

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/0823
Responsible Officer:	Catriona Shirley
Land to be developed (Address):	Lot 1 SP 4129, 1 / 48 A Queenscliff Road QUEENSCLIFF NSW 2096
Proposed Development:	Alterations and Additions to a Residential Flat Building
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	No
Existing Use Rights:	Yes
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Stephen Joseph Stanton Margaret Rachel Stanton
Applicant:	Andrew Kathestides
Application lodged:	21/05/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	31/05/2018 to 14/06/2018
Advertised:	Not Advertised
Submissions Received:	6
Recommendation:	Approval
Estimated Cost of Works:	\$ 91,946.00

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest

- groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
 Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
 Warringah Development Control Plan - B3 Side Boundary Envelope
 Warringah Development Control Plan - B5 Side Boundary Setbacks
 Warringah Development Control Plan - C3 Parking Facilities
 Warringah Development Control Plan - D3 Noise
 Warringah Development Control Plan - D6 Access to Sunlight
 Warringah Development Control Plan - D7 Views
 Warringah Development Control Plan - D8 Privacy
 Warringah Development Control Plan - E10 Landslip Risk

SITE DESCRIPTION

Property Description:	Lot 1 SP 4129 , 1 / 48 A Queenscliff Road QUEENSCLIFF NSW 2096
Detailed Site Description:	<p>The subject site is legally know as Lot CP SP 4129, 48A Queenscliff Road Queenscliff.</p> <p>The subject site is zoned as R2 Low Density Residential and is located within the Warringah Development Control Plan Land Slip Risk Map - Area B and C.</p> <p>The site is located on the southern side of Queenscliff Road, is battle axe in shape with an area of 1081sqm. The subject site contains a steep slope which has a diagonal fall of 18% in a north to south direction (from Queenscliff Road) towards Queenscliff Beach. The southern boundary of the site adjoins a landscaped reserve which adjoins Queenscliff Beach.</p> <p>The site is currently occupied by an eleven (11) storey residential flat building comprising of fifteen (15) units with two (2) units on each floor, a top floor penthouse, foyer level and basement carparking level. All units have cantilevered and wrap around balconies. The apartment building was constructed in the early 1960's.</p> <p>The site has been subject to substantial cut and fill in order to provide a podium terrace for the existing tower like apartment building on the lower southern portion of the site. The building is the tallest structure and most visually prominent structure on the Queenscliff Headland.</p> <p>Existing apartment style housing adjoins the site to the</p>

north-west, west, south-west, west and north-east. These apartment style buildings vary in scale between two (2) and five (5) stories in scale. A one storey dwelling house occupies the site to the north, No.44 Queenscliff Road.

Vehicular access to the site is provided by a steep driveway from Queenscliff Road. On-site parking is provided on site by an outdoor parking area located to the north of the existing building on the ground floor, within the ground floor foyer area and within the basement level.

Map:



SITE HISTORY

A search of Council's records has revealed the following relevant applications for this site;

Development Consent - DA2009/1471

Development Application DA2009/1471 for alterations and additions to an existing residential flat building, comprising new tiling of the ground floor car park area and enclosing an undercroft area as a storeroom on the basement level was approved on 6 January 2010.

Development Consent - DA2011/0360

Development Application DA2011/0360 for alterations and additions to an existing residential flat building was approved on 12 September 2011.

It is important to note that this application was presented to the Warringah Development Assessment Panel (WDAP) meeting held on 8 June 2011 and deferred subject to several amendments to the built form and landscape plan. Amended architectural and landscape drawings, which satisfied the WDAP requirements, were received by Council and the application was subsequently determined by the Director Strategic and Development Services on 12 September 2011.

In summary, the proposal comprised the construction of two (2) units (A and B) within the undercroft and lower ground levels of the existing apartment building. In addition, the proposal also

involved the following works:

- alterations to the existing car parking areas located within the lower level and excavation works up to 7.5m in depth within the northern setback area of the site to construct three (3) levels of car parking;
- the provision of 6 mechanical car stacking spaces and 2 visitor spaces, increasing the number of overall car parking spaces by 11 spaces, from 16 to 27 spaces;
- two additional vehicle ramps to provide access to the existing and proposed car parking areas;
- landscaping works within the western and southern boundary; and
- collection and discharge of stormwater via a rock swale dissipater and overflow pit to discharge stormwater to the adjoining reserve, Manly Lagoon and ocean.

Development Consent - MOD2012/0262

Development Consent MOD2011/0360 was modified in accordance with the provisions of Section 96 (2) of the Environmental Planning and Assessment Act 1979 and approved on May 8 2013. Specifically, the modifications to the original application were modifications to Unit A and B, modifications to the design of the carpark including the conversion of two single carparking spaces (No.4 and 5) to mechanical car stacking spaces and increase the approved number of mechanical car stacking spaces from 6 to 8 and resultant increase in the overall number of car parking spaces by 1 space, from 27 to 28.

Development Consent - DA2013/0333

Development Application DA2013/0333 was lodged for alterations and additions to a Residential Flat Building. In summary, the proposal comprised of the alterations and additions to the existing apartment building, including Units 1, 3 and 5. External and internal works were confined to the eastern elevation of the existing building on Levels 1, 2 and 3. The application was approved on the 19 July 2013.

Development Consent - MOD2016/0077

Development Consent MOD2016/0077 was modified in accordance with the provisions of Section 96 (2) of the Environmental Planning and Assessment Act 1979 and approved on July 26 2017. Specifically, the modifications sought to the application are as follows:

- Undercroft Level - Unit A , reconfiguration of internal layout and resultant increase in floor space and provision of western elevation window;
- Lower Level - Unit B and Carpark Level 1, deletion of Unit B and reconfiguration to the parking area and provision of three (3) garages and three (3) tandem parking spaces;
- Ground Floor Level - Unit B and Carpark Level 2, reconfiguration of internal and external layout and resultant increase in floor space (over pond), with the deletion of the pond; and addition of one (1) car parking space and two (2) tandem spaces;
- First Floor Level - Existing Units 1 and 2 and Carpark Level 3, provision of an additional parking space and the minor alterations, including the deletion of planter box and widening of balcony;
- Second Floor Level - Existing Units 3 and 4 and Terrace, the amendment of the communal terrace to private terrace and extend the terrace over garage to west.

PROPOSED DEVELOPMENT IN DETAIL

The proposal involves minor alterations to Units 1, 3 and 5. The proposed works are located at the lower levels of the building along the eastern elevation.

The application seeks approval for the following works;

Level 1 - Unit 1

- Extend existing balcony over Unit B (that is under construction below) by 0.865m to east; and
- Extend bedroom 3 to create an enlarged bedroom.

Level 2 - Unit 3

- Extend existing balcony to align with Unit 1 below, with cut-away to improve solar access to Unit 1; and
- Extend bathroom, bedroom 1, and bedroom 2 by 1.2m to the east.

Level 3 - Unit 5

- Extend pergola over the balcony.

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment C.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
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&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&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&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&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of</p>

Section 4.15 Matters for Consideration'	Comments
	<p>development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&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) Environmental Impact 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) Social Impact The proposed development will have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
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

- Does the existing use satisfy the definition of "existing use" under the Environmental planning and Assessment Act, 1979 (the 'Act')?

Section 106 of the Act defines an existing use as meaning:

"(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part, have the effect of prohibiting that use, and

(b) the use of a building, work or land:

(i) for which development consent was granted before the commencement of a provision of

*an environmental planning instrument having the effect of prohibiting the use, and
(ii) that has been carried out, within one year after the date on which that provision
commenced, in accordance with the terms of the consent and to such an extent as to
ensure (apart from that provision) that the development consent would not lapse."*

This necessarily requires the following questions to be answered.

1. Was the use of the building, work or land a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part 4 of the Act, have the effect of prohibiting that use?

Comment:

The applicant has not provided any evidence to substantiate that the use of the building commenced as a lawful purpose prior to the coming into force of Warringah Local Environmental Plan 2011 on 9 December 2011.

2. Was the use of the building granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?

Comment:

The use of the residential flat building commenced as a lawful purpose in 1969, under Strata Plan No. 371/69 registered on the 14 August 1969, prior to the coming into force of Warringah Local Environmental Plan 2011 on 9 December 2011.

3. Has the use of the building been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse?

Comment:

The building is currently, and has been, occupied and used as a residential flat building within one year from the date on which the provision having the effect of prohibiting the use commenced.

- **What is "the land on which the existing use was carried out" for the purposes of cl 42(2) (b) of the Environmental Planning and Assessment Regulation 2000 ("the Regulation")?**

Meagher JA in *Steedman v Baulkham Hills Shire Council* [No. 1] (1991) 87 LGERA 26 stated (at 27) the rule to be applied as follows: *"that if the land is rightly regarded as a unit and it is found that part of its area was physically used for the purpose in question it follows that the land was used for that purpose"*.

Comment:

Having regard to the above case law, it is noted that the whole of the area of the land was physically used for the purpose in question and therefore, it is considered that the land was used for that purpose and that existing use rights apply to the whole of the subject site.

- **What are the planning principles that should be adopted in dealing with an application to alter enlarge or rebuild and existing use?**

The judgement in *Fodor Investments v Hornsby Shire Council (2005) NSWLEC 71*, sets out the planning principles which should be applied in dealing with development applications seeking to carry out development on the basis of existing use rights.

The following four principles adopted by the court in this case will have general application in dealing with Development Applications that rely on existing use rights:

1. How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?

While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessments.

Comment:

The development seeks consent for minor alterations and additions to the existing building, and beneath the maximum height of the building. From the surrounding public and private domain, the majority of the works sought will not create a significant visible change given that the proposal is a minor extension of a previous consent.

Consequently, the relationship of the proposed development with surrounding buildings will remain consistent with the existing development on the site. Therefore, via the retention of the existing built form, the development will remain compatible with surrounding developments.

Surrounding sites are subjected to the same development controls as this site, and many of these sites also rely on the provision of existing use rights to accommodate residential flat buildings or the like. Accordingly, given the prevalence of residential flat buildings in the immediate vicinity, it is found that the bulk and scale of the development proposed is compatible and comparable to that on other surrounding sites.

2. What is the relevance of the building in which the existing use takes place?

Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.

Comment:

The application does not propose any change of use, nor intensification of existing use of the residential flat building presently on the land. The works are a minor extension of previously approved Development Application and utilises a redundant and underutilised space that will be visually minor when viewed from neighbouring sites and public spaces along Manly Beach and promenade to the south.

3. What are the impacts on adjoining land?

The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on

adjoining rear yards should be reasonable.

Comment:

The magnitude of works sought as a part of this development application are not found to have any adverse or unreasonable amenity impacts upon adjoining land by virtue of privacy, views, solar access of visual appearance. The assessment of this application has found that the works are reasonable and appropriate for the land.

4. What is the internal amenity?

Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.

Comment:

The works proposed as a part of this application will not reduce the amenity of any surrounding lands, but will significantly enhance the amenity of occupants within the subject units. Therefore, it is found that the development satisfies this principle.

Conclusion

The use has been approved under a previous EPI and therefore, is a lawful use. Subsequently, the use can be retained under the current EPI (WLEP 2011).

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

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

Name:	Address:
Mr Stephen Thomas Cleary	3 / 38 Queenscliff Road QUEENSCLIFF NSW 2096
Mr Blair Milton Nicholls	1 / 42 Queenscliff Road QUEENSCLIFF NSW 2096
Liesel Von Molendorff	1 / 42 Queenscliff Road QUEENSCLIFF NSW 2096
Mr Bruce Edward Propert	3 / 42 Queenscliff Road QUEENSCLIFF NSW 2096
Mr Anthony Johnston	2 / 42 Queenscliff Road QUEENSCLIFF NSW 2096
George Kokoris Janet Pickup Kokoris Mr Anastassios Kokoris Evdokia Kokoris	44 Queenscliff Road QUEENSCLIFF NSW 2096

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

- Extra Units
- View Loss

- Landscape Open Space
- Privacy
- Noise
- Overshadowing
- Building Bulk

The matters raised within the submissions are addressed as follows:

- ***There is concern that application included additional residential units as a part of the proposal.***

Comment:

The application does not include the expansion of total units within the building, nor the intensification of the existing and approved units in the residential flat building.

Therefore, as there are no additional units as part of the proposal and this issue does not warrant refusal or redesign of the application.

- ***There is concern that the proposed works will cause unreasonable view loss to the neighbouring site No. 44 Queenscliff Rd.***

Comment:

The impact of the proposed development on the available views of adjoining and surrounding properties, including No.44 Queenscliff Road, are assessed in detail in the Built Form Control section of the report under D7 - Views. In summary, the extent of view loss to adjoining and surrounding properties was assessed as being negligible.

Based on the above, it is concluded that the proposed development will not have a reasonable impact on the available views from adjoining and surrounding properties, including No.44 Queenscliff Road.

Therefore, the concerns raised in relation to view loss do not warrant refusal or redesign of the application.

- ***There is concern that the proposed works will remove landscaped areas on the south eastern side of the site.***

Comment:

The proposed works to increase the size of the bedrooms in Unit 1, and Unit 3 are located on the southern eastern elevation and make use of a redundant and underutilised area. The infilling of the balconies of Units 1 and Unit 3, and the pergola over Unit 5 have no impact on the landscape areas of the site.

The proposal actually increases the availability of landscaping in this area by providing an additional planter box (6.5m in length) adjoining Unit 3 for soft landscaping.

Therefore, the concerns raised do not warrant refusal or redesign of the application.

- ***There is concern that the infilling of balconies will create additional visual privacy and overlooking impacts to adjoining neighbours including, No.42 Queenscliff Road.***

Comment:

There is currently the ability to directly overlook the private open spaces and habitable rooms of No.42 Queenscliff Road from the existing balconies of No.48A Queenscliff Road. The proposal includes minor works to infill the balconies of Units 1 and 3, and there is no change to the

previously approved side boundary separation of these two balconies. The increase in the footprint of these balconies will not significantly or unreasonably increase the visual privacy currently exhibited.

The proposed minor footprint increase to the bedroom in Unit 1 is to be screened by a masonry wall, therefore having a negligible privacy impact on the neighbouring site. The minor increase in the footprint of the bedrooms and bathroom of Unit 3 will also have a negligible impact on No.42 due to adequate distance separation, and adjoining windows of No.42 are treated with obscure glazing and screens to maintain their privacy.

Therefore, the concerns relating to the additional privacy impacts do not carry determining weight and do not warrant the refusal of the application.

- ***There is concern that the infilling of the balconies will create additional noise for the neighbours including No.42 Queenscliff Road.***

Comment:

The residential noise of the existing balcony areas of Unit 1 and Unit 3 is not expected to increase as a result of the minor increase in the footprint of these balconies. In addition, the previously approved adequate spatial separation, and landscape buffering has not changed and will continue to further minimise any noise generated from this area.

Based on the above, the concerns relating to the acoustic impacts of the infilling of the balconies Unit 1 and Unit 3 do not carry determining weight and so does not warrant the refusal of the application.

- ***There is concern that the proposal will cause additional overshadowing to the neighbouring sites.***

Comment:

The magnitude of works sought as a part of this development application are not found to have any additional or unreasonable overshadowing impacts upon adjoining land.

Therefore, the concerns relating to the overshadowing do not carry determining weight and do not warrant the refusal of the application.

- ***There is concern that the proposed works are an further over development of the site.***

Comment:

The existing apartment building is eleven (11) stories in scale and is the tallest and most visually prominent residential building on the Queenscliff Headland. The works proposed are minor and located in a previously underutilised and redundant area of the south east elevation. The proposed works do not create any significant additional perceivable scale from the public or private domain.

Based on the above, the concerns relating to the overdevelopment of the site do not carry determining weight and do not warrant the refusal of the application.

MEDIATION

No requests for mediation have been made in relation to this application.

REFERRALS

Internal Referral Body	Comments
NECC (Coast and Catchments)	The proposed modifications are supported without condition. The proposal is not impacted by coastal processes and will not impact public access to a beach or coastal headland.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

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 65 - Design Quality of Residential Apartment Development

Clause 4 of State Environmental Planning Policy No. 65 – Design Quality for Residential Apartment Development (SEPP 65) stipulates that:

(1) This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:

(a) the development consists of any of the following:

- (i) the erection of a new building,
- (ii) the substantial redevelopment or the substantial refurbishment of an existing building,
- (iii) the conversion of an existing building, and

(b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car

parking), and

(c) the building concerned contains at least 4 or more dwellings.

Comment

The magnitude and extent of works proposed as a part of this development application are not found to constitute as a substantial redevelopment or substantial refurbishment of an existing building. The works are generally limited to some minor extensions to 3 of the units, on 3 levels within the 11 storey residential flat building.

Therefore, the magnitude of works does not warrant a detailed assessment against the provisions and requirements of SEPP 65, and it is considered that this policy does not apply to the development application.

SEPP 71 - Coastal Protection

Matters for Consideration	
Is the development located in an area identified as being within:	
100m of the coastline mean high water mark?	Yes
A Sensitive Coastal Location under SEPP 71?	No
A Zone of Wave Impact under WLEP 2000?	No
A Zone of Slope Adjustment under WLEP 2000?	No
A Reduced Foundation Capacity under WLEP 2000?	No
Within an area identified under the report entitled Review of Coastline Hazard Lines for Collaroy-Narrabeen Beach and Fishermans Beach prepared by WorleyParsons Issue 8, July 2009 as being subject to coastal impact?	No
<p>Note: Prior to any consideration of the proposed development it should be noted that Coastal Processes are constantly changing. Statutory Planning processes however, cannot be varied at the same rate. Notwithstanding, Council has recently received a report entitled Review of Coastline Hazard Lines for Collaroy-Narrabeen Beach and Fishermans Beach prepared by WorleyParson Issue 8, July 2009 to review the Coastal Hazard Zones and potential impacts of coastal processes, such as erosion, rising sea levels and large storm events.</p> <p>Whilst Warringah Local Environment Plan 2011 stipulates legislative provisions for consideration, this report provides additional information which has been brought to Council's attention.</p> <p>Accordingly, pursuant to s79C (b), (c) & (e) under the Environmental Planning Assessment Act</p>	

1979 consideration of this report will be given to aid in the interpretation of the current controls and any recommendations provided there after to help determine the likely impacts upon the natural and built environments, the suitability of the site for development and the public interest.

(Note: the report will not be given determining weight as it is not legislated unlike the existing provisions under WLEP 2011.)

The proposal has been identified as being located within a Sensitive Coastal Location as identified on the Coastal Zone map gazetted on the 18 November 2005. Accordingly, pursuant to Section 79C (a)(i) of the Environmental Planning and Assessment Act 1979, the provisions of State Environmental Planning Policy No.71 – Coastal Protection are to be considered.

Only the relevant sections of State Environmental Planning Policy No.71 – Coastal Protection to be considered by the Natural Environment Unit are identified below. It must be noted that all other provisions may apply to the subject site and should be considered prior to the determination of the Development Application.

It is noted that SEPP 71 has now been repealed and replaced by State Environmental Planning Policy Coastal Management 2018, which commenced on 3 April 2018. It is noted the assessment outcomes are consistent and satisfactory in relation to SEPP Coastal Management 2018.

Assessment Consideration	Assessment Acceptability	Further Assessment Comment
<p>Is the development acceptable with regard to the SEPP 71 Policy aims to be considered by Natural Environment Unit detailed as follows:</p> <p><i>(a) to protect and manage the natural, cultural, recreational and economic attributes of the New South Wales coast, and...</i></p> <p><i>(f) to protect and preserve beach environments and beach amenity, and</i></p> <p><i>(g) to protect and preserve native coastal vegetation, and</i></p> <p><i>(h) to protect and preserve the marine environment of New South Wales, and</i></p> <p><i>(i) to protect and preserve rock platforms, and</i></p> <p><i>(j) to manage the coastal zone in accordance with the principles of ecologically sustainable development (within the meaning of section 6 (2) of the Protection of the Environment</i></p>	Yes	N/A

Assessment Consideration	Assessment Acceptability	Further Assessment Comment
<i>Administration Act 1991), and... (l) to encourage a strategic approach to coastal management.</i>		
Does the development implement measures to conserve animals (within the meaning of the <i>Threatened Species Conservation Act 1995</i>) and plants (within the meaning of that Act), and their habitats?	Yes	N/A
Does the development implement measures to conserve fish (within the meaning of Part 7A of the <i>Fisheries Management Act 1994</i>) and marine vegetation (within the meaning of that Part), and their habitats?	Yes	N/A
Does the development take into consideration existing wildlife corridors and the impact of development on these corridors?	Yes	N/A
Are the likely impact of coastal processes and coastal hazards on the development and any likely impacts of the development on coastal processes and coastal hazards acceptable?	Yes	N/A
Are the likely impacts of development on the water quality of coastal waterbodies acceptable?	Yes	N/A
Is the development acceptable with regard to: <i>(i) the cumulative impacts of the proposed development on the environment, and</i> <i>(ii) measures to ensure that water and energy usage by the proposed development is efficient</i>	Yes	N/A
Does the development, include a non-reticulated system? Yes/No	No	N/A

Assessment Consideration	Assessment Acceptability	Further Assessment Comment
<p>If Yes:</p> <p>Will the system, or is likely to, result in a negative effect on the water quality of the sea or any nearby beach, or an estuary, a coastal lake, a coastal creek or other similar body of water, or a rock platform?</p>		
<p>Does the development seek consent, or result in, untreated stormwater being discharged into the sea, a beach, or an estuary, a coastal lake, a coastal creek or other similar body of water, or onto a rock platform?</p>	Yes	<p>Stormwater will be disposed of within the drainage system approved under development consent DA2011/0360.</p> <p>Under development consent DA2011/0360 (as modified), the collection and discharge of stormwater will occur via a rock swale dissipater (and overflow pit) located within the south-western corner of the site. The dissipater will discharge dissipated stormwater to the adjoining reserve, Manly Lagoon and ocean.</p> <p>Additionally, Council's Engineering section have imposed conditions on previous applications that require stormwater to be collected, stored and discharged to the existing and approved drainage system.</p>

SEPP (Building Sustainability Index: BASIX) 2004

BASIX certificates have been submitted with the application for both Unit 1 and Unit 3.

A BASIX certificate has been submitted with the application for Unit 1 (see Certificate No. A300441_02 and 06 August 2018). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. A300441_02 and 06 August 2018).

A BASIX certificate has been submitted with the application for Unit 3 (see Certificate No. A300483_02 and 6 August 2018). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. A300483_02 and 6 August 2018).

The BASIX Certificate for both Unit 1 and Unit 3 indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	Pass
Thermal Comfort	Pass	Pass
Energy	40	Pass

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

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

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

Warringah Local Environmental Plan 2011

Is the development permissible?	No
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	12.5m	47%	No*

*Despite the development not increasing the overall height of the 11 storey residential building (approx height of 35.5m), an assessment is made against the height of the proposed changes, which are 12.5m above the eastern side boundary existing ground level.

Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
Land Use Table	Yes
Part 4 Principal development standards	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
5.5 Development within the coastal zone	Yes
Part 6 Additional Local Provisions	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.3 Height of buildings

The proposal does not seek to increase the height of the existing 11 storey apartment building (34.45m/57.45RL).

4.6 Exceptions to development standards

The property is zoned R2 Low Density Residential under the Warringah Local Environmental Plan 2011 (LEP, as is the surrounding land. The existing residential Unit building is prohibited within the R2 Low Density Residential zone under LEP 2011. However, the property benefits from existing use rights under section 4.11 of the Environmental Planning and Assessment Act. Therefore, the current zoning provisions, development standards under the LEP and planning controls under the Warringah Development Control Plan 2011 are not applicable to the property, meaning clause 4.6 does not apply because the development standard for height of building does not apply.

However, height controls have relevance to the assessment of the application, therefore the assessment has been completed below.

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard has taken into consideration the questions established in Winten Property Group Limited v North Sydney Council (2001) NSW LEC 46.

Requirement:	8.5m
Proposed:	12.5m (36.90RL)
Is the planning control in question a development standard?	YES
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical
If numerical enter a % variation to requirement	47% (4m)

Description of area of non-compliance

The existing and approved development on the site achieves a maximum height of approx 34.45m (57.45 RL), with the highest portion of the proposed works being the pergola roof over Unit 3 balcony on the south east side of the units. The proposal is well below the building maximum height of 34.45m (57.45 RL), thereby retaining the existing and approved building height; but exacerbating the portions of

the building which exceed the requisite building height standard.

In addition to the pergola roof, the additional proposed works also exceed the 8.5m height plane, and therefore this Clause 4.6 Variation assessment pertains to these works.

The proposal must satisfy the objectives of Clause 4.3 – Height of Buildings, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the WLEP 2011. The assessment is detailed as follows:

Is the planning control in question a development standard?

The prescribed Height of buildings limitation pursuant to Clause 4.3 of the WLEP 2011 is a development standard.

What are the underlying objectives of the development standard?

The underlying objectives of the standard, pursuant to Clause 4.3 – ‘Height of buildings’ of the WLEP 2011 are:

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

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

Comment:

The subject allotment is in a unique situation whereby the zoning of the land prohibits development in the form of residential flat buildings, but the prevailing form of development within the immediate vicinity exists as residential flat buildings.

Thereby, this objective assessment must pertain to the physical characteristics and attributes of surrounding buildings, rather than the legislative permissibility of their existence.

This development application seeks to extend various elements of the building, including the infill of the existing balconies and an addition of a pergola roof. These works are not found to create any additional perceivable scale from the public or private domain by virtue of their siting, and the existing height of the building is to remain.

It is therefore found that the development as proposed is compatible with the height and scale of surrounding and nearby developments, and satisfies this objective.

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

Comment:

An assessment of the proposed development has found that the works will not give rise to any adverse or unreasonable visual impact, disruption of views, loss of privacy or loss of solar access.

The visual impact of the development is found to be acceptable in that it is minor change to previously approved works that will significantly add to the amenity of the residents.

The existing building height is not subject to increase as a part of this application, and the works

will not obscure any views from surrounding properties, further than the approved balconies and additions already do.

The development seeks to infill the existing balconies and increase the internal bedrooms floor sizes on the southernmost edge of the building, without reducing the amenity of privacy afforded to surrounding properties.

The development will not result in any additional overshadowing.

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

Comment:

The existing building on the site and the proposed works are visible from Manly Beach and the surrounding vicinity, and therefore the works have the potential to impact upon the scenic quality of the coastal environment.

The works proposed are a minimal change to the the existing building and previously approved additions on site and will not result in any perceivable change in the built form when viewed from the public domain. Therefore, the works proposed are found to minimise adverse impact of development on the scenic coastal environment.

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

Comment:

For the reasons described above, it is found that the development will be of an acceptable visual impact when viewed from surrounding and nearby public places.

What are the underlying objectives of the zone?

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the R2 Low Density Residential zone.

The underlying objectives of the R2 Low Density Residential zone:

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

Comment:

The proposed development will not decrease the quantum of housing available.

It is considered that the development satisfies this objective.

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

Comment:

Not applicable as the development is not for mixed-use purposes.

It is considered that the development satisfies this objective.

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

Comment:

Not applicable as the development benefits from Existing Use Rights and does not decrease the existing provision of landscaped open space available on the site. It is considered that the development satisfies this objective.

It is considered that the development satisfies this objective.

Is the variation to the development standard consistent with the objectives of Clause 4.6 of the WLEP 2011?

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

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development.

Comment:

The eastern end of the Queenscliff Road has a predominant character of older style residential flat buildings in a landscaped setting. The reliance on Existing Use Rights enjoyed by surrounding buildings equate to a built form substantially different to that permitted under the current planning controls. Accordingly, the proposed works are compatible with the predominant character of the area, and the existence of Existing Use Rights makes it unlikely that the planning controls will maintain this character.

A detailed assessment of the application has found that the works proposed will have a negligible impact upon the amenity of surrounding and nearby residents by virtue of views, privacy and overshadowing. The impacts of the increase in the floor space of the bedrooms in Units 1 and Unit 3 are found to be mitigated by the existence of the existing masonry wall which will, for the most part, screen the development. Accordingly, despite the variations sought to the development standard, the impacts of the development are consistent with the impacts that can reasonably be expected upon the site.

The development sought is consistent with the bulk and character envisaged by previous planning controls, but not the current planning controls. As previously addressed, the proposed development is consistent with the bulk and character that is permitted through the Existing Use Rights.

Accordingly, it can be concluded that there is merit in applying an appropriate degree of flexibility to the Height of Buildings Development Standard in this particular circumstance.

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Comment:

By granting flexibility in applying the Height of Building Development Standard in this particular circumstance, the occupants of the proposed development are granted a higher degree of amenity within the unit. This increased amenity for occupants comes at no detriment

to surrounding landowners or the environment as established above.

Therefore, by allowing flexibility in this particular circumstance a better outcome is achieved.

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

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

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

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

Comment:

The applicant's written additional information to the Clause 4.6 Exception to a Development Standard details that the application should be supported as the development is retaining the existing building parapet height and is extending outwards, rather than upwards; therefore it would be unreasonable to require compliance as it would require a large portion of the existing building to be demolished.

The works sought do not give rise to any amenity impact to surrounding land, or any environmental impact and are generally consistent with previous approvals granted on the subject site and surrounding sites; thereby demonstrating that enforcing compliance is unnecessary in the context of the site.

The objectives of the zone and of the Development Standard are achieved notwithstanding the non-compliance, and the development provides for a visual continuity and pattern of buildings in the streetscape.

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

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

Comment:

The applicant's written additional information for Building Height has adequately addressed the matters required to be demonstrated by subclause (3).

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

Comment:

For reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone in the WLEP 2011.

(b) the concurrence of the Director-General has been obtained

Comment:

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument where the variation to a numerical standard is not greater than 10%. Following the release of PS18-003, Council received correspondence from a delegate of the Secretary which granted Council staff, for 12 months from 1 March 2018, the ability to assume the Secretary's concurrence for Class 1 buildings which seek to vary the building height standard by more than 10%.

The development sought does not relate to a Class 1 Building, and equates to a variation of 47% to the Height of Buildings Development Standard. Accordingly, the Secretary's concurrence can be assumed as the clause 4.6 does not apply due to the existing use rights for the site.

Warringah Development Control Plan

Built Form Controls

The proposed development is reliant upon existing use rights pursuant to Division 4.11 of the Environmental Planning and Assessment Act 1979 as discussed later in this report. Therefore, in accordance with the Land and Environment Court of NSW judgement of Fodor Investments v Hornsby Shire Council [2005] NSWLEC 71 (Fodor) (at 15), it is made clear that planning controls that limit the size of a proposal (as do the Built Form Controls applicable under Part B of the Warringah Development Control Plan 2011) "have no application".

However, the questions posed in the above caselaw pertaining to the assessment of existing use rights impose the importance of a merit assessment of the development, rather than a quantifiable numerical assessment that would normally be undertaken.

Thereby, the below built form control table is for reference of the scale of the development only as numerical compliance has no application.

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	No change (existing 11 storey building)	N/A	Yes (As Approved)
B3 Side Boundary Envelope	5m South East	The proposal is outside the projected building envelope	-	No
	5m North West	There is no change to the projected building envelope	N/A	Yes (As approved)
B5 Side Boundary Setbacks	0.9m South	Unit 1		

	East	1.54m Balcony 0.0m Bedroom	N/A 100%	Yes No
		Unit 3 0.0m Proposed Planter Bed 1.54m Balcony 2.8m Bedroom	100% N/A N/A	No Yes Yes
		Unit 5 1.54m Pergola	N/A	Yes
	0.9m North West	No Change	N/A	Yes (As Approved)
B7 Front Boundary Setbacks	6.5m	No Change	N/A	Yes (As Approved)
B9 Rear Boundary Setbacks	6m	No change	N/A	Yes (As Approved)
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	No change	N/A	Yes(As Approved)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Part A Introduction	Yes	Yes
A.5 Objectives	Yes	Yes
Part B Built Form Controls	Yes	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	Yes	Yes
Part C Siting Factors	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
Part D Design	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
Part E The Natural Environment	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B3 Side Boundary Envelope

Description of non-compliance

The numerical non-compliance relates to the minor infill of the balcony's to Unit 1 and 3, the pergola to Unit 5 and the planter box adjacent to Unit 3.

Merit consideration

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

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

Comment:

The existing apartment building is eleven storeys in height. The proposal seeks to extend various elements of the building on the south eastern elevation, including the infill of existing balconies and a pergola roof. These works are not found to create any additional perceivable scale from the public or private domain by virtue of their siting, and the existing 34.45m height of the building is to remain. Having regard to the above, the area of non-compliance will complement the existing built form and have an acceptable impact on the bulk and scale of the existing apartment building.

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

Comment:

The previously approved side boundary setbacks of Units 1 and 3 balconies do not change as part of the application. The increase in floor space to the bedrooms of Unit 3 and Unit 1 utilise a redundant and underutilised space that will be visually negligible when viewed from the neighbouring and public spaces.

The proposal has no change to the existing provision of solar access.

Therefore, the proposal will not generate unreasonable amenity impacts on adjoining land in terms of view loss, visual outlook impacts or solar access.

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

Comment:

The alterations and additions to the south eastern elevation of the existing apartment building are a minor addition to previously approved works will further improve the amenity available to residents of the apartment building.

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.

B5 Side Boundary Setbacks

Description of non-compliance

The proposed works seeks a variation to the south eastern side setback on the lower levels of the proposed residential flat building.

The side setback encroachment occurs where the planter box extends for a further length of 6.58m (100% variation) adjacent to Unit 3, and the bedroom wall of Unit 1 (100% variation).

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 proposed works do not alter the existing provisions for deep soil landscaped areas. The proposed work utilises a redundant and underutilised space that do not allow for the provision of additional landscape open space. Therefore, it is considered the proposal meets this objective.

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

Comment:

The proposed works are a minor addition to previously approved works. The bedroom wall of Unit 1 adjoins the large masonry boundary wall of the neighbouring site No.43 Queenscliff Road, and will sit underneath the previously approved extended balcony of Unit 3. Therefore,

creating a negligible visual impact to the surrounding sites, and public beachfront.

The extension of the planter box also sits along the boundary wall and is an extension of the previously approved planter box. The extension of the planter box will provide additional landscaping opportunities and visual interest to the south eastern side of the building.

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

Comment:

The works seek to extend various elements of the building, including the infill of the existing balconies and an addition of a pergola roof. These works are not found to create any additional perceivable scale from the public or private domain by virtue of their location, and the existing height of the building is to remain.

It is therefore found that the development as proposed is compatible with the height and scale of surrounding and nearby developments, and satisfies this objective.

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

Comment:

The proposed works provide adequate and varying setbacks to the south eastern side boundary to ensure reasonable levels of privacy, amenity and solar access is maintained to the adjoining property to the east (No. 43 Queenscliff Road).

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

Comment:

The proposed modifications will maintain reasonable view sharing from surrounding and adjoining 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.

C3 Parking Facilities

The proposal does not involve the creation of additional bedrooms and therefore the proposal does not generate the need for additional carparking spaces.

D3 Noise

The potential of increased noise was assessed as part of the proposal.

Pedestrian and residential noise from residential living is consistent with normal background noise levels in a low density residential area.

The minor infilling of the existing balcony areas is not considered to cause unreasonable noise issues.

General noise disturbance issues such as construction noise, mechanical noise and the like are addressed by conditions to ensure no unreasonable noise impacts.

D6 Access to Sunlight

The magnitude of works sought as a part of this development application are not found to have any additional or unreasonable overshadowing impacts upon adjoining land.

D7 Views

The control stipulates "Development is to allow for the reasonable sharing of views". In the assessment of view loss, a site inspection was undertaken for No. 44 Queenscliff Road.

It is important to note that additional view loss assessment has also been carried out on previous occasions for previously determined applications, including a modification application. These applications are discussed in further detail under the "Site History" section of the report.

In determining the extent of view loss to the above property, the four planning principles outlined within the Land and Environment Court Case *Tenacity Consulting Pty Ltd Vs Warringah Council* (2004) NSWLEC 140, were used and are detailed as follows.

View Loss Assessment

The proposed works are confined to the lower three floor levels of the eastern elevation of the existing apartment building. From the site inspection conducted, it is concluded that any potential view loss would be confined to the dwelling house at No.44 Queenscliff Road.

Merit consideration

With regard to the consideration for a variation, 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:

The views available from affected properties include partial views of the Manly and Queenscliff Beach. These views are highly valued.

The view is obtained through building corridors and void area. Accordingly, these views are considered of minor to moderate value.

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:

The affected property has a southern orientation and is located immediately behind the apartment building at No.48A Queenscliff Road.

The potential view loss would be the view corridor between the apartment buildings located at No.48A and 42 Queenscliff Road which is obtained over the rear (southern) boundary from the balcony area in a standing and sitting position from external balcony area.

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:

The proposal will have a negligible impact on the views obtained from the property.

Specifically, the view loss impact from the development is a partial downward and obscured view of Queenscliff Beach obtained from the external balconies of the property in a standing and sitting position.

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:

The assessment of view loss caused by the development to No.44 Queenscliff Road is

considered acceptable and reasonable. This view loss impact is considered acceptable given the loss of views relate to a downward and obscured view of Queenscliff Beach. In summary, the proposal will have a negligible impact on the views obtained from No.44 Queenscliff Road.

The merit assesment of the the built form controls are acceptable, on merit, against the requirements of the control, particularly as the non-compliance is a direct result of the location and excessive height of the existing apartment building. Additionally, a more skillful design would not provide any qualitative improvement in view loss experienced by adjoining and surrounding 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.

D8 Privacy

The sloping topography of the locality and the elevated nature of the subject site results in unavoidable and existing overlooking of properties adjoining the site.

The site is located within a well established residential area where principal views (iconic involving headlands, ocean, beach, foreshore, shoreline) are available to the south. To this extent, adjoining properties in the surrounding area have balcony and deck areas orientated to the south and south east to obtain these views.

The infilling of the balcony for unit 1 and unit 3 do not change the setbacks of the previously approved balcony's, and therefore do not create any additional direct overlooking or privacy impacts to the neighbouring site of No.43 Queenscliff Rd.

Therefore, it is considered that the proposed works do not exhibit additional overlooking and privacy impacts on surrounding properties given that the elevated nature and previously approved setbacks of the balconies.

E10 Landslip Risk

The subject site is identified on Council's Landslip Hazard Map as being potentially subject to landslip (Area B and C). In this regard, a geotechnical risk assessment report was submitted with the development application which concludes that the geotechnical stability of the land has the ability to support the proposed development.

The report concludes that the landslip risk will remain acceptable provided the recommendations of the report are followed which include best practice excavation and building methods and on-site inspections during works. A suitable condition has been included in the consent to this effect.

Based on the above, the proposal satisfies the requirements of the control.

POLICY CONTROLS

Northern Beaches Council Contributions Plan 2018

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 DA2018/0823 for Alterations and Additions to a Residential Flat Building on land at Lot 1 SP 4129, 1 / 48 A Queenscliff Road, 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

Unit 1 Proposed plan and site location	21/11/2017	Day Bukh Architects
Unit 3 and 5 Proposed Plan	21/11/2017	Day Bukh Architects
Proposed south east elevation	21/11/2017	Day Bukh Architects
Proposed section and south west elevation	21/11/2017	Day Bukh Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geoetchnical Report	February 2011	Crozier Geotechnical Consultants

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. (DACPLB01)

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 (DACPLB09)

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) 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.
- (c) 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.

- (d) 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.
- (e) 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.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) 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.
- (j) 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.

- (k) 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 2008
- (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. (DACPLB10)

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 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, 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).

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

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

5. **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. (DACPLC02)

6. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range (BCA classification M and D) 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. (DACPLC03)

7. **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 TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

8. **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.

CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE

9. **Waste Management Confirmation**

Prior to the issue of a Final Occupation Certificate, evidence / documentation must be submitted to the Principal Certifying Authority that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

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 //, under the delegated authority of:



Steven Findlay, Manager Development Assessments






















ATTACHMENT A












Notification Plan	Title	Date
 2018/306517	Plan - Notification	21/05/2018

ATTACHMENT B

Notification Document	Title	Date
 2018/325723	Notification Map	29/05/2018

ATTACHMENT C

Reference Number	Document	Date
 2013/209990	view loss photos	15/07/2013
 2018/306586	Report - Geotechnical	25/10/2017
 2018/306578	Draft - BASIX Certificate - Unit 1	22/11/2017
 2018/306583	Draft - BASIX Certificate - Unit 3	22/11/2017
 2018/306107	Owners Corporation MInutes 06-09-2017	08/05/2018
 2018/306131	Owners Corporation - Stamped Plans with Signatures	08/05/2018
 2018/306537	Report - BASIX Certificate - A300441 - Unit 1	08/05/2018
 2018/306568	Report - BASIX Certificate - A300483 - Unit 3	08/05/2018
 2018/306162	Builders Quote	15/05/2018
 2018/306089	Owners Consent	15/05/2018
 2018/306515	Report - Statement of Environmental Effects	18/05/2018
 DA2018/0823	1/48A Queenscliff Road QUEENSCLIFF NSW 2096 - Development Application - Alterations and Additions	21/05/2018
 2018/305976	DA Acknowledgement Letter - Andrew Kathestides	21/05/2018
 2018/306073	Development Application Form	21/05/2018
 2018/306077	Applicant Details	21/05/2018
 2018/306517	Plan - Notification	21/05/2018
 2018/306608	Plans - Master Set	21/05/2018
 2018/306602	Report - Sediment Control	21/05/2018
 2018/306606	Report - Waste Management	21/05/2018
 2018/306616	Plans - External	21/05/2018
 2018/306623	Plans - Internal	21/05/2018
 2018/311919	Signed owners consent - 1/48A Queenscliff Road Queenscliff	22/05/2018
 2018/325708	ARP Notification Map	29/05/2018
 2018/325716	DA Acknowledgement Letter (not integrated) - Andrew Kathestides	29/05/2018
 2018/325723	Notification Map	29/05/2018
 2018/325727	Notification Letter - 101	29/05/2018
 2018/339026	Online Submission - Cleary	04/06/2018
 2018/341220	Online Submission - Nicholls	04/06/2018
 2018/346393	Online Submission - Von Molendorff	06/06/2018

	2018/351039	Online Submission - Propert	08/06/2018
	2018/361211	Online Submission - Johnston	13/06/2018
	2018/362833	Submission - Kokoris	14/06/2018
	2018/364685	Submission Acknowledgement Letter - George Kokoris & Janet Pickup Kokoris & Anastassios Kokoris & Evdokia Kokoris - SA2018/362833	18/06/2018
	2018/379789	Natural Environment Referral Response - Coastal	21/06/2018
	2018/506133	Update BASIX cert Queenscliff Unit 1	09/08/2018
	2018/506132	Updated BASIX cert Queenscliff Unit 2	09/08/2018
	2018/610569	Additional 4.6 Building Height Information	20/09/2018
	2018/618152	44 Queenscliff view loss	24/09/2018
	2018/618159	Remove	24/09/2018
	2018/618185	Site Visit	24/09/2018