



The General Manager
Northern Beaches Council
725 Pittwater Road
DEE WHY NSW 2099

10 September 2019

Attention: David Auster

Dear General Manager,

68A Queenscliff Rd, Freshwater
Development Application No. 2019/0845
Demolition of existing structures and construction of shop top housing development and strata subdivision into 7 lots.

Background

We have been engaged by the owners of Unit 6, no 53 Queenscliff Road, Freshwater, Susanne and Paul Mitchell, who have recently been notified of a Development Application at 68a Queenscliff Road, Queenscliff to provide an objection to the above mentioned Development Application. No. 68a Queenscliff Road is located immediately to the south of our client's home with Unit 6 located on the third floor within a 4-level residential flat building, with views out to the beach over the top of the proposed development site.

DA2019/00845 involves the demolition of the existing building and construction of a new 3 storey shop top housing development with lift access, roof top deck, 5 dwellings and 2 commercial premises and basement parking for 6 vehicles.

View of Locality

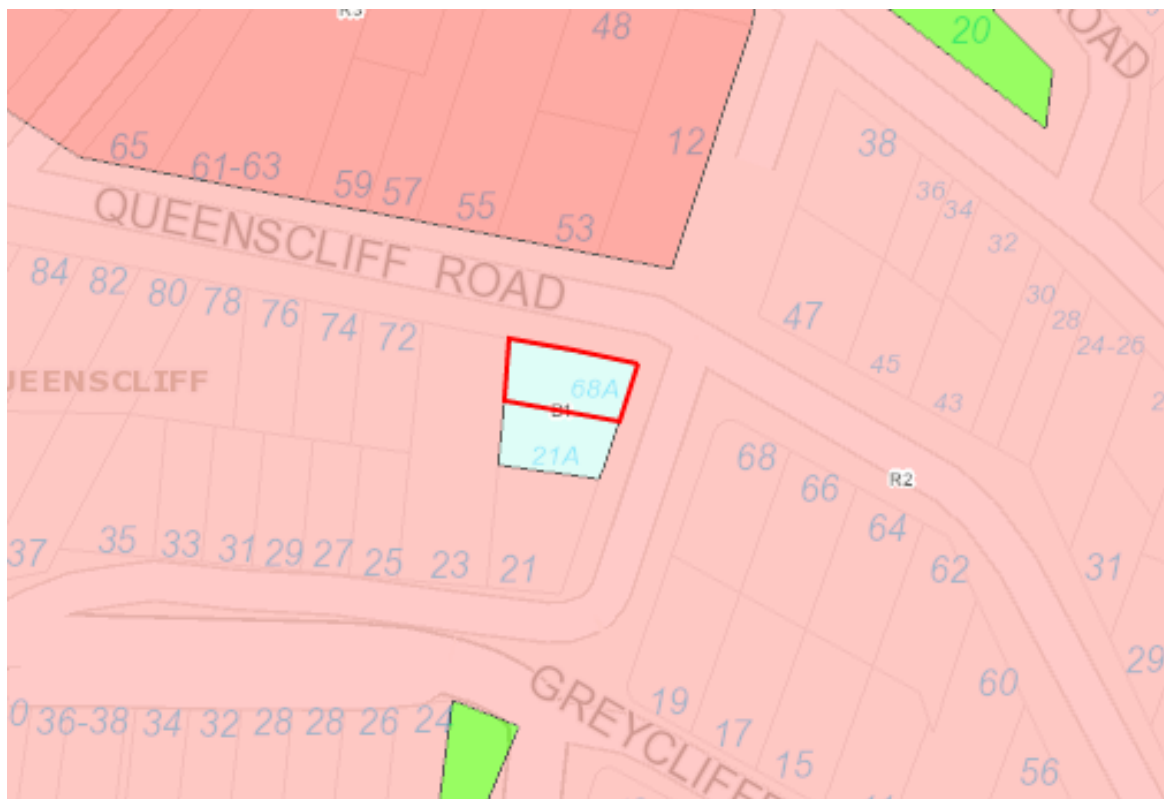
The general locality can be described as a mix of residential uses with residential flat buildings located on the northern side of Queenscliff Road and lower scale detached dwellings on the southern side of the street. The subject site and the southern neighbour 21A Bridge Street, are the only Neighbourhood Centre zoned sites in the immediate vicinity. The locality, which is a short walk from Queenscliff Beach and Freshwater village is hilly with views of the ocean available from much of the immediate locality.

The opportunity has been taken to view the subject property in the context of surrounding development and to consider plans and supporting documents relating to the development application which was available on the Northern Beaches Council website. Additionally, the site has been viewed from our client's property.

Currently 6/ 53 Queenscliff Road benefits from views due over the subject development site to Queenscliff, Manly and Shelly Beach. Views of the development site are also immediately available from their key living space.

Zoning and Land Use Generally

The property is zoned B1 Neighbourhood Centre under the provisions of the Warringah Local Environmental Plan 2013 (WLEP2011). Properties located on the northern side of Queenscliff Road are zoned R3 Medium Density Residential and properties on the southern side of Queenscliff Road and to the north east are zoned R2 Low Density Residential as can be seen on the zoning map extract below.



The area of the B1 Neighbourhood Centre zoning is only 2 lots and it is of key importance that any development be mindful and considerate of the surrounding zoning and residential uses. We note that the objectives of the B1 zone are as follows:

- *To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*
- *To ensure that neighbourhood centres provide a village-like atmosphere and safety and comfort for pedestrians.*
- *To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of any adjoining or nearby residential land uses.*

Nature of Submission

Having considered the site, its surrounds, neighbours and the details of the application currently before Council, our clients are keen to see the existing dilapidated building redeveloped and the area improved. However, they wish to ensure that this be done in a manner considerate of neighbouring properties views, privacy and amenity.

When the objectives of the Neighbourhood Centre zoning are considered, it does not appear that they are met by this development with a significant loss of amenity for neighbours and the village atmosphere disturbed.

Accordingly, this submission is an objection to the current Development Application based on various grounds which are detailed in the following paragraphs.

Background

The site is understood to have substantially commenced work on DA2015/1079, which consented to a 3 storey shop top development including Alterations and Additions to an existing Shop Top Housing Development and Strata Subdivision of low rental dwellings under SEPP (Affordable Rental Housing) 2009. As the current application is not a modification of Development Consent 2015/1079, but rather a new Development Application, the implications of this assessment and conditions of consent are not relevant, other than as background.

Accordingly, the following should be ensured:

1. An assessment of the loss of affordable housing under the provisions of SEPP (Affordable Rental Housing) 2008 is relevant to this application. Any monies paid in lieu of contributions under the previous consent are not relevant to this application, which must be assessed on its own merits.
2. Any variations to development standards or other planning controls should not be assumed as given for this application. These must be considered on their merits as would any new application. We would suggest that Council assessment on matters including height, deficiencies in parking have been intensified in recent years and current process is relevant to any new application.

Height

The applicant has submitted a clause 4.6 variation with the proposal as the height limit of 8.5 metres is breached, with a maximum height of 12.7 metres proposed. This is a 49% variation to the height control, which is extreme. The variation is partly for the third floor and for the greatest extent of the variation is the lift shaft.

The clause 4.6 variation submitted does not provide reasonable grounds to support the variation. It suggests that the new proposal is architecturally superior to the previous development consent. We would strongly disagree and state that inclusion of roof works including the lift, privacy screen, balustrades and other structures present as far less aesthetically pleasing when viewed from our client's site. The flat clean roof of the original approval is appropriate when there are many dwelling further up

the hill which overlook the site. The use of this space for recreation space, with lift access is unnecessary and unreasonable, resulting in the Clause 4.6 assessment failing.

Finally, the view loss analysis clearly demonstrates a significant loss of a high impact view as a result of the height breach. The development does not meet the test of the Clause 4.6 or tenacity and accordingly the vast height non-compliance cannot be approved.

Views

Views achieved from the key living area of unit 6 are of high value. They include the ocean, the land and water interface and beach from Queenscliff to Shelly Beach. The views are from the key indoor and outdoor living spaces of the premises. When considered under the principles of *Tenacity Consulting Pty Ltd v Warringah Council* (2004) NSWLEC 140, the views would be considered high value.

The views are available from the southern living area and balcony. See photograph below.



The impact of the loss is significant with a lift shaft and privacy screen located to remove in its entirety the land and water interface. See the diagrammatic extract from the view loss analysis submitted with the DA below. (We note that the incorrect property numbers have been provided for no 53 and 55 Queenscliff Road in this analysis)



Considering the massive height noncompliance, we believe that a revised development should be considered with no use of the roof space, and no lift access to the roof space to ensure view loss does not occur. We note that the existing 3 storey building does not provide use of the roof top, nor does the existing Development Consent 2015/1079. We request that the Council officer visit the site to understand the significant implications, particularly from the key living area.

We would also suggest that the view loss analysis is flawed, as it does not detail the view loss from what is existing on the site. Should the application be approved, this should be done with the assumption that the Development Consent 2015/1079 would be surrendered. Accordingly, the analysis should consider the existing view, and the existing building as a point of comparison, not that of the previous consent.

The owners of 6/53 Queenscliff Road did not object to the previous application, approved by Council in 2015 and had no issue with view loss due as a result of this consent. Should the existing current consent be developed, they would not have concerns. It is only the exacerbated scale of the new application which includes roof top structures and uses which fail to meet the Tenacity test.

We strongly urge Council to ensure that an unencumbered roof top be provided to ensure views are retained.

Visual privacy

The design of the proposed shop top housing development includes full use of the roof top as both private open space areas for 2 of the dwellings and a large communal area for all of the units. This use would result in significant privacy issues for the residents of many neighbouring properties including unit 6/53 Queenscliff Road. The roof top terrace would appear as a large open stage area, with residents and visitors able to easily see directly into our clients living area and private balcony. The premises are close enough that both the visual and acoustic implications would be unacceptable.

All proposed units have balconies which will provide an outdoor space. If these balcony area are undersized and unable to meet SEPP 65 requirements, then perhaps this is a sign that the development scale is excessive and the gross floor area needs to be reduced to allow for a greater balcony size. Inclusion of open space area on the roof top is an unreasonable and inequitable option.

The vast loss of privacy for neighbours is not worthy of consideration, particularly given that the use would be in an area where the height limit has been breached by a very significant amount. The use of privacy screen, outdoor furniture, BBQs etc would all only further increase view loss and we request that Council ensure that this element of the application be deleted.

Further we note that the pre-DA advice includes the advice that the design of rooftop gardens and common spaces for communal use are not encouraged on the roof top.

Acoustic Privacy

While an acoustic report has been provided, the development relies on a plan of management restricting hours of use of the roof top. This is not a reasonable expectation of a strata development, with management of such units not operational during the excluded hours, and the only means to operate being complaints to police or council. A roof top terrace will undoubtedly be used for large gatherings of people, and noise of people and music will travel and create disturbances for the neighbouring locality. No similar uses are located in the area, with roofs open and low level to allow for privacy and views to be retained.

Parking

Queenscliff Road has very limited on street parking due to its proximity to the beach and public transport and there will undoubtedly be some spill over onto the street though the intensification of the use of the land. The location is not typical with a large additional flow of traffic and people parking all throughout the week due to the beach, and many non-residents parking in the street while they catch the bus to work due to the lack of parking restrictions in the street. With much of the older housing stock not including parking or having inadequate parking, local residents often have to park some distance from their homes already, as visitors to the area dominate the street parking.

The proposed development does not adequately consider the circumstances of this site and the lack of parking currently available. The development proposed 6 spaces, where 14 are required. One of these spaces is undersized and should be excluded from the calculation. This is a massive variation, which demonstrates an overdevelopment of the site and a lack of consideration for the impact on neighbours.

Compliant parking is essential for any new development. A variation, resulting in less than half the number of spaces required, in an area where parking is already at capacity is unreasonable and inappropriate. We request that Council ensure that the density and use of the site be decreased to allow for compliant parking, so that the implications for neighbours are not that they are unable to park in the immediate vicinity of their homes.

Side Setbacks

The shop terrace built to the side boundary may cause privacy and solar access issues for the neighbours to the south. While this does not immediately impact our site, it is an area of concern.

Front Setback

The development is proposed to be built to the front boundaries as is fairly typical of shop top development. This factor further intensifies the privacy, height and view loss implications from my client's site. Accordingly, we further reiterate the need for a significant reduction in height.

Conclusion

The proposed application results in a development which is considered an overdevelopment. Significant non-compliances including height and parking are representative of the proposed overdevelopment. The amenity impacts for neighbours, including our client, with regard to views and privacy, are extensive and are ample grounds alone for refusal. The accompanying documentation relies largely on a previous approval, which is not considered relevant to this new development assessment and the application must be considered on its own merits, under current controls with views and affordable housing, in particular, lacking in information as a part of the DA package.

Considering of all these factors we urge the Council to request the applicant revise the proposal. Alternatively, we believe the application must be refused in its current form.

If you have any further enquiries on any matters in this regard, please do not hesitate to contact me on 0413341584.

Yours faithfully,



Sarah McNeilly
Director
Watermark Planning