

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0668
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Responsible Officer:	Alex Keller
Land to be developed (Address):	Lot CP SP 4129, 48A Queenscliff Road QUEENSCLIFF NSW 2096
Proposed Development:	Modification of Development Consent DA2011/0360 granted for alterations and additions to a Residential Flat Building
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	Yes
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	The Owners of Strata Plan 4129
Applicant:	Boston Blyth Fleming Pty Ltd

Application Lodged:	31/08/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	13/09/2021 to 27/09/2021
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	Nil
Recommendation:	Approval

EXECUTIVE SUMMARY

The modification application seeks consent to modify DA2011/0360, which approved alterations and additions to an existing residential flat building to provide two additional residential units in an existing undercroft area.

The modification application is limited to the landscaped treatment of the western side setback, towards the rear (south) of the building. The treatment of the area in question was the subject of many submissions in the original development consent, and specific conditions were imposed by the consent authority to limit the extent of development in this area in order to minimise impacts upon the amenity of adjoining properties, specifically with regard to potential impacts upon views.

In response to the notification of the modification application, two submissions were received in objection to the application, raising concerns with regard to potential view impacts, privacy, amenity and construction activity. These matters have been addressed in detail in this report and are not considered to warrant special conditions or further amendments. Since the works relate to minor landscaping elements and the garden area is bordered on two sides by high existing walls, no unreasonable impacts are created by the proposed modifications.

As the modification application has been lodged under the provisions of s4.55(2) of the Act, and as the conditions relating to the treatment of the area in question were imposed by WDAP (an equivalent determination panel), the modification is referred to the Northern Beaches Local Planning Panel (NBLPP) for determination, with a recommendation of approval.

PROPOSED DEVELOPMENT IN DETAIL

This application, made pursuant to Section 4.55(2) of the Act, seeks to modify the approved landscaping located in the south-western corner of the site, including the deletion of the approved pathway in the side setback location. Specifically, the modification involves:

- Site preparation of the incomplete garden area on the western side of the lower ground level terrace
- Installation of a small water feature (recirculating water)
- Removal of previously approved pathway.
- Reshaping the approved low garden bed sandstone walls for garden terracing
- Landscape planting regime as per the modification plans DA-100 / D drawn by Space Landscape Design, dated 2.6.2021.

Approval of the proposed landscaping works will also require amendments to the conditions of consent, specifically the inclusion of a new condition (Condition 1E) to make reference to the modified plans.

It is noted that the proposed works are slightly lower (100mm - 500mm) than the height of the as-built walls currently on site. The as-built works and their relation to adjoining properties are shown in the images below.



Condition 1D reads as follows:

Condition No. 1D - Modification of Consent - Approved Plans and supporting Documentation

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp

Drawing No.	Dated	Prepared By
DA-002 Rev B	28/10/2020	Custance
DA-003 Rev C	28/10/2020	Custance
DA-007 Rev B	28/10/2020	Custance
DA-008 Rev B	28/10/2020	Custance
DA-009 Rev B	28/10/2020	Custance
DA-010 Rev B	28/10/2020	Custance

Reports / Documentation – All recommendations and requirements contained within:

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Report No. / Page No. / Section No.	Dated	Prepared By
<i>Fire Engineering Report Peer Review (Ref: 17084-R1-V2)</i>	22/11/2019	<i>Peter Gardner & Associates</i>
<i>Geotechnical Assessment (Ref: 2010-198)</i>	January 2021	<i>Crozier Geotechnical Consultants</i>
<i>Fire Engineering Report (107347-FER-r4)</i>	23/09/2019	<i>BCA Logic</i>

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

c) All landscaping depicted in these modification architectural plans (all dated 28/10/2020) contained within this condition, is to be deleted and does not form part of the consent. Landscaping to be undertaken in accordance with the original landscape plans.

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

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

Council does not amend document lists in earlier conditions, but rather imposes a new condition to reference the most recent plans, which acts to supersede any plans previously referenced. This is of relevant in this instance, as the new plans provided do not show the remainder of the works approved in the previous modification application. A new Condition (Condition 1E) is recommended to refer to the amended landscape plans and the supporting geotechnical report.

As the plans listed in Condition 1D must remain, the first sentence of Part (c) remains relevant. However, it is appreciated that the second sentence may cause confusion. To avoid such confusion, Condition 1E also contains a sentence to confirm that in the event of any inconsistency between Conditions 1D and 1E, Condition 1E is to prevail.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting

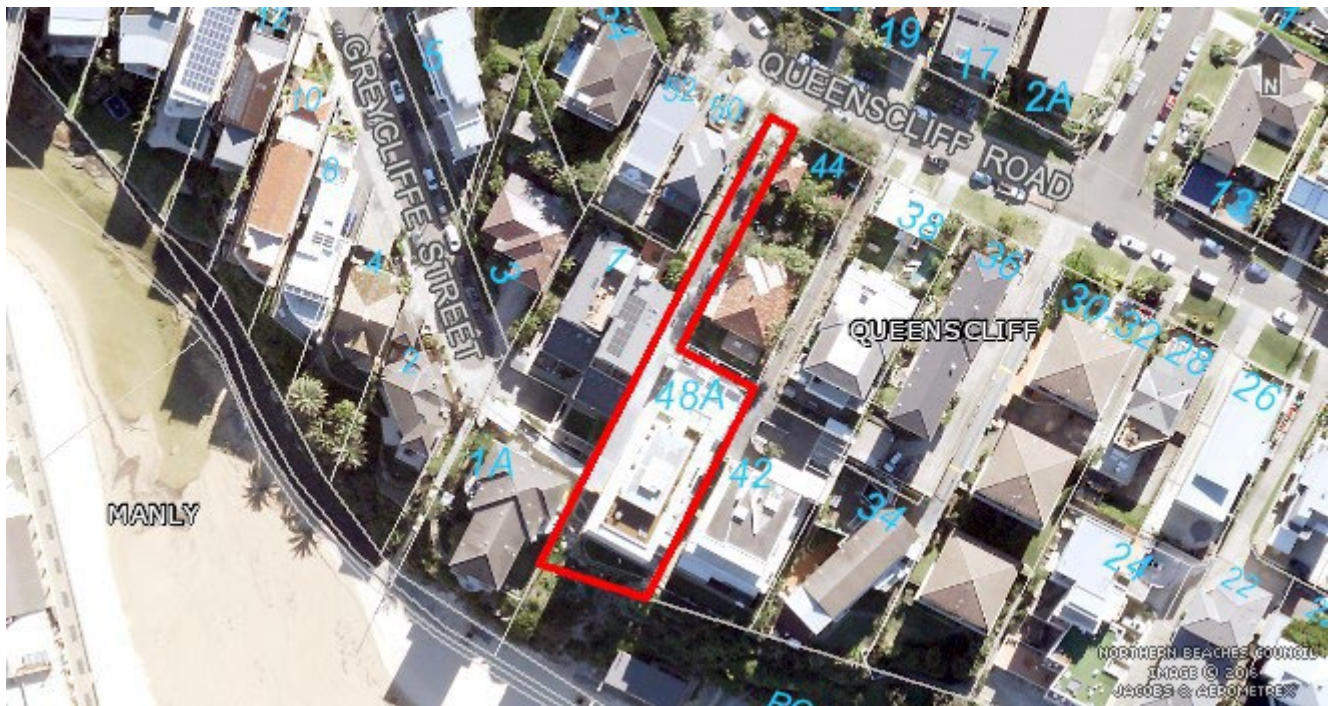
Warringah Development Control Plan - D7 Views

Warringah Development Control Plan - E7 Development on land adjoining public open space

SITE DESCRIPTION

Property Description:	Lot CP SP 4129, 48A Queenscliff Road QUEENSCLIFF NSW 2096
Detailed Site Description:	<p>The site is located within the R2 Low Density Residential zone and accommodates an 11-storey residential flat building containing 15 units and basement carparking.</p> <p>The subject site is located on the southern side of Queenscliff Road.</p> <p>The site is battle-axe in shape with a frontage of 4.8m along Queenscliff Road and a depth of between 41.375m and 88.91m. The site has a surveyed area of 1,081m².</p> <p>The subject site contains a steep slope which has a diagonal fall of approximately 21m (18%) in a north to south direction (from Queenscliff Road) towards Queenscliff Beach.</p> <p>Existing landscaped open space on site is characterised by areas of rock outcrops within the northeastern portion of the site and poor quality shrubs, medium size trees ground cover and weeds within the rear (southern) portion of the site. The site has been subject to substantial cut and fill in the past. Vehicular access to the site is provided by a steep driveway from Queenscliff Road.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by apartment style housing to the north-west, west, south-west, west and north-east. These apartment style buildings vary in scale between two and five stories in scale. A one-storey dwelling house occupies the site to the north, No. 44 Queenscliff Road. The southern boundary of the site adjoins a landscaped reserve which adjoins Queenscliff Beach.</p>

Map:



SITE HISTORY

Development Application No.DA2009/1471 for 'Alterations and additions to an existing residential flat building, comprising a new storeroom and tiling on the ground floor and basement level' was approved on 6 January 2010.

Prelodgement Meetings - On 28 January 2010 and 2011, two (2) pre DA meetings were held for alterations and additions to an existing residential flat building including a ground floor residential unit, additional carparking spaces within the existing sub-floor space and landscaping and remedial works.

In summary, the proposed works presented at the meetings were generally supported as it would provide a more contemporary building design to the lower portion of the building, improve the visual transition to the adjoining reserve at Queenscliff reserve, and increase the overall number of car parking spaces on-site. Furthermore, the pre-lodgement report noted that the design of the proposed development should maintain view sharing, solar access and privacy between adjoining properties, particularly No.1 and 1A Greycliffe Street.

In conclusion, the proposal was generally supported on the merits of the scheme and DA2011/0360 was subsequently lodged with Council.

Development Application No.DA2011/0360 for alterations and additions to a residential flat building was approved by Council on 12 September 2011. In summary the works involved:

- the construction of two (2) residential units, comprising of an undercroft Unit (Unit A) and lower ground level split level unit (Unit B), within the southern portion of the existing apartment building including ancillary site works.
- alterations to the existing car parking areas located within the lower level and excavation works up to 7.5m in depth within the northern setback area of the site to construct three (3) levels of car parking, including six (6) mechanical car stacking spaces and two (2) visitor spaces. These works will result in an overall increase in the number of car parking spaces by 11 spaces, from 16 (existing) to 27 (proposed) spaces.
- alterations for two (2) additional ramps to provide access to the existing and proposed car

parking areas.

Under Warringah LEP 2000 the works were Category 2 "Housing" and therefore permissible. The subject building has since become a prohibited use as an RFB within the R2 Low Density Residential Zone for Warringah LEP 2011.

Pre-lodgement Meeting No.PLM2015/0011 for alteration and additions to a residential flat building was held with Council on 9 July 2015. A number of modifications have been required to address various components of the consent with unforeseen contingencies in the progress of construction works.

The development consent has subsequently been modified four (4) times since 2011, the most recent of which was **Mod2020/0572** involving the regularization of an as-built tiered landscaped terrace area at the southwest side of the building with planting and mechanical ventilation exhaust stack on the northern side of the building above the basement parking area, the removal of a pedestrian path along the southern portion of the western boundary and changes to the fire sprinkler system.

The following condition was imposed by the Development Determination Panel (DDP) in its determination of 2nd March 2021:

"1D(c) All landscaping depicted in these modification architectural plans (all dated 28/10/2020) contained within this condition, is to be deleted and does not form part of the consent. Landscaping to be undertaken in accordance with the original landscape plans. In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

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

The reasoning behind for the imposition of this condition was expanded upon within the DDP minutes as follows:

"The Panel does not concur with the assessment report, or supplementary memo in regards to the impact from the proposed landscaping. The impacts are such that this could not be considered to be within the parameters of a Modification under Section 4.55 (1A) as involving minimal environmental impact.

The Panel considers that the impact of the landscape terracing, and raised levels of landscaping, are unacceptable in relation to visual impacts, view loss, light and amenity to the adjoining properties. In this regard the landscape plans and references to the landscaping in the architectural plans are to be removed from the approval.

These issues were raised previously in the original determination. The landscaping plans were amended to remove the raised landscaped areas, in order to lessen the impacts on adjoining properties. The original approved landscape plans did not contain any detail which indicated changes to the existing ground levels. In this regard the approved landscaping should be installed at the ground levels prior to construction."

The landscaping approved in the south-western corner of the site was unable to be implemented due to the presence of bedrock with the creation of terraced planter beds and the importation of soil the only viable option to enable the establishment of any form of landscaping on this portion of the site. Further, the approved pathway located on the boundary in this location would, if constructed, result in unnecessary impacts on the amenity of the adjacent apartments at No. 1A Greycliffe Street in terms of

privacy and view affectation noting that a 1 metre high balustrade would need to be constructed on the boundary to prevent persons falling into the adjoining property.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

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

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

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2011/0360 for the following reasons:</p> <ul style="list-style-type: none">• The landscaping approved in the south-western corner of the site was unable to be implemented due to the presence of bedrock with the creation of terraced planter beds and the importation of soil the only viable option to enable the establishment of any form of landscaping on this portion of the site.• The approved pathway located on the boundary in this location would, if constructed, result in unnecessary impacts on the amenity of the adjacent apartments at No.1A Greycliffe Street in terms of privacy and view affectation noting that a 1 metre high balustrade would need to be constructed on the boundary to prevent persons

Section 4.55 (2) - Other Modifications	Comments
	<p>falling into the adjoining property.</p> <p>The applicant has provided the following justification to support their argument that the modifications are substantially the same:</p> <ul style="list-style-type: none"> • <i>The modified landscape design seeks to maintain amenity between adjoining residential property and also the adjacent public domain / foreshore reserve,</i> • <i>The modified landscape design proposes plant species which at maturity are suitable for view considerations and landscape setting,</i> • <i>The modified landscape design proposes plant species which at maturity will not reduce existing levels of sunlight obtained by surrounding residential properties and will not cast shadow onto the adjacent public domain, and</i> • <i>The modified landscape design removes the previously approved pathway and provides for a non-trafficable terraced landscaped area which will not be capable of being used, or adapted for use, as either private or communal open space and to that extent will not give rise to adverse visual or aural privacy impacts.</i> <p>Reviewing the above comments and the court judgement by Justice Bignold established in the <i>Moto Projects (No 2) Pty Ltd v North Sydney Council (1999) 106 LGERA 289</i> it is concurred that the proposed modification is consistent with the (original) consent and can be considered under Section 4.55 of the Act.</p> <p>In considering the reasons for granting of consent it is noted that the Development Determination Panel of Council made the following conclusion in Minutes of the previous assessment relating to the works:</p> <p>The impacts are such that this could not be considered to be within the parameters of a Modification under Section 4.55 (1A) as involving minimal environmental impact.</p> <p><i>"The Panel does not concur with the assessment report, or supplementary memo in regards to the impact from the proposed landscaping. The impacts are such that this could not be considered to be within the parameters of a Modification under Section 4.55 (1A) as involving minimal environmental impact.</i></p>

Section 4.55 (2) - Other Modifications	Comments
	<p><i>The Panel considers that the impact of the landscape terracing, and raised levels of landscaping, are unacceptable in relation to visual impacts, view loss, light and amenity to the adjoining properties. In this regard the landscape plans and references to the landscaping in the architectural plans are to be removed from the approval.</i></p> <p><i>These issues were raised previously in the original determination. The landscaping plans were amended to remove the raised landscaped areas, in order to lessen the impacts on adjoining properties. The original approved landscape plans did not contain any detail which indicated changes to the existing ground levels. In this regard the approved landscaping should be installed at the ground levels prior to construction."</i></p> <p>For the above reasons the applicant has provided a 4.55(2) application and as the proposal relates to landscaping works that are ancillary to the residential flat building the application and remains consistent with the original development consent, including reasons for granting approval. The changes to the landscaping at the south-west corner of the site allow for views and stabilisation of the soil area with low coastal planting and low sandstone walled garden beds that are sympathetic to the adjacent public reserve.</p>
<p>(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and</p>	<p>Development Application DA2011/0360 did not require concurrence from the relevant Minister, public authority or approval body.</p>
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(ii) a development control plan, if the consent authority is a council that has made a development control plan under</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan.</p>

Section 4.55 (2) - Other Modifications	Comments
section 72 that requires the notification or advertising of applications for modification of a development consent, and	
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on “Notification & Submissions Received” in this report.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining a modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation was submitted with the original application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>requested in this case, however the applicant has provided an response to submissions viewed online and demonstrating the merit consideration of the changes / modification proposed.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter has been addressed via a condition in the original consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

Section 4.15 'Matters for Consideration'	Comments

EXISTING USE RIGHTS

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

Section 4.65 of the Act defines an existing use as:

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

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

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

This necessarily requires the following questions to be answered:

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

Comment: The Applicant has provided evidence in the form of development consent No.64/161 for Lot B in DP 2061, which reveals that the use of the building and land commenced as a lawful purpose in 1964, prior to the coming into force of Warringah Local Environmental Plan 2011 on 9 December 2011.

Pursuant to Warringah LEP 2000 the use was "Category 2 - Housing" however existing use rights have become applicable for the current R2 Low Density Residential zone now, since the gazettal of WLEP 2011. The works propose relate to a sloping garden area toward the south-western corner of the site to provide suitable low retaining walls for soil beds, native coastal planting and a garden water feature. The works have no impact on existing use rights for the building in terms of density, bulk, scale, traffic, noise, or the residential flat building design.

2. Was the use of the land for residential flat building was 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 and land for development of residential flat building containing 18 units was lawfully approved by Council on 24 September 1964, prior to the coming into force of Warringah Local Environmental Plan 2011 on 9 December 2011.

3. Has the use of the building and land 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 survey information and development application documents, which reveals that the use of the building was in place prior to 2011 and development consent for alterations and additions granted on 12 September 2011, which is within one year, and prior to the date on which the provision having the effect of prohibiting the use commenced.

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

Meagher JA in *Steedman v Baulkham Hills Shire Council* [No. 1] (1991) 87 LGERA 26 stated (at 27) the rule to be applied as follows: “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 do not apply to the whole of the subject site.

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

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

The following four principles adopted by the NSW Land and Environment Court in this case will have general application in dealing with development applications that rely on existing use rights:

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

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

Comment: The modification works to the section of garden landscaping at the south western corner of the site does alter the approved landscape open space area for the site or the building structures, bulk, floor space, parking or any other built form controls.

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

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

Comment: The modification work seeks to provide a suitable alternative landscape treatment at the

lower corner of the site below the end of the driveway area due to bedrock and shallow soil so that amenity between adjacent buildings is provided by suitable planting for the coastal environment.

3. What are the impacts on adjoining land?

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

Comment: The modification to the garden landscape space does not create any unreasonable impact on adjacent land and maintains amenity considerations of noise, soil erosion protection, suitable planting, privacy and setback treatment.

4. What is the internal amenity?

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

Comment: The modification work is wholly located within the site and does not impact existing bushland within the adjacent public reserve. Acceptable amenity for the surrounding residential environment is maintained. The previous approval for DA2011/0360 was made pursuant to Warringah LEP 2000 in that "housing" was subject to a Locality statement with "categories" of development and not a land use Zoning Table and Zones as per current the Standard Instrument LEP.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 13/09/2021 to 27/09/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Robyn Jean Wormald	15 / 1 Greycliffe Street QUEENSCLIFF NSW 2096
Christopher Hrones	12/11a Oyama Avenue MANLY NSW 2095

The matters raised within the submissions are addressed as follows:

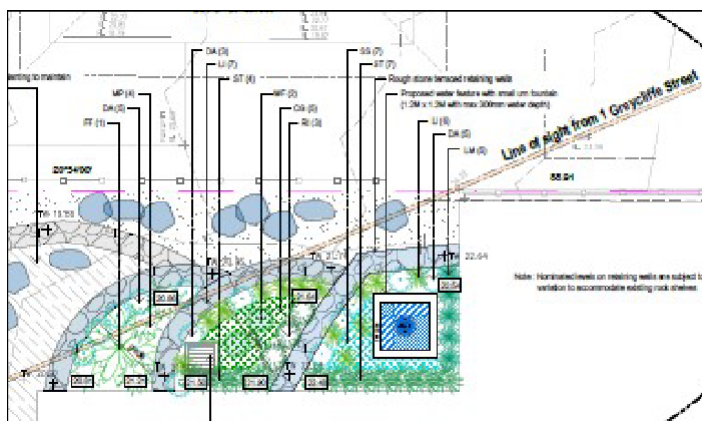
- *Concern regarding impact on views*

Comment: A submission was received from the property owners of 3/1a Greycliffe Street raising

concerns with regards to impacts to views. However, the concerns raised are not in relation to the proposed works but rather the landscaped treatment of the coastal reserve immediately to the south of the subject site. The landscaped treatment of the coastal reserve is not impacted by the proposed modifications and is not relevant to the subject application.

A second submission received from the property owners of 15/1 Greycliff Street made reference to existing impacts to views associated with the approved development in general, with no specific concern raised in relation to the proposed modifications.

Nonetheless, the landscaped plans have been designed to minimise impacts upon the amenity of adjoining properties by strategically locating the terracing and larger plants outside the view corridor in question. This issue is addressed in detail under the heading *Part C7 Views* within this report.



Based on the above, it is concluded that the proposed development will not have any unreasonable impacts on the available views from adjoining and surrounding properties and the modification is consistent with the objectives of Part C7 of the DCP.

- *Concern regarding noise, debris and dust from construction activity.*

Comment: The works proposed in the subject modification application are relatively minor in comparison to the scope of works approved under the parent development application, which have already been completed. The impacts upon neighbouring properties associated with construction should be relatively minimal, with unreasonable impacts mitigated/covered by existing conditions of consent.

A submission also raised concern regarding existing debris associated with the mulch that has been used in the as-built landscaped area. Whilst the mulch has subsequently been removed, the proposed landscaping of ground covers in this area will protect the exposed soil/mulch which should actively reduce the amount of mulch/dirt/debris within this area. Further, the proposed retaining walls are designed to sit slightly higher than the edge of the garden bed to retain the mulch and soil within the subject site.

- *Concern that the water feature may cause smell and mosquitoes from stagnant water.*

Comment: The water feature has recirculating water that prevents smell and mosquitoes due to the moving water. The water noise assists to mask background noise between adjacent bedroom / private open space areas. Nonetheless, the applicant has agreed that if the water feature is of concern, they are agreeable to its deletion. Noting that the water feature is in a location that is somewhat physically disconnected from the associated unit, a condition of

consent is recommended to delete the water feature, with the area to be replaced with plantings of the same species as those proposed in the surrounding garden.

- *Concern regarding solar access.*

Comment: A submission has been received in objection to the proposed plantings and any further impacts upon solar access. The majority of the proposed plantings are ground covers with maximum maturity heights of less than 1m. Whilst some slightly taller plants are proposed (maximum 1.5m in height), they are setback from the boundary, adjacent to the existing wall of the development. The proposed plantings will not result in any additional overshadowing of the adjacent property.

- *Concern regarding the visual appearance of the retaining wall.*

Comment: A submission was received regarding the visual appearance of the existing retaining walls. The proposed modifications will result in a minor reduction to the height of the walls, and the proposed plantings will result in the enhancement of the aesthetic appearance of the area.

The two submissions received have been considered in detail and none of the matters raised warrant the refusal of the subject application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>Supported without conditions.</p> <p>The application is for modification of development consent DA2011/0360 and amendment to approved plans referenced in the most recent modification approval Mod2020/0572. This application proposes to modify the landscaping works in the south-western corner of the site and associated conditions 1D(a) and 1D(c) of Mod2020/0572.</p> <p>The landscape plans provide for a lowering of as built terraced walling between 100mm and 500mm below existing and provide a plant schedule amended with planting to a height of no more than 1 metre within the garden beds occupying the view line of 1 Greycliffe St.</p> <p>Landscape Referral no objections to the landscape works as depicted by Landscape Plan DA-100 revision D.</p>
NECC (Coast and Catchments)	<p>Supported without conditions.</p> <p>The application has been assessed against the requirements of clauses 13, 14 and 14 of State Environmental Planning Policy Coastal Management and has been assessed to comply. Therefore, it is supported for approval with conditions.</p>
NECC (Water Management)	<p>Supported with existing condition (No.16) applied.</p> <p>The project is proposing minor landscaping works. The proposed modification to the approved DA are low environmental risk from a water quality management perspectives (stormwater and</p>

Internal Referral Body	Comments
	groundwater). Sediment and erosion controls measures shall be maintained at all times during construction activity.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	Ausgrid requirements have been addressed by existing referral advice provided for the original development application as modified. No further matters are advised as per case reference "A32622 - Decision not required".

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

The requirements of SEPP 55 (and Draft SEPP) were addressed as part of the parent development application. The modification works maintain consistency with the SEPP and no further detail consideration or change to conditions is required pursuant to the SEPP.

SEPP 65 - Design Quality of Residential Apartment Development

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

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

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

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

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

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

As previously outlined the proposed modification of the development related to the parent approval for alterations and additions to an 11 storey residential flat building.

As per the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are applicable to the assessment of this application.

As previously outlined within this report Clause 50(1A) of the Environmental Planning and Assessment Regulation 2000 requires the submission of a Design Verification Certificate from the building designer at lodgement of the development application. This documentation has been submitted.

Clause 28 of SEPP 65 requires:

(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.

DESIGN REVIEW PANEL

Northern Beaches Council does not have an appointed Design Review Panel.

DESIGN QUALITY PRINCIPLES

Principle 1: Context and Neighbourhood Character

Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.

Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to, and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

Comment:

The modification work maintains consistency with the landscape character of the foreshore area and includes native plant and shrubs that are suitable for the coastal environment and position adjacent to other apartment buildings.

Principle 2: Built Form and Scale

Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.

Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

Comment:

The modification work does not affect the building form and scale of the approved development work.

Principle 3: Density

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.

Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

Comment:

No change is proposed to the density of the site. The existing building is one of numerous anomalies with the current zoning as low density residential land due to historical development at the Queenscliff end of Manly Beach. (Parent DA added Units to the building with renovation works to the subfloor areas and parking areas as part of a major renovation to the building.)

Principle 4: Sustainability

Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials, and deep soil zones for groundwater recharge and vegetation.

Comment:

The modification work does not affect the sustainability performance of the building.

Principle 5: Landscape

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long term management.

Comment:

The modification relates to a minor section of the site applicable to garden area changes for landscaping and minor retaining walls with a cosmetic water feature to enhance noise privacy and amenity.

Principle 6: Amenity

Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident wellbeing.

Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all age groups and degrees of mobility.

Comment:

The modification works will maintain amenity to adjacent land and provide appropriate planting and soil support to limit erosion.

Principle 7: Safety

Good design optimises safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.

A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

Comment:

The modifications include a water feature that is safe and does not require fencing. The position of the garden area is subject to passive surveillance from adjacent private open space.

Principle 8: Housing Diversity and Social Interaction

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.

Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents.

Comment:

The modification work does not affect housing diversity or social housing considerations.

Principle 9: Aesthetics

Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.

The visual appearance of well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

Comment:

Acceptable design aesthetics have been applied for the modification works to respond to the conditions

of consent and reasons for the modification work.

APARTMENT DESIGN GUIDE

The proposed modification work is a qualitative change to the existing landscape space and does not change the area or dimensions of setbacks, landscape area, building elements to the RFB, residential access, or does not change the siting, building design, configuration or performance. Therefore, no detail assessment under the criteria of the 'Apartment Design Guide' is required.

STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

Clause 30 of SEPP 65 Standards that cannot be used as grounds to refuse development consent or modification of development consent states that:

- (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.

Comment:

(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.

(3) To remove doubt:

- (a) subclause (1) does not prevent a consent authority from refusing an application in relation to a matter not specified in subclause (1), including on the basis of subclause (2), and
- (b) the design criteria specified in subclause (1) are standards to which clause 79C (2) of the Act applies.

Note. The provisions of this clause do not impose any limitations on the grounds on which a consent authority may grant or modify development consent.

Comment:

The proposed modification work is a qualitative change to the existing landscape space and is

consistent with the design quality principles and objectives of the ADG.

SEPP (Building Sustainability Index: BASIX) 2004

The requirements of SEPP BASIX were addressed as part of the parent development application. The modification works maintain consistency with the SEPP for associated landscaping components and no further detail consideration or change to conditions is required pursuant to the SEPP.

SEPP (Infrastructure) 2007

The requirements of *SEPP Infrastructure* were addressed as part of the parent development application. By existing conditions the modification works maintain consistency with the SEPP for the works including compliance with *Ausgrid*, *Sydney Water*, *Transport for NSW* and other service infrastructure authorities. No further detail consideration or change to conditions is required pursuant to the SEPP.

SEPP (Coastal Management) 2018

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

12 Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- (a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and*
- (b) the proposed development:*
 - (i) is not likely to alter coastal processes to the detriment of the natural environment or other land, and*
 - (ii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and*
 - (iii) incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and*
- (c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.*

Comment:

The works are not likely to alter coastal processes or adversely affect the natural foreshore environment.

13 Development on land within the coastal environment area

- (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,*
- (b) *coastal environmental values and natural coastal processes,*
- (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,*
- (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
- (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,*
- (f) *Aboriginal cultural heritage, practices and places,*
- (g) *the use of the surf zone.*

Comment:

The proposed landscaping work and changes to the open space area are consistent with the coastal environment for garden feature work, use of native species for habitat and minimal impact on the coastal environment.

- (2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
 - (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or
 - (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

The proposed landscaping work and changes to the open space area are consistent with the coastal use area objectives.

14 Development on land within the coastal use area

- (1)
 - (a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
 - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
 - (iv) Aboriginal cultural heritage, practices and places,
 - (v) cultural and built environment heritage, and
 - (b) is satisfied that:
 - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
 - (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The proposed modification work is consistent with the coastal use area requirements and objectives of the SEPP.

As such, it is considered that the modification application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

15 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

The proposed landscaping work and changes to the open space area are consistent with the coastal zone objectives to ensure no increased risk from coastal hazards.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	31.3m (Originally 11 storey building - Alterations created a 12 storey configuration with renovation work)	No change	268% (Existing)	No (As approved)

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	N/A
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Variation %	Complies
B1 Wall height	7.2m	12 storey RFB 31.0m 8m for Unit additions to RFB lower levels	No change	Existing 330.5%	As approved
B3 Side Boundary Envelope	East 45 degrees at 5m	Main RFB structure Within envelope for lower Unit additions	No change	Existing 100% N/A	No As approved Yes
	West 45 degrees at 5m	Main RFB structure Within envelope for lower Unit additions	No change No change	Existing 100% N/A	No As approved Yes
B5 Side Boundary	East	Building	No change	Existing	No

Setbacks	0.9m	additions: Nil to 4.5m		100%	As approved
		Main RFB and utility 0.0m to 3.9m	Ventilation outlet: 7.3m	Existing 100%	No As approved
	West 0.9m	Main RFB building: 0.9m to 3.9m	No change	N/A	Yes
		Main RFB and driveway 0.0m to 3.9m	No change Ventilation outlet: 9.5m	N/A	Yes
		Foreshore area	No change Landscaped terrace: 0.9m	N/A	Yes
	North 0.9m	Building: Nil to 3.5m	No change	Existing	No As approved
		-	Ventilation outlet: 2.2m	Existing	Yes
B7 Front Boundary Setbacks	6.5m	45.0m (Access handle area)	No change	Existing	Yes
B9 Rear Boundary Setbacks	6m	Building: 4.1m to 6.4m	Unaltered	Existing	As approved
		Balconies: 2.1m to 4.4m	No change	Existing	As approved
		-	Landscaped terrace: 4.1m	Existing	No As approved
D1 Landscaped Open Space and Bushland Setting (Site area 853sqm excluding access handle)	40% 341sqm	18.9% 204sqm	No change	40.17% Existing	No As approved

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	N/A	N/A
B3 Side Boundary Envelope	N/A	N/A

Clause	Compliance with Requirements	Consistency Aims/Objectives
B5 Side Boundary Setbacks	N/A	N/A
B7 Front Boundary Setbacks	N/A	N/A
B9 Rear Boundary Setbacks	Yes	Yes
C4 Stormwater	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	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

The proposal seeks changes to the landscaped open space area and while no net area change is proposed the modification affects the approved landscape design.

Merit consideration

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

- *To enable planting to maintain and enhance the streetscape.*

Comment: The modification works are not visible from Queenscliff Road or the public beach area below the site due to the separation distance and adjacent structures such as fencing,

buildings and existing landform. The planting regime is appropriate for the local area that include sandstone garden edging and native plants.

- *To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.*

Comment: The selected planting and reshaping of the garden bed include suitable species for the coastal environment and sandstone topography. The planting selected is similar to adjacent garden areas already completed at the southern side of the lower private terrace. The modification is consistent with this objective.

- *To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.*

Comment: The landscaping works proposed include suitable low lying shrubs and plants that will not have an adverse impact on views across the corner of the site and provide suitable soil cover to reduce erosion risk and landscape amenity to adjacent POS. The modification is consistent with this objective.

- *To enhance privacy between buildings.*

Comment: The landscaping provides an appropriate level of landscape separation and the inclusion of a small recirculating water feature assist to mask low level noise for privacy between adjacent POS. The modification is consistent with this objective.

- *To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.*

Comment: The landscape area to be modified is on a steep side slope below the driveway area and is not suitable as a recreation space.

- *To provide space for service functions, including clothes drying.*

Comment: The landscape area to be modified is on a steep side slope below the driveway area and is not accessible for use as a clothes drying area or other functions.

- *To facilitate water management, including on-site detention and infiltration of stormwater.*

Comment: The proposed modification to the landscape area does not create an adverse impact on stormwater management for the site and will provide suitable ground cover shrubs for soil support and covering exposed rock areas and to assist with infiltration in a landscape setting.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of this control and remains supportable on merit.

D7 Views

Merit consideration

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

(Note: a comprehensive view impact assessment was made with DA2011/0360, including site photos

from various parts of adjacent properties / units. This information has been reviewed in context of submissions received and considered as part of this modification application assessment)

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

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

1. Nature of the views affected

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

Comment to Step 1: The views available from affected properties include whole views of the Queenscliff / Manly Beach land/water interface, the Pacific Ocean and distant views of North Head and St Patrick's Estate. These views are highly valued and views from adjacent apartments that have yards adjacent have a similar whole view. Generally, the works are not readily visible due to the high terrace and driveway structure / corner of a 2m to 3m retaining wall on the south side of the landscape area.

These views are also obtained through building corridors and voids and landscaping are also available. Accordingly, these views are considered of minor to moderate value.



Image: View line between buildings of Manly beachfront area not affected by the modification works.

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

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

Comment to Step 2: The proposed landscaping will have a negligible impact on any views obtained from the ground floor units at the rear of No. 1 Queenscliff Road as the landscaping works are situated beside a corner of the building with high walls on 2 sides.



Image: Side view over Council reserve area from 1A Queenscliff Road. This area is not part of the modification.

3. Extent of impact

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

Comment to Step 3: The proposed landscape plantings on-site, including the maturity height and foliage density of trees and understorey species, is not expected to result in further unacceptable and unreasonable view loss impacts to adjoining and surrounding lands. The modification work area is depicted below and show that the high courtyard walls, elevated driveway and sloping garden bed area will ensure no view impact on views. The proposed planting has been laid out so that only low plants are positioned in the view corridor and these are well below the standing or sitting view line.



Image: Location of modification work in relation to side setback and adjacent higher walls of existing buildings.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Step 4: The proposed landscape plantings on-site, including the maturity height and foliage density of trees and understorey species, is not expected to result in further unacceptable or any unreasonable view loss impacts to adjoining and surrounding lands,

including adjacent apartments at No.1 and No.1A Queenscliff Road.



Image: Type of landscaping completed in front of the modification area to match to garden landscape area to be completed.

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

Comment: The modification to the garden area provides graduated garden beds for the slope and suitable planting. The position and shape of the garden area is situated well below the main driveway structure and will assist in improved amenity for adjacent private open space without impacting views.

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

Comment: The modification works includes suitable garden planting for the coastal environment of low shrubs and grass. No canopy trees are proposed.

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

E7 Development on land adjoining public open space

The site adjoins a foreshore reserve and Council has undertaken rehabilitation planting / weed management of the adjacent reserve including extensive replanting works for erosion control and native coastal habitat. The landscaping changes seek to maintain consistency with the Council reserve area that now has more established coastal plants. The change to low hob retaining walls will assist in soil retention of garden bed and the proposed plantings will improve the aesthetic appearance of the

setback area.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

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

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

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

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

The modification works relate to an unfinished section of the garden landscaped area below the main driveway structure and adjacent "Unit A" that was a new unit constructed in the southern undercroft of the original building. The parent consent was subject to the Apartment Design Guide (ADG) under State Environmental Planning Policy (SEPP) No.65 and the modification assessment has the relevant parts of the SEPP. The building is also located in the R2 Low Density Residential zone (following the gazettal of Warringah LEP 20111 and therefore existing use rights apply to the building which have been addressed in context of the modification being limited to ground level garden landscaping only.

The modification application received two submissions raising concerns with potential view impacts, privacy, amenity, the water feature and construction activity which have been considered addressed during the assessment. This assessment including inspection of the subject site and surroundings has resolved that the modification work does not warrant special conditions or plan amendments for the construction certificate process. The works relate to minor landscaping elements and the garden area is bordered on two sides by high existing walls no unreasonable impacts are created by the modification proposal. The work zone for the garden area to be completed is not part of the adjacent public reserve and appropriate planting is selected for the natural coastal environment. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Northern Beaches Local Planning Panel as the consent authority grant **approval** to Modification Application No. Mod2021/0668 for Modification of Development Consent DA2011/0360 granted for alterations and additions to a Residential Flat Building on land at Lot CP SP 4129,48 A Queenscliff Road, QUEENSCLIFF, subject to the conditions printed below:

B. Add Condition 1E - Modification of Consent - Approved Plans and Supporting Documentation, to read as follows:

1E. Modification of Consent - Approved Plans and supporting Documentation

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

a) Modification Approved Documents

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Assessment 2010-198	17.8.2021	Crozier Geotechnical Consultants

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

Landscape Plans		
Drawing No.	Dated	Prepared By
DA-100 Revision D Landscape Plan	2.6.2021	Space Landscape Designs

In the event of any inconsistency between the plans or requirements of Conditions 1D and 1E, Condition 1E is to prevail.

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