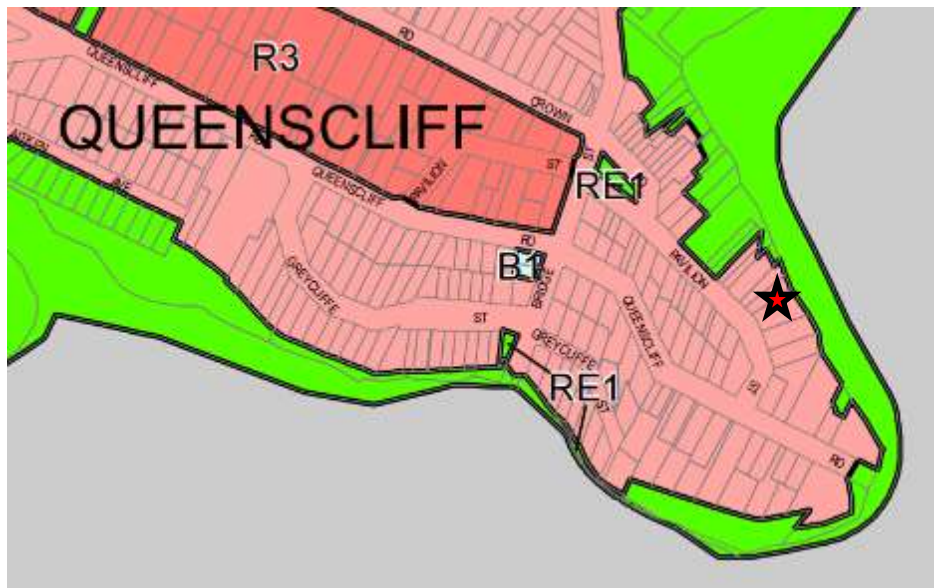
The proposed privacy screen structures are located over existing hard surface areas and do not reduce the existing landscaped area of the site. There will be no additional stormwater runoff.

5. ZONING & DEVELOPMENT CONTROLS

The proposed development is identified as development requiring the consent of the Council under the provisions of the Environmental Planning and Assessment Act 1979, as amended. The following is an assessment of the proposal against the relevant provisions of the Act and all of the relevant planning instruments and policies of Warringah Council.

5.1 Warringah Local Environmental 2011

The Warringah Local Environmental Plan 2011 (LEP 2011) came into effect on Friday 9 December 2011.



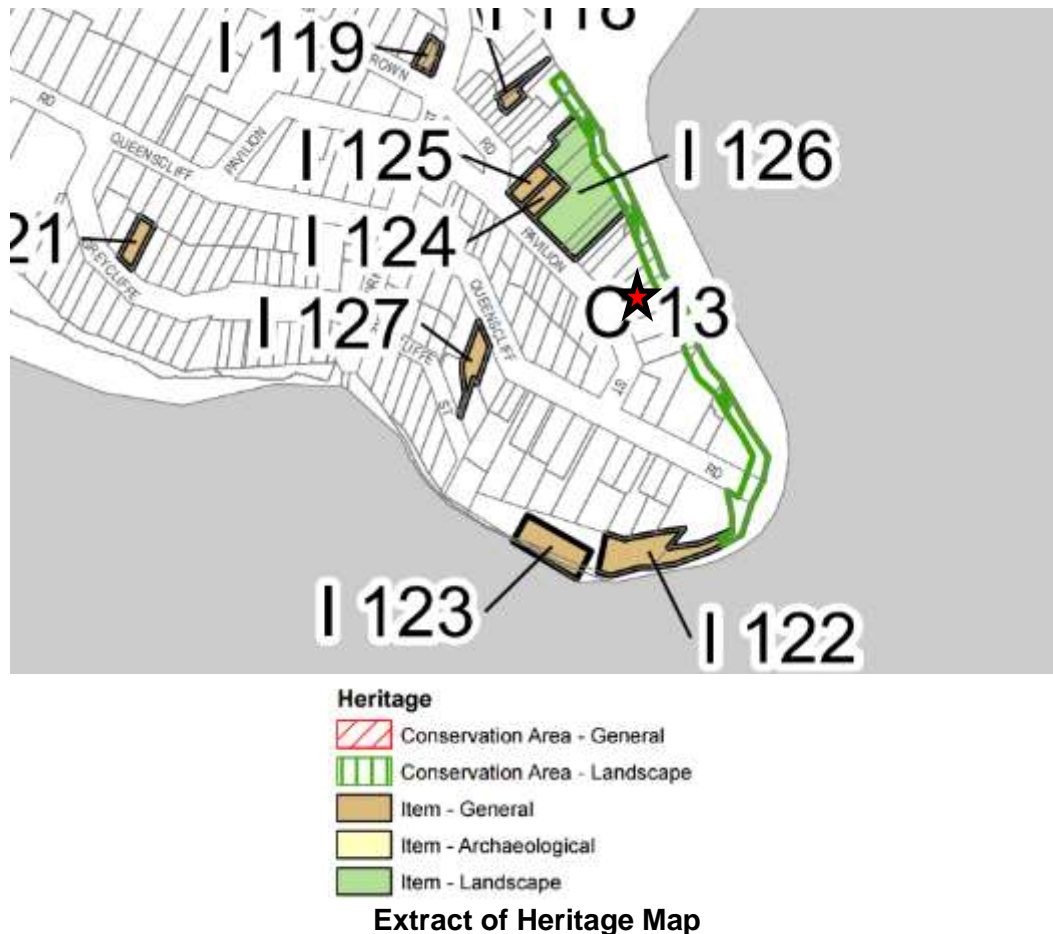
Extract of Zoning Map

The site is zoned R2 Low Density Residential. Development for the purposes of a dwelling house is permissible in this zone with the consent of Council. The following provisions of the LEP are relevant to the proposed development:

Clause	Development Standard	Proposal	Compliance
4.3 Height	8.5m	Approx. 4.03m	Yes

The following provisions of the LEP also apply:

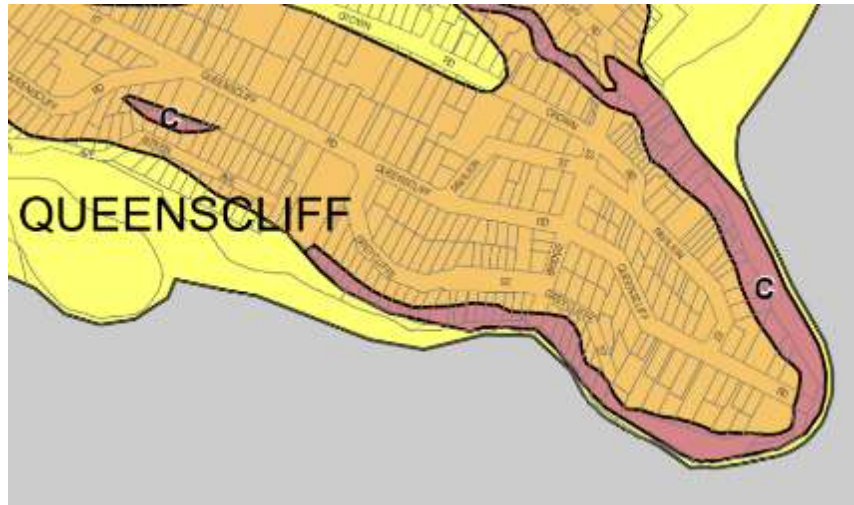
Clause 5.10 - Heritage Conservation



The rear eastern portion of the site is identified as being within the C13 Queenscliff Coastal Cliffs Conservation Area. The Heritage Inventory for the C13 Conservation Area is included in **Appendix 1** of this report. It is noted that the proposed works do not extend into that portion of the site that is located within the conservation area. It is considered that the proposed works will not have any detrimental impact on the significance of the conservation area for the following reasons:

- The proposed works are well setback from the coastal cliffs and embankment.
- The proposed works are located over the existing building footprint.
- The proposed works are modest and do not result in unreasonable bulk or scale when viewed from the conservation area.

Clause 6.4 – Development on Sloping Land



Extract of Landslip Map

The site is identified as being partly within Category B and Category C of the Landslip Risk Map. A Geotechnical Report has been prepared by JK Geotechnics.


There are no other provisions of the Warringah Local Environmental Plan 2011 that apply to the proposed development.

5.2 Warringah Development Control Plan 2011

The Warringah Development Control Plan (DCP) has been prepared by Council and was due to come into effect upon the gazettal of the LEP 2011. The new DCP contains detailed planning controls that support LEP 2011.

The following table provides a summary of the relevant controls of the DCP:

Clause	Requirement	Compliance
B1 – Wall heights	7.2m	Yes The proposal complies with this clause.
B2 – Number of storeys	Not Applicable	Not Applicable
B3 - Side Boundary Envelope	Building envelope 45 degrees from 5m. Eaves up to 675mm are an allowable encroachment	Yes The proposed privacy screen complies with the building envelope controls.
B4 – Site Coverage	Not Applicable	Not Applicable

Clause	Requirement	Compliance
B5 - Side Boundary setbacks	Minimum: 0.9m	This is discussed in detail at the end of this table. **
B6 – Merit assessment of Side Boundary Setbacks	Not Applicable	Not Applicable
B7 – Front Boundary Setbacks	Minimum 6.5m	Yes Proposed works are located behind the established building line.
B9- Rear Boundary Setbacks& B10 Merit Assessment of Rear Setbacks	6m rear setback required The rear boundary setback may be encroached by swimming pools and outbuildings which, in total, do not exceed 50% of the rear setback area	Yes Ample setback provided to rear boundary.
B11 – Foreshore Building Setback	Not applicable	Not Applicable
B12 – National Parks Setback	Not applicable	Not Applicable
B13 – Coastal Cliffs Setback	The site is identified as C – Coastal Cliff Setback requiring all works to be within a setback measured 25m from the street frontage. 	Yes All proposed works comply with this requirement. (refer to architectural plans)

Clause	Requirement	Compliance
B14 – Main Roads Setback	Not applicable	Not Applicable
B15 – Minimum Floor to Ceiling Height	Not applicable	Not Applicable
C2 – Traffic, Access and Safety	Vehicular crossing to be provided in accordance with Council's Vehicle Crossing Policy	Yes Existing vehicular crossing retained.
C3 – Parking Facilities	Garages not to visually dominate façade Parking to be in accordance with AS/NZS 2890.1	Yes Existing garage retained.
C4 - Stormwater	To be provided in accordance with Council's Stormwater Drainage Design Guidelines for Minor Developments & Minor Works Specification.	Yes It is noted that there is no increase in hard surface area as a result of this proposal.
C5 – Erosion and Sedimentation	Soil and Water Management required	Yes A Site Management Plan will be submitted as part of the Construction Certificate.
C6 - Building over or adjacent to Constructed Council Drainage Easements	Not Applicable	Not Applicable
C7 - Excavation and Landfill	Site stability to be maintained	Yes The works do not require any fill or excavation.
C8 – Demolition and Construction	Waste management plan required	Yes Waste Management Plan submitted
C9 – Waste Management	Waste storage area to be provided	Yes

Clause	Requirement	Compliance
		Existing waste storage areas retained.
D1 – Landscaped Open Space and Bushland	Min 40% Landscaped Area to be maintained	The proposal does not reduce the area of landscaping currently provided on site.
D2 - Private Open Space	Dwelling houses with three or more bedrooms Min 60m ² with min dimension 5m	Yes The proposed works do not reduce the area of private open space currently provided.
D3 - Noise	Mechanical noise is to be attenuated to maintain adjoin unit amenity. Compliance with NSW Industrial Noise Policy Requirements	Not Applicable
D4 – Electromagnetic Radiation	Not Applicable	Not Applicable
D5 – Orientation and Energy Efficiency	Dwellings to be orientated to receive northern sun Appropriate construction to enhance thermal properties and ventilation/natural cooling Compliance with SEPP (BASIX) requirements	Not Applicable – works are for a privacy screen only.
D6 – Access to sunlight	The controls require that sunlight to at least 50% of the private open space of both the subject and adjoining properties' private open space receives not less than three hours sunlight between 9am – 3pm on 21 June winter solstice.	Shadow diagrams are not required to be submitted. Notwithstanding, the design of the screen is such that it does not extend above existing wall or roof height of the existing dwelling on site. There is not considered

Clause	Requirement	Compliance
		to be any significant additional overshadowing.
D7 - Views	View sharing to be maintained	Yes The subject and surrounding properties enjoy views of Freshwater Beach and the northern headland of Freshwater. This is discussed in more detail at the end of the table.**
D8 - Privacy	This clause specifies that development is not to cause unreasonable overlooking of habitable rooms and principle private open space of adjoining properties.	Yes The proposed screen aims to improve privacy of the subject site. The screen will assist in reducing views into the private open space, pool area, living areas, bedrooms, laundry and lower level bathroom of the subject site from the adjoining residential flat building. The adjoining property to the south comprises a large 6 storey residential flat building with balconies along the rear elevation of every level and numerous windows provide direct views into the rear yard of the subject site. The proposed screen will assist in minimising some of the overlooking.
D9 – Building Bulk	This clause requires buildings to have a visual bulk and architectural scale that is consistent with structures on nearby	Yes The proposal has been designed to minimise bulk and scale. The screen has been

Clause	Requirement	Compliance
	properties & not to visually dominate the street.	designed as a lightweight louvred structure. This structure is not solid to minimise bulk and scale. The screen also maximises the existing change in ground levels of the subject and adjoining property, by pitching the screen from a point close to the ground level of the garden area at No. 5 Pavilion Street. The proposal also complies with Council's building envelope which aims to reduce bulk and scale.
D10 – Building Colours and materials	External finishes and colours sympathetic to the natural and built environment	Yes External finishes selected to be compatible with the existing surrounding development and the natural environment.
D11 - Roofs	The LEP requires that roofs should not dominate the local skyline.	Not Applicable
D12 – Glare and Reflection	Glare impacts from artificial illumination minimised. Reflective building materials to be minimized.	Yes The proposal will not result in unreasonable glare or reflection.
D13 - Front Fences and Front Walls	Front fences to be generally to a maximum of 1200mm, of an open style to complement the streetscape and not to encroach onto street.	Not Applicable.

Clause	Requirement	Compliance
D14 – Site Facilities	Garbage storage areas and mailboxes to have minimal visual impact to the street Landscaping to be provided to reduce the view of the site facilities.	Yes Existing facilities retained.
D15 – Side and Rear Fences	Side and rear fences to be maximum 1.8m and have regard for Dividing Fences Act 1991.	The proposal provides for a privacy screen and its design and location are discussed in detail throughout this report.
D16 – Swimming Pools and Spa Pools	Pool not to be located in front yard or where site has two frontages, pool not to be located in primary frontage. Siting to have regard for neighbouring trees.	Not Applicable
D17 – Tennis Courts	N/A	Not Applicable
D18 - Accessibility	Safe and secure access for persons with a disability to be provided where required.	Not Applicable
D19 – Site Consolidation in the R3 and IN1 Zone	Not Applicable	Not Applicable
D20 – Safety and Security	Buildings to enhance the security of the community. Buildings are to provide for casual surveillance of the street.	Yes The dwelling continues to provide a good outlook of the driveway and site approach.
D21 – Provision and Location of Utility Services	Utility services to be provided.	Yes Existing facilities on site.
D22 – Conservation of Energy and Water	A BASIX Certificate is required.	Yes

Clause	Requirement	Compliance
D23 - Signs	Building identification signage to be appropriate for proposed use and not to impact on amenity of surrounding locality. Signs not to obscure views or potentially hazardous road features or traffic control devices.	Not Applicable
E1 – Private Property Tree Management	Arboricultural report to be provided to support development where impacts to trees are presented.	Not Applicable Works do not require the removal of any indigenous vegetation.
E2 – Prescribed Vegetation	Not identified on map	Not Applicable
E3 – Threatened species, populations, ecological communities	Not identified on map	Not Applicable
E4 – Wildlife Corridors	Retain and enhance native vegetation and the ecological functions of wildlife corridors.	Yes The proposed works are located over the existing footprint and do not impact on the wildlife corridors.
E5 – Native Vegetation	Provide natural habitat for local wildlife, maintain natural shade profiles and provide psychological & social benefits.	Yes The proposed works are located over the existing footprint and do not impact on native vegetation.
E6 - Retaining unique environmental features	Unique or distinctive features within a site to be retained	Yes The proposed works are located over the existing footprint and do not impact on any environmental features of the site.

Clause	Requirement	Compliance
E7 – Development on land adjoining public open space	To ensure that development responds to its adjacent surroundings to preserve and enhance the natural qualities of the environment.	Yes The proposed works are located over the existing footprint and do not impact on the adjoining public open space. The privacy screen is a lightweight structure and provides for appropriate bulk and scale.
E8 – Waterways and Riparian Lands	Identified on map Waterway Impact Statement required	Not Applicable
E9 – Coastline Hazard	Not identified on map	Not Applicable
E10 – Landslip Risk	Identified on map as B and C	A Preliminary Geotechnical Report is provided.
E11 – Flood Prone Land	Not identified on map	Not Applicable.

As discussed in the table above, further assessment of the following control is provided below:

B5 Side Boundary Setbacks

This clause requires a setback of 900mm to each side boundary. It is considered that the unusual circumstances of the site combined with the current privacy issues created by the adjoining 6 storey residential flat building warrants a variation to this control. The proposed privacy screen provides a nominal setback to the southern side boundary but is considered to achieve the objectives of this clause and be justified in this instance for the following reasons:

- The proposed screen is located over an area which is previously paved (as approved) and does not limit the ability for landscaping. Planters and green walls have been retained to ensure amenity for the residents. The proposal does not reduce the area of landscaping currently on site.
- The proposed screen is essential in providing some form of privacy to the residents of No. 7 Pavilion Street. Currently direct views are provided from the raised garden area, balconies and internal habitable rooms of all levels of the adjoining residential flat building at No. 5 Pavilion Street.

- The structure is light weight and is not solid, comprising of spaced horizontal louvres to allow light and air infiltration and reduce bulk whilst obstructing some views into the private open space of No. 7 Pavilion Street. This structure is varied in height which further reduces bulk.
- The lattice panel on the western portion of the existing fence does not provide any unreasonable bulk and is below the height of the existing block wall adjacent at No. 5 Pavilion Street.
- The privacy screen does not extend above building height and will not result in any additional shadow of private open space or habitable areas of the adjoining properties.
- The proposal maintains reasonable sharing of views as discussed in detail under the response to Clause D7 below.
- The proposal complies with the building envelope provisions of Clause B3 of the DCP which aims to reduce bulk and scale.

D7 Views

The subject and surrounding properties enjoy views to the north and north east over Freshwater Beach and views to the south and southwest over Queenscliff Beach and towards Manly. Development in the locality has been designed to maximise these views.

It is considered that the proposal has had regard to the view sharing principles established in the Land & Environment Court as detailed below. The assessment has been carried out with respect to No. 5 Pavilion Street and the views from the public domain.

i. Assessment of views:

The subject site and surrounding properties enjoy significant views of Freshwater Beach and the northern headland of Freshwater Beach to the north and northwest. Surrounding properties, particularly those on the western side of Pavilion Street, also benefit from significant views over Queenscliff Beach and Manly to the south and southwest.

ii. Where are views obtained:

The immediately adjoining property, No. 5 Pavilion Street, comprises a large 6 storey residential flat building. Units within this development enjoy direct views to the east from all rear windows and their respective balconies on the eastern (rear) elevation).

Properties on the western side of Pavilion Street have limited and obstructed views towards the east over Freshwater from the upper levels. These properties also enjoy views of Queenscliff Beach and Manly from the upper levels.

View from the public domain are currently obtained between buildings and are restricted glimpses and views towards the headland between Freshwater and Curl Curl Beaches. These views are obtained at a standing view from passing pedestrians.

iii. Extent of Impact:

The only potential impact is to the adjoining property at No. 5 Pavilion Street. However it is considered that this impact is minimal. All units at No. 5 Pavilion Street enjoy uninterrupted views to the east of Freshwater Beach, Freshwater rockpool and headland. These direct views to the east from the balconies and internal living areas will not be impacted by the proposed privacy screen.

Unit 1, being the lower level northern side Unit, may benefit from some oblique views to the north across the subject site. These views are from the bedroom and bathroom. There is expected to be a minor encroachment of this view by the privacy screen that extends over the pool.



Image 1 – View impact from window 1

Image 2 – view impact from window 2

Photos from Unit 1 Master Bed and Butlers Pantry (photo obtained from neighbour submission lodged as part of MOD2020/0582).

The views from Pavilion Street will be retained, given the slope of the site and setback of the proposed structure.



Photo taken adjacent to boundary with street and depicting proposed structure

iv. Reasonableness of Loss

Given that the view loss is considered to be minimal and having regard to the bulk and scale of the existing surrounding development it is considered that the proposal provides for an appropriate outcome. This is further substantiated by fact that the proposal complies with Council's building height envelope. Further a screen or fencing is necessary to prevent access and falls from the adjoining property at No. 5 Pavilion Street into the subject site. Currently there is a drop of over 1.8m from the ground level of No. 5 Pavilion Street and the ground level of the subject site. An alternative of providing a 1.2m high balustrade along the existing wall enclosing the elevated boundary would have greater impacts on views.

There are no other provisions of the DCP that apply to the proposed development.

6. EP & A ACT - SECTION 4.15

The Provisions of any Environmental Planning Instruments

The proposal is subject to the provisions of the Warringah Local Environmental Plan 2011. The site is zoned R2 Low Density Residential under the provisions of the LEP. Construction of a dwelling alterations (privacy screen) are permissible with the consent of Council in this zone. It is considered that the provisions of this document have been satisfactorily addressed within this report and that the proposal complies with the relevant provisions.

There are no other environmental planning instruments applying to the site.

The Likely Impacts of the Development

It is considered that the development will provide for a privacy screen to improve amenity to the residents of the existing dwelling without any detrimental impacts on the environment, social and economic status of the locality.

The Suitability of the Site for the Development

The subject site is zoned R2 Low Density Residential and the construction of a privacy screen ancillary to an existing dwelling house in this zone is permissible with the consent of Council. The privacy screen is of a bulk and scale that is consistent with the existing surrounding development. The proposal does not result in the removal of any vegetation.

For these reasons it is considered that the site is suitable for the proposed development.

The Public Interest

It is considered that the proposal is in the public interest in that it will provide privacy screen ancillary to an existing dwelling that is consistent with other development in this locality without impacting the amenity of the adjoining properties or the public domain.

7. CONCLUSION

This application seeks approval for the construction of a privacy screen ancillary to an existing dwelling. As demonstrated in this report the proposal is consistent with the aims and objectives of the Warringah Local Environmental Plan 2011. The proposed dwelling does not have any detrimental impacts on the amenity of the adjoining properties or the character of the locality.

It is therefore considered that the proposed construction of a privacy screen ancillary to an existing dwelling upon land at **No. 7 Pavilion Street, Queenscliff** is worthy of the consent of Council.

Natalie Nolan
Grad Dip (Urban & Regional Planning) Ba App Sci (Env Health)
Nolan Planning Consultants
May 2021

APPENDIX A – PHOTOS OF EXISTING PREMISES



View from rear yard of subject site towards No. 5 Pavilion Street (note black privacy screen demolished by owners No. 5 Pavilion Street). Photo depicts direct views from Units and garden area of No. 5 Pavilion Street into the subject site



View from Laundry door/window. The proposed screen would obstruct this view and provide privacy.

APPENDIX B – LETTER TO NEIGHBOURS

James O'Leary
7 Pavilion Street
Ph: 0413881021

To the Owners of 5 Pavilion Street

11 May 2021

Recent Development and Side Boundary Protection Plan

Dear Owners

I want to advise you of our plans to undertake additional works at our property later this year, and to provide you with an opportunity to discuss these matters. I know that we had some challenges relating to our previous works last year. While I was surprised by the adversarial approach taken by some owners at the time, I am hopeful that a more constructive dialogue might be possible this time around.

Prior Works

I understand that having a prolonged development take place next door can be frustrating. You would hopefully appreciate that we went through an even more extreme version of this when your building was abandoned, demolished and ultimately rebuilt, which rendered our outside areas unusable for almost 2 years.

I also understand frustrations that you may have had regarding works that we undertook near and across your boundary. As previously advised in writing, I apologise for this – when we removed the previous boundary dividing wall, I was mistakenly under the assumption that this ended at your boundary given that is where your retaining wall was built up to in that area. Since you alerted this mistake to me, we undertook a number of remedial steps to address your concerns including:

- Undertaking a detailed survey to ensure we have exact boundary levels going forward;
- Removing all affixations (mainly small screws) that were located on your wall;
- Repairing any impact of these affixations in line with industry and standards and manufacturer advice – and providing a meeting between our respective builders to confirm the same
- Moving our cliff safety wall away from your boundary, leaving a gap of c. 70mm between this and your Din Cell wall – which while strange in appearance, complies with your rights and concerns raised.

There were a number of other minor matters that were raised by various apartment owners, but all of these have now been approved by Council.

Ongoing Privacy, Security & Safety Concerns

As communicated to you previously by letter dated 11 September 2020, I remain concerned about the privacy, security and safety of my property, my family and others given the nature and height of the construction of your retaining Din Cell wall and resulting garden level adjoining our property.

Our privacy was further impacted on 12 November 2020, when you removed an existing privacy screen from your garden area that was designed to provide a level of privacy protection for our property. Relevantly, this screen was installed by the developer of your property after discussions and agreement with us (and after consultation and approval of Mr Lambert) in the middle of 2018.

The background to these discussions was that the original construct of the approval to develop your apartment block was to include privacy louvres to ensure that as neighbours, we were not looking into each other's properties (as your apartment block sits a number of metres over the cliff set back line where all the other houses in the street are positioned). Following the removal of scaffolding at your development, it was apparent that wide gaps were put between the louvres, undermining their effectiveness as privacy measures, with the result that a number of apartments (especially #1 and #2) would look directly into our living areas, our children's bedrooms and our swimming pool. The developer at the time (Mr Dean Brown) agreed in writing (and after consultation with Mr Lambert, who at the time may have been the sole representative of the Body Corporate), to undertake a number of steps including:

- Inserting additional louvres on levels 1 and 2 to provide improved privacy protection (which did not occur)
- Installation of a privacy screen 1.8m high off your garden bed level, which was contemplated to be extended for the full length of the property from the cliff edge to your front access fence if required, once the landscaping was finished (ie. if it did not provide enough coverage) – I actually agreed to relax the need for additional louvres on levels 1 and 2 on the basis of the installation of the privacy screen.

Given this, it is unfortunate that steps were taken to remove the privacy screen without any discussion or notice. In any event, as the situation currently stands there is open access to our property from your garden area, including a c. 2m drop – which provides a clear line of sight into our property from apartment #1 and the street. It also provides easy access for intruders and the potential for innocent persons to trip and fall, potentially resulting in serious injury or death. While the garden area is not meant to be accessed by anyone except garden maintenance workers (who are required to wear safety harnesses), we have regularly sighted residents of your apartment block and other non-garden related persons in the area, in all cases without a harness. In fact, I have video footage showing the gardeners of your property using our property to climb over the Din Cell wall (at the bottom of our stairs) to access the garden to provide maintenance – this occurred in the morning of 2 December 2020. At no times were the gardeners wearing harnesses. This sort of risk of ready access to such a dangerous area is obviously unacceptable for both of us. I also note that the nature of your front fence provides direct visibility to our property and insufficient security as there is a step to the right of the gate that provides potential access to persons seeking to enter the area.

In an effort to ensure these serious privacy, security and safety issues are addressed, I will be shortly applying for a Development Approval for a new boundary privacy and security structure at the same height as was intended by the previously agreed privacy screen. I have already conducted a number of meetings with Council on this matter, and have worked with them to devise a structure that provides mutual privacy benefits, improved safety and negligible view loss for your lower level apartments. I am happy to discuss any aspects of this directly if you would like, and am available any time on my mobile number provided above.

Please understand that my strong preference would be to meet in an amicable, constructive manner to work through these matters, but recognise that similar to last time, you may simply prefer to

liaise with Council directly. In either case, please rest assured that I intend to pursue these matters to the fullest extent possible to protect my property, my family and other persons from the risks that have been created by your Din Cell retaining wall and garden design against my boundary.

Regards

A handwritten signature in black ink, appearing to be 'James O'Leary', with a stylized, flowing script.

James O'Leary