



STATEMENT OF ENVIRONMENTAL EFFECTS

**Redevelopment for a
Residential Flat Building**

**122 to 124 Queenscliff
Road, Queenscliff**

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1 Introduction

1.1 Description of the Proposed Development

This report is a Statement of Environmental Effects (SEE), pursuant to Section 4.15 of the Environmental Planning and Assessment Act 1979.

The development application seeks consent for demolition of existing structures and development of a residential flat building comprising 6 apartments and 12 car parking spaces within a basement level at 122 to 124 Queenscliff Road, Queenscliff.

The proposal is depicted in the accompanying architectural plans by ESS Architects. Key aspects of the proposal are noted as follows:

- Demolition of the existing structures.
- 2 to 3-storey building comprising 6, 3 bedroom apartments.
- A single basement level is proposed accommodating 12 car parking spaces (including 1 accessible space) plus 8 bicycle storage bays. A mechanical car lift is proposed for travel between the ground and basement levels.
- A garbage bin room is provided within the basement level.
- An internal lift for access to each floor level.
- Proposed landscaping works are depicted in the accompanying plans by Melissa Wilson Landscape Architects. Landscaping works include (but are not limited to) vegetation removal, excavation, retaining walls, 2 roof terraces, spas and plunge pools, various plantings within the building and the landscaped area around the building.
- Stormwater disposal has been designed to meet the relevant standards and Council policy as detailed in the accompanying documentation prepared by Van der Meer consulting engineers. Creation of a drainage easement is proposed to facilitate this to which there is agreement in-principle with the adjoining land owner.
- The car parking and vehicle access configuration has been designed to satisfy the appropriate standards. In this regard the proposal is accompanied and supported by a traffic and parking impact assessment by prepared by PDC traffic consultants.
- The application does not propose the removal of any designated trees as identified in the accompanying Arborist Report. The changes proposed are appropriately compensated for through the implementation of a new site landscape planting regime as depicted on the landscape plan.

1.2 Design statement

The following are excerpts from the architectural design statement that accompanies the application. They provide an understanding of the design philosophy of the proposed development.

1.2.1 Built form

'The built form is a rational response to the particular constraints and opportunities of the site/context and the functional needs of the proposed program.

The allowable envelope has been defined through the required setbacks, height plane and landscape requirements as well as taking into consideration the solar, shadow and view impacts of the adjacent neighbours.

The front setback is 6m which aligns with the setback of our north/western Neighbour at No.126 and is consistent within the streetscape. The rear setback is 9m for ground -1, 12m for ground and 15m for Level 01. All of the rear setbacks are greater than the DCP requirement. The side setbacks are 2.2m and 3.2m which comply with the DCP setbacks and is consistent within the streetscape. The proposed building height also sits below the required LEP building height plane of 8.5m. Landscape open space is provided to comply with the DCP control being 40% of the site area.

The allowable height in combination with the natural slope of the land allows for three storeys above ground with a single level of basement below. Within each level two apartments can be provided with a central core for vertical circulation.

Within the allowable envelope the massing has been further reduced to suit the site, context and program. A terracing typology has been adopted to provide high levels of amenity to the proposed apartments while responding to the natural slope of the land and by reducing any shadow impacts and mass/scale to the adjacent neighbours.

The ground -1 apartments have a 9m setback to the rear boundary which provide for large external landscaped spaces that face the primary views of surrounding Manly and the Manly coastline. The ground level apartments have an additional rear setback of 3.6m in order to provide large landscaped terraces. Level 01 is a further 3.6m setback also with large landscaped terraces with the roof a further 3.6m setback. The roof also has a landscaped terrace space completing the landscaped terracing of the built form.

The additional setbacks for each level of the project allow for solar access to the southern neighbour while also reducing the bulk mass and scale appearance from the adjacent neighbours and the greater context. The integrated greenery including the roof, each level of terrace, side boundaries and the lower level landscaped space at grade also helps integrate the project with the site and context.

From the streetscape the building appears as two separate buildings in order to match the forms of the two existing buildings. This is achieved through each apartment being separated by a void in the building that accommodates the car parking lift and also allows for the centralised pedestrian entrance. Due to the slope of the land the proposal appears as a single storey above the front fence/wall line. The proposed ridge lines are also lower than the existing ridge lines of the existing apartment buildings'.

Each internal space has been orientated towards the view or streetscape where possible. The increased side setbacks of 3.2m allow for windows to face

the side boundaries. where this occurs there is little to no overlooking or privacy issues’.

1.2.2 Landscape

‘The landscape design works have been developed in collaboration with the consultant team and aim to respond to the architectural form and character being developed by ESS Architects. The planting palette incorporates a mix of exotic and native species. As there are a number of different microclimates created within the site and around the building the planting palette varies in response to this.

When you enter the building the proposed site frontage and entry comprise two landscape courtyards below street level with a large signature tree, *Brachychiton acerifolius* in each to create a sense of entry and scale, screen planting along the Northern boundary of *Acmena ‘Firescreen’* and mixed planting of natives that will tolerate sun and shade including, *Asplenium australasicum*, *Alocasia macrorrhiza*, *Blechnum sp.*, *Macrozamia communis*. Each courtyard garden will contain a mixed understorey of different ground cover and grass species, *Dianella Caerulea*, *Lomandra ‘Shara’* and *Viola hederacea*. To create a sense of openness and also enable the courtyards to be used there will be a small open green area of native groundcover, *Dichondra repens*.

On the lower ground level the Southern rear gardens and pool areas contains a level lawn area off the main living space with a stepping stone path leading to a small paved area for outdoor entertaining. The lower level garden are full of low native grass and shrub species such as *Lomandra ‘Shara’*, *Isolepis nodosa* and a few drought tolerant exotic species including *Aloe sp.* that will be tall enough to create a sense of enclose but not block views either from the proposed building or neighbours buildings either side. The side passages include taller screening tree and palm species such as *Banksia integrifolia*, *Elaeocarpus reticulatus*, and *Livistona australis* that will help to screen the building give a sense of scale and are not in a position where they will impede neighbouring views.

Planters on the northern and southern terrace and also the ground level contain low-maintenance, low-water-use plant species such as *Aloe ‘Bush Baby Yellow’*, *Lomandra ‘Shara’*, *Isolepis nodosa* and *Westringia ‘MUNDI’*. Plants such as *Goodenia ovata* and *Solandra maxima*, *Rosmarinus sp.* will trail over the terrace planters so the building will be draped in plants. The roof gardens will be filled with a similar mix of native species as the lower level planters creating a sense that the garden is cascading over the building.

Generally the approach to the landscape is to create a lush and varied garden setting for the proposed new building using a variety of tree, shrub, grass and groundcover species that are both appropriate to the coastal location and to the different garden spaces and uses’.

1.2.3 Amenity

‘The built form has been designed to enhance the amenity of the occupants of the proposed dwellings without adversely affecting the amenity of the adjacent neighbouring properties.

The internal layouts of the apartments have been designed in order to maximise amenity. The proposed planning provides good levels of solar access and good passive cross ventilation to each apartment. The orientation of the apartments allows for access to views, solar access and ventilation while also allowing privacy to neighbouring buildings.

Corridor space has been minimised and all areas including bedrooms, bathrooms and living areas have been designed to take advantage of the sites amenity.

All apartments exceed minimum areas and dimensions.

Full kitchens are provided with storage and sufficient bench areas + fixtures for food preparation, cooking and washing up. Each unit also has access to a full sized bathroom and/or ensuites. Laundry areas are provided with plenty of storage.

Landscape areas with good deep soil planting has been provided along all boundaries that serve to give amenity to residents whilst providing further privacy screening and blending the building into the surrounding landscape'.



Render A – DA front elevation character (source: architectural render)



Render B – DA rear elevation – garden apartment character (source: architectural render)

1.3 Pre-lodgement Meeting PLM 2020/0164 Aug 2020

A Pre-DA lodgement submission was made to Council in relation to proposed development of the site. The application has been prepared in response to the feedback received from Council. The following design changes and information responses are noted:

- Building height has been reduced to meet the height of buildings development standard and is now lower than the existing roof ridges. Level 02 (the previous upper level) has been deleted and replaced with a heavily recessed open roof terrace that incorporates increased boundary setbacks.
- Dwelling density: the proposed number of dwellings is reduced from 7 to 6.
- Rear setbacks have been increased and exceed the minimum DCP requirement.
- Side setbacks have been increased and meet / exceed the minimum DCP requirements.
- Regard has been had to the comments of Council's Urban Designer, including establishing a north/south visual 'break' through the centre of the development. A break is provided in the middle of the proposed building frontage. Landscaping has been incorporated within a recess within the front facade with elevated landscape planting incorporated within the centre of the rear of the building.
- Landscaped open space is increased (from 33% / 317m² to 40%) and is compliant with the DCP. The landscape area includes two metre landscape 'corridors' along the sides of the proposed building. Areas are proposed to the perimeter of the building and integrated within the building structure. The Landscaped areas include adequate areas capable of supporting an appropriate range of vegetation types and sizes.
- Privacy has been addressed in various ways but, in relation to the eastern and western adjoining properties, principally through increased side setbacks, minimal side facing openings, orientation of the proposed dwellings and appropriate landscape treatments. In relation to properties to the north and south, the significant level difference and separation avoids any unreasonable privacy impact.
- The building has been changed to address streetscape and building bulk considerations. The architectural treatment includes horizontal articulation including a low-profile form that is compatible with the streetscape presentation of buildings on the southern side of Queenscliff Rd and appears smaller in bulk than the existing buildings. An architectural design statement accompanies the application providing further information regarding the design philosophy.
- Historical approvals and use history - existing use rights have been established for both properties 122 and 124 Queenscliff Road as established by the approval of the DA2021/1611 on 8 November 2021 and as addressed further within section 4.2 this report.

In these ways the DA has addressed the issues raised by Council to the Pre-DA application.

1.4 Statement of Environmental Effects

This Statement of Environmental Effects (SEE) is prepared in response to Section 4.15 of the Environmental Planning and Assessment Act 1979. The proposal has been considered under the relevant provisions of Section 4.15 of the Environmental Planning and Assessment Act 1979.

In preparation of this document, consideration has been given to the following:

- Environmental Planning and Assessment Act, 1979
- Local Environmental Plan
- Relevant State Environmental Planning Policies
- Development Control Plan

The proposal is permissible and generally in conformity with the relevant provisions of the above planning considerations.

Overall, it is assessed that the proposed development is satisfactory, and the development application may be approved by Council.

2 Site Analysis

2.1 Site and location description

The site is located at 122 and 124 Queenscliff Road, Queenscliff and legally described as Lot 6 (122 Queenscliff Rd) and Lot 5 in Deposited Plan 16941 (124 Queenscliff Rd). The combined sites have an area of 950.6m².

The site is rectangular in shape with a total northern frontage of 25.98m to Queenscliff Road, eastern and western side boundaries of approximately 36.545m and a southern (rear) boundary of approx. 26m.

The site is located on the southern side of Queenscliff Road. The topography slopes away from Queenscliff Road with a level difference of approximately 5m between the front and rear the boundaries.

The land at 122 Queenscliff Road contains a two to three storey brick building with tile roof containing flats, two dwellings, one above the other. There is no vehicle access or car parking on the site.

The land at 124 Queenscliff Road contains a two to three storey brick building with tile roof containing flats, being two dwellings, one above the other. Car parking for two vehicles is provided within the lower ground level of the building accessed along the eastern side and entered from the southern / rear of the building.

Residential flat buildings are intermixed with dwelling houses on sloping topography within the local area that comprises the Queenscliff suburb.

Development to the south of the site fronts Aitken Avenue and is positioned on significantly lower topography.

The streetscape character is varied with a mix of residential housing types, building forms and variable building setbacks.

The location is characterised by sloping topography. The streetscape character comprises higher, visually prominent 4 storey flat buildings along the northern side of the road. Development along the southern side of the road is positioned below the street level and is more mixed comprising residential flat buildings, dwelling houses, mainly 2-3 storeys in height, but with some larger 4 to 5 storey flat buildings.

The figures on the following pages depict the character of the property and its existing development.



Figure 1 – Location of the site within its wider context (courtesy Google Maps)



Figure 2 – the development pattern within the local area to the site



Figure 3 – Alignment, orientation and spatial layout of the subject site and adjoining development (courtesy Northern Beaches Council)



Figure 3 – the character of the existing development upon the site



Figure 4 – the existing 2-3 storey character to the rear of 122 Queenscliff Rd



Figure 5 – 3 storey, rear setback, and landscape character of development to the east of the subject site



Figure 6 - existing development at 124 Queenscliff Rd as viewed from the south-east



Figure 7 - existing front setback character at 122 Queenscliff Rd



Figure 8 - existing front setback character at 124 Queenscliff Rd



Figure 9 - front and side setback character to the west of the subject site



Figure 10 - front fence character to the east of 122 Queenscliff Rd



Figure 11 - front fence character, adjoining to the east of 122 Queenscliff Rd



Figure 12 - side and front setback character to the east of 122 Queenscliff Rd

3 Environmental Assessment

3.1 Section 4.15 of the Environmental Planning & Assessment Act, 1979

The following section of the report assesses the proposed development having regard to the statutory planning framework and matters for consideration pursuant to Section 4.15 of the Environmental Planning & Assessment Act, 1979 as amended.

Under the provisions of the Environmental Planning and Assessment Act 1979 (the Act), the key applicable planning considerations, relevant to the assessment of the application are:

- State Environmental Planning Policies – as relevant
- Warringah Local Environmental Plan 2011
- Warringah Development Control Plan
- The application of the above plans and policies is discussed in the following section of this report.

The application has been assessed against the relevant heads of consideration under Section 4.15 of the Act; a summary of these matters are addressed within Section 7 of this report, and the town planning justifications are discussed below.

4 Section 4.15 (1)(i) the provisions of any environmental planning instrument

4.1 Warringah Local Environmental Plan 2011 – Zoning

The property is zoned R2 Low Density Residential under the Warringah Local Environmental Plan 2011 (LEP). The R3 medium density residential zone is opposite the site on the northern side of Queenscliff Rd.



Figure 13 – zone excerpt (Council's website)

The proposal constitutes demolition of existing structures (2 sperate buildings containing flats) and development of a residential flat building. The proposal is prohibited within the R2 zone but the property benefits from an existing use right as is addressed within section 4.2 below.

Clause 2.3(2) of the LEP requires the consent authority to 'have regard to the objectives for development in a zone' in relation to the proposal. The objectives of the zone are stated as follows:

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

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

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

The proposed development is consistent with the zone objectives as it will provide for the housing needs of the community within a residential environment of mixed character, within a landscaped setting, compatible with the surrounding development. The proposal is assessed as compatible and harmonious with its context as addressed further within this report.

Accordingly, the proposal has had sufficient regard to the zone objectives and there is no statutory impediment to the granting of consent.

4.2 Existing use rights and merit assessment

Existing Use Rights to a property apply under Division 4.11 of the Act and Part 5 of the Regulation. The proposal is accompanied and supported by a report from Shaw Lawyers that establishes the grounds upon which the property enjoys an existing use right. The report summarises its findings as follows:

1. *'Existing use rights are governed by the provisions under sections 4.65 - 4.70 (formerly s.106-109B) of the EPA Act and Part 5 of the Environmental Planning and Assessment Regulation 2000 (EPA Regulation).*
2. *An existing use right arises where a use that was lawfully commenced but subsequently becomes a prohibited use under a new local environmental plan or other environmental planning instrument.*

124 Queenscliff Road

3. *124 Queenscliff Road has the benefit of existing use rights as a building containing flats and that such existing use rights have not been abandoned.*
4. *In forming this opinion, we have considered the various planning controls and undertaken an analysis of the historical information available to us. We have also considered the recent Development Consent granted by the Council on 8 November 2021 (reference DA2021/1611). As part of approving that development, the Council considered and endorsed the proposition that the building had the benefit of the existing use rights for the following reasons:*
 - a. *the building was used for a lawful purpose immediately before the coming into force of an environmental planning instrument (in this case, the Warringah Local Environmental Plan 2011) which would, but for the existing use rights provisions, have the effect of prohibiting that use;*
 - b. *the use of the building was lawfully approved by Council in 1940, prior to the coming into force of the WLEP 2011;*
 - c. *the building has been used a residential building comprising two flats since its approval and has not changed its use since this time.*

122 Queenscliff Road

5. *Unlike 124 Queenscliff Road, the building on 122 Queenscliff Road was lawfully constructed at a time when it was not necessary to obtain*

development approval for the construction of the building on the land. We have formed the view that, in satisfaction of clause 4.65 of the EPA Act:

- a. the use was lawfully commenced in 1938;*
- b. residential flat buildings have been prohibited at the site since the commencement of WLEP 1985; and*
- c. the building was being used as a building containing flats immediately prior to the WLEP coming into force.*

6. Thus, the Properties have the benefit of existing use rights'.

The report concludes at 22 and 23:

'22. Council can be satisfied that the Properties have the benefit of existing use rights.

23. It is also lawful to apply existing use rights over the entire two lots in a way that would enable you to consolidate the lots and construct a single residential flat building over the consolidated lots. There have been a number of decisions that the existing use has extended to the whole of the land, and not been confined to part of it (see The Council of the City of Parramatta v Brickworks Limited [1972] HCA 21; (1972) 128 CLR 1; Mona Vale Pty Ltd v Pittwater Council [2003] NSWLEC 74; (2003) 124 LGERA 449, at [20]-[22], and Romeo v Pittwater Council [2006] NSWLEC 645; (2006) 149 LGERA 107, at [20], and [31]-[32])'.

Based on the above, it is concluded that the site accommodates two authorised residential flat buildings, that benefit from existing use rights.

In these circumstances the replacement of the existing flats with new residential flat buildings is permissible with development consent.

the proposal involves a single residential flat building in place of two existing flat buildings. There are no exceptions to development standards proposed.

4.3 Existing use rights and merit assessment

The principles to be considered is a merit assessment involving existing use rights were established by Senior Commissioner Roseth in Fodor Investments v Hornsby Shire Council [2005] NSWLEC 71.

As stated in the Planning Principle, the current planning controls are not relevant to the site, but they provide guidance in assessing the proposed development's compatibility and physical impacts. The Planning Principle is repeated and responded to below (emphasis added as relevant to the subject matter).

4.3.1 Question 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 assessment.

Assessment of the proposed developments' compliance with the planning controls is documented within Sections 4.3 to 5.3 of this report. Assessment is made against:

- The character (e.g. scale, height, setbacks) of the existing development and the proposed development
- Warringah LEP 2011
- SEPP 65 and its accompanying Apartment Design Guide.
- Warringah DCP
- Other relevant NSW Land and Environment Court planning principles

Assessment of the existing developments' compliance with some of the key local built form controls are also addressed herein.

The proposed development complies with the height of buildings development standard. No FSR standard is applicable to the site or any residential zoned land under the LEP. Rather, the key determinants of the development extent on the site are established through the application of the following suite of controls.

- Height of the building (LEP)
- Landscaped open space (DCP - D1)
- Boundary setbacks (DCP - B5, B7, B9)
- Wall height (DCP - B1)
- Side boundary envelope (DCP - B5)
- Car parking (DCP - C2, C3, H1)

The proposed development complies with the landscaped area and side and rear setback controls. Furthermore, the proposal achieves a high level of compliance with the other numerical built form controls and satisfies the objectives of those controls. The detailed way that the proposal responds to the built form controls is addressed elsewhere within Section 4 (LEP and SEPPs) and Section 5 (DCP) of this report.

The proposal involves demolition of the existing buildings and a contemporary redevelopment that is responsive to the site conditions, sloping topography, street frontage character, orientation of the block, existing building envelope/height/scale, building setback pattern, and planning control parameters.

The proposed development relates appropriately to surrounding land. In terms of the current local planning controls, the following aspects are noted:

- Height of the building – the roofs of the existing buildings exceed the maximum height whereas the proposed building is compliant.
- Landscaped open space (D1) – As shown within figure 15, the existing Landscaped open space is a compliant 67% on 122 Queenscliff Road (noting that it has no driveway or onsite parking and 14% on 124 Queenscliff Road. This comprises a combined total 385.3 or 40% but which is unevenly, and therefore poorly, distributed. The proposed development offers 40% of landscaping which is evenly distributed.

- Car parking - the existing development is significantly non-compliant whereas the proposal is compliant. There is currently 2 car parking spaces within the existing development serving at 124 Queenscliff Rd which accommodates 2, 3 bedroom dwellings; there is no parking on 122 Queenscliff Rd. Under Appendix 1 of the DCP the existing development on the site generates parking demand for 7 resident parking spaces and 1 visitor space meaning that the existing development is deficient in carparking by 6 spaces in a location where on street parking is in high demand and low supply.
- Wall height (B1) - modest exceedances are existing and proposed.
- Side boundary envelope (B3) - modest exceedances are existing and proposed.
- Side boundary setbacks (B5) - generally increased by the proposal and compliant with the DCP.
- Front boundary setback (B7) - there is a minor exception to the front setback, addressed within section 5.
- Rear boundary setbacks (B9) - existing non-compliant with the DCP in relation to the driveway on 124 Queenscliff Rd. The proposal meets and exceeds the minimum setback.

Question 2

- What is the relevance of the building in which the existing 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.~~

In response:

The existing building is proposed for demolition and an increase in the development extent is proposed.

The land presents an opportunity for increased development and housing in a manner that satisfies the objectives of the built form controls, is compatible with the character of the area, and that is in the public interest. The land offers high residential amenity close to transport services and recreational opportunities.

Such will optimise the residential use of the land whilst maintaining compatibility with the mixed, but prevailing medium density character of the location. Furthermore, guidance is taken from the planning principle established in *Project Venture v Pittwater* and the recent court cases that are instructional in relation to the guidance provided by the existing character (addressed below).

Compatibility with the character of the area

In terms of compatibility with the character of the area, three recent court matters have considered the term 'desired future character' and the role that existing character plays in the assessment of compatibility. These cases include:

- *Big Property Pty Ltd v Randwick City Council* [2021] (Big Property),

- HPG Mosman Projects Pty Ltd v Mosman Municipal Council [2021] (HPG),
- SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112 and Woollahra Municipal Council v SJD DB2 Pty Limited [2020] NSWLEC 115 (SJD)

Guidance is therefore taken from these cases.

In the SJD appeal, Justice Preston found that the local environmental plan and other approved development that contravenes the development standard are both relevant to determining desired future character.

In Big Property, Commissioner O'Neill, referencing the SJD cases found that: development standards for building envelopes are frequently generic standards which do not account for existing and approved development or the nuances of an individual site. The Commissioner expressly referenced SJD, and stated that:

"The presumption that the development standards that control building envelopes determine the desired future character of an area is based upon a false notion that those building envelopes represent, or are derived from, a fixed three-dimensional masterplan of building envelopes for the area and the realisation of that masterplan will achieve the desired urban character. Although development standards for building envelopes are mostly based on comprehensive studies and strategic plans, they are frequently generic, as demonstrated by the large areas of a single colour representing a single standard on Local Environmental Plan maps, and they reflect the zoning map. As generic standards, they do not necessarily account for existing and approved development, site amalgamations, the location of heritage items or the nuances of an individual site. Nor can they account for provisions under other EPLs that incentivise particular development with GFA bonuses or other mechanisms that intensify development. All these factors push the ultimate contest for evaluating and determining a building envelope for a specific use on a site to the development application stage. The application of the compulsory provisions of cl 4.6 further erodes the relationship between numeric standards for building envelopes and the realised built character of a locality" [at 44].

Furthermore, Commissioner O'Neill stated at [57]:

"The desired future character of the locality can be evaluated by reference to matters other than the development standards that determine the building envelope for the site, including the existing development that forms the built context of the site (Woollahra Municipal Council v SJD DB2 Pty Limited [2020] NSWLEC 115 (SJD DB2) at [54]). The desired future character of an area is not determined and fixed by the applicable development standards for height and FSR, because they do not, alone, fix the realised building envelope for a site. The application of the compulsory provisions of cl 4.6 further erodes the relationship between numeric standards for building envelopes and the realised built character of a locality (SJD DB2 at [62]-[63]). Development standards that determine building envelopes can only contribute to shaping the character of the locality (SJD DB2 at [53]-[54] and [59]-[60]).

Taking guidance from the above, I understand:

- that development standards for building envelopes are frequently generic standards which do not account for existing and approved development and the circumstances of an individual site.

- the built form controls in the subject matter does not account for existing and approved development within the site's visual catchment where there is a mix of residential building forms including flat buildings that are 4 storeys and exceed the applicable height standard.
- development standards that determine building envelopes can only contribute to shaping the character of the locality and the existing character should also be considered.
- the height and form of older flat buildings and the mix of residential forms are relevant considerations.
- the landscaped character of the development within the visual catchment is relevant considerations, the majority of which have less landscaped area and plants than the proposal.
- the setback character of the development within the visual catchment are relevant considerations.

Existing and future development character

There is a prevailing medium density housing character within the location. The casual observer is likely to see the dominant visual character comprising flat buildings and other medium density housing forms.

The area's future character is unlikely to significantly change because it is already highly built-up and established with 3-to-4 storey flat buildings and a mix of other residential housing forms. The prevailing local planning controls do not incentivise or facilitate any significant changes to the existing built form. Therefore, the existing character is relevant to consider.

The dominant characteristics of the existing development within the local context are summarised as follows.

North side of Queenscliff Road -

- 3 or 4 storeys.
- Brick with pitched tile roofs.
- Garages at ground level.
- Concrete driveways along one side (with greater side setback) and sometimes in front of the building.
- Pedestrian pathways and some garden area along the other side (lesser side setback).
- Protruding balconies.
- Less landscaped area.
- There are some more recent examples of residential flat buildings intermixed. They typically comprise of basement car parking, flat roofs, increased landscape planting.

South side of Queenscliff Road -

Despite the site's R2 zoning, the local area comprising the R2 zone (to the south of Queenscliff Road) within the site's visual catchment is not homogenously characterised with low density dwelling houses, but rather it contains a mix of housing types including:

- Flats like those contained on the subject site.
- Residential Flat Buildings at: 112, 114, 118 (3 dwellings), 130, 132 Queenscliff Rd; 24 Aitken Ave – adjoining the rear of the site. Dwelling houses of 2-3 storeys/levels.
- 2 storeys to the street, 2 to 3 storeys to the rear, with some larger 4-5 storey flat buildings.
- Brick with pitched tile roofs.
- Garages at ground level.
- Concrete driveways along one side.
- Less landscaped area on higher density sites and more landscaped area on lower density sites.
- Medium to large established trees mainly within the rear yards contribute to the treed character of the location (figure 5).
- South sloping rear private open spaces which include, yard areas, gardens, dividing fences, some perimeter landscaping, and in several instances swimming pools.

Taking guidance from both the planning controls applicable to the site and the existing development character, the proposal will be compatible with the development context and achieve appropriate amenity outcomes to neighbouring properties.

A reasonable scale, extent, and intensity of development is proposed as demonstrated by the proposal's compliance with the controls that form the key determinants of the development extent within the R2 zone.

The scale, extent and intensity of the proposed development is assessed as being within the capacity of the site and compatible with the character and pattern of development within the local area.

Question 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.

In response:

The impacts on adjoining land have been assessed and this is documented within sections 4 and 5 of this report. In summary it is noted that:

- Privacy is achieved as addressed within section 4.6.3.
- Shading impact on adjoining properties is reasonable as addressed within section 4.6.4.
- View sharing is achieved as addressed within section 5.3.
- The proposed building form will not be visually intrusive or inappropriate as addressed within the architectural design statement and section 5.3.

Question 4

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.

The proposed development achieves high internal amenity noting the following:

- Overall, the proposed development offers higher internal amenity than the existing residential dwellings up on the property. Such an outcome is consistent with the first objective of the R2 zone which is to provide for the housing needs of the community and satisfies the planning principle.

For the reasons outlined above, and contained elsewhere within this report, the proposal is assessed as satisfying the provisions of the planning principle.

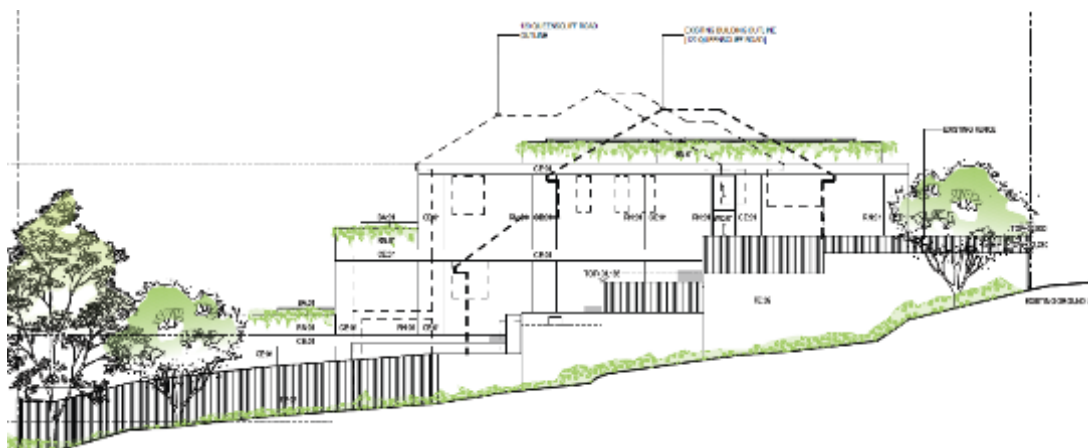


Figure 14 – existing and proposed building outlines (eastern elevation) the proposed building is lower than the roof ridge heights of the existing building

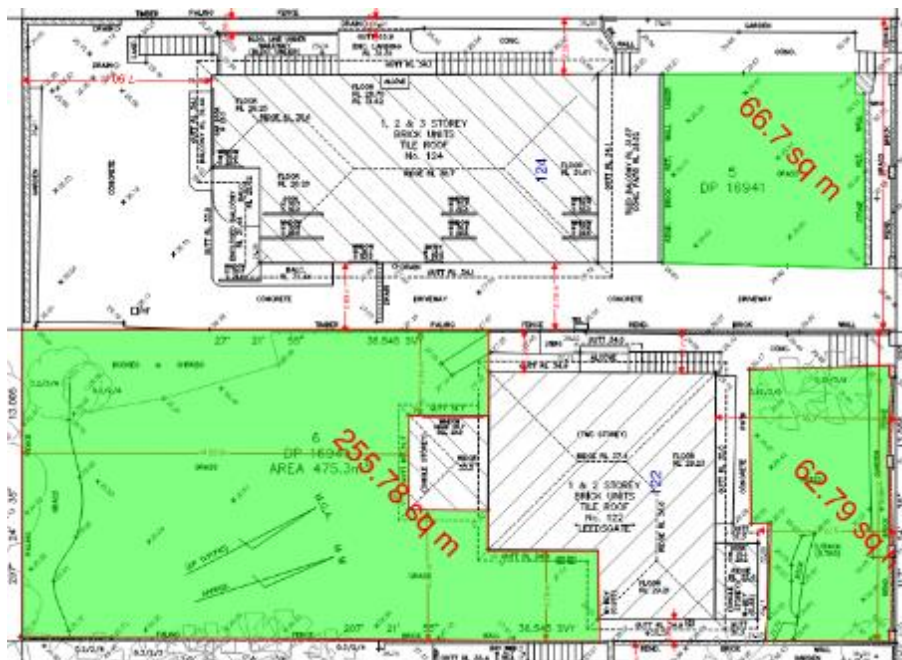


Figure 15 – the existing extent of landscaped open space area on the site



Figure 16 – rear elevation of the proposal within the local development pattern (source: architectural plan set, see full size image within)

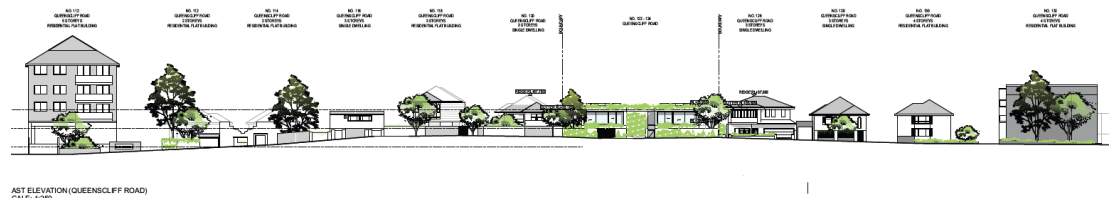


Figure 17 – front elevation of the proposal within the local development pattern (source: architectural plan set, see full size Image within)

4.4 Other relevant provisions of the LEP

Other provisions of the LEP that are relevant to the assessment of the proposal are noted and responded to as follows:

LEP Provision	Response	Complies
Part 4 of LEP – Principal Development Standards		
LEP Clause 4.1 Minimum subdivision lot size	NA	NA
LEP Clause 4.3 – Height of Buildings	As demonstrated on the accompanying architectural plans the proposal satisfies the Height of Buildings standard.	Yes
LEP Clause 4.4 – Floor space ratio	NA	NA
LEP Clause 4.6 – Exceptions to development standards	NA	NA
Part 5 of LEP – Miscellaneous Provisions		
LEP Clause 5.10 Heritage Conservation	NA	NA
LEP Clause 5.21 Flood planning	Council's maps do not identify the site as being flood affected. Based on the above the proposed development satisfies the considerations within clause 5.21 and the site is suitable for the development proposed.	Yes
Part 6 of LEP – Additional Local Provisions		
LEP Clause 6.1 Acid sulfate soils	Excavation for footings is proposed below the existing site levels (being at approx. AHD RL 24) which is above AHD RL 5.00.	Yes
LEP Clause 6.2 Earthworks	Excavation is proposed below the existing site levels. The siting and design of the proposed development has considered the matters within clause 6.2(3) of the LEP and results in appropriate outcomes against these criteria. The proposal is accompanied by a geotechnical assessment that concludes that the proposal is appropriate for the site. Based on the above the proposed development satisfies the considerations within clause 6.2 and the site is suitable for the development proposed.	Yes
LEP Clause 6.4 Development on	The siting and design of the proposed	Yes

SECTION 4.15 (1)(I) THE PROVISIONS OF ANY ENVIRONMENTAL PLANNING INSTRUMENT

LEP Provision	Response	Complies
sloping land	<p>development has considered the matters within clause 6.4(3) of the LEP and results in appropriate outcomes against these criteria.</p> <p>Furthermore, the proposal is accompanied by a geotechnical assessment that concludes that the proposal is appropriate for the site.</p> <p>Based on the above the proposed development satisfies the considerations within clause 6.4 and the site is suitable for the development proposed.</p>	

4.5 State Environmental Planning Policy

4.5.1 State Environmental Planning Policy - BASIX

The proposed development is BASIX affected development as prescribed. A BASIX assessment report accompanies the application and satisfies the SEPP in terms of the DA assessment.

4.5.2 The State Environmental Planning Policy (Biodiversity and Conservation) 2021

- The following aspects of The State Environmental Planning Policy (Biodiversity and Conservation) 2021 are applicable to the land and the proposed development:
- Chapter 2 - Vegetation in Non-Rural Areas

This matter is addressed below

Chapter 2 - Vegetation in Non-Rural Areas

Vegetation is prescribed under Warringah DCP for the purposes of SEPP (Vegetation in Non-Rural Areas) 2017. The proposal does not involve the removal of any designated trees and therefore the provisions of this policy are satisfied by the proposal.

4.5.3 State Environmental Planning Policy (Resilience and Hazards) 2021

- The following aspects of State Environmental Planning Policy (Resilience and Hazards) 2021 - are applicable to the land and the proposed development:
- Chapter 2 - Coastal Management
- Chapter 4 - Remediation of Land
- These matters are addressed below.

Chapter 2 - Coastal Management

The Coastal Management Act 2016 establishes a strategic planning framework and objectives for land use planning in relation to designated coastal areas within NSW. The Act is supported by Chapter 2 Coastal Management under the Resilience and Hazards SEPP. It is applicable because the site is within the designated:

- Clause 13 coastal environment area
- Clause 14 coastal use area

As relevant to these affectations, the aims of the SEPP within clauses 13 and 14 addressed below. In summary, the proposal is assessed as being consistent with the aims and objectives of the SEPP.

Clause 13 - Development on land within the coastal environment area

The provisions of clause 13 *Development on land within the coastal environment area* are addressed as follows:

13 Development on land within the coastal environment area	Response
(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:	
(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,	<ul style="list-style-type: none"> ▪ The land and its development for residential purposes is established on the site. The extent of proposed works is supported by the appropriate range of technical studies. The proposal is assessed as satisfactory in relation to this consideration.
(b) coastal environmental values and natural coastal processes,	<ul style="list-style-type: none"> ▪ The land and its development for residential purposes is established on the site. The extent of proposed works is supported by the appropriate range of technical studies. The proposal is assessed as satisfactory in relation to this consideration.
(c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,	<ul style="list-style-type: none"> ▪ The subject site is established for residential purposes. Development is established on the site. ▪ Provision of appropriate stormwater management has been made for the site. ▪ The proposal does not relate to sensitive coastal lakes identified in Schedule 1 ▪ The proposal is assessed as satisfactory in relation to this consideration.
(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,	<ul style="list-style-type: none"> ▪ The subject site is established for residential purposes. The proposal is assessed as satisfactory in relation to this consideration.
(e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,	<ul style="list-style-type: none"> ▪ The proposal will not adversely impact upon existing access provisions. The proposal is assessed as satisfactory in relation to this consideration.
(f) Aboriginal cultural heritage, practices and places,	<ul style="list-style-type: none"> ▪ The proposal is not known to be located in a place of Aboriginal cultural heritage significance. The proposal is assessed as satisfactory in relation to this consideration.
(g) the use of the surf zone	<ul style="list-style-type: none"> ▪ Not relevant to the assessment of the proposal.
(2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:	
(a) to the development is designed, sited and will be managed to avoid an adverse impact	<ul style="list-style-type: none"> ▪ Responses have been made above in relation to the considerations within

13 Development on land within the coastal environment area	Response
<i>referred to in subclause (1), or</i>	<p>subclause (1).</p> <ul style="list-style-type: none"> The proposal is assessed as satisfactory in relation to these considerations.
<i>(b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or</i>	<ul style="list-style-type: none"> The proposal is assessed as satisfactory in relation to this consideration.
<i>(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.</i>	<ul style="list-style-type: none"> Aside from compliance with relevant codes, standard conditions of consent, and Australian Standards there are no other mitigation measures foreseen to be needed to address coastal impacts. The proposal is assessed as satisfactory in relation to this consideration.
(3) This clause does not apply to land within the Foreshores and Waterways Area within the meaning of <u>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</u> .	<ul style="list-style-type: none"> Noted; not applicable.

Clause 14 Development on land within the coastal use area

The provisions of clause 14 *Development on land within the coastal environment area* are addressed as follows:

14 Development on land within the coastal use area	Response
<p>(1) <i>Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:</i></p> <p>(a) <i>has considered whether the proposed development is likely to cause an adverse impact on the following:</i></p>	
<p>(i) <i>existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,</i></p>	<ul style="list-style-type: none"> The proposal will not adversely impact upon existing access provisions. The proposal is assessed as satisfactory in relation to this consideration.
<p>(ii) <i>overshadowing, wind funnelling and the loss of views from public places to foreshores,</i></p>	<ul style="list-style-type: none"> The proposal will not result in any significant or excessive overshadowing of the coastal foreshore. Nor will result in significant loss of views from a public place to the coastal foreshore.
<p>(iii) <i>the visual amenity and scenic qualities of the coast, including coastal headlands,</i></p>	<ul style="list-style-type: none"> The proposal will not result in any significant additional visual impact on the coastal

14 Development on land within the coastal use area	Response
	<p>foreshore. Nor will result in significant loss of views from a public place to the coastal foreshore.</p> <ul style="list-style-type: none"> ▪ The proposal is assessed as satisfactory in relation to this consideration.
<i>(iv) Aboriginal cultural heritage, practices and places, cultural and built environment heritage, and is satisfied that:</i>	<ul style="list-style-type: none"> ▪ The proposal will not impact this matter for consideration. The proposal is assessed as satisfactory in relation to this consideration.
<i>(i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or</i>	<ul style="list-style-type: none"> ▪ The proposal is not known to be located in a place of Aboriginal cultural heritage significance. ▪ The proposal is assessed as satisfactory in relation to this consideration.
<i>(ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or</i>	<ul style="list-style-type: none"> ▪ See above response.
<i>(iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and</i>	<ul style="list-style-type: none"> ▪ See above response.
<i>(c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.</i>	<ul style="list-style-type: none"> ▪ The subject site is established for residential purposes. ▪ The bulk, scale, and size of the proposed development is assessed as being compatible with the character and pattern of development within the local area. ▪ The proposal will not result in any significant additional visual impact on the coastal foreshore. Nor will result in significant loss of views from a public place to the coastal foreshore. ▪ The proposal is assessed as satisfactory in relation to this consideration.
<i>(2) This clause does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.</i>	<ul style="list-style-type: none"> ▪ Noted; not applicable.

Chapter 4 – Remediation of Land

Chapter 4 Remediation of Land under the Resilience and Hazards SEPP applies to all land and aims to provide for a State-wide planning approach to the remediation of

contaminated land. Clause 7 of SEPP 55 requires Council to consider whether land is contaminated prior to granting consent to carrying out of any development on that land. In this regard, the likelihood of encountering contaminated soils on the subject site is low given the following:

- Council's records indicate that site has only been used for residential uses.
- The subject site and surrounding land are not currently zoned to allow for any uses or activities listed in Table 1 of the contaminated land planning guidelines of SEPP 55.
- The subject site does not constitute land declared to be an investigation area by a declaration of force under Division 2 of Part 3 of the Contaminated Land Management Act 1997.

Given the above factors no further investigation of land contamination is warranted. The site is suitable in its present state for the proposed residential development. Therefore, pursuant to the provisions of SEPP 55, Council can consent to the carrying out of development on the land.

4.6 State Environmental Planning Policy 65 Design Quality of Residential Apartment Development

State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65) aims to improve the design quality of residential flat developments. As per the definition of a 'Residential Flat Building' and the provisions of Clause 4, the provisions of SEPP 65 are applicable to the proposed development.

Key provisions of the policy are repeated and responded to below.

Clause 28(2) of SEPP 65 states:

(2) In determining a development application for consent to carry out development to which this Policy applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):

(a) the advice (if any) obtained from the design review panel, and

(b) the design quality of the development when evaluated in accordance with the design quality principles, and

(c) the Apartment Design Guide.

Response -

Clause 28(2)(b) requires any development application for residential flat development to be assessed against the 9 design quality principles contained within Schedule 1. The proposal's compliance with the principles is detailed within the accompanying Design Verification Statement by ESS Architects.

Pursuant to clause 28(2)(c), in determining a development application for a residential flat building the consent authority is required to take into consideration the Apartment Design Guide. In this regard the accompanying Design Verification Statement by ESS Architects addresses the ADG.

4.6.1 Standards of the SEPP that cannot be used to refuse development consent

Clause 30 of SEPP 65 establishes standards that cannot be used as grounds to refuse development consent if the prescribed design criteria is met. Clause 30 is repeated and responded to below:

- Clause 30 (1)

(1) If an application for the modification of a development consent or a development application for the carrying out of development to which this Policy applies satisfies the following design criteria, the consent authority must not refuse the application because of those matters:

(a) if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,

(b) if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide,

(c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.

Note. *The Building Code of Australia specifies minimum ceiling heights for residential flat buildings.*

In response -

- In response to 30(1)(b), the internal area of the apartments is notated upon the architectural plans with none of the apartments having floor areas below the minimum standards.
- In response to 30(1)(c), the floor to ceiling heights are shown in sections on the architectural plans at a minimum of 2700mm (3.1m floor to floor allowing for the floor slab and services).
- Based on the above, there are no grounds to refuse the development application in response to matters contained within Cl 30 (1) (a), (b) or (c).
- Clause 30(2)

(2) Development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to:

(a) the design quality principles, and

(b) the objectives specified in the Apartment Design Guide for the relevant design criteria.

In response -

The application is accompanied and supported by an ADG assessment report prepared by ESS Architects. It demonstrates that the proposal has given adequate regard to clause 30(2) (a) and (b) of the Policy.

4.6.2 Key amenity considerations

Clause 6A of SEPP 65, establishes that the Apartment Design Guide is to be used to assess the prescribed criteria and the development control plan has no effect with regard to these matters. Clause 6A is repeated and responded to below:

6A Development control plans cannot be inconsistent with Apartment Design Guide

(1) This clause applies in respect of the objectives, design criteria and design guidance set out in Parts 3 and 4 of the Apartment Design Guide for the following—

- (a) visual privacy,*
- (b) solar and daylight access,*
- (c) common circulation and spaces,*
- (d) apartment size and layout,*
- (e) ceiling heights,*
- (f) private open space and balconies,*
- (g) natural ventilation,*
- (h) storage.*

(2) If a development control plan contains provisions that specify requirements, standards or controls in relation to a matter to which this clause applies, those provisions are of no effect.

(3) This clause applies regardless of when the development control plan was made.

Assessment of the proposed development with regards to visual privacy, solar and daylight access is provided within the sections below. Other matters are addressed within the accompanying design verification statement.

4.6.3 Privacy

Privacy has been considered in the proposed design having regard to the provisions under 3F of the ADG.

It is noted that existing dwelling houses adjoin both the eastern and western sides of the property.

Guidance is also taken from the existing setback and separation character on the subject site and the surrounding properties. It is noted that there is no consistent pattern, and setbacks vary along with the different residential building forms in the location.

The following features of the design, the ways in which it addresses privacy, and its relationship with adjoining land are noted:

- Appropriate building setbacks are provided to the eastern, western, and southern boundaries noting:
 - 2.2m to 3.2m side setbacks are provided to the east and west
 - 9m, 12m and 15m setbacks are provided to the south (rear)
- The existing development pattern is orientated north to south with the principal private open spaces to the south to take advantage of the amenity and views. The proposed dwellings follow this pattern and are orientated north to south with their outlook and principal private open spaces (balconies and terraces) to the south to take advantage of the amenity and views. In this way the proposed development is

oriented to optimise visual privacy between buildings on site and for neighbouring buildings.

- With the coastal views located to the east, and district views extending to the west, there is an established pattern where there is degree of overlooking experienced between properties in order to enjoy the view outlook. In this regard it is observed that there is generally an absence of privacy screens and therefore a general acceptance that view access is favoured over complete privacy.
- Bedrooms are located on the eastern and western sides at the southern end (rear) of each dwelling, with the living areas inset significantly from the side boundaries. This increases separation between the proposed living areas and those within adjoining properties. Furthermore, passive habitable rooms and utility rooms (mainly bedrooms and bathrooms) are located on each side of the dwelling / building floorplates, significantly increasing the separation between the proposed living spaces on the site and those adjoining.
- The proposed building adopts a terraced form with the rear setbacks increasing as the height of the building rises. The proposed apartments being of on different levels have increased and appropriate visual separation distances by virtue of these increased rear setbacks when viewed obliquely from the adjacent private open spaces.
- Roof terrace – privacy is addressed by the position of the access stairs, limited space for congregation near the property interfaces, separation from the adjacent private open spaces, and the perimeter planter that will limit downward sightlines.
- Minimal openings are proposed within the side facing elevations of the proposed development. the design will obtain most of its ventilation and solar access from north and south facing openings.

In summary:

- It is assessed that the proposal is satisfactory and appropriately designed to reasonably address privacy considerations.
- The proposed development provides adequate separation distances to the boundary and the adjoining private open spaces in accordance with the ADG's design criteria.
- The proposal will not unreasonably affect the visual privacy of the neighbouring properties and will achieve an appropriate privacy outcome.

4.6.4 Solar access and shadowing of adjoining land

Supporting information

The proposal is accompanied by shadow diagrams demonstrating the extent of proposed shading to adjoining land. This information includes a solar access assessment by ESS Architects, shadow plans in both elevation and plan view, and view-from-the sun diagrams in accordance with the ADG. The information enables assessment of solar access into the proposed dwellings and adjoining properties.

Solar access to the proposed dwellings is also addressed by the project architect in the accompanying design statement.

Solar access to the proposed development

The ADG establishes that 70% of apartments private open space (12 square metres for a 3-bedroom dwelling) shall receive six square metres of direct sunlight for two hours

between 9:00 AM and 3:00 PM on the 22nd of June. Drawing number A2705 confirms that four of the six apartments will receive the requisite amount of solar access. Two apartments (G.02 and G.-02) receive 1 hour of sunlight. This is 67% of the total number of apartments which is a minor variation to compliance with the control.

Site and development circumstances

The topography slopes from the north to the south, which generally accentuates (lengthens) the shadows that are cast by the existing / proposed development.

The existing development pattern on the southern side of Queenscliff Rd, on and adjacent to the site, comprises 2 to 3 storey buildings with private open spaces and gardens to the rear, noting that Queenscliff Rd is reasonably busy and coastal and district views are available to the south.

Solid front fences are common along the street. These assist in providing privacy and a road noise buffer to the northern setback of properties along the southern side of Queenscliff Rd. These spaces provide opportunities for gaining solar access, and a second/alternative private open space 2 the larger areas at the rear of the properties

The design comprises a 2-3 storey building form, that is appropriately setback from adjoining residential properties to the south, east and west. In relation to the terrace building design, the architectural design statement notes:

'The additional setbacks for each level of the project allow for solar access to the southern neighbour while also reducing the bulk mass and scale appearance from the adjacent neighbours and the greater context'.

The subdivision pattern is slightly orientated to the north-east meaning that slightly more shade is cast onto the property to the east (120 Queenscliff Road) which is the consistent with the shading pattern in the location.

Solar impacts on the adjoining properties

Assessment has been made of the potential for the proposal to impact upon the existing shadowing of neighbouring properties, in particular, the rear yard areas of 120 Queenscliff Road which includes a private open space and swimming pool.

The following considers the proposal's solar impacts on the adjoining properties having regard to the provisions of the ADG. In relation to shading, the ADG requires under 4E 'Private open space and balconies' that balconies achieve 2 hours of direct sunlight in mid-winter.

Furthermore, because the adjoining properties dwelling houses, consideration is being given to DCP controls D2 (Private Open Space) and D6 (Access to Sunlight). These require two hours of solar access to be maintained to 30 square metres of private open space for a 3-bedroom dwelling house.

In relation to the property at 120 Queenscliff Road, drawing number A2603 confirms:

- 6 hours of solar access is maintained to more than 30m² of private open space at mid-winter in accordance with the DCP control. The area in sunlight is ranges from 44m² to 77m², which meets and exceeds minimum requirements of the DCP the control.
- The areas in sunlight, on an hourly basis from 9:00 AM to 3:00 PM, are shown in the table below from the architectural drawings.

■ 120 QUEENSLIFF ROAD_SOLAR ACCESS TO PRIVATE OPEN SPACE_TOTAL POS: 275M2

SOLAR ACCESS	09:00	10:00	10:30	11:00	11:30	12:00	12:30	15:00	TOTAL HOURS
PROPOSED POS AREA	66m ²	67m ²	77m ²	59m ²	49m ²	48m ²	54m ²	44m ²	6 HOUR

MINIMUM TOTAL PRIVATE OPEN SPACE - 60m²

MINIMUM REQUIRED SOLAR TO PRIVATE OPEN SPACE - 30m² (50% OF TOTAL POS)

In relation to the property at 126 Queenscliff Road, due to the orientation of the subdivision pattern / site, the existing and proposed developments do not overshadow number 126 after 10 AM midwinter. Therefore, the proposed development will have a very modest impact on the western adjoining property.

Based on the above, it is concluded that:

- The proposal application demonstrates that reasonable access to sunlight is maintained.
- The dwelling houses that are adjacent to the proposed development will continue to receive the requisite amount of solar access (2 hours to their Private Open Spaces between 9:00 AM and 3:00 PM on 22 June).
- 67% of the proposed dwellings receive the required amount of sunlight on 22 June and no proposed units receive no sunlight.
- The provisions relating to solar and daylight access are reasonably satisfied by the proposal.

4.7 Building and access – design compliance

The application is accompanied and is supported by an assessment of the design against the key provisions of the Building Code of Australia by Building Regulation Services. The report assesses the design compliance of the proposed building identifying matters for further consideration at detailed design and construction certificate stage.

5 Development Control Plan

In response to Section 4.15 (1)(iii) of the Act, the Warringah Development Control Plan (DCP) is applicable to the property.

The built form controls applicable to the subject site and the proposed development are location based, meaning that DCP maps establish the built form controls for the location, including, for example, setbacks, wall height, and landscaped open space. Relevant provisions of the Warringah DCP are addressed below.

5.1 Overview

The proposed development comprises a 2-to-3 storey residential flat building, incorporating a recessed upper-level roof terrace. The design is of compatible (and in many cases less height) and bulk to that of nearby development. The proposal is:

- compliant with the key planning controls that establish a building envelope for the consolidated site, for example, building height, boundary setbacks, landscape area, car parking.
- located within a landscaped setting, providing compliant (40%) landscaped open space, and will be appropriately treated to be compatible with the built form and landscape character of the locality.
- compliant with overshadowing and privacy.
- designed from an appropriate mix of high-quality materials and finishes, in a contemporary form.

5.2 Part B - Built Form Controls

A table demonstrating compliance with the relevant provisions of the DCP is detailed as follows. Where a numerical non-compliance is identified, this is addressed separately below the table.

Control	Requirements	Proposed	Complies
B1 Wall heights	7.2m	<p>The existing and proposed buildings demonstrate modest exceptions to the DCP wall height control.</p> <p>Location and extent: minor west side. Upto 1.5m east side for the rear section of the upper level (figures 18 & 19).</p> <p>The numerical variation is acknowledged, and justification is provided in response to the planning control objectives, the</p>	No

Control	Requirements	Proposed	Complies
		circumstances of the site, and the merits of the proposal, as noted below.	
<p>Control objectives</p> <p><i>To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.</i></p> <p><i>To ensure development is generally beneath the existing tree canopy level.</i></p> <p><i>To provide a reasonable sharing of views to and from public and private properties.</i></p> <p><i>To minimise the impact of development on adjoining or nearby properties.</i></p> <p><i>To ensure that development responds to site topography and to discourage excavation of the natural landform.</i></p> <p><i>To provide sufficient scope for innovative roof pitch and variation in roof design.</i></p>		<ul style="list-style-type: none"> ▪ The proposed development is not visually intrusive, maintaining side setbacks of 2m to 3.2 along each side. ▪ The design incorporates a recessive, low profile roof that minimises its height. ▪ The visual impact of the development must be considered within the context of the existing development within the hillside that includes larger flat buildings. The proposed wall height is compatible with the built form context. ▪ Rear setbacks significantly increase as the building rises: ground floor 9m, middle level 12m, upper level 15m. In this way the wall height exception is compensated for by the significantly increased rear setbacks. ▪ By taking this shape, the bulk and form of the building when viewed from the adjoining private open spaces is minimised with the upper levels becoming recessive. ▪ Appropriate amenity outcomes are maintained to the adjoining properties, noting: <ul style="list-style-type: none"> – View sharing is not anticipated to be diminished by the proposed wall height exception. – Solar access is maintained to both adjoining properties as separately addressed within this report. – Privacy is maintained to both adjoining properties as separately addressed within this report. ▪ In these ways the proposed wall height exception is considered to result in an appropriate development outcome that meets the objectives of the controls. <p>For these reasons the objectives of the control are assessed as being satisfied and the circumstances are appropriate for council to be flexible in applying the numerical provisions of the control.</p>	

Control	Requirements	Proposed	Complies
B3 Side Boundary Envelope	5m at 45 degrees	Yes, as shown in figures 20 and 21, a modest exception is proposed. The numerical variation is acknowledged, and justification is provided in response to the planning control objectives, the circumstances of the site, and the merits of the proposal, as noted below.	Yes
<p>Control objectives</p> <p><i>To ensure that development does not become visually dominant by virtue of its height and bulk.</i></p> <p><i>To ensure adequate light, solar access and privacy by providing spatial separation between buildings.</i></p> <p><i>To ensure that development responds to the topography of the site.</i></p>		<p>The justifications for the side boundary envelope exception follow the reasons outlined above in response to the wall height exception. With specific reference to the objectives of the side boundary envelope control the following points are noted.</p> <ul style="list-style-type: none"> ▪ The proposed exceptions occur at the rear of the building at the upper level. ▪ The exceptions have a relatively small visual catchment, in that they will be mostly seen from the rear of the adjoining properties to the east and west. ▪ The design effectively redistributes floor space from a 'generic' building envelope (achieved by simple application of the built-form controls) within the rear of the property, concentrating these areas further to the north on the site where the building footprints adjoin the footprints of other residential developments and will have less impact on the really private open spaces. ▪ The proposed building height and massing will not be visually dominant and relates to site conditions including the sloping topography, and the mix of two to three storey residential dwellings on the adjacent properties to the east and west. The front of the proposal will present as less than two storeys with significant recesses and landscaping incorporated. When viewed from the sides/rear, the proposal will present obliquely as a terraced building form of two to three stories that responds to the slope of the land. The rear of the building is terraced and incorporates elevated landscape planting. ▪ Solar access is maintained to both adjoining 	

Control	Requirements	Proposed	Complies
		<p>properties as separately addressed within this report.</p> <ul style="list-style-type: none"> Privacy is maintained to both adjoining properties as separately addressed within this report. The proposed development provides a terraced building form at the rear of the property which ensures that it responds to the sloping topography of the site. <p>For these reasons the objectives of the control are assessed as being satisfied and the circumstances are appropriate for council to be flexible in applying the numerical provisions of the control.</p>	
B4 Site coverage	NA	NA	NA
B5 & B6 Side Boundary Setbacks	900m	<p>Dwellings - 2.2m to 3.2m for both the east and west sides.</p> <p>Basement level – # east side 2.2m # west side 2.3m</p>	<p>Yes</p> <p>Yes</p>
B7 Front Boundary Setbacks	6.5m	<p>Basement: 6.12m</p> <p>Building: 6m</p> <p>The numerical variation is acknowledged, and justification is provided in response to the control objectives, the circumstances of the site, and the merits of the proposal, as noted below.</p>	No*
<p>Control objectives</p> <ul style="list-style-type: none"> To create a sense of openness. To maintain the visual continuity and pattern of buildings and landscape elements. To protect and enhance the visual quality of streetscapes and public spaces. To achieve reasonable view sharing. 		<p>An exception of 500 millimetres (8%) is proposed in relation to the front setback to the principal building façade.</p> <ul style="list-style-type: none"> The proposal provides an appropriate sense of openness having regard to the character of properties along the southern side of Queenscliff Rd, many of which have solid, high, front fences. <p>The proposed development provides an</p>	

Control	Requirements	Proposed	Complies
		<p>appropriate sense of openness and will maintain the visual continuity and pattern of buildings and landscape elements noting:</p> <ul style="list-style-type: none"> It is not visually intrusive, maintaining appropriate side setbacks, bulk, height, articulation, and intervening deep soil landscape areas that will be densely planted. As such the proposal will enhance the visual quality of the streetscape The proposed building height is modest when viewed from the streetscape noting that the land is set down below the level of the street and the front facade of the building will present as less than 2 storeys at the road level. The visual quality of the streetscape is enhanced by the following features of the design: <ul style="list-style-type: none"> Articulation within the front facade including use of materials, landscaping, and fin walls. A large significant recess within the middle of the front façade that incorporates the vehicle access point and elevated planting. It displays a front setback of approx. 10.9m for a width of 4.75m. Integration of landscaping (see Render A) within the building form via elevated planter areas. Minimisation of the extent of proposed hard surface associated with vehicle access by way of the proposed car lift. Increased planting within the front setback and maintenance of compatible height fencing at the front boundary. The proposal will provide more landscaped area and planting than most other developments within the visual catchment and provides an appropriate response to the existing development character. Compatible front set back in relation to adjoining developments. View sharing is not anticipated to be diminished by the proposed front setback exception. <p>For these reasons the objectives of the control are assessed as being satisfied and the</p>	

Control	Requirements	Proposed	Complies
		circumstances are appropriate for Council to be flexible in applying the numerical provisions of the control.	
B9 Rear boundary setbacks	NA to corner allotments	Variable due to terraces in proposed building heights and rear setbacks: 9m – 12m – 15m.	Yes

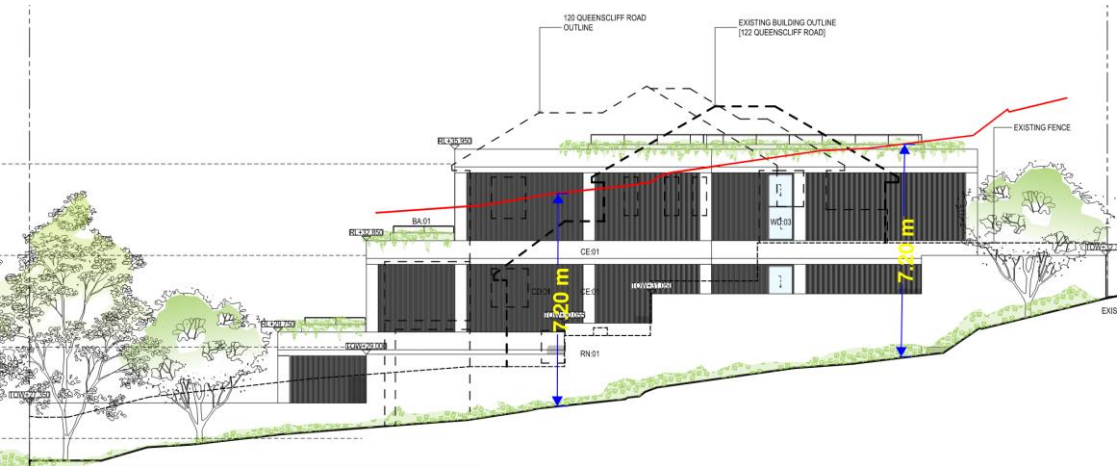


Figure 18 – the existing and proposed buildings demonstrate modest exceptions to the DCP wall height control

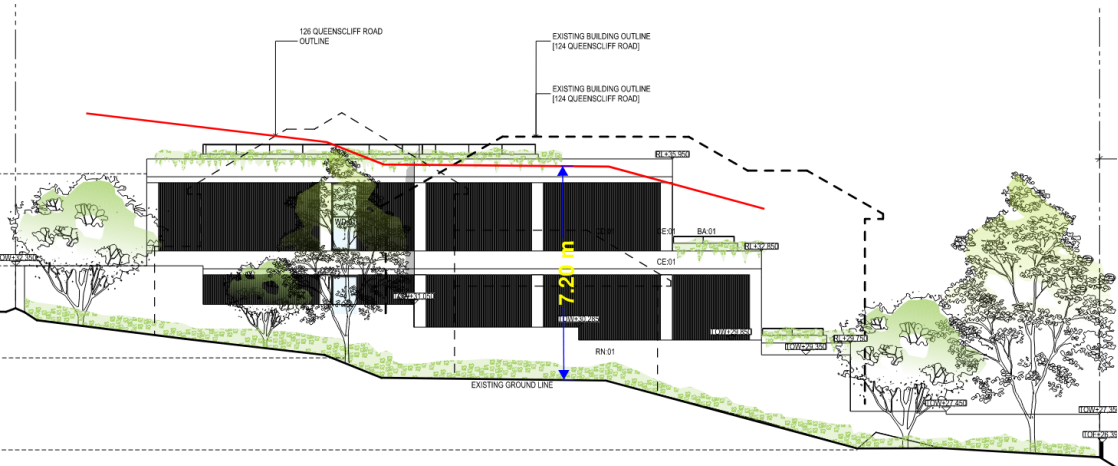


Figure 19 – west side exception to the DCP wall height control

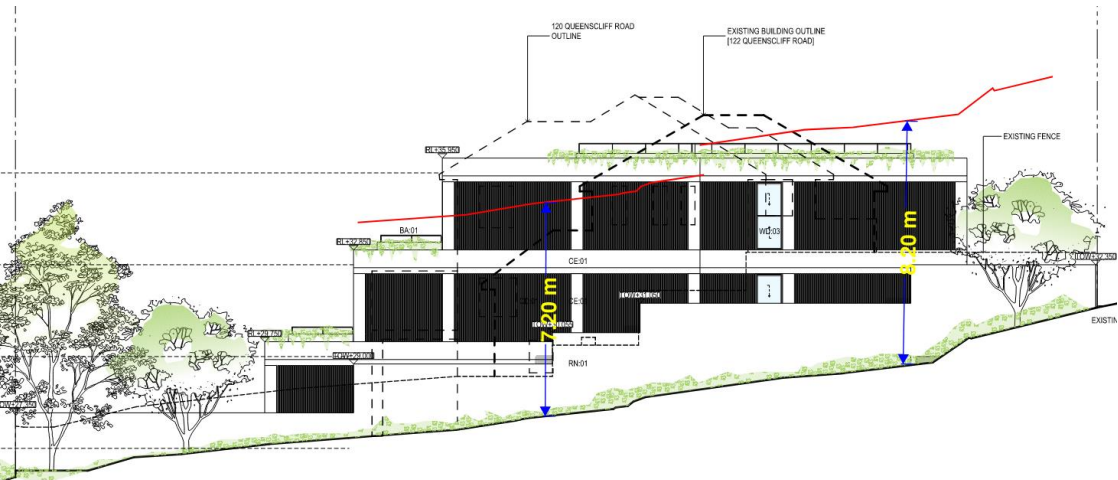


Figure 20– east side exception to the DCP side boundary envelope control

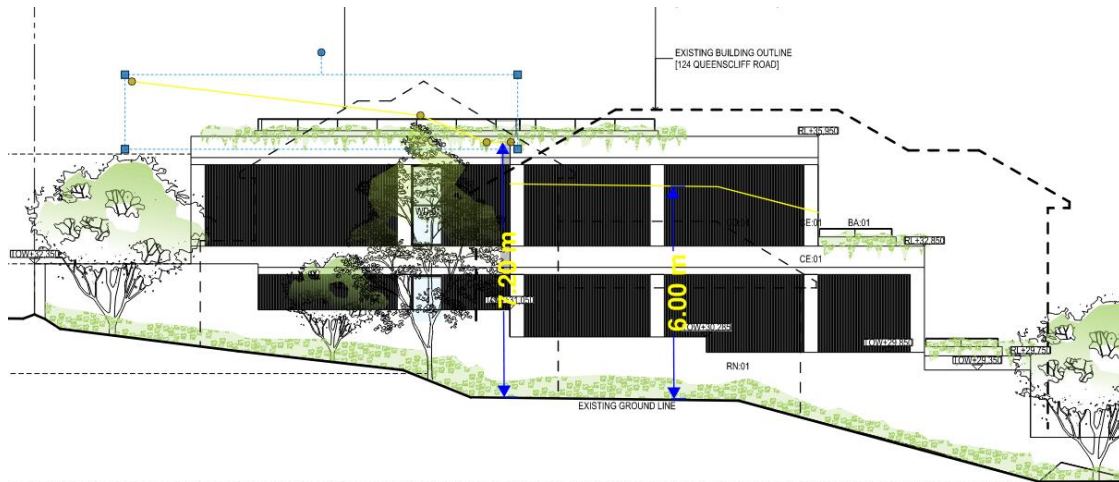


Figure 21 – west side exception to the DCP side boundary envelope control

5.2.1 Conclusion - variations to numerical aspects of the DCP

Based on the above, it is concluded that the proposed numerical DCP exceptions are modest and contextually reasonable, satisfying the objectives of the planning controls.

Under clause (3A)(b) of Section 4.15 of the Act, it is appropriate for the consent authority to be flexible in applying the controls where the objectives of those controls have been satisfied.

It is concluded that the proposed development is consistent with the relevant objectives of DCP. Accordingly, our assessment finds that these aspects of the proposal are worthy of support, in this particular circumstance.

5.3 Broader DCP Compliance Assessment

Clause	Compliance with Requirement	Consistent with aims and objectives
Part C - Siting Factors		
C1 Subdivision	NA	NA
<p>C2 Traffic, Access and Safety</p> <p>The proposal appropriately responds to the provisions of Part C2 and C3 of the DCP. The proposed vehicle access and parking arrangement is supported by an assessment prepared by PDC consultants. Key conclusions from the assessment are noted as follows:</p> <p><i>The traffic assessment confirms that the development will generate a total of 4 vehicle trips / hour during the 7-9am (AM) and 4-6pm (PM) peak periods. The net increase will however be only 2 vehicle trips / hour during both the AM and PM peak periods, once the generation of the existing development is taken into consideration. This is a negligible increase that will have no material impact on the performance of the external road network or key intersections in the locality and accordingly, no external improvements will be required to facilitate the development. The traffic impacts of the proposed development are therefore considered acceptable.</i></p> <p><i>The development is required to provide up to a minimum of 10 car parking spaces under the WDCP 2011, including nine (9) spaces for residents and one (1) space for visitors. In response, the development provides 12 car parking spaces for residents and therefore satisfies the minimum requirements of the WDCP 2011 in terms of both the overall provision and allocation for residents. The proposed car parking provision is therefore considered acceptable.</i></p> <p><i>The proposed access and internal parking arrangements comply with the relevant requirements of AS 2890.1 and AS 2890.3. Any minor amendments considered necessary (if any) can be dealt with prior to the release of a Construction Certificate</i></p> <p><i>The proposed development is therefore supportable on traffic planning grounds.</i></p> <p>Based on the above the proposal is assessed as satisfactory in addressing vehicle access and parking</p>	Previously addressed	Previously addressed

Clause	Compliance with Requirement	Consistent with aims and objectives
considerations.		
C3 Parking Facilities The proposed parking arrangement is addressed within the accompanying assessment prepared by PDC consultants.	Yes	Yes
C3(A) Bicycle Parking and End of Trip Facilities Required: 1 per dwelling (6 spaces) and 1 per 12 for visitors (1). Provision for 8 bicycle parking spaces is provided within the basement level. This provision meets and exceeds the minimum requirement of the control.	Yes	Yes
C4 Stormwater The proposal has satisfactorily addressed the provisions relating to stormwater. The applicant is seeking to establish an easement through the adjoining downstream property to the south at 24 Aitken Ave. A letter to this affect accompanies the application signed by the adjoining owner providing in-principle agreement. A condition of consent may reasonably be imposed to require this outcome. A stormwater management plan supports the proposal, and these details accompany the Development Application. Based on the above the proposal is assessed as satisfactory in addressing the stormwater drainage considerations of the DCP.	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to constructed Council drainage easements	Yes	Yes
C7 Excavation and landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management Waste management is provided for by the proposed development as shown on the architectural plans. The proposed development is supported by an waste management assessments addressing both the demolition and construction phase along with the	Yes	Yes

Clause	Compliance with Requirement	Consistent with aims and objectives
<p>ongoing operational phase.</p> <p>Key conclusions from the assessment are noted as follows:</p> <p><i>'The Northern Beaches Council standard waste collection service is proposed to collect waste from the Queenscliff Street kerbside.</i></p> <p><i>The Owner's corporations is responsible for all aspects of waste management including placing bins in the designated collection location the night before the allocated collection day. Bins are to be returned on the same day collections occur.</i></p> <p><i>The approved Waste Management Plan (WMP) will be the model to be adopted for this development. Detailed design and as-built installation must incorporate the design proposed and approved under this WMP. Any revisions of the WMP or changes to the approved waste system of the development may require Council approval and may require a re-submitted Waste Management Plan'.</i></p> <p>Bulky Goods Waste</p> <p>Provision is made within the basement level for a Bulky Goods waste storage room in accordance with Councils' requirements.</p>		
Part D - Design		
<p>D1 Landscaped open space and bushland setting</p> <p>Required: 40% (min dimension of 2m)</p> <p>Proposed: 40% (380m²) as per Drawing A2402.</p>	Yes	Yes
<p>D2 Private Open Space</p> <p>Required: residential flat buildings – 10m² with minimum dimensions of 2.5 metres.</p> <p>Response:</p> <p>Clause 6A(f) of SEPP 65, establishes that the Apartment Design Guide is to be used to assess the <i>private open space and balconies</i> and the development control plan has no effect with regard to this matter.</p> <p>The proposal's compliance with the ADG is addressed within the accompanying ADG compliance report.</p>	NA	NA
D3 Noise	Yes	Yes

Clause	Compliance with Requirement	Consistent with aims and objectives
<p>Pursuant to Clause D3 of the DCP the potential for acoustic impacts have been considered in the design and the following aspects are noted:</p> <ul style="list-style-type: none"> Internal vehicle noise from the car parking area/driveway is not anticipated to be significant, noting that the parking area is enclosed by masonry perimeter walls and the majority of the level is below ground. As a residential development within a residential zone no excessive or inappropriate noise is anticipated from the proposed development. <p>Based on the above, the proposal is assessed as satisfactory in addressing potential acoustic impact considerations.</p>		
D4 Electromagnetic radiation	Yes	Yes
D5 Orientation and energy efficiency	Yes	Yes
D6 Access to Sunlight	Previously addressed	Previously addressed
<p>D7 Views –</p> <p>Pursuant to Clause D7 of the DCP, development is to allow for the reasonable sharing of views, encourage innovative design solutions and ensure existing canopy trees have priority over views.</p> <p>In terms of potential view sharing impacts:</p> <ul style="list-style-type: none"> Coastal, district, and lagoon views are available from the location to the south, including southeast and southwest of the site. The proposed built form is sensitive to the height along with the side and rear setbacks of the adjoining properties. The additional rear setbacks for each level of the proposal allow for increased access to the views by each of the adjacent properties. There are no built form non-compliances proposed that are anticipated to give rise to unreasonable view impacts. <p>Access has not been gained to nearby properties in assessing this aspect; this may be undertaken when the DA is publicly exhibited to neighbouring properties.</p>	Yes	Yes

Clause	Compliance with Requirement	Consistent with aims and objectives
At this stage, it is assessed that the proposal is unlikely to unreasonably impede significant established views from surrounding residential properties or public vantage points.		
D8 Privacy –	Previously addressed	Previously addressed
<p>D9 Building Bulk</p> <p>The objectives and requirements of the control repeated and responded to below.</p> <p>Objectives</p> <ul style="list-style-type: none"> • <i>To encourage good design and innovative architecture to improve the urban environment.</i> • <i>To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.</i> <p>Requirements</p> <ol style="list-style-type: none"> 1. <i>Side and rear setbacks are to be progressively increased as wall height increases.</i> 2. <i>Large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief.</i> 3. <i>On sloping land, the height and bulk of development (particularly on the downhill side) is to be minimised, and the need for cut and fill reduced by designs which minimise the building footprint and allow the building mass to step down the slope. In particular:</i> <ul style="list-style-type: none"> <i>The amount of fill is not to exceed one metre in depth.</i> <i>Fill is not to spread beyond the footprint of the building.</i> <i>Excavation of the landform is to be minimised.</i> 4. <i>Building height and scale needs to relate to topography and site conditions.</i> 5. <i>Orientate development to address the street.</i> 6. <i>Use colour, materials and surface treatment to reduce building bulk.</i> 7. <i>Landscape plantings are to be provided to reduce the visual bulk of new building and works.</i> 8. <i>Articulate walls to reduce building mass.</i> <p>The proposal is appropriately designed to satisfy the provisions of the control, noting that:</p>	Yes	Yes

Clause	Compliance with Requirement	Consistent with aims and objectives
<ul style="list-style-type: none"> ▪ Side setbacks to the proposed building are compliant. ▪ Rear setbacks increase as the building height increases, the rear setbacks significantly exceeding the minimum 6 metres. ▪ The following aspects of the design are noted from the architectural design statement: <ul style="list-style-type: none"> – <i>Within the allowable envelope the massing has been further reduced to suit the site, context and program. A terracing typology has been adopted to provide high levels of amenity to the proposed apartments while responding to the natural slope of the land and by reducing any shadow impacts and mass/scale to the adjacent neighbours.</i> – <i>The ground -1 apartments have a 9m setback to the rear boundary which provide for large external landscaped spaces that face the primary views of surrounding Manly and the Manly coastline. The ground level apartments have an additional rear setback of 3.6m in order to provide large landscaped terraces. Level 01 is a further 3.6m setback also with large landscaped terraces with the roof a further 3.6m setback. The roof also has a landscaped terrace space completing the landscaped terracing of the built form.</i> – <i>The additional setbacks for each level of the project allow for solar access to the southern neighbour while also reducing the bulk mass and scale appearance from the adjacent neighbours and the greater context. The integrated greenery including the roof, each level of terrace, side boundaries and the lower level landscaped space at grade also helps integrate the project with the site and context.</i> – <i>From the streetscape the building appears as two separate buildings in order to match the forms of the two existing buildings. This is achieved through each apartment being separated by a void in the building that accommodates the car parking lift and also allows for the centralised pedestrian entrance. Due to the slope of the land the proposal appears as a single storey above the front fence/wall line. The proposed ridge lines are also lower than the existing ridge lines of the existing apartment buildings’.</i> – <i>Each internal space has been orientated towards the view or streetscape where possible. The increased side setbacks of 3.2m allow for windows to face the side boundaries. where this</i> 		

Clause	Compliance with Requirement	Consistent with aims and objectives
<p><i>occurs there is little to no overlooking or privacy issues'.</i></p> <ul style="list-style-type: none"> ▪ The proposed building height and massing relates to site conditions including the sloping topography, and the mix of two to three storey residential dwellings on the adjacent properties to the east and west. ▪ The front of the proposal will present as less than two storeys with significant recesses and landscaping incorporated. ▪ When viewed from the sides, the proposal will present obliquely as a terraced building form of two to three stories that responds to the slope of the land. ▪ The rear of the building is terraced and incorporates elevated landscape planting. The perimeter of the property incorporates appropriate deeps or landscaped areas that are proposed to accommodate a new and improved landscape planting regime incorporating a range of appropriate sized plants that will assist in reducing the visual bulk and enhance visual the presentation of the proposed building ▪ Large areas of continuous wall planes are avoided by recesses within the building floorplates, incorporation of balconies, appropriate fenestration, elevated planting, use of materials, and articulation. The design treatments proposed are considered effective in reducing the building mass and providing a visually interesting design. <p>It is assessed that the proposed building form is appropriate in ensuring that its bulk and mass is appropriate and compatible with its context.</p>		
<p>D10 Building Colours and Materials</p> <p>The proposal will renew and improve the site's existing built form quality.</p> <p>The proposal will employ appropriate materials and finishes to achieve an appropriate streetscape presence and be compatible with the mixed building character of the site's setting.</p>	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D13 Front fences and front walls	Yes	Yes

Clause	Compliance with Requirement	Consistent with aims and objectives
D14 Site facilities	Yes	Yes
D15 Side and rear fences	Yes	Yes
D16 Swimming Pools and Spa Pools	Yes	Yes
D17 Tennis courts	NA	NA
D18 Accessibility The application is accompanied and is supported by an assessment of the design against the key access provisions of the Building Code and other relevant legislation. The report finds that the proposal is capable of satisfying access requirements subject to further detailed design and documentation at the Construction Certificate stage. In conclusion, the relevant accessibility considerations are appropriately addressed and satisfied by the proposal.	Yes	Yes
D19 Site consolidation in the R3 and IN1 zone	NA	NA
D20 Safety and security	Yes	Yes
D21 Provision and location of utility services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes

Clause	Compliance with Requirement	Consistent with aims and objectives
Part E - The Natural Environment		
E1 Preservation of Trees or Bushland Vegetation Pursuant to Clause E1 of the DCP 'Private Property Tree Management', the application proposes building within proximity to established trees located on of the property and on neighbouring land that will be impacted by the proposal. The application is accompanied and supported by an arborist report. It assesses the impact of the proposed development upon existing vegetation. As confirmed in the accompanying arborist assessment report, the proposal does not involve the removal of any designated trees and therefore the provisions of this policy are satisfied by the	Yes	Yes

<p>proposal.</p> <p>The arborist makes recommendations for the management and mitigation of tree impacts which may reasonably form conditions of development consent.</p> <p>Based on the above, the proposed development has made appropriate assessment of vegetation impacts and the provisions of this clause are satisfied by the proposal.</p>		
E2 Prescribed Vegetation Previously addressed.	NA	NA
E3 Threatened species, populations, ecological communities listed under State or Commonwealth legislation, or High Conservation Habitat	NA	NA
E4 Wildlife Corridors	Yes	Yes
E5 Native Vegetation	Yes	Yes
E6 Retaining unique environmental features	NA	NA
E7 Development on land adjoining public open space	NA	NA
E8 Waterways and Riparian Lands	NA	NA
E9 Coastline Hazard	NA	NA
E10 Landslip Risk	NA	NA
E11 Flood Prone Land Previously addressed	NA	NA

6 Section 4.15 the Environmental Planning and Assessment Act 1979 – Summary

The proposal has been assessed having regard to the matters for consideration pursuant to S.4.15 of the Act and to that extent Council can be satisfied of the following:

- There will be no significant or unreasonable adverse built environment impacts arising from the proposed physical works on the site.
- The site is appropriate for accommodating the proposed development. The proposal has sufficiently addressed environmental considerations. There will be no significant or unreasonable adverse environmental impacts arising from the proposal.
- The proposal will result in positive social and economic impacts, noting:
 - Employment during the construction phase of the works;
 - Economic benefits, arising from the investment in improvements to the land;
 - Social benefits arising from the increased housing in a suitable location near, services, public transport and a range of recreation facilities.
 - Social and environmental benefits arising from the renewal of existing housing, with the replacement housing meeting contemporary safety (BCA) and environmental standards including BASIX compliance.
 - Social and environmental benefits arising from increased on site car parking provision in a location that is known to have a high carparking demand and limited supply.
- The proposal is permissible and consistent with the objectives of the zone, pursuant to the LEP. The proposal satisfies the relevant provisions of council's DCP.
- It is compatible with the current and likely future character of development within the local context.
- It will not result in any significant unacceptable offsite impacts that limit the use or enjoyment of nearby or adjoining land.
- The proposal will have an acceptable impact when considering key amenity issues such as visual impact, views, overshadowing, noise, and privacy.
- Given the site's location and established function, the site is assessed as being entirely suitable for the proposed development.
- The public interest is best served through the approval of the application.

7 Conclusion

The application seeks development consent for demolition of two existing flat buildings and development of a residential flat building comprising 6 apartments at 122 to 124 Queenscliff Road, Queenscliff.

The properties benefit from existing use rights, the proposed development is permissible with consent, and consistent with the intent of the built form controls as they are reasonably applied to the site given the prevailing environmental circumstances.

The proposal has appropriately responded to the comments raised by Council in response to the Pre-DA submission. The proposal is appropriately located and configured to complement the property's established neighbourhood character.

The numerical exceptions proposed to the DCP controls have been appropriately acknowledged, with their acceptability assessed, having regard to the control objectives and the existing development character. Therefore, it is appropriate to apply flexibility to the controls in the circumstances.

This report demonstrates that the exceptions will not give rise to any unacceptable residential amenity or streetscape consequences. Furthermore, the character and extent of the proposed development is entirely compatible with the character of the location.

The proposal succeeds when assessed against the Heads of Consideration pursuant to section 4.15 of the Environmental Planning and Assessment Act, 1979 and should be granted development consent.

BBF Town Planners



Michael Haynes
Director

8 Appendix – Letter from Shaw Reynolds Lawyers



Shaw Reynolds
Lawyers

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Our Ref: CHS:KA:200044

12 April 2022

Kristoffer Harvey and
Gemini Queenscliff Pty Limited

Dear Mr Harvey,

Re: Advice with respect to existing use rights at 122 and 124 Queenscliff Road, Queenscliff

7. We have been asked to provide advice as to whether the existing dwellings at 122 and 124 Queenscliff Road, Queenscliff (**Properties**) and the land on which the dwellings are erected have the benefit of existing use rights under s4.65 of the Environmental Planning and Assessment Act 1979 (**EPA Act**).

Summary of Advice

8. Existing use rights are governed by the provisions under sections 4.65 - 4.70 (formerly s.106-109B) of the EPA Act and Part 7 of the Environmental Planning and Assessment Regulation 2021 (**EPA Regulation**).
9. An existing use right arises where a use that was lawfully commenced but subsequently becomes a prohibited use under a new local environmental plan or other environmental planning instrument.

124 Queenscliff Road

10. 124 Queenscliff Road has the benefit of existing use rights as a building containing flats and that such existing use rights have not been abandoned.
11. In forming this opinion, we have considered the various planning controls and undertaken an analysis of the historical information available to us. We have also considered the recent Development Consent granted by the Council on 8 November 2021 (reference DA2021/1611). As part of approving that development, the Council considered and endorsed the proposition that the building had the benefit of the existing use rights for the following reasons:

- a. the building was used for a lawful purpose immediately before the coming into force of an environmental planning instrument (in this case, the Warringah Local Environmental Plan 2011) which would, but for the existing use rights provisions, have the effect of prohibiting that use;
- b. the use of the building was lawfully approved by Council in 1940, prior to the coming into force of the WLEP 2011;
- c. the building has been used a residential building comprising two flats since its approval and has not changed its use since this time.

122 Queenscliff Road

12. Unlike 124 Queenscliff Road, the building on 122 Queenscliff Road was lawfully constructed at a time when it was not necessary to obtain development approval for the construction of the building on the land. We have formed the view that, in satisfaction of clause 4.65 of the EPA Act:

- a. the use was lawfully commenced in 1938;
- b. residential flat buildings have been prohibited at the site since the commencement of WLEP 1985; and
- c. the building was being used as a building containing flats immediately prior to the WLEP coming into force.

13. Thus, the Properties have the benefit of existing use rights.

Factual background – 122 Queenscliff Road

Date	Event
26 October 1859	22 acre property granted to Daniel Jones, as Portion 1211 of the Parish of Manly Cove
1884	Land on which Property is located was subdivided and sold (in lots 17 to 22) as part of the Queenscliff Estate
July 1914	Lots 17-22 purchased by John Cookey and William Schofield Nixon
1928	Lots purchased by Manly Surf View Estates Co Ltd, being a company formed for the specific purpose to purchase, subdivide and sell land at Queenscliff. Land subdivided into 41 allotments and sold as “Surf View Estate”
May 1934	Several lots – including Lot 6 which contained 122 Queenscliff Road – sold by Manly Surf View Estates Co Ltd to Nixon and Cooksey (as tenants in common)
1920s to 1930s	Nixon and Cooksey built weatherboard cottages on several properties in the Queenscliff and Freshwater area. Warringah Council served “Closing Orders” to close and demolish the weatherboard cottages.
July 1937	Lot 6 purchased by Ilma Kathleen Ball

Late 1937/Early 1938	Leeds-Gate (being the name of the building on 122 Queenscliff Drive as at today's date) built.
24 May 1938	An entry in the minutes of the former Warringah Council, dated 24 May 1938 notes: <i>'Mrs I.K. Ball, requesting improvements to the footpath in front of her new building in Queenscliff Road.'</i>
September 1939	Reference to "Leedsgate" apartment building in Sydney Morning Herald.
9 December 1942	Sydney Morning Herald, 9 December 1942, p3 (Source: National Library of Australia, Trove) referencing "flats" at this property.
1948	Property passed to Ball's daughters, Valda Kathleen Rorke and Lesley Ilma Thompson.
1953	Ilma Thompson becomes sole proprietor of Property.
24 September 1962	Valuation by Department of Valuer General NSW identifies 'Flats' on the property.
6 May 1980	Property transferred to Vera Costanzo
11 October 2013	Transmission application lodged by Grace Costanzo as executor of the will of Vera Costanzo.
11 October 2013	Property transferred from Grace Costanzo to Frank and Ross Costanzo as tenants in common pursuant to deed of family relation.
5 July 2019	Property purchased by Gemini Queenscliff Pty Ltd. Special condition in the contract for sale of land: <i>"to the best of their knowledge, the House has always comprised of two separate flats which have been occupied independently by either the Vendors predecessors in title and a lessee, or by separate two lessees..."</i>
16 August 2019	Property transferred from Frank and Ross Costanzo to Gemini Queenscliff Pty Ltd.

Factual background - 124 Queenscliff Road

Date	Event
26 October 1859	22 acre property granted to Daniel Jones, as Portion 1211 of the Parish of Manly Cove
1884	Land on which Property is located was subdivided and sold (in lots 17 to 22) as part of the Queenscliff Estate
July 1914	Lots 17-22 purchased by John Cookey and William Schofield Nixon
1928	Lots purchased by Manly Surf View Estates Co Ltd, being a company

	formed for the specific purpose to purchase, subdivide and sell land at Queenscliff. Land subdivided into 41 allotments and sold as “Surf View Estate”
November 1930	Lot 5 - which contained 124 Queenscliff Road – sold by Manly Surf View Estates Co Ltd to Alice Maude Coulter
28 August 1940	Notice on the <i>Construction</i> newspaper notes that duplex flats were approved by the local Council
3 September 1940	Entry in minutes of former Warringah Council notes: <i>“Garage proposed to be erected in conjunction with duplex flats for Mrs A Coulter on Lot 5 Surfview Estate, Queenscliff Road: Resolved – That the proposed site of the garage be approved provided the structure does not project in from of the line of the neighbouring properties on either side.”</i>
12 September 1941	Property acquired by Stella Kemp
26 June 1942	Property transferred to Mary Ruby Dickerson
16 January 1946	Property acquired by Leslie Neville Rose
28 November 1950	Property acquired by Desmond William Noble
30 October 1951	Property acquired by Edna Alice Bell
24 September 1962	Valuation by Department of Valuer General NSW identifies ‘Flats’ on the property.
25 September 1965	Survey identifies two storey residential flat building containing two flats located on property.
10 December 1964	Property acquired by Dorothy Louise Nell Cavill
3 March 1966	Building Application C185/66 for additions to existing building – approved. The plans refer to “Duplex Flat” and the Council officer’s assessment report stated that <i>“there exists on the subject allotment a brick duplex flat building... This building has been existing for approx. 30 years.”</i>
21 July 1966	Property acquired by Jack Thomas Dymond Pithers
2 May 1968 - 6 June 1968	Building Application C517/68 for additions to residence lodged with Warringah Shire Council specifies zoning of land ‘C Class: Residential flats’. Approved on 6 June 1968.
20 December 1979	Survey describes property to contain two-storey brick units.
13 February 1980	Correspondence from Council regarding a Certificate of Compliance refers to residential flats on the property. Correspondence was in response to an application for a Certificate of Compliance. Council’s

	letter raised some issues in terms of compliance with C517/68 approval and therefore said it would not issue a certificate until the issues were rectified. The letter refers to “ground floor flat” and “upper floor flat”. No further documents available from the Council to determine how issue was resolved.
6 March 1980	Property acquired by Michael Angelo Papallo, Kathleen Papallo as joint tenants
11 March 2014	Notice of death of Michael Angelo Papallo. Surviving joint tenant is Kathleen Papallo.
5 September 2014	Property transferred from Kathleen Papallo to Sarah Anne Louise Goodman.
16 January 2017	Property transferred from Sarah Anne Louise Goodman to Kristoffer Allan Harvey.
5 November 2021	Development Application DA2021/1611 approved for the Subdivision of an existing residential building comprising two flats (Strata Subdivision)

Legal framework – existing use rights

14. Sections 4.65 to 4.70 of the EPA Act (Division 4.11 of Part 4) contain provisions relating to existing uses. The following provisions are of particular relevance:

4.65 Definition of “existing use” (cf previous s 106)

In this Division, existing use means—

- (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 this Division, 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.*

4.66 Continuance of and limitations on existing use (cf previous s 107)

- (1) *Except where expressly provided in this Act, nothing in this Act or an environmental planning instrument prevents the continuance of an existing use.*
- (2) *Nothing in subsection (1) authorises—*

- (a) any alteration or extension to or rebuilding of a building or work, or*
 - (b) any increase in the area of the use made of a building, work or land from the area actually physically and lawfully used immediately before the coming into operation of the instrument therein mentioned, or*
 - (c) without affecting paragraph (a) or (b), any enlargement or expansion or intensification of an existing use, or*
 - (d) the continuance of the use therein mentioned in breach of any consent in force under this Act in relation to that use or any condition imposed or applicable to that consent or in breach of any condition referred to in section 4.17(1)(b), or*
 - (e) the continuance of the use therein mentioned where that use is abandoned.*
- (3) Without limiting the generality of subsection (2)(e), a use is to be presumed, unless the contrary is established, to be abandoned if it ceases to be actually so used for a continuous period of 12 months.*

...

4.70 Saving of effect of existing consents (cf previous s 109B)

- (1) Nothing in an environmental planning instrument prohibits, or requires a further development consent to authorise, the carrying out of development in accordance with a consent that has been granted and is in force.*
- (2) This section—*
 - (a) applies to consents lawfully granted before or after the commencement of this Act, and*
 - (b) does not prevent the lapsing, revocation or modification, in accordance with this Act, of a consent, and*
 - (c) has effect despite anything to the contrary in section 4.66 or 4.68.*
- (3) This section is taken to have commenced on the commencement of this Act.*

15. Clause 163 of the EPA Regulations provides that the ‘enlargement, expansion or intensification of an existing use’ is permitted with development consent. Accordingly, the Council is empowered to grant development consent.

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- 16. On 9 December 2011, the Warringah Local Environmental Plan (**WLEP 2011**) came into effect. The Property was zoned R2 Low Density Residential under the WLEP 2011.
- 17. The WLEP 2011 controls the uses that are permissible (either with or without consent) or prohibited in the R2 Low Density Residential Zone.

18. There are several low-density residential uses permitted within this zone. However, residential flat buildings, being a building containing 3 or more dwellings, are prohibited in this zone.
19. This tracing of the history of the uses shows that the existing use of the building for the lawful purpose of a residential flat building continued up to the time immediately before the coming into force of WLEP 1985.
20. In order for you to have an existing use under the EPA Act, there needs to have been a use of the buildings or works for a lawful purpose immediately before the coming into force of an environmental planning instrument, which would have the effect of prohibiting that use. We have formed the view that, in satisfaction of clause 4.65 of the EPA Act:
 - a. the use was lawfully commenced in 1938;
 - b. residential flat buildings have been prohibited at the site since the commencement of WLEP 1985; and
 - c. the building was being used as a building containing flats immediately prior to the WLEP coming into force.

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21. The Property is zoned R2 Low Density Residential under the WLEP 2011.
22. The Council does not have a record of the approval granted in August 1940.
23. Historically, the Council has acted as if the building was constructed in accordance with a lawful approval, particularly:
 - a) The granting of alterations and additions to the flats in the 1960s; and
 - b) The lack of any enforcement action in respect of the established building on site.
24. More recently, the Council has considered whether the Property has the benefit of existing use rights in the context of the recent Development Consent and made the following relevant findings (with emphasis):

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 provided evidence in the form of historic development consents C155/66 dated 3 March 1966 [sic] and C517/68 dated 6 June 1968, which reveal that the use of the building commenced as a lawful purpose following consent for residential building comprising two flats on the property in 1940, prior to the coming into force of Warringah Local Environmental Plan 2011 on 9 December 2011.

2. Was the use of the building / work / land 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 building was lawfully approved by Council in 1940, 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 Applicant has provided evidence in the form of a site history, which reveals that the Building Approval was granted consent for construction in 1940 and subsequently further developed with additional consents in 1966 and 1968, which reveals that the construction and use of the building was carried out between 1940 and 1968. The building has been used a residential building comprising two flats since its approval and has not changed its use since this time.

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.

25. Thus, the Council’s own analysis supports the proposition that the Property has the benefit of existing use rights.

Existing Use Rights have not been abandoned

26. We have also considered whether there has been an abandonment of that use (so that the existing use rights no longer apply). Under s4.66 of the EPA Act, the continuance of an existing use is extinguished where the use is abandoned. Section

4.66(3) provides that a use is presumed to be abandoned for the purposes of subsection (2)(e) if it “ceases to be actually so used for a continuous period of 12 months”. During the period commencing on 25 March 2020 and ending on 25 March 2022, the reference to 12 months is taken to be a reference to 3 years.

27. We understand that the current operation of each relevant buildings is as multiple residences and that there is no indication that they have been operated otherwise. There is no suggestion by the Council or any other person that the buildings have ceased to be used for residential flats.

Conclusion

28. Council can be satisfied that the Properties have the benefit of existing use rights.
29. It is also lawful to apply existing use rights over the entire two lots in a way that would enable you to consolidate the lots and construct a single residential flat building over the consolidated lots. There have been a number of decisions that the existing use has extended to the whole of the land, and not been confined to part of it (see *The Council of the City of Parramatta v Brickworks Limited* [1972] HCA 21; (1972) 128 CLR 1; *Mona Vale Pty Ltd v Pittwater Council* [2003] NSWLEC 74; (2003) 124 LGERA 449, at [20]-[22], and *Romeo v Pittwater Council* [2006] NSWLEC 645; (2006) 149 LGERA 107, at [20], and [31]-[32]).
30. Please contact the writer if you have any questions about this advice, or require further information.

Yours faithfully,



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