

STATEMENT OF ENVIRONMENTAL EFFECTS

FOR A PROPOSED STRATA SUBDIVISION

LOCATED AT

21 GREYCLIFFE STREET, QUEENSCLIFF

FOR

OWNERS CORPORATION OF STRATA PLAN No. 11195



**Prepared
May 2023**

Table of Contents

| | | |
|-----|---|----|
| 1.0 | Introduction | 3 |
| 2.0 | Property Description..... | 3 |
| 3.0 | Site Description | 4 |
| 4.0 | The Surrounding Environment..... | 6 |
| 5.0 | Proposed Development | 7 |
| 6.0 | Zoning and Development Controls | 8 |
| 6.1 | State Environmental Planning Policy (Resilience and Hazards) 2021..... | 8 |
| 6.2 | State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 | 8 |
| 6.3 | Warringah Local Environmental Plan 2011 | 8 |
| 6.4 | Warringah Development Control Plan | 15 |
| 7.0 | Matters for Consideration under Section 4.15 of The Environmental Planning and Assessment Act, 1979 | 19 |
| 7.1 | The provisions of any environmental planning instrument | 19 |
| 7.2 | Any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority..... | 19 |
| 7.3 | Any development control plan..... | 19 |
| 7.4 | Any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4..... | 19 |
| 7.5 | The regulations (to the extent that they prescribe matters for the purposes of this paragraph), | 19 |
| 7.6 | The likely impacts of that development, including environmental impacts on both the natural and built environments, and the social and economic impacts in the locality. | 19 |
| 7.7 | The suitability of the site for the development..... | 19 |
| 7.8 | Submissions made in accordance with this Act or the regulations | 20 |
| 7.9 | The public interest..... | 20 |
| 8.0 | Conclusion | 20 |

1.0 Introduction

This Statement of Environmental Effects accompanies a Draft Strata Plan prepared by Warren Bee, Reference No. 18954 SP, dated 4 May 2023 to detail the Strata Subdivision on land at **No. 21 Greycliffe Street, Queenscliff**.

This Statement describes the subject site and the surrounding area, together with the relevant planning controls and policies relating to the site and the type of development proposed. As a result of this assessment it is concluded that the development of the site in the manner proposed is considered to be acceptable and is worthy of the support of the Council.

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

- *The Environmental Planning and Assessment Act, 1979 as amended*
- *The Environmental Planning and Assessment Regulation 2000*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Building Sustainability Index – BASIX) 2004*
- *Warringah Local Environmental Plan 2011*
- *Warringah Development Control Plan*

2.0 Property Description

The subject allotment is described as **Helva Court, No 21 Greycliffe Street, Queenscliff** being SP 11195 and is zoned R2 Low Density Residential within the provisions of the Warringah Local Environmental Plan 2011.

The land is noted as being Landslip Area B, and this issue will be addressed further within this statement.

The site is identified as being within a Coastal Use Area as mapped within the State Environmental Planning Policy (Resilience and Hazards) 2021. This matter will be further discussed within this statement.

The site is not affected by any additional hazards.

3.0 Site Description

The subject site is located on the northern side of Greycliffe Street and western side of Bridge Road. The site is regular in shape, with a street frontage of 15.455m to Greycliffe Street and a secondary, eastern frontage of 24.895m to Bridge Street. The western side boundary measures 25.555m and the rear boundary measures 21.065m. The site area is 455.9m².

The site is occupied by a four-level brick residential flat building development with a tile roof. Vehicle access is provided to the site via Greycliffe Street and Bridge Street with hardstand car parking spaces available under the residential flat building.

The details of the existing site are indicated on the Strata Subdivision Plan, Strata Plan Reference No. 11195, dated 3 September 1976, which accompanies the DA submission.

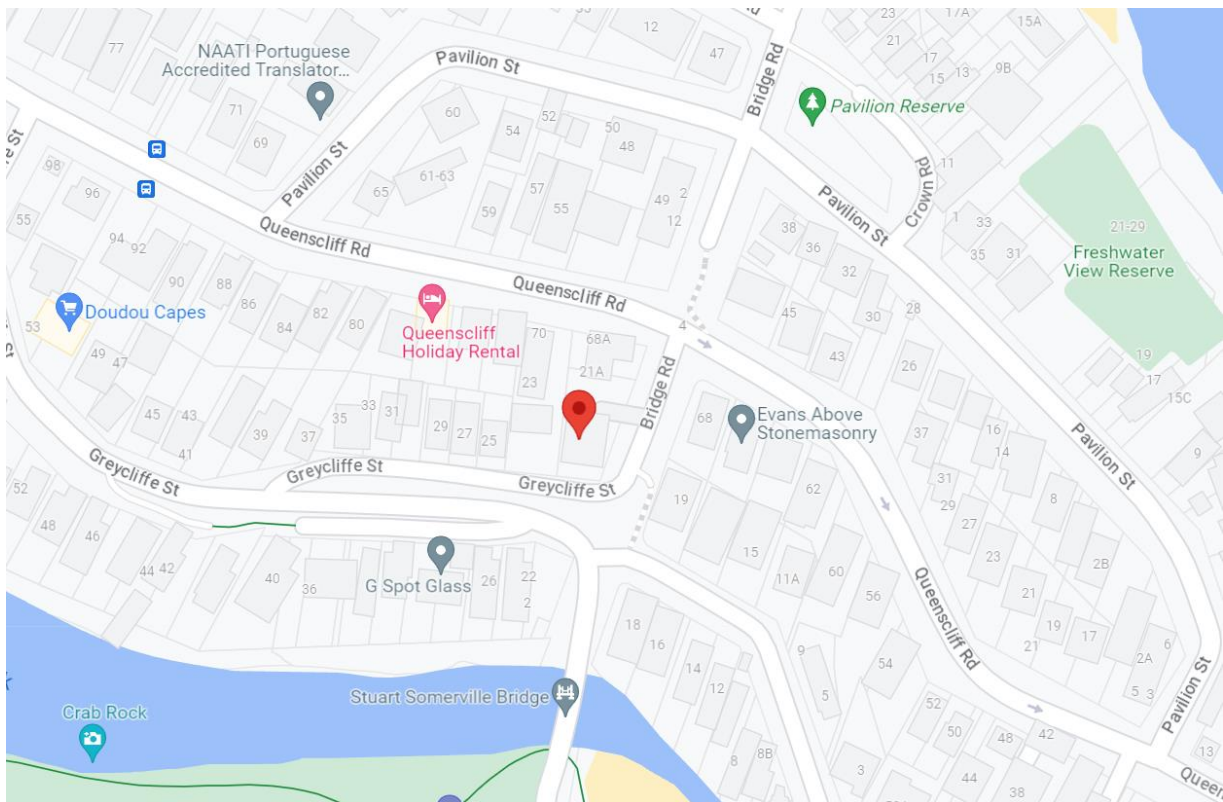


Fig 1: Location of Subject Site
(Source: Google Maps)



**Fig 2: View of subject site , looking north-west from corner of Greycliffe Street & Bridge Road
(Source: Google Maps)**

4.0 The Surrounding Environment

The general vicinity of the site is characterised by a mix of single detached dwellings, associated small residential flat development and newer style flat buildings within a landscaped setting.

Queenscliff beach is located approximately 120m to the south of the subject site.

Properties in the area enjoy local views and views towards Queenscliff Beach and Manly Beach, with no amendment to the existing view corridors for the surrounding sites as a result of the proposed Strata Subdivision.

The site and its surrounds are depicted in the following aerial photograph:

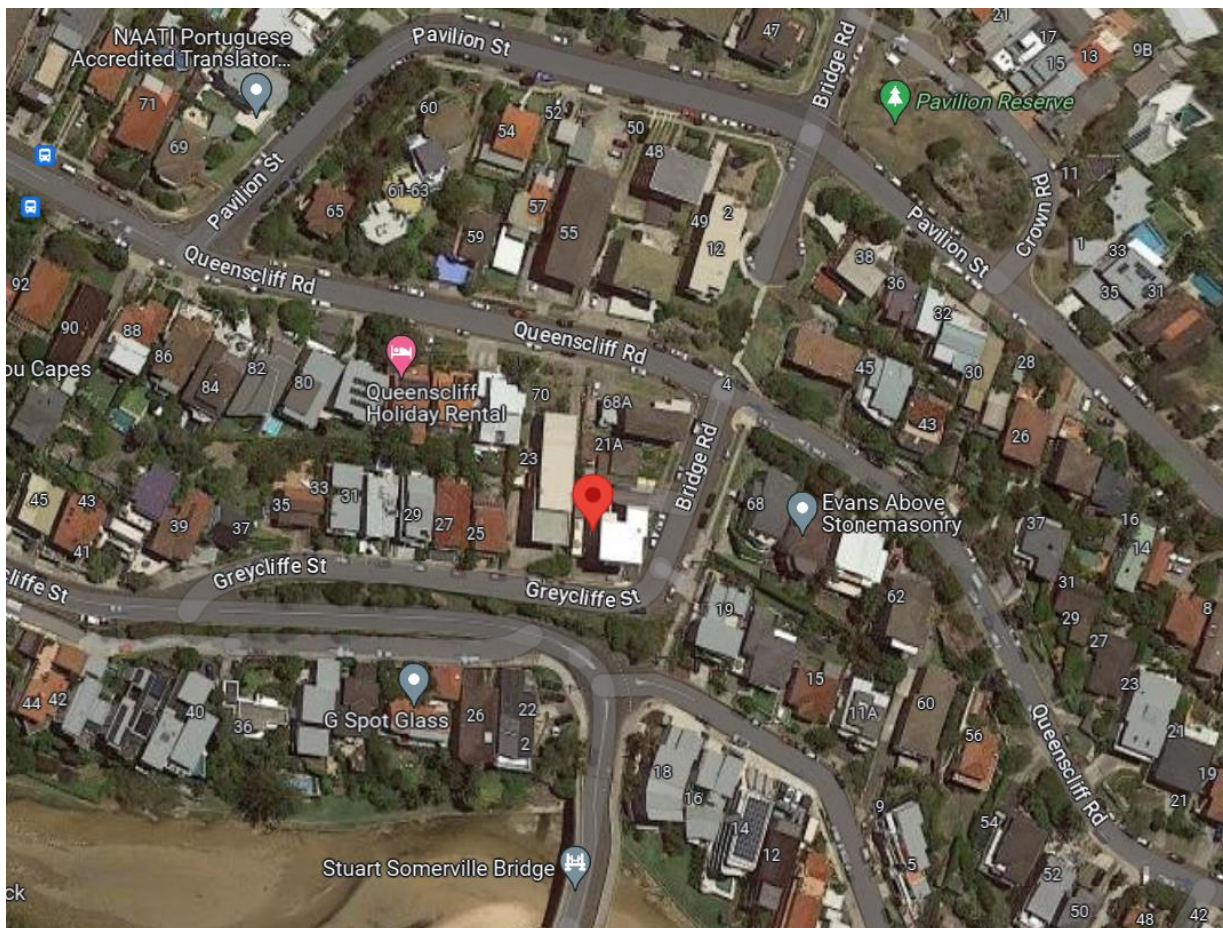


Fig 3: Aerial view of locality
(Source: Google Maps)

5.0 Proposed Development

The proposal seeks consent for the amendment to the existing strata title subdivision of the residential flat development. The strata title amendments include:

- Inclusion of new courtyard spaces to Lot 1 (28m²) and Lot 3 (42m²)
- amendment to the onsite location of the car parking space for Lot 8, Lot 11 and Lot 12.

The change in the carparking spaces on the site allows for the provision of a new walkway area between Lots 10 and Lot 11 car parking spaces to improve the functionality of the site.

No physical works are proposed as part of the application.

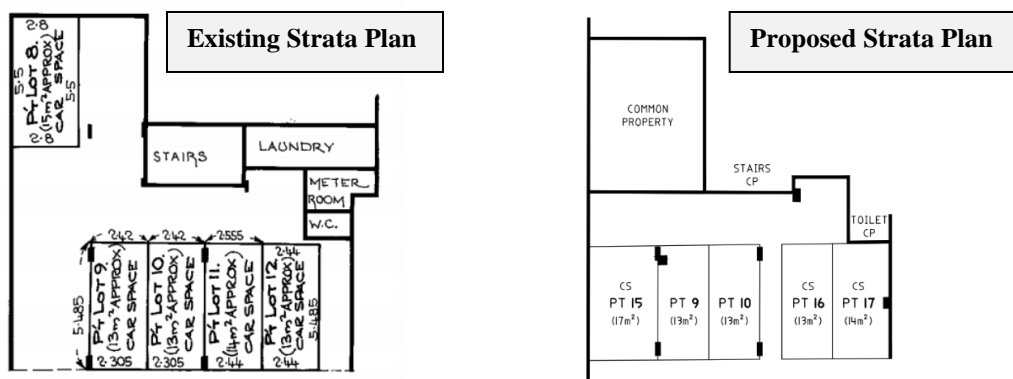


Fig 6: Comparison of the existing Strata plan (Ref No. 11195) & Draft Strata plan (Ref No. 18954) car parking

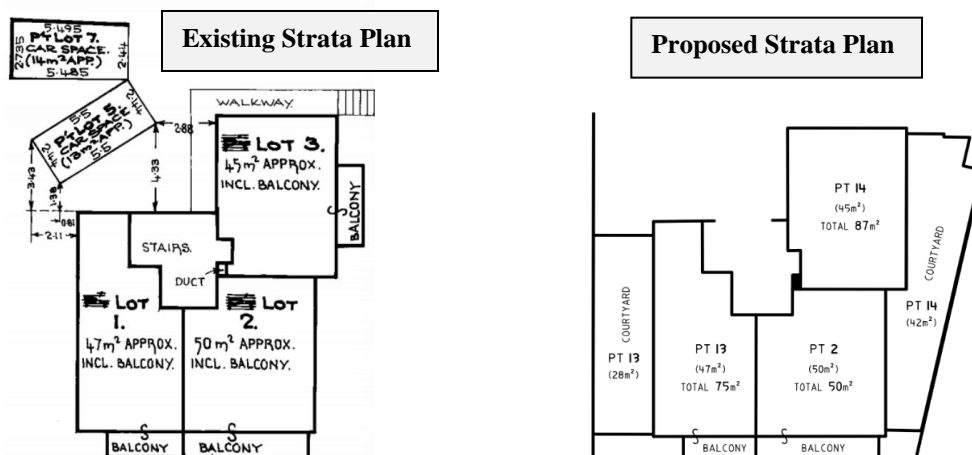


Fig 7: Comparison of the existing Strata plan (Ref No. 11195) & Draft Strata plan (Ref No. 18954) courtyards

6.0 Zoning and Development Controls

6.1 State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 2 Coastal Management

The site is located within the coastal zone and thus the proposal requires assessment under the Clauses 2.10 and 2.12 of Chapter 2 of the above SEPP.

The proposal is sited in a relatively unconstrained location that is cleared and suitably setback an effective buffer distance to Queenscliff Beach. The Strata Subdivision is not foreseen to generate any increased risk of coastal hazards on the site or surrounding coastal land.

Chapter 4 Site Contamination

SEPP (Resilience and Hazards) 2021 and in particular Clause 4.6(1)(a) suggests that a consent authority must not grant consent to the carrying out of any development on land unless it has considered whether the land is contaminated.

Given the history of residential use of the land, the site is not considered to be subject to contamination and further investigation is not required at this stage.

6.2 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

The proposal will not see any change to the existing building fabric. A BASIX Certificate is not required in this instance.

6.3 Warringah Local Environmental Plan 2011

The land is zoned R2 Low Density Residential under the provisions of the WLEP 2011.



Fig 7: Zoning map extract (Source: Warringah LEP 2011)

The existing residential flat building is defined in the Dictionary to the WLEP 2011 as:

residential flat building means a building containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling housing.

Residential flat buildings are not a permissible use under the R2 Residential zone. However, the proposal is able to be considered by Council under the existing use rights regulated within Section 4.65 and Section 4.66 of the Environmental Planning and Assessment Act 1979 ("the EP & A Act") and Clauses 40-43 of the Environmental Planning and Assessment Regulation 2000 ("the Regulation").

Under the provisions of Section 4.65 of the Environmental Planning and Assessment Act 1979, existing use means:-

- (a) The use of a building, work or land for a lawful purpose immediately before becoming into force of an Environmental Planning Instrument which would, but for division 4 of this part, have the effect of prohibiting that use, and;*
- (b) The use for building, work or land;*
 - (i) For which Development Consent was granted before the commencement of the provision of an Environmental Planning Instrument having the effect of prohibiting the use, and*
 - (ii) That has been carried out, within 1 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.*

Establishment of Existing Use Rights

The investigation of the development history of the subject site notes that the use of the subject site for a residential flat building commenced in 1976 as demonstrated by the Strata Subdivision Plan, Strata Plan Reference No. 11195, dated 3 September 1976. The existing use has continued since that time to the current date.

Accordingly, the relevant date for the purposes of section 4.65 of the Act is 9 December 2011, when WLEP 2011 was gazetted and the use became prohibited. In accordance with the provisions of Section 4.65 of the EPA Act, the current use is considered to meet the requirements to benefit from the existing rights provisions. The development therefore continues to be permissible in the R2 zone under the provisions of existing use rights.

This proposal for Strata Subdivision of the existing residential flat building on the subject site relies upon the provisions of existing use rights regulated under Section 4.65 and Section 4.66 of the Environmental Planning and Assessment Act 1979 ("the EP& A Act") and clauses 40-43 of the Environmental Planning and Assessment Regulation 2000 ("the Regulation").

The relevant provisions relating to the application of Environmental Planning Instruments to developments relying upon existing use rights are as follows:-

Section 4.65 of EP & A Act -

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

- (2) *Nothing in subsection (1) authorises:*
- (a) any alteration or extension to or rebuilding of a building or work, or*
 - (b) any increase in the area of the use made of a building, work or land from the area actually physically and lawfully used immediately before the coming into operation of the instrument therein mentioned, or*
 - (c) without affecting paragraph (a) or (b), any enlargement or expansion or intensification of an existing use, or*
 - (d) the continuance of the use therein mentioned in breach of any consent in force under this Act in relation to that use or any condition imposed or applicable to that consent or in breach of any condition referred to in section 4.17 (1) (b), or*
 - (e) the continuance of the use therein mentioned where that use is abandoned.*
- (3) *Without limiting the generality of subsection (2) (e), a use is to be presumed, unless the contrary is established, to be abandoned if it ceases to be actually so used for a continuous period of 12 months.*

The EP & A Act under Section 4.66 states that if provisions of an environmental planning instrument will derogate from the existing use rights provisions, then these provisions do not have any force or effect whilst the existing use rights remain.

4.67 Regulations respecting existing use

- (1) *The regulations may make provision for or with respect to existing use and, in particular, for or with respect to:*
- (a) the carrying out of alterations or extensions to or the rebuilding of a building or work being used for an existing use, and*
 - (b) the change of an existing use to another use, and*
 - (c) the enlargement or expansion or intensification of an existing use.*
 - (d) (Repealed)*
- (2) *The provisions (in this section referred to as the incorporated provisions) of any regulations in force for the purposes of subsection (1) are taken to be incorporated in every environmental planning instrument.*
- (3) *An environmental planning instrument may, in accordance with this Act, contain provisions extending, expanding or supplementing the incorporated provisions, but any provisions (other than incorporated provisions) in such an instrument that, but for this subsection, would derogate or have the effect of derogating from the incorporated provisions have no force or effect while the incorporated provisions remain in force.*
- (4) *Any right or authority granted by the incorporated provisions or any provisions of an environmental planning instrument extending, expanding or supplementing the incorporated provisions do not apply to or in respect of an existing use which commenced pursuant to a consent of the Minister under section 4.33 to a development application for consent to carry out prohibited development.*

The residential flat development has been continuously used for residential purposes since 3 September 1976.

The proposal, which seeks consent for the Strata Subdivision of the existing residential flat building, is consistent with Section 4.67 of the Act.

The following clauses of the Environmental Planning & Assessment Regulations is applicable to the proposed works to the existing residential building.

Clause 41(1) states that:

- 41 (1)** *An existing use may, subject to this division:*
- (a) be enlarged, expanded or intensified, or*
 - (b) be altered or extended, or*
 - (c) be rebuilt, or*
 - (d) be changed to another use, including a use that would otherwise be prohibited under the Act.*

Clause 42 notes that Development Consent is required for the enlargement, expansion or extension of an existing use.

Clause 42 of the Regulation states:-

- 42 (1)** *Development Consent is required for any enlargement, expansion or intensification of an existing use.*
- (2)** *The enlargement, expansion or intensification:*
- (a) must be for the existing use and for no other use and*
 - (b) must be carried out only on the land on which the existing use was carried out immediately before the relevant date.*

Clause 43 of the Regulation states:-

- 43 (1)** *Development consent is required for any alteration or extension of a building or work used for an existing use.*
- (2)** *The alterations or extension*
- (a) must be for the existing use of the building or work and for no other use and*
 - (b) must be erected or carried out only on the land on which the building or work was erected or carried out or immediately before the relevant date.*

Clause 44 of the Regulation states:-

- 44 (1)** *Development consent is required for any rebuilding of a building or work used for an existing use.*
- (2)** *The rebuilding:*
- (a) must be for the existing use of the building or work and for no other use, and*
 - (b) must be carried out only on the land on which the building or work was erected or carried out immediately before the relevant date.*

The net effect of these provisions is that, if existing use rights can be established, then the building can be rebuilt, altered or added to and the existing use can be enlarged or intensified with the consent of Council on the same land as the existing use.

The utilisation of the existing use rights provisions of the Act are necessary in this instance due to the non-compliance of the existing residential flat building with the R2 Low Density zone, which prohibits residential flat development.

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

The proposed development is therefore consistent with the existing use provisions as contained within the Act and therefore worthy of a favorable merit-based assessment.

More recently Commissioner Roseth provided guidance for the assessment of existing use rights through a four step process under a Planning Principle in *Fodor Investments v Hornsby Shire Council [2001] NSWLEC 71*.

An assessment of the proposal under the Planning Principle is provided below:

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

The subject site is zoned R2 Low Density Residential, which permits uses such as dwelling houses, which together with a number of existing residential flat developments form the local character of the immediate vicinity.

While the R2 Low Density Residential zone does not permit residential flat development, the R2 Low Density Residential zoning does not accurately reflect the existing and past residential use of the subject land, nor the surrounding area.

While existing building does not comply with the building height and building setback controls in WLEP 2011 and WDCP 2011, the Strata Subdivision will not change the building height, façade or setbacks as no works are proposed. Accordingly, the residential flat building will present a consistent presentation to the street view, and maintain a harmonious built form of comparable to the immediate area.

There is also no floor space ratio control applying to the subject site or neighbouring sites.

The proposal provides for the strata title subdivision of the existing building with no physical works proposed. Accordingly, there is no change to the bulk and scale of the existing building. The existing building maintains compatibility with surrounding development.

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

Commissioner Roseth provided in his judgement:

‘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.’

It is noted that the proposal seeks to carry out Strata Subdivision only. The proposal does not involve a change of use. The existing building remains unchanged, and will continue to be compatible with the bulk, scale and character of the locality.

The surrounding properties include a mix of residential development including detached dwelling and residential buildings between two and 10 storeys in height, and in this regard, the proposal is consistent with the housing density of the immediate area.

What are the impacts on adjoining land?

The proposal seeks to provide for Strata Subdivision only. The height and general form of the building will continue to be compatible with the surrounding properties and will maintain the existing views and outlook for the surrounding properties. The Strata Subdivision of the approved works will not result in any further impacts on adjoining properties.

What is the internal amenity?

The proposal will not see any change to the internal amenity of the dwellings within the subject residential flat building as no physical works are proposed. Accordingly, there is no adverse impact on the internal amenity of the development as a result of the proposed Strata Subdivision.

Warringah Local Environment Plan 2011

As discussed above, the site benefits from existing use rights and the provisions of any environmental planning instrument, including WLEP 2011, cannot operate so as to denigrate from those rights. However, the WLEP 2011 has been considered below for the purposes of considering the consistency of the development with the likely future character of the area.

2.3 Zone objectives and permissibility

The site is zoned R2 low Density Residential, with the Strata Subdivision permissible pursuant to the existing use rights provisions of the EPA Act.

The proposal is considered to be consistent with the relevant objectives of the zone, as follows:

- The Strata Subdivision continues to meet the housing needs of the community in a low density residential environment.
- The Strata Subdivision will continue to provide a landscaped setting and is in harmony with the natural environment of Warringah.

Clause 2.6 – Subdivision – consent requirements

The requirement of WLEP 2011 requires the prior consent of Council for any subdivision. Accordingly, this application seeks consent pursuant to the existing use rights provisions of the EPA Act.

Clause 4.2A – Minimum subdivision lot size for strata subdivision of residential or tourist and visitor accommodation in certain zones

The subject site is in the R2 zone and is therefore not subject to the provisions of this clause.

Clause 4.3 Height of Buildings

The WLEP 2011 prescribes a maximum building height of 8.5m. The Strata Subdivision seeks to make no change to this development standard as no works are proposed.

Clause 6.2 – Earthworks

No physical works are proposed, and the proposal will not result in any disturbance of the existing site conditions.

Clause 6.4 – Development on sloping land

The site is identified as Landslip Area B.

The application seeks consent for the strata title subdivision of an existing residential flat development. No physical works are proposed, and no geotechnical investigation is necessary in this instance.

Clause 5.10 Heritage

The site is not a heritage item and is not within a conservation area. The site is in the vicinity of 49 Greycliffe Street which is a dwelling house listed as a heritage item of local significance. The proposal makes no change to the building height and envelope controls and this, together with the physical separation between the site and the dwelling house at 49 Greycliffe Street, ensure that there is no impact on the setting of this heritage item.

6.4 Warringah Development Control Plan

As the development application is submitted on the basis of existing use rights under the EP&A Act the numerical standards in WDCP 2011 do not apply. However, they are set out in the Table below for the purposes of considering the consistency of the development with the likely future character of the area:

| Standard | Required | Compliance/Proposed |
|------------------|--|---|
| C1 – Subdivision | <p><u>Requirements</u></p> <p>1. R2 Low Density Residential zone requirements:</p> <p>Proposed new allotments:</p> <p>a) Min width: 13m b) Min depth: 27 m and c) Min building area: 150m²</p> <p><u>Access</u></p> <p>2. Motor vehicle access to each residential allotment is required from a constructed and dedicated public road.</p> <p>Where access is proposed to a section of unconstructed public road, then the subdivision will need to provide legal, constructed access to the Council's satisfaction.</p> <p>Access for Council service vehicles, emergency vehicles and garbage collection vehicles must be provided.</p> <p>Driveways, accessways, etc, to allotments should have a gradient not exceeding 1:4 and allow for transitions at a minimum length of 1.5m and at a grade no steeper than 1:10.</p> <p>Driveways in excess of 200 metres will not be allowed for residential development.</p> <p>Driveways that are 30m or more in length require a passing bay to be provided every 30m. To provide a</p> | <p>As the proposal seeks to provide for Strata subdivision, rather than dwellings on separate lots, these controls do not explicitly apply.</p> <p>The subject application includes the Strata subdivision of the development as depicted on the indicative subdivision plan. All apartments will continue to be separately serviced with the existing built form arrangement proposed and not altered as a consequence of the Strata Subdivision.</p> <p>The existing driveways and layback remain unchanged and will continue to provide access to the existing hardstands.</p> |

| | | |
|---------------------------------|---|---|
| | <p>passing bay, driveways shall be widened to 5.0m for a distance of at least 10m.</p> <p>Passing bays should have regard to sight conditions and minimise vehicular conflict.</p> <p>Vehicular ingress/egress points to internal lots may be used as passing/turning bays, subject to extension of a right-of-carriageway over the passing/turning bay.</p> <p>Rights-of-carriageway should be located so as to accommodate all vehicle turning facilities.</p> | |
| C2 – Traffic, Access and Safety | <p>Objectives</p> <p>To minimise:</p> <ul style="list-style-type: none"> a) traffic hazards; b) vehicles queuing on public roads c) the number of vehicle crossings in a street; d) traffic, pedestrian and cyclist conflict; e) interference with public transport facilities; and f) the loss of “on street” kerbside parking. <p>Vehicular crossing to be provided in accordance with Council’s Vehicle Crossing Policy</p> | <p>The proposal will retain the existing driveway access points, with no loss of on street parking opportunity.</p> |
| C3 – Parking facilities | <p>Objectives</p> <ul style="list-style-type: none"> • To provide adequate off street carparking. • To site and design parking facilities (including garages) to have minimal visual impact on the street frontage or other public place. • To ensure that parking facilities (including garages) are designed so as not to dominate the street frontage or other public spaces. | <p>The existing car parking is retained.</p> |

| | | |
|--|--|---|
| C4 – Stormwater | <p>Objectives</p> <ul style="list-style-type: none"> • To ensure the appropriate management of stormwater. • To minimise the quantity of stormwater run-off. • To incorporate Water Sensitive Urban Design techniques and On-Site Stormwater Detention (OSD) Technical Specification into all new developments. • To ensure the peak discharge rate of stormwater flow from new development is no greater than the Permitted Site Discharge (PSD). <p>Hydraulic Design to be provided in accordance with Council's Stormwater Drainage Design Guidelines for Minor Developments and Minor Works Specification</p> | As no new works are proposed, the existing stormwater arrangements will remain unchanged. |
| D21 – Provision and Location of Utility Services | <p>Objectives</p> <ul style="list-style-type: none"> • To encourage innovative design solutions to improve the urban environment. • To ensure that adequate utility services are provided to land being developed. <p>Utility services to be provided</p> | Normal utility services are available to the site. |
| E1 – Private Property Tree Management | Arboricultural report to be provided to support development where impacts to trees are presented | N/A – proposal does not seek to remove any significant vegetation |
| E2 – Prescribed Vegetation | Not identified on map | N/A |
| E3 – Threatened species, populations, ecological communities | Not identified on map | N/A |
| E4 – Wildlife Corridors | Not identified on map | N/A |
| E5 – Native Vegetation | Identified on map | N/A |
| E6 – Retaining unique environmental features | Not identified on map | No significant features within site |
| E7 – Development on land adjoining public open space | Not identified on map | N/A |

| | | |
|-----------------------------------|------------------------------|--|
| E8 – Waterways and Riparian Lands | Not identified on map | N/A |
| E10 – Landslip Risk | Identified on map as Area B. | The proposal involves no actual works or change to the natural landform. |
| E11 – Flood Prone Land | Not identified on map | N/A |

7.0 Matters for Consideration under Section 4.15 of The Environmental Planning and Assessment Act, 1979

7.1 The provisions of any environmental planning instrument

In summary, the proposed development is permissible with consent pursuant to the relevant provisions of the Environmental Planning and Assessment Act 1979 and the Environmental Planning and Assessment Regulation 2000 relating to existing uses.

There are no other environmental planning instruments applying to the site.

7.2 Any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority

It is not considered that there are any draft environmental planning instruments applying to the site.

7.3 Any development control plan

It is considered that the proposed Strata Subdivision design respects the desired character objectives of the DCP in that it reinforces the existing residential character of the area and maintains compatibility with the existing uses in the vicinity.

7.4 Any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4

No matters of relevance are raised in regard to the proposed development.

7.5 The regulations (to the extent that they prescribe matters for the purposes of this paragraph),

No matters of relevance are raised in regard to the proposed development.

7.6 The likely impacts of that development, including environmental impacts on both the natural and built environments, and the social and economic impacts in the locality.

It is considered that the proposal, which seeks consent for strata title subdivision of an existing residential flat development, which is lawfully utilised under existing use rights will not impact upon the amenity of adjoining properties or upon the character of the surrounding area. It is considered that the existing development is compatible with and will complement the character of the area.

7.7 The suitability of the site for the development

The site is considered suitable for the proposed development.

The proposal will provide for the strata title subdivision of an existing residential flat development, without having a detrimental impact on the amenity of the adjoining properties or any impact on the streetscape.

7.8 Submissions made in accordance with this Act or the regulations

This is matter for Council in the consideration of this proposal.

7.9 The public interest

The proposal will not impact upon the environment, the character of the locality or upon the amenity of adjoining properties and is therefore considered to be within the public interest.

The Council's LEP and DCP together with the existing use rights provisions of the EPA Act enable such development in this locality.

8.0 Conclusion

The proposal provides for strata title subdivision of an existing residential flat development, which is lawfully used as a residential flat building since 1976.

As a residential flat development is not a permissible within the R2 Low Density Residential Zone, the development relies on the existing use rights regulated within Section 4.65 and Section 4.66 of the Environmental Planning and Assessment Act 1979 and clauses 40 – 43 of the Environmental Planning and Assessment Regulation 2000.

The arguments within this submission confirm that the existing residential flat building which is used pursuant to the existing Strata Subdivision Plan, Strata Plan Reference No. 11195, dated 3 September 1976 has established and relies on the existing use rights provisions.

There is no lawful reason why Council cannot consider the proposed Strata Subdivision of the land as sought in this application.

The proposal will not require any physical change to the building and therefore will not have a detrimental impact on the adjoining properties or the locality.

As the proposed development will not have any significant impact on the environment, scenic quality of the area or the amenity of the adjoining allotments, the issue of Development Consent under the delegation of Council is requested.

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