

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

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| Application Number: | Mod2020/0572 |
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| Responsible Officer: | Nick Keeler |
| Land to be developed (Address): | Lot CP SP 4129, 48 A Queenscliff Road QUEENSCLIFF NSW 2096 |
| Proposed Development: | Modification of Development Consent DA2011/0360 granted for 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 |
| Delegation Level: | DDP |
| Land and Environment Court Action: | No |
| Owner: | The Owners of Strata Plan 4129 |
| Applicant: | C & C Project Management Pty Ltd |

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|----------------------------------|-----------------------------------------|
| Application Lodged: | 03/11/2020 |
| Integrated Development: | No |
| Designated Development: | No |
| State Reporting Category: | Residential - Alterations and additions |
| Notified: | 13/11/2020 to 27/11/2020 |
| Advertised: | Not Advertised |
| Submissions Received: | 5 |
| Clause 4.6 Variation: | Nil |
| Recommendation: | Approval |

EXECUTIVE SUMMARY

The proposal is for modification of Development Consent DA2011/0360 granted for alterations and additions to a Residential Flat Building, determined by the former Warringah Development Application Panel on 12/09/2011. The development consent has been modified three times since the original approval.

The proposed modification involves the legitimisation of an as-built tiered landscaped terrace area at the southwest side of the building with planting and mechanical ventilation exhaust stack on the northern side of the building above the basement parking area, the removal of a pedestrian path along the southern portion of the western boundary and changes to the fire sprinkler system.

The application has received three (3) objections from neighbouring residents raising concerns relating to inconsistencies with the expected outcomes of the development consent approved by the Warringah Development Application Panel, including privacy, solar access and view impacts.

The assessment of the application has found that the proposal is appropriate for the site and does not result in any unreasonable amenity impact to adjacent properties.

As such, the application is recommended for approval, subject to a condition requiring the deletion of a proposed tree that may cause unreasonable view loss.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks to modify development consent DA2011/0360 granted for alterations and additions to a Residential Flat Building. The proposed modifications involve the following:

1. Removal of the side path along the western boundary
2. Retrospective approval for the as-built terraced garden beds adjacent to the western boundary
3. Upgraded ventilation stack to Building Code of Australia requirements
4. Change in fire safety requirements to replace FER r3 (fire curtain system) with FER r4 (sprinkler system)

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 Development Control Plan - D3 Noise
Warringah Development Control Plan - D7 Views

SITE DESCRIPTION

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|------------------------------|----------------------------------------------------------------|
| Property Description: | Lot CP SP 4129 , 48 A Queenscliff Road QUEENSCLIFF NSW 2096 |
| | |

Detailed Site Description:

The site is located within the R2 Low Density Residential zone and accommodates an 11-storey residential flat building containing 15 units and basement carparking.

The subject site is located on the southern side of Queenscliff Road.

The site is battle-axe in shape with a frontage of 4.8m along Queenscliff Road and a depth of between 41.375m and 88.91m. The site has a surveyed area of 1,081m².

The subject site contains a steep slope which has a diagonal fall of approx. 21m (18%) in a north to south direction (from Queenscliff Road) towards Queenscliff Beach.

Existing Landscaped open space on site is characterised by areas of rock outcrops within the northeastern portion of the site and poor quality shrubs, medium size trees ground cover and weeds within the rear (southern) portion of the site. The site has been subject to substantial cut and fill in the past. Vehicular access to the site is provided by a steep driveway from Queenscliff Road.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by apartment style housing to the north-west, west, south-west, west and north-east. These apartment style buildings vary in scale between two and five stories in scale. A one-storey dwelling house occupies the site to the north, No. 44 Queenscliff Road. The southern boundary of the site adjoins a landscaped reserve which adjoins Queenscliff Beach.

Map:

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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 and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2011/0360, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

| Section 4.55(1A) - Other Modifications | Comments |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if: | |
| (a) it is satisfied that the proposed modification is of minimal environmental impact, and | <p>Yes</p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <ul style="list-style-type: none">• The changes relate to landscaping alterations and the provision of a mechanical ventilation outlet required for BCA compliance.• The approved use of the development will not be changed by the proposal.• The external appearance of the building will be largely unchanged by the proposed modifications.• Despite the proposed modifications, the appearance of the building will be largely unchanged when viewed from surrounding sites and the public domain. |
| (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent | The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2011/0360 for the following reasons: |

| Section 4.55(1A) - Other Modifications | Comments |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| as originally granted was modified (if at all), and | <ul style="list-style-type: none"> • The external appearance of the building will be largely unchanged by the proposed modifications. • Despite the proposed modifications, the appearance of the building will be largely unchanged when viewed from surrounding sites and the public domain. • The proposed changes will not change the use of the development. • The modifications will not result in additional impacts on surrounding sites and the public domain. |
| (c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and | The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Warringah Local Environment Plan 2011 and Warringah Development Control Plan. |
| (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be. | See discussion on “Notification & Submissions Received” in this report. |

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of 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 | Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the |

| Section 4.15 'Matters for Consideration' | Comments |
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| | residential use of the site, and is not considered a contamination risk. |
| Section 4.15 (1) (a)(iii) – Provisions of any development control plan | Warringah Development Control Plan applies to this proposal. |
| Section 4.15 (1) (a)(iiia) – 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 in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation was submitted with the original application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to a geotechnical report.</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 in the original 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 development). This matter has been addressed via a condition in the original 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 in the original 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 in the original consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter has been addressed via a condition in the original consent.</p> |
| Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts | <p>(i) Environmental Impact</p> <p>The environmental impacts of the proposed development on the natural and built environment are addressed under the</p> |

| Section 4.15 'Matters for Consideration' | Comments |
|----------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| on the natural and built environment and social and economic impacts in the locality | Warringah Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use. |
| Section 4.15 (1) (c) – the suitability of the site for the development | The site is considered suitable for the proposed development. |
| Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs | See discussion on “Notification & Submissions Received” in this report. |
| Section 4.15 (1) (e) – the public interest | No matters have arisen in this assessment that would justify the refusal of the application in the public interest. |

EXISTING USE RIGHTS

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

Section 4.65 of the Act defines an existing use as:

"(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."*

Comment:

Existing Use Rights for the purpose of a Residential Flat Building in the R2 Low Density Residential zone were established in the assessment of the original development application.

- 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: “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 that 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 NSW Land and Environment 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 proposed modification does not alter the built form of the existing residential flat building, apart from the provision of a new mechanical ventilation outlet structure on the northern side of the building. This structure is centrally located within the site and is of a minor scale relative to the residential flat building.

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 existing building is not proposed to be demolished. The proposal is for minor modifications to an existing approval for alterations and additions.

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 proposed modifications will not result in any significant or unreasonable impacts on adjoining land, as assessed throughout this report.

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:

There is no adverse impact on the internal amenity of the proposal.

Conclusion

The use has been approved under a previous environmental planning instrument (County of Cumberland Planning Scheme Ordinance, 27 June 1951) and, therefore, is a lawful use. Subsequently, the use can be retained under the current environmental planning instrument (WLEP 2011).

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 13/11/2020 to 27/11/2020 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 5 submission/s from:

| Name: | Address: |
|----------------------------------|------------------------------------------------|
| Mrs Michaela Rose Somerville | 54 Queenscliff Road QUEENSCLIFF NSW 2096 |
| Mr Stephen Bruce Simpson | 17 Curl Curl Parade CURL CURL NSW 2096 |
| Mrs Virginia Paige Mounsey | 8 Glen Street FRESHWATER NSW 2096 |
| C & C Project Management Pty Ltd | 25 Everview Avenue MOSMAN NSW 2088 |
| Mr Trevor Milton Collins | 4 / 48 A Queenscliff Road QUEENSCLIFF NSW 2096 |

Three (3) of the submissions received are from neighbouring residents and two (2) are responses to the submissions by the applicant.

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

- Inconsistency with intended outcomes of previously approved development
- Impact of ventilation outlet

The matters raised within the submissions are addressed as follows:

- *Concern is raised that the proposed modification is inconsistent with the intended outcomes of the original approval, specifically the requirement to remove the proposed landscaped terracing between the building and the western boundary adjacent to No. 1A Greycliffe Street.*

Comment:

It is acknowledged that the approval of DA2011/0360 by WDAP required the removal of the proposed landscaped terraces on the western side of the building due to its potential view and amenity impacts to adjacent properties.

The applicant is seeking consent to legitimise the as-built terraces that were otherwise required to be removed under the conditions of consent for DA2011/0360. The NSW Land and Environment Court via “*Windy Dropdown Pty Ltd v Warringah Council [2000] NSWLEC 240*” has held that development consents can be modified to grant consent retrospectively to works that have already been carried out.

Based on an assessment of the merits of the proposed modification, it is considered the as-built terraces and proposed landscaping do not fundamentally diverge from the decision of WDAP. While this modification includes landscaped terraces, the scale of the terraces and the proposed landscaping is substantially reduced. The maximum height of vegetation proposed on the lowest terrace is 1.5m. Most of the vegetation proposed on the middle and upper terraces are between 0.1m and 1m high. One 4m tree is proposed on the middle terrace, adjacent to the building. To ensure no view corridors are unreasonably impacted, a condition is included to delete the tree from the proposal. This will also ensure that the intended outcomes of the WDAP decision are upheld.

The provision of the terraces is not expected to unreasonably impact upon the privacy and amenity of adjacent dwellings. The area is not readily accessible by residents of the site and is expected to be occupied for short times during periodic landscaping maintenance. The terraces do not cause any additional solar access impacts as the shadow of the residential flat building subsumes any shadow cast by the terraces.

As such, subject to condition, the proposed terraces and landscaping is considered acceptable and in-keeping with the intended outcomes of the original development consent.

- *Concern is raised regarding the mechanical ventilation outlet on the northern side of the building and its view impact to nearby dwellings.*

Comment:

The mechanical ventilation outlet on the northern side of the building is a requirement under the Building Code of Australia. Due to the limited scale of the outlet structure and the built form of existing development in the locality, its impact in terms of amenity, view loss and solar access are considered reasonable in the locality context. As established in *Tenacity Consulting v Warringah Council [2004] NSWLEC 140*, it is often unrealistic to expect the retention of view

corridors across side boundaries.

REFERRALS

| Internal Referral Body | Comments |
|-----------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Landscape Officer | <p>The modification application includes alterations to the landscape works including the removal of the western boundary path and replacement with terrace walling, ground boulders and planting.</p> <p>In review of the impact to neighbouring properties from the proposed works, it is considered that the terraced garden area within the south-western area will not impact the views of neighbours as all the planting is of low height, with the exception of the proposed Frangipani. Conditions of consent shall be imposed to deleted the Frangipani from the landscape works.</p> |
| NECC (Coast and Catchments) | <p>State Environmental Policy (Coastal Management) 2018.</p> <p>The proposal is supported for approval without condition.</p> <p>The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps but not been included on the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018. Hence, Clauses 13, 14 and 15 State Environmental Policy (Coastal Management) 2018 apply for this DA.</p> <p>On internal assessment the proposed modification satisfies the requirements under State Environmental Policy (Coastal Management) 2018.</p> |

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 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.

The proposed development, as modified, does not generally alter or create any changes to the previous assessment of the original (and modified) development application which was found to satisfy the requirements of the 10 Design Quality Principles contained in Clauses 9-18 of SEPP 65 and the matters contained in the (superseded) Residential Flat Design Code (RFDC) and Apartment Design Guide.

As per the definition of a residential flat building and the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are not applicable to the assessment of this application.

Accordingly, no further assessment is required with regard to the provisions of SEPP 65.

SEPP (Coastal Management) 2018

Refer to Coast & Catchments referral comments for CM SEPP consideration.

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

| Development Standard | Requirement | Approved | Proposed | % Variation | Complies |
|-----------------------------|--------------------|-----------------------------|-----------------|--------------------|-----------------|
| Height of Buildings: | 8.5m | Existing 11 storey building | Unaltered | N/A | Yes |

Compliance Assessment

| Clause | Compliance with Requirements |
|---------------------------------|------------------------------|
| 4.3 Height of buildings | Yes |
| 6.2 Earthworks | Yes |
| 6.4 Development on sloping land | Yes |

Warringah Development Control Plan

Built Form Controls

| Standard | Requirement | Approved | Proposed | Complies |
|-----------------------------------------------|-------------|----------------------------|--------------------------|-------------------------|
| B1 Wall height | 7.2m | 11 storey RFB | Unaltered | As approved |
| B3 Side Boundary Envelope | E - 5m | Within envelope | Unaltered | Yes |
| | W - 5m | Within envelope | Unaltered | Yes |
| B5 Side Boundary Setbacks | E - 0.9m | Building: Nil to 4.5m | Unaltered | As approved |
| | | - | Ventilation outlet: 7.3m | Yes |
| | W - 0.9m | Building: 0.9m to 3.9m | Unaltered | Yes |
| | | - | Ventilation outlet: 9.5m | Yes |
| | | - | Landscaped terrace: 0.9m | Yes |
| | N - 0.9m | Building: Nil to 3.5m | Unaltered | As approved |
| | | - | Ventilation outlet: 2.2m | Yes |
| B7 Front Boundary Setbacks | 6.5m | 45.0m | Unaltered | Yes |
| B9 Rear Boundary Setbacks | 6m | Building: 4.1m to 6.4m | Unaltered | As approved |
| | | Balconies: 2.1m to 4.4m | Unaltered | As approved |
| | | - | Landscaped terrace: 4.1m | No, similar to approved |
| D1 Landscaped Open Space and Bushland Setting | 40% | 18.9% (204m ²) | Unaltered | As approved |

Compliance Assessment

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|-----------------|------------------------------|-----------------------------|
| A.5 Objectives | Yes | Yes |
| B1 Wall Heights | Yes | Yes |
| | | |

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|----------------------------------------------------|------------------------------|-----------------------------|
| B3 Side Boundary Envelope | Yes | Yes |
| B5 Side Boundary Setbacks | Yes | Yes |
| B7 Front Boundary Setbacks | Yes | Yes |
| B9 Rear Boundary Setbacks | Yes | Yes |
| C2 Traffic, Access and Safety | Yes | Yes |
| C3 Parking Facilities | Yes | Yes |
| C4 Stormwater | Yes | Yes |
| C7 Excavation and Landfill | Yes | Yes |
| C8 Demolition and Construction | Yes | Yes |
| C9 Waste Management | 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 |
| D9 Building Bulk | Yes | Yes |
| D10 Building Colours and Materials | Yes | Yes |
| D11 Roofs | Yes | Yes |
| D12 Glare and Reflection | Yes | Yes |
| D14 Site Facilities | Yes | Yes |
| E1 Preservation of Trees or Bushland Vegetation | Yes | Yes |
| E2 Prescribed Vegetation | Yes | Yes |
| E4 Wildlife Corridors | Yes | Yes |
| E6 Retaining unique environmental features | Yes | Yes |
| E7 Development on land adjoining public open space | Yes | Yes |
| E10 Landslip Risk | Yes | Yes |

Detailed Assessment

D3 Noise

The proposed development includes a water feature on the upper terrace. In light of submissions received, the potential acoustic impact of the water feature is considered below.

Merit consideration

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

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

Comment:

The proposed development demonstrates appropriate design solutions to improve the urban environment by providing an attractive landscaped outlook for the site and adjoining properties.

- *To ensure that noise emission does not unreasonably diminish the amenity of the area or result in noise intrusion which would be unreasonable for occupants, users or visitors.*

Comment:

The submitted plans indicate the proposed water feature is to be static, thereby not causing any unreasonable acoustic impact to adjacent residences.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of 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.

D7 Views

Merit consideration

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

- *To allow for the reasonable sharing of views.*

Comment:

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

1. Nature of the views affected

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

Comment to Principle 1:

The view corridor that has the potential to be impacted by the proposed development is one enjoyed of Queenscliff and Manly beaches towards the south. The extent of the view is restricted to a narrow corridor between the existing buildings at 1A Greycliffe Street and 48A Queenscliff Road.

The image below indicates the approximate view corridor described above.



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 potential for greatest view impact of the proposed development is from the south facing balconies of units in the residential flat building at 1 Greycliffe Street across the rear boundary with 1A Greycliffe Street and the side boundary with 48A Queenscliff Road.

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:

It is expected that the proposed development will have minimal impact to the view corridor as most of the proposed vegetation on the terraces are low-lying. The majority of the proposed vegetation have a mature height of between 0.1m and 1.5m. The taller plants are located on the lowest terrace, which negates their impact on the view corridor.

The exception to this is the potential impact caused by the proposed Frangipani tree to be located on the middle terrace. The mature height of this tree is expected to be 4m, which has the greatest view impact potential. While the submitted landscape plan indicates there to be no impact on the view corridor enjoyed by the units at 1 Greycliffe Street, Council is not satisfied there will be no view impact. As such, a condition is included to require the deletion of the Frangipani tree.

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:

Subject to condition, the proposed development is not expected to have an unreasonable impact on any existing view corridors. The development is generally compliant with the relevant built form controls and incorporates a more desirable landscaping outcome for the site.

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

Comment:

The design of the proposed development is considered appropriate for the site and to improve the urban environment.

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

Comment:

No canopy trees are located within the view corridor.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

Section 7.12 contributions were levied on the Development 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

In summary, the proposed development relates to a landscaped portion of the site that was required to be revised by the Warringah Development Application Panel under the original development consent. Works relating to this portion of the site have been undertaken that are inconsistent with the development consent. The application seeks to legitimatise the as-built works and provide a revised landscaping solution for the area.

Subject to conditions of consent, the concerns raised in submissions received in objection to the proposal are considered to be reasonably mitigated, and no issue has been raised which would warrant the refusal of the proposal.

Accordingly, the application is recommended for approval.

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 approval to Modification Application No. Mod2020/0572 for Modification of Development Consent DA2011/0360 granted for alterations and additions to a Residential Flat Building on land at Lot CP SP 4129,48 A Queenscliff Road, QUEENSCLIFF, subject to the conditions printed below:

A. Add Condition No. 1D - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

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

a) Modification Approved Plans

| Architectural Plans - Endorsed with Council's stamp | | |
|------------------------------------------------------------|--------------|--------------------|
| Drawing No. | Dated | Prepared By |
| DA-002 Rev B | 28/10/2020 | Custance |
| DA-003 Rev C | 28/10/2020 | Custance |
| DA-007 Rev B | 28/10/2020 | Custance |
| DA-008 Rev B | 28/10/2020 | Custance |
| DA-009 Rev B | 28/10/2020 | Custance |
| DA-010 Rev B | 28/10/2020 | Custance |

| Reports / Documentation – All recommendations and requirements contained within: | | |
|-----------------------------------------------------------------------------------------|--------------|----------------------------------|
| Report No. / Page No. / Section No. | Dated | Prepared By |
| Fire Engineering Report Peer Review (Ref: 17084-R1-V2) | 22/11/2019 | Peter Gardner & Associates |
| Geotechnical Assessment (Ref: 2010-198) | January 2021 | Crozier Geotechnical Consultants |

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

c) The development is to be undertaken generally in accordance with the following:

| Landscape Plans | | |
|------------------------|--------------|-------------------------|
| Drawing No. | Dated | Prepared By |
| DA-100 Rev C | 26/10/2020 | Space Landscape Designs |

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.

B. Add Condition No. 22E - Landscape works completion to read as follows:

Landscaping is to be implemented in accordance with the approved Landscape Plan DA-100, revision C, prepared by Space Landscape Designs, inclusive of the following conditions:

i) the proposed Frangipani - *Plumeria acutifolia* shall be deleted from the works.

Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.