

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0646
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Responsible Officer:	Alex Keller
Land to be developed (Address):	Lot 5 DP 16941, 124 Queenscliff Road QUEENSCLIFF NSW 2096 Lot 6 DP 16941, 122 Queenscliff Road QUEENSCLIFF NSW 2096
Proposed Development:	Demolition works and construction of a residential flat building
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	No
Existing Use Rights:	Yes
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Gemini Queenscliff Pty Limited
Applicant:	Kristoffer Allan Harvey

Application Lodged:	02/06/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New multi unit
Notified:	15/06/2022 to 29/06/2022
Advertised:	Not Advertised
Submissions Received:	6
Clause 4.6 Variation:	4.3 Height of buildings: 13.5%
Recommendation:	Deferred Commencement Approval

Estimated Cost of Works:	\$ 5,068,491.00
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EXECUTIVE SUMMARY

This application has been referred to the Northern Beaches Planning Panel (NBLPP) as the proposal has a height variation of more than 10% for a residential flat building.

The Clause 4.6 Variation request for the non-compliance with the building height standard arises from the site having a moderate slope in the central area of the site with some minor excavation under the existing building as well as the need for a safety rail around the roof terrace. This results in a 13.5%

variation (the overall height is 9.65m for the corner of the balustrade line) above the 8.5m height line. A smaller variation also exists along the rear parapet edge along the southern side of the roof. The site topography substantially corresponds to natural ground level, therefore no comparison between existing (modified) ground level and natural ground level is required.

The variation to the building height does not result in any unreasonable amenity impacts given the flat roof form and the balustrades are set well back from the edge of the dwelling. The majority of the roof area complies with the height plane.

Concerns raised in the public submissions predominantly relate to building bulk, privacy impacts, landscaping selection, screening protection from rear balconies and side windows, views, overshadowing, traffic and visual amenity. Critical assessment issues included; existing use rights applying to the land, submission issues, building bulk, side boundary envelope, views, privacy, overshadowing and general streetscape impacts. The proposal was reviewed by DSAP and the applicant has sought to address those design considerations with amended plans.

This report concludes with a recommendation that the NBLPP should grant consent to the development application for reasons that the applicant has sufficiently changed the architectural plans during the assessment period to accommodate submission issues and respond to non-compliance with the planning controls, in context with existing use right that apply to the land.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for demolition work including the construction of a residential flat building containing 3 apartments with landscaping basement parking and ancillary site works. Details of the works (as per amended plans, dated up to 17.7.2023) include:

Basement Level RL 21.95

- Carparking for 12 cars, car lift, OSD, lift and stair access, Waste bin bulky goods room, bicycle storage, building equipment / services rooms, residential service rooms, water tank.

Ground Level RL26.05

- Lobby area, lift and stair access, services space, Apartment "1" and "2" with 3 x bedrooms (or "study"), 2 x bathrooms, laundry cupboard, kitchen living dining area, storage, terrace and landscape and a swimming pool in each rear courtyard.

First Floor Level RL29.25

- Bin holding area, Lobby area, lift and stair access, services space, Apartment "3" and "4" with 3 x bedrooms, 4 bathrooms, laundry, kitchen living dining area, storage, terrace and landscape front courtyard.

Second Floor Level RL32.45

- Lobby area, lift and stair access, services space, Apartment "5" and "6" with 3 bedrooms, 2 bathrooms, laundry cupboard, kitchen living dining area, storage, terrace, stair access to roof terrace.

Roof 35.45 to 35.85

- Roof terrace area with seating table, BBQ, building skylights, lift overrun, roof garden and safety fence (RL36.45)

Ancillary site works, demolition, excavation, stormwater and drainage works, landscaping, bin / letterbox / entry structure, fencing and incidental works.

Future Strata subdivision may be undertaken subject to State planning legislation.

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 Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Local Environmental Plan 2011 - Zone R2 Low Density Residential
Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - B9 Rear Boundary Setbacks
Warringah Development Control Plan - C2 Traffic, Access and Safety
Warringah Development Control Plan - C3 Parking Facilities
Warringah Development Control Plan - C4 Stormwater
Warringah Development Control Plan - C7 Excavation and Landfill
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D3 Noise
Warringah Development Control Plan - D6 Access to Sunlight
Warringah Development Control Plan - D7 Views
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - D9 Building Bulk
Warringah Development Control Plan - D11 Roofs

SITE DESCRIPTION

Property Description:	<p>Lot 5 DP 16941 , 124 Queenscliff Road QUEENSCLIFF NSW 2096</p> <p>Lot 6 DP 16941 , 122 Queenscliff Road QUEENSCLIFF NSW 2096</p>
Detailed Site Description:	<p>The site comprises the two properties of No.122 and No.124 Queenscliff Road, Queenscliff, being Lot 6 and Lot 5 respectively in Deposited Plan 16941. The combined Lot area is 950.6m². The site is rectangular in shape with a total northern frontage of 25.98 metres (m) to Queenscliff Road, eastern and western side boundaries of approximately 36.54m and a southern (rear) boundary of approximately 26m.</p> <p>The site is located on the southern side of Queenscliff Road with a southerly aspect toward Manly Lagoon area.</p> <p>The topography slopes away from Queenscliff Road with a level difference of approximately 5m between the front and rear the boundaries.</p> <p>The land at 122 Queenscliff Road contains part two, part three storey brick building with tile roof containing flats, two dwellings, one above the other. There is no vehicle access or car parking on the site.</p> <p>The land at 124 Queenscliff Road contains a part two ,part three storey brick building with tile roof containing flats, being two dwellings, one above the other. Car parking for two vehicles is provided within the lower ground level of the building accessed along the eastern side and entered from the southern / rear of the building. Development adjacent the southern boundary of the fronts Aitken Avenue and is positioned on significantly lower topography.</p> <p>The streetscape character is varied with a mix of residential housing types, building forms and variable building setbacks. Some residential flat buildings are intermixed with dwelling houses on along the southern side of Queenscliff Road near the site which is within the R2 Low Density Residential Zone. The northern side of Queenscliff Road is dominated by residential flat buildings that are within a medium density zone.</p> <p>Therefore the streetscape character (within visible distance of the site along Queenscliff street) comprises higher, visually prominent 4 storey flat buildings along the northern side of the road. Development along the southern side of the road is positioned below the street level and is more mixed comprising residential flat buildings, dwelling houses, mainly 2-3 storeys in height, but with some larger 4 to 5 storey flat buildings as well.</p>

Map:



SITE HISTORY

122 Queenscliff Road

Historical Development circa 1943

The land comprising this lot was subdivided from the original Portion 1211 Parish of Manly Cove and sold (within lots 17 to 22) as part of the "Queenscliff Estate" in 1884. In 1928 the lots were purchased by the "Manly Surf View Estates Co Ltd"; a company formed at the time with the specific purpose to purchase, subdivide and sell land at Queenscliff.

A reference to the building "Leedsgate" is identified in the former Warringah Council Minutes dated 24 May 1938, being "Mrs I K Ball, requesting improvements to the footpath in front of her new building in Queenscliff Road". Council have no surviving original building plans from this period and a search of Warringah Council Minutes have not identified any record / reference to development approval. However, an early newspaper reference to 'Leedsgate' building Queenscliff Road Queenscliff, appears on 23 September 1939 as an advertisement within the *Sydney Morning Herald*.

An aerial survey of Sydney was conducted in May and June of 1943, and No.122 Queenscliff Road is occupied by a building that appears as a similar outline to its current position and shape.

A Warringah Council *NSW Valuer General* listing card for No.122 Queenscliff Road, dated 1962, identifies the "improvements" on the land as "Flats" for "Leeds Gate" 122.

A search of Council building records has not identified any subsequent development consents for the land or major building alterations.

Pre-lodgement Meeting No.PLM 2020/0164 for demolition of existing apartment buildings and construction of a four-story residential flat building comprising 7 dwellings and basement car parking for 14 cars. This proposal covers the premises of both No.122 and No.124 Queenscliff Road. The proposed format for the building was not supported and the following concluding comments were provided that included advice on 'existing use'.

"Even if Existing Use Rights can be satisfactorily established for the land affected by the proposed development and the proposed use, the built form of the proposal in its current form is not acceptable and requires significant redesign prior to submission. In particular, at a minimum, you are encouraged to:

- Delete Level 02 in its entirety;*
- Provide greater setbacks to the northern front boundary, and the eastern and western side boundaries;*
- Provide increased landscaped open space, including adequate areas capable of supporting mature vegetation;*
- Have regard to the comments of Council's Urban Designer, including establishing a north/south corridor through the centre of the development.*
- Ensure that all windows, including outdoor terrace areas, along the northern and southern (side) elevations are designed in a manner that will minimise impact on the privacy of adjoining residential dwellings;"*

The applicant has undertaken detailed research to establish existing use rights for the purpose of a flat building and various amendments were made to the building design to address design comments raised in the PLM notes.

The development proposed to combine No.122 with No.124 Queenscliff Road and construct a single larger residential flat building. The proposal has followed the PLM advice.

124 Queenscliff Road

Historical Development

The land comprising this lot was subdivided from the original Portion 1211 Parish of Manly Cove and sold (within lots 17 to 22) as part of the "Queenscliff Estate" in 1884. In 1928 the lots were purchased by the "Manly Surf View Estates Co Ltd"; a company formed at the time with the specific purpose to purchase, subdivide and sell land at Queenscliff.

A reference to the approval for a garage '*to be erected in conjunction with duplex flats*' is identified in the former Warringah Council Minutes of September 1940. However, a separate item reference officially approving the duplex flats could not be found. Council have no surviving original building plans from this period.

An aerial survey of Sydney was conducted in May and June of 1943, and No.124 Queenscliff Road was still vacant, therefore construction had not yet commenced. It is probable that the flats were built sometime between late 1943 and 1949. However, notices appeared in the "Construction" newspaper, dated 28 August 1940, that Council had approved duplex flats on the property for "Mrs A Coulter". The land was subsequently sold to S Kemp and again notice appeared in "Construction" newspaper, on 15 October 1941, that "a block of flats is to be erected in Queenscliff Road, Queenscliff for Mrs Kemp, therefore an approval is likely to have been gained prior to 1941.

A Warringah Council *NSW Valuer General* listing card for No.124 Queenscliff Road, dated 1962, identifies the "improvements" on the land as "Flats".

Building Approval No.185/66 for alterations and additions (staircase awning) was approved by Council on 3.3.1966

Building Approval No.517/68 for alterations and additions (enclose rear balcony structure) was approved by Council on 6.6.1968.

Development Application No.2021/1611 for Strata subdivision of an existing residential building comprising two flats was approved by Council on 5.11.2021.

A pre-lodgement meeting that relates to No.122 and No.124 Queenscliff Road is outlined above under the details for PLM2020/0164.

Consideration of the Current Application

The applicant has provided a detailed historical search on the subject properties, summarised above. In assessment of this application Council concludes that existing use rights circumstances are relevant for the current proposal as outlined under the section 'existing use rights' within this report.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under 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	There are no current draft environmental planning instruments.
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 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement for flat building with 4 or more apartment that are also 3 storeys or more. This documentation has been provided.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. The DA was notified in accordance with the <i>Community Participation Plan</i>. Additional information was requested in association with DSAP review and referral issues as well as considerations about existing use rights. The applicant also sought to address public issues raised in submissions (as relevant) by amended plans. The amended architectural plans (dated 20.2.23) were notified and made viewable online to those persons who raised submission issues with the original plans. Some supplementary</p>

Section 4.15 Matters for Consideration	Comments
	<p>details and minor changes were further made dated 17.7.2023 to refine the drawings in response to concerns and public interest considerations. These later changes are minor and do not increase amenity impacts on surrounding land. Further technical information was also sought regarding the vehicle lift access and OSD stormwater. The third round of re-notification is not warranted pursuant to the <i>Community Participation Plan</i> with the minor technical changes to the plans that seek to address Council's internal referral considerations, including envelope compliance and improved landscaping. Additional comments were however sought by informing adjacent objectors to the proposal of the changes to the plans made in response to submission issues.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 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 of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of 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. Principal considerations for the site include streetscape appearance, landscaping, roof terrace, views, overshadowing, privacy, setback, drainage and stormwater management. These matters are addressed within 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, subject to conditions. In summary, the proposal is for a non-conforming use (being demolition of 2 small flat buildings), site consolidation and

Section 4.15 Matters for Consideration	Comments
	construction of a larger single flat building. The land is within the R2 Low Density Residential Zone and the use is prohibited but permitted to be re-developed for the same "use" (including enlarged or expanded) as an "existing use". The suitability of the land has been considered in terms of its natural characteristics, slope, shape, depth and surrounding pattern of development, including streetscape and residential densities.
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, subject to conditions.

EXISTING USE RIGHTS

No.122 QUEENSCLIFF ROAD (Lot 6)

- **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 meaning:

"(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:

- Yes. The formal control of land uses did not exist until the commencement of the *Local Government Act in 1919 (LGA)*. Part XI of the *Local Government Act 1919* dealt with building regulation. Section 311, within Pt XI, provided that “a building shall not be erected or altered

unless the approval of the Council is obtained therefor beforehand." However, although Pt XI applied automatically to Municipalities, it only applied to Shires by proclamation. *Warringah Shire Council* became a shire on 7 March 1906 under the Local Government (Shires) Act 1906 and the Governor of NSW, by proclamation published in the *NSW Government Gazette* on 7 June 1940, applied Pt XI of *LGA 1919* to the Shire of Warringah.

- Historical information shows the building on No.122 Queenscliff Road was constructed before June 1938 and at the time of the construction, Pt XI of the *Local Government Act 1919* did not apply to the land since the Pt.XI had not been yet been applied by proclamation to Warringah Shire. The erection of the buildings and the carrying out of works on the land were, therefore, lawful because there was no town and country planning law that required development consent to be obtained.
- On 5 April 1945, Pt XIIA Town and Country Planning Schemes was inserted into the Local Government Act 1919 by the Local Government (Town and Country Planning) Amendment Act 1945 (1945 Act). This authorised for the first time the making of planning schemes for regulating and controlling the use of land. The "Interim development" provisions of Div 7 of Pt XIIA applied to the land for the period whilst the *Cumberland County Council* (CCPS) was preparing its Scheme which canvassed multiple Council's in the Sydney basin.
- CCPS 1951 zoned the land "Living Areas". The land use table to cl 26 of CCPS 1951 specified that the purposes for which buildings may be erected in the Living Areas zone with or without consent.
- Pursuant to the land use table in clause 26 of the CCPSO, the use of the site for a *dwelling-house* was permitted without consent and the use of the site for a *residential building* was permitted with consent.
 - (i) *Dwelling-house* was defined in clause 24 of the CCPSO as follows:

"Dwelling-house" means a building designed for use as a dwelling for a single family, together with such out-buildings as are ordinarily use therewith, and includes a dwelling in a row of two or more dwellings attached to each other such as are commonly known as semi-detached or terrace buildings.
 - (ii) *Residential building* was defined in clause 24 of the CCPSO as follows:

"Residential building" means a building, other than a dwelling-house, designed for use of human habitation together with such out-buildings as are ordinarily use therewith, a residential flat building, a hostel, an hotel designed primarily for residential purposes and, a residential club, but does not include any building mentioned, whether by inclusion or exclusion, in the definition of "places of instruction" and "institution".

2. Was the use of the building or land granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?

Comment:

Yes. The use of No.122 Queenscliff Road commenced prior to the coming into force of the current *Warringah Local Environmental Plan 2011* (WLEP) on 9 December 2011, which currently has the

effect of prohibiting the use.

3. **Has the use of the building or 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:

Yes. The applicant has provided evidence in the form of historical references to the use of the land for "Flats". Records demonstrate the site building was constructed "new", by way of reference in Council Minutes dated 24 May 1938 and has been used for residential purposes up to the current time. No evidence of abandonment for 2 flats has been identified and the building has not been subject to significant change, alteration or additions since originally constructed. Therefore, no subsequent consents are available.

- **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: *"that if the land is rightly regarded as a unit and it is found that part of its area was physically used for the purpose in question it follows that the land was used for that purpose"*.

Comment:

Having regard to the above case law, it is noted that the whole of the area of the land was physically used for the purpose in question and therefore, it is considered that the land was used for that purpose and that existing use rights apply to the whole of the subject site. The applicant has provided detailed supporting information regarding the historical use of the site and the development / planning framework applying to the land since 1919.

No.122 QUEENSCLIFF ROAD (Lot 6)

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 formal control of land uses did not exist until the commencement of the *Local Government Act in 1919 (LGA)*. Part XI of the *Local Government Act 1919* dealt with building regulation. Section 311, within Pt XI, provided that *"a building shall not be erected or altered unless the approval of the Council is obtained therefor beforehand."* However, although Pt XI applied automatically to Municipalities, it only applied to Shires by proclamation. *Warringah Shire Council* became a shire on 7 March 1906 under the *Local Government (Shires) Act 1906* and the Governor of NSW, by proclamation published in the *NSW Government Gazette* on 7 June 1940, applied Pt XI of *LGA 1919* to the Shire of Warringah.

- The flats on No.122 Queenscliff Road were constructed before June 1938 and at the time of the construction of the building, Pt XI of the *Local Government Act 1919* did not apply to the land since the Pt.XI had not been yet been applied by proclamation to Warringah Shire. The erection of the buildings and the carrying out of works on the land were, therefore, lawful because there was no town and country planning law that required development consent to be obtained.
- On 5 April 1945, Pt XIA *Town and Country Planning Schemes* was inserted into the Local Government Act 1919 by the Local Government (Town and Country Planning) Amendment Act 1945 (1945 Act). This authorised for the first time the making of planning schemes for regulating and controlling the use of land. The "Interim development" provisions of Div 7 of Pt XIA applied to the land for the period whilst the *Cumberland County Council* (CCPS) was preparing its Scheme which canvassed multiple Council's in the Sydney basin.
- CCPS 1951 zoned the land "Living Areas". The land use table to cl 26 of CCPS 1951 specified that the purposes for which buildings may be erected in the Living Areas zone with or without consent.
- Pursuant to the land use table in clause 26 of the CCPSO, the use of the site for a *dwelling-house* was permitted without consent and the use of the site for a *residential building* was permitted with consent.

(i) *Dwelling-house* was defined in clause 24 of the CCPSO as follows:

"Dwelling-house" means a building designed for use as a dwelling for a single family, together with such out-buildings as are ordinarily use therewith, and includes a dwelling in a row of two or more dwellings attached to each other such as are commonly known as semi-detached or terrace buildings.

(ii) *Residential building* was defined in clause 24 of the CCPSO as follows:

"Residential building" means a building, other than a dwelling-house, designed for use of human habitation together with such out-buildings as are ordinarily use therewith, a residential flat building, a hostel, an hotel designed primarily for residential purposes and, a residential club, but does not include any building mentioned, whether by inclusion or exclusion, in the definition of "places of instruction" and "institution".

2. Was the use of the building or land granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?

Comment:

Yes. The use of No.122 and No.124 Queenscliff Road was lawfully approved, prior to the coming into force of the current *Warringah Local Environmental Plan 2011* (WLEP) on 9 December 2011, that has the effect of prohibiting the use. Warringah LEP 2000 categorised site by "localities" rather than zones and permitted "housing", subject to density requirements and in this locality generally restricted apartment buildings to only the medium density area on the northern side of Queenscliff Road. WLEP 2011 returned the zoning of the land back to *R2 Low Density Residential*, from its previous G8 Queenscliff Locality Statement under LEP 2000.

3. Has the use of the building or 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:

Yes. The applicant has provided evidence in the form of a subsequent consent No.185/66, issued on 3.3.1966. Then again with consent No.517/68 to carry out "alterations and additions to the residential duplex building" which reveals that the use of the building in its form at the time and demonstrates the land use was continuing on No.124 Queenscliff Road. Records demonstrate that No.122 Queenscliff Road was being used for residential purposes (as per VG cards) commenced prior to the planning provision change that had the effect of prohibiting the use on each lot and currently the buildings continue to be used as a residential building containing "flats".

- **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: "*that if the land is rightly regarded as a unit and it is found that part of its area was physically used for the purpose in question it follows that the land was used for that purpose*".

Comment:

Having regard to the above case law, it is noted that the whole of the area of the land was physically used for the purpose in question and therefore, it is considered that the land was used for that purpose and that existing use rights apply to the whole of the subject site.

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

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

Section 163 of the *Environmental Planning and Assessment Regulation 2021*, makes provision for existing uses to be able to be enlarged, expanded or intensified, altered or extended, rebuilt, or changed (subject to the land use type).

No impediment to consolidation of the 2 properties has been identified which therefore enables the 2 lots to become one site for the purpose of redevelopment (to enlarge or rebuild the "use").

The following four principles adopted by the court in *Fodor Investments v Hornsby Shire Council* (2005) NSWLEC 71 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 existing buildings on the land are 10.3m (No.122) high, and 9.0m high (No.124), above existing ground level and do not comply with the 8.5m maximum permitted building height of *Warringah LEP 2011*. The new building will be lower by virtue of a flat roof design but in a 3 storey configuration. The development proposes to completely demolish the 2 existing flat buildings and construct a new contemporary flat building containing 6 flats and a basement carpark across the consolidated site. Non-compliances with the *Warringah DCP 2011* controls concerning the relevant controls including side boundary setback, wall height and landscaping and side boundary envelope are addressed in detail within this report. This is of relevance to the proposal since there are distinctive differences between the "single dwelling" controls that actually apply to the land and those that would otherwise normally apply to a residential flat building in a medium density setting. Details are provided within this report under the relevant built form controls heading.

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 setbacks to the new flat building and the relationship of setbacks evident on surrounding land is not inconsistent with the pattern of development nearby, however the principle change is toward the rear whereby the proposal seeks a minimum rear setback and has a large basement area below the building. The single mass of the building "fills the gap" between the 2 existing buildings. The excavation also impacts the treatment of the side setbacks and continuity of existing ground levels with adjacent property. The side setbacks and landscaping are significantly modified by the proposal however overall a landscape setting is proposed. Car parking the new building will be in a basement that allows for visitor parking and access is retained by a central position for the driveway (as existing). The general amenity impacts are sought to be minimised in terms of changes to overshadowing, views and privacy amenity for the residential surroundings. The building bulk, distribution of floor space, height and parking area addressed under the Warringah DCP assessment.

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 proposal seeks to construct a new flat building with a modern open plan layout, and uses contemporary styling for the building. The balcony spaces and window fenestration are discussed in detail within this report for amenity impacts in terms of amenity for the adjacent residents regarding solar access, privacy and noise. Landscaping is used to provide wide lawn spaces with border planting for privacy and to complement adjacent open space. Compliant solar access is maintained to adjacent land for 21 June as shown for the (amended design) shadow diagrams A2601.

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 re-development of as far as practicable and respond to the local built form controls to achieve good internal amenity, including basement carparking, internal lift access, suitable private open space areas for all units, solar access, domestic storage and a landscape setting for the building. The buildings setbacks are consistent with the built form controls for a dwelling house (except for the basement) despite being a 3 storey flat building within the low density residential zone. In this regard, the proposal seeks to protect or ensure no unreasonable amenity impact on residential surrounding land, including views, privacy, overshadowing, landscape setting and car parking. While this compares differently to the historical character of the existing buildings the visual change imposed on the street includes a contemporary appearance with roof terrace, curved shaping of walls, expressed brickwork style concrete facing, window / balcony shapes, landscaping and the colours and materials schedule selected.

Conclusion

No.124 Queenscliff Road

A time line of the various planning controls applying to the land have been laid out in the absence of any original building consent or original plans having been found. On the balance of probabilities the historical information available presents details of the use of the land for "flats" of which there are 2 flats within the building and the use of the land for residential purposes has been ongoing. Recent development Consent, granted by the Council on 8 November 2021 (reference DA2021/1611), did not challenge the ongoing use of the land or raise issues of "abandonment". It is concluded that:

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

No.122 Queenscliff Road

A time line of the various planning controls applying to the land have been laid out in the absence of any original building consent or original plans having been found for 'Leeds-Gate'. The early development history of the land is similar to that of No.124 Queenscliff Road. On the balance of probabilities the historical information available presents details of the use of the land for "flats" of which there are 2 flats within the building and the use of the land for residential purposes has been ongoing. It is concluded that the site of No.122 Queenscliff Road similarly satisfies the existing use 'test' as also outlined above for No.124 such that the 2 sites together benefit from existing use rights.

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 15/06/2022 to 29/06/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 6 submission/s from:

Name:	Address:
Dave Turner	Address Unknown
Mr Andrew John Avakian	1 / 118 Queenscliff Road QUEENSCLIFF NSW 2096
Ms Hazel Gillian Shepherd	30 Aitken Avenue QUEENSCLIFF NSW 2096
Mr Robert Murray Swinton	1 / 105 Queenscliff Road QUEENSCLIFF NSW 2096
Geoffrey Gordon Cumming	26 Aitken Avenue QUEENSCLIFF NSW 2096
Sophie Maree Wyeth	126 Queenscliff Road QUEENSCLIFF NSW 2096

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

1. Side boundary fence/ retaining walls
2. Landscape planting
3. Prohibited use
4. Side setback privacy
5. Traffic and parking
6. Landscape open space
7. Excavation and dilapidation risk
8. Building height and bulk
9. Side boundary envelope
10. Overdevelopment
11. Solar access
12. Front and rear setbacks
13. Visual and acoustic privacy
14. Streetscape
15. Adjacent comparison
16. Wall height
17. Landscape works
18. Stormwater management
19. Wind impacts and ventilation
20. Public interest

The matters raised within the submissions are addressed as follows:

- *1. Concern that the boundary fences may need to be upgraded due to the adjacent pools, however the applicant has shown a new side fence type wall that may overlap the boundary and requirement of the existing side boundary fences.*

Comment:

The replacement of side fencing is a matter that is administered by the Local Court system pursuant to the *Dividing Fences Act 1991* and not Council. However, the proposal shows masonry walls that assist to support landscaping, excavation or soil fill in addition to existing side fencing and these masonry walls should be contained wholly with the subject land. Conditions are recommended to ensure they remain part of the subject property and do not encroach on adjacent land. A 100 millimetre (mm) offset is recommended.

This issue is addressed by conditions and does not warrant refusal of the application.

- *2. Concern that landscape planting will include large trees (Banksia ericifolia / Syncarpia glomulifera) that may cause root damage or overshadowing / debris fall (of pool areas) on adjacent land.*

Comment

To address this issue regarding the nominated larger trees are to be replaced with suitable smaller species. This issue is addressed by conditions as per Council's Landscape assessment and conditions.

- *3. Concern is raised that the land is zoned R2 Low Density Residential which prohibits flat buildings on the site being used as if it were zoned R3 Medium Density Residential.*

Comment:

The site has the benefit of "existing use rights" as detailed within this report, under the assessment of existing use rights. The *EP&A Act 1979* ("the Act") allows for changes; including alterations, extension, enlargement, expansion or intensification of an "existing use". Details of existing use provisions are considered in context with *Division 4.11 Existing Uses* of the Act. The circumstances of the case have been reviewed in the context of available historical records and relevant case law, including *Jojeni Investments Pty Ltd v Mosman Municipal Council [2015] NSWCA 147*, *Auburn Council v Nehme [1999] NSWCA 383*, and *Jebblon Pty Limited v North Sydney Municipal Council (1982) 48 LEGRA 113*.

Having considered the circumstances of the case, including; the relevant development site history records for the subject land and the applicable planning controls, this issue does not warrant refusal of the application as existing use rights may be exercised by the applicant for the proposal.

- *4. Concern that the side setbacks are too narrow and do not achieve adequate building separation for the side boundary envelope. All eastern side windows should be deleted for privacy to adjacent land.*

Comment:

In response to concerns about building bulk and setback along the side boundaries the design was amended to increase setbacks and include better building separation. The deletion of all side windows for the eastern elevation not warranted as these windows have been included with screens or altered to reduce the size. The lower ground level storey is well excavated toward the front and is therefore has limited impact on privacy. The ground level and upper level do not include side doors or side balconies which assists to minimise impacts on adjacent land. Additional privacy conditions are recommended to ensure privacy for the balconies without creating undue impact on views or solar access.

This issue does not warrant refusal of the application.

- *5. Concern that the additional occupancy for a larger building will generate further traffic and parking demand in the surrounding streets, including Queenscliff Road.*

Comment:

On street parking in Queenscliff area is limited and Queenscliff Road has a high volume of traffic, therefore off street parking requirements pursuant to the WDCP 2011 for new residential development is a common concern with local residents and an assessment of access and

parking provided within this report. The proposed basement parking can accommodate twelve (12) car spaces which includes 2 visitor spaces. Disabled persons parking is provided within the overall parking and the carpark is accessed via a car lift that includes a 'waiting' / passing bay at street level. The car lift will be required to return to street level as the 'default' position to minimise any kerb-side queuing. The site is within an established residential area with reasonable access to public transport and local centres of Manly, Brookvale and Dee Why. In summary, the proposal will not create an unreasonable impact on parking and traffic in the surrounding area, including impacts on streetscape amenity, by the inclusion of 12 new off street parking spaces. Council's Traffic engineer is satisfied with the parking and traffic access and detailed traffic engineering assessment comments are provided under the heading "Internal referrals". Overall the proposal is satisfactory pursuant to *Part C3 Parking Facilities* and *Part C2 Traffic Access and Safety* of the DCP subject to conditions.

This issue does not warrant refusal of the application.

- *6. Concern that there is a significant lack of landscaped open space and site works will affect adjacent trees and vegetation along the boundary area.*

Comment:

This issue is addressed in detail under the *Part D1 Landscaped Open Space* within this report with regard to the variation in landscaped open space. In summary, the proposal will not create an unreasonable impact on landscaping amenity for adjacent land including the streetscape. In this regard, the landscaping design was refined with the amended architectural plans for the overall landscaping components (setbacks, roof top garden, planter boxes and the like). The applicant has also provided an *Arborist Impact Appraisal and Method Statement*, report (prepared by Naturally Trees) to address tree protection and excavation work near the boundaries. The overall landscape open space on site will be increased from that present with the current flat building. Council's landscape officer has reviewed the plans and provided detailed comments under the heading "Internal referrals" within this report. The applicant has also included changes recommended by the DSAP review for improved landscaped areas.

This issue does not warrant refusal of the application.

- *7. Concern that there may be damage to adjacent property from excavation works and other dilapidation risks during demolition or site works*

Comment:

This issue is addressed by standard conditions to require pre-construction and post construction dilapidation reports as well as standard construction related conditions for excavation works, compliance with *Australian Standards*, *WorkCover* and implementing the recommendations made within the applicants Geotechnical Investigation Report by *Geo Environmental Engineering*.

This issue is addressed by conditions and does not warrant refusal of the application.

- *8. Concern that the overall building height and scale of the development is larger than that of the surrounding houses in the vicinity with a boarder flat roof form which is indifference to the existing pitched roof building.*

Comment

The proposal is not bound by the LEP height control due to existing use rights applying to the

development. However, the building proposed is marginally lower than the existing maximum height of the present flat building on the site and complies with the 8.5m height control. The configuration of the building with a flat roof and as 3 storeys, does cover a broader building footprint although. However, by the use of a basement carparking and changes to refine to the building design during the assessment period the proposal has produced an acceptable height and scale in context with the particular circumstances of being a development that is responsive to existing use rights and the building height development standard. The flat roof format enables the building to comply with the building height control and minimise view impacts. The height and scale of the building has not attracted any submissions of objection about view loss. Visual impacts on the streetscape, from building height, is addressed in detail under the heading *Clause 4.3 Height of buildings* within this report.

This issue is addressed and does not warrant refusal of the application.

- *9. Concern that the proposed building does not comply with the side boundary envelope, which would create a wider building setback for a flat building in the R3 Zone.*

Comment:

This issue is addressed in detail under the heading *Part B3 Side Boundary Envelope* within this report. As outlined in *Fodor Investments v Hornsby Shire Council [2005] NSWLEC 71*, the planning controls within the relevant local planning instruments do not strictly apply to developments that rely on existing use rights. This does not mean such development is "unfettered" since the controls still have relevance in responding to those controls due to associated impacts, such as carparking, shadowing, overlooking, view and the like in situ with surrounding land uses. In the adjacent R3 zone along Queenscliff Road a new residential flat building would be required to have a 4.5m side setback, however variations are commonly sought for "constrained" single or narrow sites within a medium density environment. The non-compliance with the side boundary envelope has been demonstrated to not create unreasonable amenity impacts and is considered in context with the existing flat building in terms of the new larger building. The non-compliance with the side boundary envelope has been reduced by setting the floor level lower (similar to the rear yard level) rather than raising the building footprint.

This issue is addressed and does not warrant refusal of the application.

- *10. Concern that the proposal is an overdevelopment of site and introduces more building bulk when viewed from adjacent land and the street.*

Comment

Consideration of building bulk is detailed under the heading *Part D9 Building Bulk* within the report. In summary, The proposed building is sufficiently articulated to reduce the building mass as viewed from the streetscape and surrounding properties. The massing of the building design is reduced at the upper floor and uses contemporary materials and colours as a technique to and landscaping with window spaces and side wall setbacks to break up building bulk. Overdevelopment of a site is often represented by a lack of car parking, lack of landscaping, overshadowing, view loss, excessive height, reduced front or rear setbacks and the like which is symptomatic of trying to "fit" too much residential floor space or units into a development for extra yield. The proposal demonstrates minimal non-compliance with these issues and has been refined following DSAP review to address DCP design issues raised during the assessment period.

This issue is addressed and does not warrant refusal of the application.

- *11. Concern that the proposal will contribute to further overshadowing of adjacent land and reduce solar access to living areas, including No.120 Queenscliff Road and properties in Aitkin Avenue with solar panels.*

Comment

Consideration of this issue is addressed in detail under the heading *Part D6 Access to Sunlight* within this report. The existing shadow diagrams and proposed shadow diagrams are of assistance in understanding the shadow regime in relation to surrounding land, including impact of buildings and fencing structures in so far as changes to overshadowing. In summary, solar access / overshadowing is shown on the drawings A2601 to A2603 as well as A2701 to A2705. The diagrams show that in the morning period on 21 June the main shadow will reach across to No.120 Queenscliff Road as well as the rear of properties along Aitkin Avenue. By 11am no overshadowing begins to affect No.120 Queenscliff Road and no unreasonable change to existing shadows occur to No.126 Queenscliff Road as detailed within *Part D6 Access to sunlight*.

This issue is addressed and does not warrant refusal of the application.

- *12. Concern that the front and rear setbacks are not compliant and the proposal is inconsistent with adjacent development, including in-filling the "gap" between the existing buildings.*

Comment

The proposal has a compliant front and rear setback distance with landscaping concentrated in these open spaces. Border landscaping is used to provide trees to compliment the pattern of landscaping along the street to allow for small and medium size dense native planting. Trees in the road reserve will be retained, except for changes to construct the ramp and new awing entry. The setbacks along the street are punctuated by garage structures for various houses whereas this building will rely on a basement for carparking and therefore the front setback space will remain similar for the front wall plane, however the front balcony elements allow for a residential outlook and additional landscape elements to be integrated in to the facade in terms of planter boxes and shaping the "art deco" styling of the building.

This issue is addressed and does not warrant refusal of the application.

- *13. Concern that the proposal will impact adjacent land by visual and acoustic privacy, including overlooking from the large format side windows and balcony spaces.*

Comment

This issue is addressed in detail under the heading *Part D8 Privacy* within this report. In summary, the applicant made refinements to the design during the assessment period to better protect privacy and reduce overlooking to adjacent land, however additional screening is to be conditioned for the large format side windows where no screens are shown. At ground level standard side boundary fencing allows for reasonable acoustic and visual privacy for the residential environment. Conditions are recommended for noise considerations with any pool pumps or air conditioning motors. The overall density of 6 units within the site is able to be achieved by consolidation and the roof terraces have been reduced in area by ensuring wide

setbacks so that the apartments do not create unreasonable noise or privacy impacts to adjacent land.

The balconies do not show adequate side screens at the rear and conditions are included to provide custom privacy screens that will minimise overshadowing and view impacts but also afford privacy. Conditions are included to have planter box setbacks at the side (to match the opposite side of the balcony) and angled louvre screens to assist privacy to adjacent land. Fencing and screen planting is shown along the rear boundary and generally the proposal does not create unreasonable overlooking impacts toward Aitkin Avenue to adjacent properties given the mixed residential environment.

This issue is addressed and does not warrant refusal of the application subject to conditions.

- *14. Concern that the proposal does not provide a good fit to the streetscape character.*

Comment

This issue has been addressed in detail by DSAP review and recommendations. The existing flat building on site has simple art-deco feature and the applicant has sought to design the proposed new building in a contemporary interpretation reflective of the art-deco style also. The building does however include modern apartment styling and layout, including sustainable design features. The proposal is generally consistent with the built form controls that otherwise apply to the R2 Low density zone and therefore despite some variations "fits" on the site without unreasonable view impacts, without unreasonable additional shadow impacts, without unreasonable loss of landscaping or and maintains appropriate articulation with an identifiable residential character / style to the building. Refer to the heading Internal Referrals - DSAP for additional streetscape comments in addressing this issue.

This issue is addressed and does not warrant refusal of the application.

- *15. Concern that previous the development application uses consideration of the unconstructed alterations and additions approved for No.126 Queenscliff Road.*

Comment:

This issue is addressed as the plans identify the existing site layout and site inspection has considered the existing arrangements. The approved alterations at No.126 Queenscliff Road are not used to discount any imminent impacts on the existing dwelling if the subject proposal is constructed first. Conditions are included for privacy and overlooking considerations as well as landscaping treatment and dilapidation.

This issue is addressed and does not warrant refusal of the application.

- *16. Concern that the proposal includes variations to the 7.2m wall height control and therefore has associated amenity impacts on surrounding land and the streetscape.*

Comment

This issue is addressed in detail under the heading *Part B1 Wall heights* within this report. In summary, the non-compliance with the wall height is limited to a marginal sections across the top of the side walls and across the front and rear elevation due to the part 2 part 3 storey format of the building. The non-complying sections of walls height is limited is influenced 3 storey format of the residential flat building (noting that the site relies on existing use rights) and the minor cross slope of the land and variable existing ground level. Impacts on views from public domain are not unreasonably impacted in the context of the pattern of surrounding development. The proposal uses an 'art-deco' retro styling to break up the wall planes with

curved and recessed sections, including terraces and planter box elements.

This issue is addressed and does not warrant refusal of the application.

- *17. Concern that the proposal has inadequate landscaping area with the excavation, site works will impact adjacent trees and garden planting.*

Comment

This issue has been considered in detail by Council's Landscape Officer and under the heading *Part D1 Landscape Open Space*. In summary, an arborist report has been provided to address tree protection measures and excavation impacts. This applies particularly to the eastern boundary with No.120 Queenscliff Road. The applicant has provided a comprehensive landscape plan that includes a range of native species to restore a landscape setting to the site, enable screen planting and assist with maintaining a landscape setting for the streetscape. The variation to landscape open space has been addressed within this report and included revisions to the plans in accordance with DSAP recommendations for appropriate landscaping elements.

This issue is addressed by conditions and does not warrant refusal of the application.

- *18. Concern that the proposal will create stormwater impacts from runoff and have limited absorption with the reduced landscape open space.*

Comment:

The proposal will discharge water via an easement connection to Aitkin Avenue and therefore the proposed OSD and stormwater runoff will be better managed to minimised drainage impacts on adjacent land. The proposal will maintain a landscape setting with deep soil areas to ensure absorption within the available soil space. Generally the surrounding terrain contains sandstone bedrock areas close to the surface and therefore runoff is required to comply with Council's Water Management Policy. This issue has been addressed by Council's Development Engineers and subject to conditions does not warrant refusal of the application.

- *19. Concern that the proposal will create a wind tunnel effect on adjacent land and basement ventilation is not shown and may be near boundary areas.*

Comment

The building is generally lower than adjacent buildings and presents as two storey to Queenscliff Road with a flat roof form. The site elevations are stepped back at the upper levels with ground level landscaping proposed around the perimeter of the property. The scale of the building will not create an adverse wind tunnel impact on surrounding land. The basement has ducting shaft beside the lift for fume extraction as shown on the plans, otherwise this is conditioned if additional ventilation is needed to meet BCA/Aust. Std. requirements.

This issue is addressed and does not warrant refusal of the application.

- *20. Concern that the proposal is not in the public interest due to non-compliance with the DCP and other planning control as well setting a precedent for a RFB in the low density residential zone.*

Comment:

The public interest is considered throughout this report in applying an objective assessment of the proposal with regard to the Warringah LEP, Warringah DCP and the circumstances of the site benefitting from existing use rights. General environmental amenity concerns have been addressed, including engineering, building, landscaping, design, traffic, waste, and water management. The proposal has been refined during the assessment period in response to public submission issues and DSAP review. The issue of precedent is limited by circumstances of existing use rights applicable to the site and therefore cannot be applied to surrounding properties where such particulars do not apply, based on site history or current zoning rules.

This issue is addressed and does not warrant refusal of the application.

REFERRALS

Internal Referral Body	Comments
Design and Sustainability Advisory Panel	<p><u>SDAP Summary Conclusion</u></p> <p>The Panel does not support the proposal in its current form. A significant redesign is required in accordance with the recommendations above.</p> <p>The Panel refers the applicant to the Apartment Design Guide for aspects related to amenity and internal planning of apartments.</p> <p>Scale, built form and articulation</p> <ol style="list-style-type: none"><i>1. Enhance and further articulate central gap, explore use of northern clerestory windows to reinforce urban pattern and take advantage of solar potential for the upper units</i><i>2. Significantly reduce reliance on excavated space for habitable rooms and reduce the internal floor areas of the lower units in particular.</i><i>3. Allow for retaining wall thickness, soil and planting retention during and after construction wherever retaining walls are in proximity to boundaries. The Panel suggests retaining a continuous zone of at least 900mm adjacent to adjacent property line at natural ground level. The applicant mentioned technology that would allow for minimal setback from the boundary, but the Panel was not shown details of the final appearance or potential impact on neighbouring properties.</i><i>4. The side setbacks should be increased to take advantage of oblique views, solar access about Eastern and Western elevations, to lessen impact on adjacent neighbours and to improve views from footpath towards South.</i> <p><u>Comments</u></p> <ul style="list-style-type: none">The central gap has been altered with the pedestrian entry it should be noted that the lift module (as a car box) will sit in the centre position, visible to the street, and this will form a hole when the car lift is down in the basement. Skylights are used at the upper level and not clerestory windows.

Internal Referral Body	Comments
	<ul style="list-style-type: none"> Excavated space has been reduced and internal floor reduces at lower level. Retaining walls are stepped near the boundaries to form graduated levels and garden planting space. Side setbacks have been increased (with 2 revisions of amended plans). <p>Access, vehicular movement and car parking</p> <p><i>3.Reconfigure entry considering protection, viability of lift and quality of experience. Utilise landscape features to enhance the amenity of the entry area.</i></p> <p><i>4.It is likely that the driveway will require adjustment / widening to enable a waiting car to be clear of the road and local car traffic and buses passing the site.</i></p> <p><u>Comments</u></p> <ul style="list-style-type: none"> Front entry has been revised with more landscaping an integration of bin/ ramps, landscaping etc Driveway has been widened to meet Traffic Engineering requirements. <p>Landscape Recommendations</p> <p><i>5. Use all native species / endemic where possible in the landscape. The planting will do better also with more similar water/ nutrient requirements etc.</i></p> <p><i>6. Adjust tree locations to provide canopy cover in the rear yards.</i></p> <p><i>7. Consider shade, privacy and safety of rooftop private open space.</i></p> <p><i>8. Deep excavation within 1m of the side boundary just to “flatten” the side setbacks against the side boundary is not an appropriately sensitive design response. NGL within 1m of the boundary lines should be retained to allow for site stability, drainage, landscaping and prevent deep cutting / walls on the side boundary.</i></p> <p><u>Comments</u></p> <ul style="list-style-type: none"> Native species have been used as the dominant planting. Tree locations will be revised as per conditions and to include neighbour submission issues about new large trees near boundary. Roof landscaping has been widened around edge to limit overlooking and increase setbacks by having smaller roof terraces. Excavation near boundary has been revised to step down and be graduated to keep NGL buffer as much as practicable with landscaping buffers. <p>Amenity Recommendations</p> <p><i>9. Reconfigure the plans and utilise increased side setbacks to allow sunlight to penetrate living spaces to all apartments and to minimise reliance on artificial lighting.</i></p> <p><i>10. Consider switching the layout of the units to have the living areas on the</i></p>

Internal Referral Body	Comments
	<p><i>outside walls, include extensive obscure glass (that may need to be double glazed for thermal performance) to increase natural light levels.</i></p> <p><i>11. Increase floor to floor heights to at least 3.3m where terraces are located above habitable space</i></p> <p><i>12. Provide detail of cover to roof access stair, (the cranked stair arrangement will make the design and operation of these devices particularly challenging)</i></p> <p><i>13. Provide adequate screening to southern boundary to protect privacy of neighbours.</i></p> <p><i>14. The placement of the spa and large terrace in full view of numerous overlooking apartments to the north affords no natural privacy to this private open space. Reshaping this area, a smaller terrace that is partially protected by an attractive feature of the roof / parapet shape / roof area and helps to visually integrate with the streetscape of the adjoining buildings at No.124 and No.118 Queenscliff Road would provide a more innovative design response. This should minimise view impacts and avoid the need for ancillary elements such as cabana / shade installations on the roof to protect the BBQ/tables/spa area.</i></p> <p><u>Comments</u></p> <ul style="list-style-type: none"> • Plans have been revised to reduce building bulk and revised solar access provided to demonstrate solar access. • Layouts have been changed to place living areas on outside for natural light amenity. • Floor heights revised however minimal change required. • Stair access to roof terrace revised and detail provided. • Screening to southern boundary provided with revised landscaping, boundary wall /fence. • Spa deleted and no roof structures proposed for awnings etc. <p>Facade Aesthetics Recommendations</p> <p><i>15. Investigate alternative materials, noting that the planting, while supported will rely on a commitment by owners to maintain it. The design should fit with its context without the use of planting. Investigate face brickwork as an alternative facade material with a view to improving the fit with the local context.</i></p> <p><i>16. Removal of building infrastructure (service boxes, pergolas, convoluted pathways) in the front setback and a more graduated / stepped excavation profile with landscaping, at least 50% of the front fencing open style with landscaping is required. The WDCP (Part D2) does not seek any privatisation (balcony / bedroom courtyards etc) in the 6.5m front setback area.</i></p> <p><u>Comments</u></p> <ul style="list-style-type: none"> • Revised facade treatment made with photomontage provided. • Infrastructure at front revised for maximum planting area and rationalised layout to entry. Courtyards are small and only off bedroom / study rooms. <p>Sustainability Recommendations</p> <p><i>17. Increase the PV provision and consider connection direct to the units as</i></p>

Internal Referral Body	Comments
	<p><i>there is minimal common area energy consumption</i></p> <p><i>18. Reconsider the apartment layout to provide some northerly aspect to the building</i></p> <p><i>19. Ensure the lifts are included in the BASIX</i></p> <p><i>20. Ensure the skylights and glazed entry to the stair wells are included in the NatHERS modelling</i></p> <p><i>21. Consider the inclusion of bidirectional EV charging points</i></p> <p><i>22. Replace a car space with space for motorbikes and scooters</i></p> <p><i>23. Full electrification and no gas in anticipation of decarbonisation of the grid. Replace the stove tops with induction and the hot water with heat pump hot water.</i></p> <p><i>24. Increase the size of the rainwater tank and connect it to the spa and pool top up as well as the irrigation</i></p> <p><i>25. Investigate material choices with low embodied carbon; low carbon concrete mixes with 70% less cement are readily available. Fly ash concrete should be investigated for the structure of the building, as well as other low carbon materials</i></p> <p><i>26. Select roofing materials with high albedo roof to reduce urban heat and install high insulation levels</i></p> <p><u>Comments</u></p> <ul style="list-style-type: none"> • No PV provided on roof as landscaping covers the roof form amenity of occupants and views. • Window spaces revised for northern light to building. • BASIX revised with amended plans. • Skylights now smaller and will be detailed with construction specifications. • EV charging points to be included with construction specifications. • Adequate bike spaces provided. Car spaces provided for visitors and occupants only. • Appliance specification with Construction specifications. • Water tank connections detailed with construction specifications • Materials revised however fly ash has not been specified. • Roof comprises terrace and landscape planting area. <p><u>Conclusion on DSAP Review.</u></p> <p>Generally the recommendations of DSAP have been included with the amended design plans. The applicant has amended the plans twice during assessment period and also provided supplementary details to address DSAP recommendations as above or selected matters are appropriate to include with construction specifications.</p>
Building Assessment - Fire and Disability upgrades	<p>Supported with conditions.</p> <p><u>Amended Plans - 4/5/2023</u></p> <p>The amended application has been investigated with respect to aspects relevant the Building Certification and Fire Safety Department. There are no objections to</p>

Internal Referral Body	Comments
	<p>approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note 1: The proposed development may not comply with some requirements of the BCA and the <i>Premises Standards</i>. Issues such as this however may be determined at Construction Certificate Stage.</p> <p><u>Original Referral Comments</u> - Health and Building The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note 1: The proposed access lift located at the pedestrian entrance for the purposes of complying with Access for Persons with a Disability is considered undesirable and should be reviewed with the view to providing a ramp.</p> <p>Note 2: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Environmental Health (Acid Sulfate)	<p>Supported without conditions.</p> <p><u>General Comments</u> The proposed development will not occur within land defined as an Acid Sulfate Soil risk. We have no objections to the proposal.</p>
Landscape Officer	<p>Supported with conditions.</p> <p>The proposal is supported with regard to landscape issues.</p> <p><u>Additional Information Comment 15/06/23:</u> The amended reports and plans are noted.</p> <p>As per the ADG all planting on structures shall meet the minimum soil depth requirements outlined in table 5 under section 4P Planting on structures, whereas groundcovers/grasses require minimum 300mm soil depth and shrubs require minimum 500mm soil depth (note: any subsurface drainage requirements are in addition to these minimum soil depths).</p> <p>The Landscape Plans are generally supported; however, an Amended Landscape Plan shall be submitted prior to issuing a Construction Certificate, to ensure tree and species selections are appropriate to the site and their location, subject to the imposed conditions.</p> <p>The Arboricultural Impact Assessment identifies four trees for removal, trees 3, 4, 11, and 12, and all are exempt under Council's exempt provisions, therefore consent is not required for their removal. Proposed tree replacement will offset any canopy loss.</p>

Internal Referral Body	Comments
	<p><u>Original Comment Summary:</u> Landscape Referral raised the following concerns:</p> <ul style="list-style-type: none"> • Planting selection and the location of trees, • Landscape Plan information and in particular the location of existing trees to be retained, • Confirmation of the location of trees 11 and 12.
NECC (Coast and Catchments)	<p>Supported with conditions.</p> <p>This has been assessed in accordance with:</p> <ul style="list-style-type: none"> • Submitted studies and plans • Coastal Management Act and Hazard and Resilience SEPP • Warringah LEP and DCP <p>The application meets the objectives.</p>
NECC (Development Engineering)	<p>Supported with conditions.</p> <p><u>Original referral comments:</u> The proposed development requires an easement to drain water through the downstream property. The applicant has provided a letter from the owner of the downstream property indicating that they are currently assessing the options for an easement. The easement must be created prior to any consent.</p> <p>The submitted drainage plans including on-site stormwater detention (OSD) is not satisfactory. The design must include a summary table and calculations for the system. Also the tank is located in a position that will not permit 24 hour access for maintenance and inspection. It is considered that the tank be relocated to the front of the site possible under the driveway to achieve this requirement. The plans must include sections and details of the orifice plate, pits and pipes for the internal drainage system.</p> <p>The proposed driveway crossing appears to conflict with two existing utility service pits. In this regard, the applicant must provide an approval from the relevant service authority for the construction of the driveway crossing over these pits.</p> <p>The width of the crossing and provision of a waiting bay must be assessed by Council's Traffic Engineer prior to further assessment. The proposed walls on either side of the crossing may restrict the sight lines to pedestrians. This issue must also be assessed by Traffic.</p> <p>Development Engineering cannot support the proposal due to insufficient information to address stormwater management and vehicular access in accordance with clause C2 and C4 of the DCP.</p> <p><u>Additional Information Submitted 10/5/23 & 24/5/23</u></p>

Internal Referral Body	Comments
	<p>The submitted drainage plans including OSD are acceptable. The driveway has been located clear of the service pits in the footpath. As the easement has not been created a deferred commencement condition has been provided for the application.</p> <p>Development Engineering support the proposal, subject to conditions as recommended.</p>
NECC (Riparian Lands and Creeks)	<p>Supported with conditions.</p> <p>The development application is for the demolition of existing structures and development of a residential flat building comprising of 6 apartments and basement car park.</p> <p>The application has been assessed against relevant legislation and policy to relating to waterways, riparian areas, groundwater and the Warringah LEP 2011 and Warringah DCP 2011,</p> <p>The rear boundary of the development site - 122 and 124 Queenscliff Road, Queenscliff is tagged by the 100 metre Wetland Buffer and is located approximately 90 metres from the mapped wetland and approximately 98 metres from Manly Lagoon foreshore.</p> <p>The development site is separated from the Lagoon and wetland by a dwelling to the south, Aitken Road and a Council reserve, but the development consists of large excavation of approximately 3.5m to 7.5m below the existing ground surface, as outlined in the Geotechnical Investigation Report by <i>Geo-Environmental Engineering</i> dated 22 March 22 therefore a Sediment and Erosion Control Plan is required.</p>
NECC (Water Management)	<p>Supported with conditions.</p> <p>The proposal was assessed under the current creek and water management legislation framework, the relevant parts of the LEP, DCP and Water Management for Development Policy. The Creek Management Study 2004 principles and NRAR waterfront land principles were also considered in the assessment.</p> <p>The supplied reports, plans and documentation were considered.</p> <p><u>Water Quality</u></p> <p>The proposed stormwater management is integrating a 16m³ rainwater tank and stormwater cartridges.</p> <p>Pollutant loading (sediment and nutrient) will be reduced to the Water Management for Development Policy requirement and is as such considered as a water quality treatment chain subject to conditions.</p> <p><u>Dewatering</u></p> <p>1. Tailwater (surface water, rainwater, minor seepage): Please contact catchment@northernbeaches.nsw.gov.au for advice on Council's water quality requirements for a single instance of dewatering tailwater that collects in an excavation during works. A Council</p>

Internal Referral Body	Comments
	<p>dewatering permit application must be made for expected multiple instances or continuous dewatering of tailwater.</p> <p>2. Groundwater: The geotechnical report from Geo-environmental G22006QUE-R01F 22nd March 2022 is indicating that groundwater inflow is possible in the proposed excavation level.</p> <p>A sump and pump management system might be sufficient during construction. If the dewatering operation is becoming more complex during construction activity then: A permit from Council will be required for any dewatering of groundwater (Contact catchment@northernbeaches.nsw.gov.au for more information about Council permits).</p> <p>An application for interference with an aquifer is required to <i>WaterNSW</i> (If the need for water management act (WMA) approvals only becomes apparent following development consent, applicants should be referred directly to WaterNSW).</p> <p>https://www.waternsw.com.au/__data/assets/pdf_file/0003/155424/Dewatering-information-forcouncilsand-applicants.pdf https://www.waternsw.com.au/__data/assets/pdf_file/0005/167279/Geotechnical-Investigation-Reports-Minimum-Requirements-fact-sheet.pdf https://www.waternsw.com.au/customer-service/water-licensing/dewatering</p> <p><u>Sediment management</u> Due to the sensitivity of the downstream environment it is imperative that an erosion and sediment management strategy is developed and implemented to ensure protection of this area during construction.</p>
Traffic Engineer	<p>Supported with conditions</p> <p>Additional traffic comments on amended plans - 29/5/22</p> <p>The applicant has submitted amended plans and an accompanying traffic impact statement. The amended plans have widened the driveway to 5.5m for the first 6m inside the property boundary which allows a vehicle to pull in off the street to avoid having to queue on Queenscliff Road. This is a positive change and supported and means that there should be no need for vehicles to have to wait on Queenscliff Road for the car lift to be vacated.</p> <p>the widening of the driveway coupled with additional information confirming that the retaining wall on the property frontage is only 900mm in height has also addressed concerns regarding sight lines to pedestrians from vehicles exiting the property.</p> <p>Finally, it is noted that the developer is now proposing an OSD tank in the portion of the basement carpark where motorcycle parking had been considered a possibility. As there no other suitable location for motorcycle parking and no</p>

Internal Referral Body	Comments
	<p>DCP requirement to provide it, the provision of motorcycle parking is not pressed.</p> <p>Traffic Comments - 29/9/22</p> <p>The development is for demolition of the existing 2 residential flat buildings on the site and construction of a 6 x 3 bedroom unit development with off street parking for 12 vehicles and 8 bicycles. The parking area serving the proposed development is to be accessed by a car lift.</p> <p><u>Traffic Generation</u></p> <p>Using traffic generation rates for medium density residential flat buildings as quoted in the RMS Guide to Traffic Generating Developments the existing 4 unit development on the site generates 2-3 vehicle trips per hour in both the AM and PM peak periods, The proposed 6 unit development will generate 3-4 vehicle trips per hour in peak periods.</p> <p>The increased level of traffic will be negligible and is not anticipated to result in any appreciable impact on the surrounding road network.</p> <p><u>Parking</u></p> <p>Using rates in the Warringah DCP the 6 x 3 bedroom development is required to provide 9 residential spaces and 1.2 visitor spaces (round up to 2). i.e a total of 11 spaces are required. The developer proposes to provide 12 spaces all for residential use, one of the spaces will be an adaptable space. No visitor parking is proposed.</p> <p>The quantum of parking is acceptable and the absence of visitor parking, in this case, is supported in view of the proposed car lift which would be difficult to negotiate for visitors unfamiliar with its operation.</p> <p>While there is no accessible parking requirement outlined in the Warringah DCP. The Building Code of Australia requires that a minimum of 1 disabled parking space be provided for carparks providing up to 50 spaces. The developer proposes 1 adaptable space which is considered sufficient.</p> <p><u>Bicycle & Motorcycle Parking</u></p> <p>The Warringah DCP requires 1 bicycle space per dwelling and 1 visitor space per 12 dwellings i.e 7 spaces. The developer proposes to provide 8 bicycle parking spaces within the basement carpark.</p> <p>The Warringah DCP has no specific requirements for motorcycle parking however there is a vacant area adjacent to parking space No.4 which is 5.4m in length and 2.01m in width. This would be adequately sized to accommodate 2</p>

Internal Referral Body	Comments
	<p>motorcycle parking spaces and should be marked as such to provide greater scope for alternate modes of travel by residents. This will be conditioned.</p> <p><u>Access</u></p> <p>Vehicular access to the development will be via 3.3m wide driveway accessed from Queenscliff Road. This width has been demonstrated to be sufficient to cater for the critical left in and left out turning movements of a B99 vehicle but is insufficient to provide a waiting bay for an inbound vehicle to wait for outbound vehicle in the lift to exit. AS/NZS 2890.1 (offstreet parking) clause 3.5 outlines the minimum storage requirements to cater for queuing at a mechanical parking installation.</p> <p>The applicants traffic consultant has undertaken queueing analysis which demonstrates that the 98th percentile queue will not exceed one vehicle and there is therefore not a requirement for a waiting bay at the property boundary. It is however considered that there should be an illuminated display at the entry points to the car lift which should indicate to an approaching driver at street and basement levels, by way of red light or wording, that a vehicle has entered the lift. Given the volume of traffic on Queenscliff Road and the potential for traffic or pedestrians to be delayed if queuing occurs, priority for access to the lift should be given to inbound vehicles from street level with the lift programmed to return to street level as a default mode, minimising the chances of inbound vehicles being unable to quickly enter the lift.</p> <p>Signage should also be displayed in the lift advising drivers to enter in a forwards direction (to ensure that drivers do not reverse to or from the lift at street level). The above will be conditioned.</p> <p><u>Sight lines at property boundary</u></p> <p>Clause 3.3 of AS/NZS 2890.1 requires that a 2.5m x 2.0m sight line triangle should be available at the point where the driveway access meets the property boundary. The current plans incorporate walls on either side of the access driveway which will prevent sight lines to pedestrians and will also limit sight lines to approaching traffic.</p> <p>Given the high volume of traffic using Queenscliff Road and its regular use by both pedestrians and cyclists it is considered that the walls adjacent to the driveway should be reduced in height to no more than 1m in height throughout the sightline triangle to ensure adequate visibility for an exiting driver. This will be conditioned.</p>
Waste Officer	<p>Supported with conditions.</p> <p><u>Waste Management Assessment - Amended plans</u> (submitted 10/5/2023) Recommendation - Supported, subject to conditions.</p> <p><u>Original Waste Management Assessment</u></p>

Internal Referral Body	Comments
	<p>Recommendation - Unacceptable.</p> <p>Specifically:</p> <p><u>Residential Waste & Recycling Bins</u></p> <p>1) The proposal is for the owners corporation to present the bins at the kerbside for collection. - <i>Unacceptable</i>. Council does not permit bins from multiple occupancy properties to be presented at the kerbside for collection. Council will provide a "wheel out/wheel in service" for the bins from a bin storage area located within the property.</p> <p>An enclosure that complies with the requirements contained within Councils "Design Guidelines for Waste Storage Facilities" must be provided at street level.</p> <p>2) The doors of the basement bin room open inwards. <i>Unacceptable</i>. The door/s must open outwards. A single 1200mm wide door would be suitable.</p> <p><u>Bulky Goods Room</u></p> <p>The doors of the bulky goods room open inwards. <i>Unacceptable</i>. The door/s must open outwards away from the direction of travel when accessing the room. A single 1200mm wide door would be suitable.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p>Supported with conditions.</p> <p>The proposal was referred to <i>Ausgrid</i> who provided a response stating that the proposal is acceptable subject to compliance with the relevant power line clearances as per <i>Ausgrid Network Standards</i> and <i>SafeWork NSW Codes of Practice</i>. These recommendations will be included as a condition of consent.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

SEPP 65 - Design Quality of Residential Apartment Development

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

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

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

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

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

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

As previously outlined the proposed development is for the erection of a three storey residential flat 'housing' development plus basement car parking for the provisions of six self-contained dwellings.

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 has an appointed Design and Sustainability Advisory Panel (DSAP). Refer to the DSAP referral comments section within this report.

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 site is located in a low density residential zone but opposite a medium density precinct of Queenscliff. There are a range of older style flat buildings in the vicinity and in-fill contemporary flat buildings in the streetscape. Generally the proposal maintains a landscaped setting and the historical context is limited by the mix of dwelling houses and apartment buildings. The proposal changes the context of the site by removal of 2 small flat building (being 4 units in total) to consolidated the site to construct a single larger contemporary flat building with 6 Units. The building has modern styling with landscaping elements, large window spaces, brick-pattern finished concrete with a shaped facade, including articulated side wall planes to address the residential setting.

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 built form and height has been amended to address views and building alignment with setbacks for landscaping provided that include articulation along the wall planes. The proposal maintains a residential outlook to the street with the main district views to the south used to enhance internal amenity of the building. Building bulk is broken down by window and screening as well as landscape elements and variation along the side setbacks. Overall the proposed building is lower than the existing two flat buildings on the site however the overall massing of the building is much larger across the central area of the consolidated site with a strongly defined access to the public domain.

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:

The consolidation of the site enables an appropriate site with an area to be attained for the density of the building to achieve 6 apartments and step the building up the site to take advantage of the slope and southerly outlook toward Manly. The density is commensurate with achieving landscaped setbacks, building envelope and overall height that is consistent with the built form controls for the zone and provide adequate carparking. Access to stormwater drainage, transport, local parks and Manly CBD is convenient to the site.

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 proposal has been subject to review by DSAP and has incorporated design changes to achieve appropriate sustainability outcomes including accessibility, thermal comfort, EV options, use of landscaping amenity and solar access.

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 proposal provides deep soil landscaping for the building surrounds with screen planting concentrated along the side and rear setbacks. Landscaping is also used for the roof top area to enhance the roofscape for overlooking properties and the streetscape appearance. A range of native plants are shown to for native birds and fauna and enhance the surrounding landscaped for the building is suitable for the coastal environment.

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 well being.

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 proposal has been revised during the assessment period to better address amenity issues including, privacy, neighbours solar access, storage and services space, mobility access and room layouts. This has included changes to the front setback, side setback and roof terraces to address amenity considerations, given the low density residential environment on either side of the site and toward the rear.

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 building design has clearly defined entry areas and open style fencing as well as window spaces facing the street allow for passive surveillance. The building will have security devices to promote safe access that are appropriate for a residential flat building in managing residential access.

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:

Given the limited size of the building for only 6 apartments the mix of apartments is suitable for the area and will cater for couples or small families. Generally the building and its design, layout, parking and location within Queenscliff is likely to appeal to the "high end" of the Manly sub-market appeal for new apartments in proximity to the Manly Beach / Manly CBD.

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:

The proposal has a distinctive contemporary appearance with landscape elements strongly integrated into the design.

APARTMENT DESIGN GUIDE

The following table is an assessment against the criteria of the 'Apartment Design Guide' as required by SEPP 65.

Development Control	Criteria / Guideline	Comments
Part 3 Siting the Development		
Site Analysis	Does the development relate well to its context and is it sited appropriately?	Satisfactory. The proposal is influence by the site being adjacent to dwelling houses on either side and within a low density residential zone. The proposal utilizes the slope of the land to gain a southerly outlook toward Manly Lagoon and employs a car lift avoid the need for vehicle ramps that would require a significant driveway space for access.
Orientation	Does the development respond to the streetscape and site and optimise solar access within the	Satisfactory. The site faces south for its

	development and to neighbouring properties?	private open space and therefore maintaining solar access is influenced by the western and eastern overshadowing regime created on neighbouring land.												
Public Domain Interface	<p>Does the development transition well between the private and public domain without compromising safety and security?</p> <p>Is the amenity of the public domain retained and enhanced?</p>	<p>Satisfactory.</p> <p>Open style fencing is proposed with landscape front setback, entry foyer and vehicle access.</p>												
Communal and Public Open Space	<p>Appropriate communal open space is to be provided as follows:</p> <ol style="list-style-type: none"> 1. Communal open space has a minimum area equal to 25% of the site 2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter) 	<p>The small number of units does not warrant any large open space area. Upper units that have smaller balcony space also have access to a roof terrace for these top floor units. Lower units have large internal living spaces, terrace and (at lower ground level) access to garden and a pool.</p>												
Deep Soil Zones	<p>Deep soil zones are to meet the following minimum requirements:</p> <table border="1"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr> </thead> <tbody> <tr> <td>Less than 650m²</td><td>-</td><td rowspan="4">7%</td></tr> <tr> <td>650m² – 1,500m²</td><td>3m</td></tr> <tr> <td>Greater than 1,500m²</td><td>6m</td></tr> <tr> <td>Greater than 1,500m² with significant existing tree cover</td><td>6m</td></tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m ²	-	7%	650m ² – 1,500m ²	3m	Greater than 1,500m ²	6m	Greater than 1,500m ² with significant existing tree cover	6m	<p>Satisfactory.</p> <p>Standard conditions required for landscape completion.</p>
Site area	Minimum dimensions	Deep soil zone (% of site area)												
Less than 650m ²	-	7%												
650m ² – 1,500m ²	3m													
Greater than 1,500m ²	6m													
Greater than 1,500m ² with significant existing tree cover	6m													
Visual Privacy	<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p>	<p>Satisfactory subject to conditions.</p>												

	<table border="1"> <tr> <th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> <tr> <td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> <tr> <td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr> <tr> <td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr> </table> <p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	
Building height	Habitable rooms and balconies	Non-habitable rooms												
Up to 12m (4 storeys)	6m	3m												
Up to 25m (5-8 storeys)	9m	4.5m												
Over 25m (9+ storeys)	12m	6m												
Pedestrian Access and entries	<p>Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>	<p>Satisfactory.</p> <p>The front facade of the building has undergone a number of revisions during the assessment process to address access, driveway arrangement and landscaping for the entry areas.</p>												
Vehicle Access	<p>Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?</p>	<p>Satisfactory.</p> <p>A car lift is proposed that includes a waiting bay / passing bay and the lift returns to street level as the default setting (priority) for car access off Queenscliff Road.</p>												
Bicycle and Car Parking	<p>For development in the following locations:</p> <ul style="list-style-type: none"> On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre <p>The minimum car parking requirement for</p>	<p>Satisfactory</p> <p>Adequate bike and car parking is provided in the basement.</p>												

	<p>residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p> <p>Visual and environmental impacts are minimised.</p>	
Part 4 Designing the Building		
Amenity		
Solar and Daylight Access	<p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:</p> <ul style="list-style-type: none"> Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter. 	<p>Satisfactory.</p> <p>The proposal utilises side windows for additional light to living areas and large floor to ceiling glazing at the rear to allow for natural light due to the southerly aspect for all apartments.</p>
	<ul style="list-style-type: none"> A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter. 	<p>Direct sunlight is shown on the shadow diagrams (sun-view) and solar access is also gained along the northern street frontage for the front rooms facing the street. Large side windows assist direct solar access to living areas due to the south facing aspect as well as roof terraces for the upper level apartments.</p>
Natural Ventilation	<p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:</p> <ul style="list-style-type: none"> At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed. 	<p>Satisfactory</p> <p>Natural ventilation is achieved by all apartments having dual aspect.</p>

	<ul style="list-style-type: none">Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.	Satisfactory												
Ceiling Heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table><tr><th colspan="2">Minimum ceiling height</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>1.8m at edge of room with a 30 degree minimum ceiling slope</td></tr><tr><td>If located in mixed used areas</td><td>3.3m for ground and first floor to promote future flexibility of use</td></tr></table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use	Satisfactory.
Minimum ceiling height														
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If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use													
Apartment Size and Layout	<p>Apartments are required to have the following minimum internal areas:</p> <table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m²</td></tr><tr><td>1 bedroom</td><td>50m²</td></tr><tr><td>2 bedroom</td><td>70m²</td></tr><tr><td>3 bedroom</td><td>90m²</td></tr></table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</p> <p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.</p>	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	<p>Satisfactory</p> <p>Unit LG01 - 3x Bed 177sqm Unit LG02 - 3x Bed 175sqm Unit GL01 - 3x Bed 146sqm Unit GL02 - 2x Bed 145sqm Unit L101 - 3x Bed 108sqm Unit L102- 3x Bed 106sqm</p> <p>Satisfactory</p>		
Apartment type	Minimum internal area													
Studio	35m ²													
1 bedroom	50m ²													
2 bedroom	70m ²													
3 bedroom	90m ²													

	Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	Satisfactory															
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	Satisfactory															
	Master bedrooms have a minimum area of 10m2 and other bedrooms 9m2 (excluding wardrobe space).	Satisfactory															
	Bedrooms have a minimum dimension of 3.0m and must include built in wardrobes or have space for freestanding wardrobes, in addition to the 3.0m minimum dimension.	Satisfactory															
	Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none">3.6m for studio and 1 bedroom apartments4m for 2 and 3 bedroom apartments	Satisfactory															
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	Satisfactory															
Private Open Space and Balconies	All apartments are required to have primary balconies as follows: <table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>4m²</td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m²</td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m²</td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m²</td><td>2.4m</td></tr></table>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	Satisfactory
	Dwelling Type	Minimum Area	Minimum Depth														
	Studio apartments	4m ²	-														
1 bedroom apartments	8m ²	2m															
2 bedroom apartments	10m ²	2m															
3+ bedroom apartments	12m ²	2.4m															
	The minimum balcony depth to be counted as contributing to the balcony area is 1m																
	For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m.	Satisfactory.															
Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight.	Satisfactory. Two only															
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	Not applicable															
Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: <table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr></table>	Dwelling Type	Storage size volume	Satisfactory for all units.													
	Dwelling Type	Storage size volume															

	<table><tr><td>Studio apartments</td><td>4m²</td></tr><tr><td>1 bedroom apartments</td><td>6m²</td></tr><tr><td>2 bedroom apartments</td><td>8m²</td></tr><tr><td>3+ bedroom apartments</td><td>10m²</td></tr></table>	Studio apartments	4m ²	1 bedroom apartments	6m ²	2 bedroom apartments	8m ²	3+ bedroom apartments	10m ²		
Studio apartments	4m ²										
1 bedroom apartments	6m ²										
2 bedroom apartments	8m ²										
3+ bedroom apartments	10m ²										
	At least 50% of the required storage is to be located within the apartment.										
Acoustic Privacy	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	Satisfactory. Units face south and open roof terrace setback from edges with moderate area to limit usability.									
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	Satisfactory									
Configuration											
Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	Satisfactory. Small apartment complex and therefore building intended for limited market appeal.									
Ground Floor Apartments	Do the ground floor apartments deliver amenity and safety for their residents?	Satisfactory. Open style fencing and landscape buffer with defined entry foyer area.									
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	Contemporary styling with landscaping and window spaces used to give modern appearance.									
Roof Design	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Can the roof top be used for common open space? This is not suitable where there will be any unreasonable amenity impacts caused by the use of the roof top.	Landscaped roof element used with open roof terrace. Conditions recommended for no weather structures on roof.									
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	Site contains shallow soil with bedrock close to the surface throughout.									
Planting on Structures	When planting on structures the following are recommended as minimum standards for a range of plant sizes:										
	<table><tr><td>Plant type</td><td>Definition</td><td>Soil Volume</td><td>Soil Depth</td><td>Soil Area</td></tr><tr><td></td><td></td><td></td><td></td><td></td></tr></table>	Plant type	Definition	Soil Volume	Soil Depth	Soil Area					
Plant type	Definition	Soil Volume	Soil Depth	Soil Area							

	<table><tr><td>Large Trees</td><td>12-18m high, up to 16m crown spread at maturity</td><td>150m³</td><td>1,200mm</td><td>10m x 10m or equivalent</td></tr><tr><td>Medium Trees</td><td>8-12m high, up to 8m crown spread at maturity</td><td>35m³</td><td>1,000mm</td><td>6m x 6m or equivalent</td></tr><tr><td>Small trees</td><td>6-8m high, up to 4m crown spread at maturity</td><td>9m³</td><td>800mm</td><td>3.5m x 3.5m or equivalent</td></tr><tr><td>Shrubs</td><td></td><td></td><td>500-600mm</td><td></td></tr><tr><td>Ground Cover</td><td></td><td></td><td>300-450mm</td><td></td></tr><tr><td>Turf</td><td></td><td></td><td>200mm</td><td></td></tr></table>	Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent	Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm	3.5m x 3.5m or equivalent	Shrubs			500-600mm		Ground Cover			300-450mm		Turf			200mm		
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Ground Cover			300-450mm																													
Turf			200mm																													
Universal Design	Do at least 20% of the apartments in the development incorporate the Livable Housing Guideline's silver level universal design features	Satisfactory. Internal spaces provide suitable space and accessible parking space provided in basement within internal lift for all floors.																														
Adaptable Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	Not applicable																														
Mixed Use	Can the development be accessed through public transport and does it positively contribute to the public domain? Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.	Not applicable																														
Awnings and Signage	Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development. Signage must respond to the existing streetscape character and context.	Not required. Landscaped setback provided.																														
Performance																																

Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?	Satisfactory. Submitted details provided.
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	Satisfactory. Basix requirements comply with the SEPP.
Waste Management	Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?	Satisfactory. Proposal has been revised to comply with waste management requirements of Council Waste service policy.
Building Maintenance	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	Satisfactory. Durable concrete surfaces and glass with landscaped roof. To be managed with by-laws and Strata management.

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:

the proposal meets the above requirements for parking, internal areas and ceiling heights and therefore has addressed these elements of the ADG.

(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 proposal has been subject to a number of amendments to address the ADG and respond to neighbours concerns about landscaping, setbacks, privacy and overshadowing. Additionally conditions are provided to ensure roof structures are not added to the terrace area (for view impact reasons) and general design issues to maintain consistency with the ADG (noting that existing use rights apply to the land).

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.1276224M-04 dated 3.5.2023).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	45	45

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

Other Service Infrastructure Authorities

The application was referred not required to be referred to *Transport for NSW* and no other service infrastructure authority referral issues are raised pursuant to the SEPP. Requirements of *Sydney Water* are addressed by separate processes administered directly through *Sydney Water*.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

Division 3 Coastal environment area

2.10 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 proposal is consistent with considerations to maintain appropriate protection of the foreshore area, landscaping, water quality and natural features of the site. No known aboriginal relics are recorded on the site.

- 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 subsection (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 proposal will not create unreasonable impacts on the coastal environment in terms of runoff, coastal processes, ecology, landform, or scenic amenity.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

- 1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
 - 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
 - ii) platform for members of the public, including persons with a disability,
 - iii) overshadowing, wind funnelling and the loss of views from public places to
 - iv) foreshores,
 - v) the visual amenity and scenic qualities of the coast, including coastal headlands, Aboriginal cultural heritage, practices and places, cultural and built environment heritage, and
 - b) is satisfied that:
 - i) the development is designed, sited and will be managed to avoid an
 - ii) adverse impact referred to in paragraph (a), or
 - iii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or 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 development work is situated well above the Manly Lagoon and over 450m from the beachside area and at the outer edge of the 'coastal use area'. The new flat building is of a modern contemporary styling (3 storey at the rear and 2 storeys toward the road) with a primary outlook toward Manly lagoon area. The proposal will remain consistent with the aims and considerations for the coastal environment of Queenscliff Road and its surroundings.

Division 5 General

2.12 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 proposal will not create unreasonable impacts on the coastal environment in terms of runoff, coastal processes, hazards and geotechnical safety for excavation and building works.

2.13 Development in coastal zone generally—coastal management programs to be considered

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Comment:

The proposal will not create unreasonable impacts on the coastal environment in terms of runoff, coastal processes, ecology, landform, or scenic amenity.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use. Concern regarding potential asbestos or lead paint is managed by standard practice and statutory law for the safe handling of asbestos and demolition material, including compliance with Australian Standards, WorkCover and waste management conditions.

Warringah Local Environmental Plan 2011

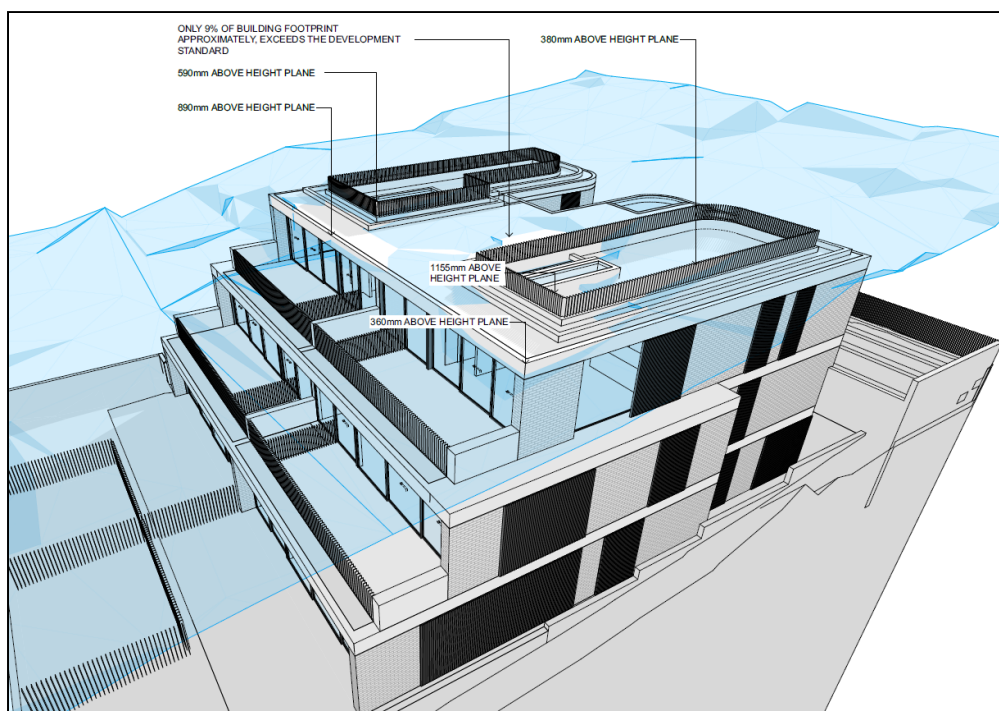
Is the development permissible?	No
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings*:	8.5m	9.65m (roof terrace fence)	13.5% (top of roof fence)	No
		8.86m (main roof structure edge)	4.2% roof parapet	No

The development application is made pursuant to the existing use rights provisions of the EPA Act and under established precedent made in the NSW *Land & Environment Court* the development standards in WLEP 2011 are not deemed to strictly apply. A detailed height plane from survey data has been provided to show the building complies with the building height plane measured from Existing Ground Level (EGL).

Image: Height plane blanket from existing ground level in relation to 8.5m height limit (blue) for the proposed building.



*Height of buildings is measured by existing ground level, consistent with the approach taken in *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*. (There is no significant variation between natural ground and existing ground across the site)

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
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

Detailed Assessment

Zone R2 Low Density Residential

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

Comment

The existing site comprising 2 lots contains 2 separate buildings with 2 flats in each building. The proposal seeks to provide 6 flats which adds to the housing stock in an area that has numerous larger apartment style developments, single houses and small scale flat buildings. The southern side of

Queenscliff road has a low density residential zoning and the proposal seeks to rely on existing use rights to construct a new residential flat building in context with the applicable controls and the controls that would otherwise apply to a flat building in a medium density zone. The new building will provide a modern style flat building with carparking, contemporary open plan layout and a new landscape regime to meet the housing needs of the community. Details of existing use rights implications are addressed within this report.

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

Comment

The proposal does not seek to provide additional (non-housing) land uses on the site or any other commercial facilities not associated with residential use of the land.

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

Comment

The proposed flat building will maintain landscaping component 38.8% at ground level (which is commensurate to 40% requirement in low density areas) however this is less than the 50% required in the medium density areas. A landscaped setting to the street, with open style fencing, as well as rear yard landscaped buffer is proposed. The building also includes landscape elements for the building as roof top planting and landscaped courtyard areas at the front. The proposal is consistent with this objective and further details are provided pursuant to the Warringah DCP *Part D1 Landscaped Open Space*.

4.6 Exceptions to development standards

Development standard:	Building Height
Requirement:	8.5m
Proposed:	9.65m
Percentage variation to requirement:	13.5% (1.15m)

The diagram below shows the non-compliance in association with existing ground level along the forward roof edge (upper storey) and corner and mid section above the 8.5m height plane. The highest element being the fence element around the outer edge of the roof terrace, whereas the main roof structure is generally below the height plane (blue).

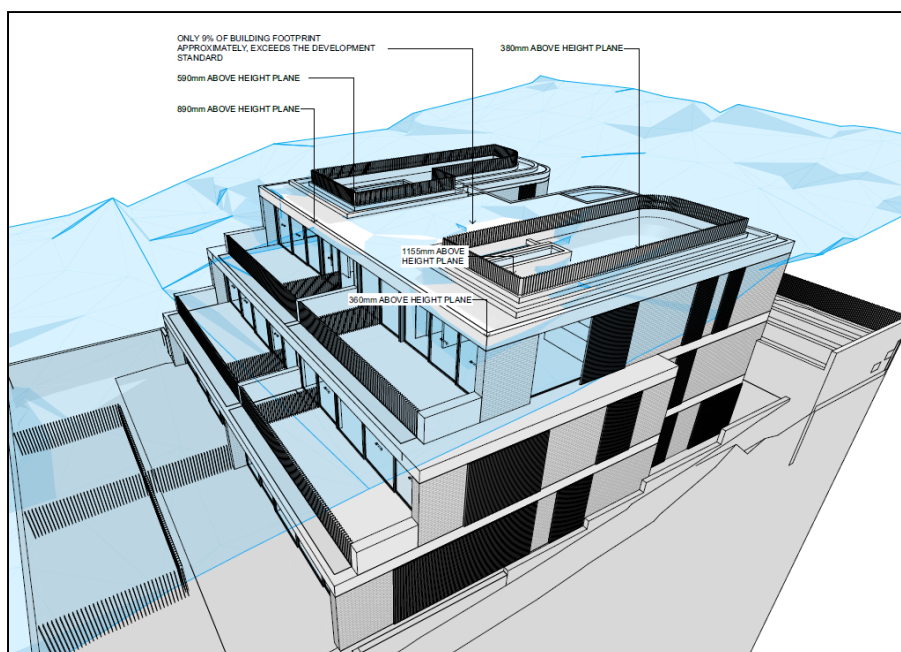


Image: Height plane variation for building elements above existing ground level.

Assessment of request to vary a development standard

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

Clause 4.6 Exceptions to development standards

(1) *The objectives of this clause are as follows:*

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Comment:

The proposal seeks to vary the maximum height line for the building where it relates to the forward edge along the southern side of the roof and for parts of the roof terrace elements (including part of the perimeter fence structure on the roof). The slope of the land is consistent with natural ground level and has minimal excavation at present.

Clause 4.3 – Height of Buildings development standard is not expressly excluded from the operation of this clause.

(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks*

to justify the contravention of the development standard by demonstrating:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Secretary has been obtained.

Clause 4.6 (4)(a)(i) (Justification) Assessment

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

Comment:

The Applicant's written request (attached to this report as an Appendix) has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Comment:

In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 *at* [26]. *The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'*

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
- (c) to promote the orderly and economic use and development of land,
- (d) to promote the delivery and maintenance of affordable housing,
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
- (g) to promote good design and amenity of the built environment,
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
- (j) to provide increased opportunity for community participation in environmental planning and assessment.

Applicants Written Request

The applicants written request argues, in part:

- *"The nature and extent of the exceedance is minor. The exceedance relates to minor parts of the proposed building, for example, a section of the balustrade associated with the roof terrace, not the whole balustrade).*
- *The height of the balustrade must meet the minimum quite standards under the building code.*
- *The exception does not result in additional gross floor area or bulk above the building height plane.*
- *The site is challenged by its orientation and topography in achieving good solar access. The roof terrace provides a valuable private open space that achieves good solar access on a south sloping property. The roof terrace is assessed as a positive feature of the design that adds to the amenity and quality of the proposed building.*
- *From the various survey and architectural plans accompanying the application that the prior excavation of the site (within the footprint of the existing building) distorts the maximum building height plane. The proposed building height is compatible with the building heights of the adjacent dwelling houses.*
- *The proposed building height will have an appropriate scale to a casual observer when viewed surrounding and nearby development'. Therefore, the height of the proposed building will be 'compatible with surrounding and nearby development.*
- *The front of the proposal will present as two storeys to the street with significant recesses and landscaping incorporated.*
- *The proposed building adopts a terraced form with the rear setbacks increasing as the height of the building rises. The rear of the building also incorporates elevated landscape planting. When viewed from the sides, the proposal will present obliquely as a terraced building form of two to three storeys that responds to the slope of the land."*

Comment:

- The proposed height is consistent with the established streetscape heights along the south side of Queenscliff Road and the building is substantially lower than buildings along the northern side

(directly opposite). The height variation (being on the low side of site for the building is not readily distinguishable from the street frontage.

- The height variation affects a portion of the upper balustrade and roof edge as demonstrated in the height blanket diagram. The non-compliance does not adversely impact privacy or overshadowing or views from surrounding land. Privacy and overshadowing concerns are attributed by the side wall setbacks and elevated balcony positions not the non-compliance with the edge of roof or slatted balustrade.
- The non-compliance is partly influenced by minor excavation with the foundation areas of the existing buildings on site which artificially distorts the height plane with regard to natural ground level.
- The variation is minor in its extent / minor protrusions and present at the southern edge of the roof line (principally tapering elements across the height plane).
- The roof terrace maintains a low profile and with landscaped surrounds to keep the terrace away from the roof edge. The roof terrace provides amenity benefits to future occupants of the building with minimal disruption to properties that overlook the site toward Manly hinterland and toward views of the Manly Lagoon area.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of an acceptable design that will not unreasonably impact the amenity of the surrounding urban or natural environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

In considering the proposal, it is noted that the bulk, height, setbacks and selected elements of the proposal have been designed in consideration to minimise elements that contribute to height and style the upper level to ensure non-complying elements do not contribute to unreasonable views and overshadowing. Generally, the height of the building and distribution of built form has been made with regard to the Warringah DCP and WLEP. The subject land has a moderately steep slope (including existing excavation) that influences the design response such as floor levels, side and front setbacks, excavation, building footprint, use of a vehicle lift (rather than a steep ramp) and future amenity considerations.

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

Clause 4.6 (4)(a)(ii) (Public Interest) Assessment

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of Development Standards

The underlying objectives of the standard, pursuant to Clause 4.3 – ‘Height of Buildings’ of the WLEP 2013 are:

(1) The objectives of this clause are as follows:

a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development

Comment:

The subject site is generally lower than adjacent buildings along the southern side of Queenscliff Road by adopting a flat roof form. The slope requires the building to step down the site in response to the steepness of the site changes through the central floor plate. The rear of the site has a broad outlook above the ground floor level with views of Manly Lagoon area and the new building maintains a two storey appearance toward the street albeit with a larger, wider building footprint. The existing ground level influences the non-compliance with the roof eaves / and terrace element above however these non-compliance are minor and overall the new building proposed is lower than the two existing duplex buildings on the land.

b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access

Comment:

Detailed solar access diagrams are provided to demonstrate that the proposed height variation does not create any unreasonable impact on solar access to adjacent land. View considerations have been made with the assessment of the proposal and the height of the building does not create any unreasonable view impact as the building profile is stepped and articulated and does not use a pitched roof profile. Overall, the non-compliant balustrade, upper roof edge and partial roof section do not cause unreasonable amenity impacts. (Other considerations of privacy, bulk and building envelope DCP controls are addressed separately in this report)

It is considered that the proposal is consistent with this objective.

c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments

Comment:

The local terrain has a wide occurrence of bedrock close to the surface and the site is in an established urban area. Trees are therefore spaced between houses and generally limited to being near the road reserve or deep soil 'pockets'. The site is not in a location where principal public views lines are gained across the site from a public beach / parkland reserve / lookout or similar. It is considered that the proposed height variation maintains consistency with this objective for the new landscape regime proposed for the surrounding area of the building.

d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities

Comment:

Visual inspection along the streetscape along Queenscliff Road between Dalley Street and Greycliffe Street demonstrates that most properties along the northern side are 4 storey flat buildings with garages at ground level. At the southern side of the street (within the visual catchment contains both large and small apartment building in the streetscape with houses and some duplex flats. The dominant roof style is 'hipped' or 'hip and valley' form. The subject site

has a 4.5m variation between the front boundary and the rear boundary which compels the building to step down a storey as the land transitions to the rear so that the building height variation maintains consistency with this objective. Flat roofs are generally confined to newer buildings where views are a consideration for surrounding dwellings. The height variation does not adversely impact this objective.

Zone Objectives

The underlying objectives of the R2 Low Density Residential zone are:

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

Comment:

The proposed height variation does not wholly offend this objective except for the zone but as an existing use it is not low density but seeks to change the density from 4 units to 6 units. There is no change in the "use" for the purpose of being "residential". The existing use rights applying to the land do not seek to place any internal residential floor space above the height line although the roof terrace acts as private open space. The non-compliant height does not affect landscaping and setbacks that are commensurate with the zone requirements

It is considered that the development satisfies this objective.

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

Comment:

This clause is not relevant to the proposal as no other (non-residential services or facilities) are proposed.

It is considered that the development satisfies this objective.

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

Comment:

The height variation does not impact the landscape setting of the site and the surrounding setting over the long term once landscaping is re-established for the garden areas. The higher buildings along the northern side of Queenscliff Road will retain views of the site by use of only low landscaping on the roof area.

The non-compliance with the corner of the roof eaves and balustrade elements does not adversely affect this objective.

Conclusion

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone.

Clause 4.6 (4)(b) (Concurrence of the Secretary) Assessment

Cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS 20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of Buildings Development Standard is assumed by the delegate of Council.

Warringah Development Control Plan

Built Form Controls

Built Form Control*	Requirement*	Proposed	% Variation*	Complies*
B1 Wall height	7.2m	5.1m to 5.4m North wall	N/A	Yes
		8.2m to 7.7m South wall	13.8%	No
		5.1m to 8.2m East wall	13.8%	No
		5.2m to 7.7m West wall	6.9%	No
B3 Side Boundary Envelope (eaves permitted to 0.625m)	45 degrees at 5m East	Breach of envelope	0.5m	No
	45 degrees at 5m West	Within envelope	N/A	Yes
B5 Side Boundary Setbacks	0.9m East	2.3m Basement	N/A	Yes
		2.2m to 3.2m Ground level main wall / screen elements	N/A	Yes
		2.2m to 3.2m Level 1 main wall / screen elements	N/A	Yes
		3.2m Level 2	N/A	Yes

		2.8m Roof Terrace edge	N/A	Yes
	0.9m West	2.3m Basement	N/A	Yes
		2.2m to 3.2m Ground level main wall / screen elements	N/A	Yes
		2.2m to 3.2m Level 1 main wall / screen elements	N/A	Yes
		3.2m Level 2 main walls	N/A	Yes
		4.4m Roof Terrace edge	N/A	Yes
B7 Front Boundary Setbacks (Bin facilities permitted in association with flat buildings)	6.5m	6.29m Basement	3.2%	No
		6.29m Ground Level wall elements	3.2%	No
		6.29m Level 1 main wall elements	3.2%	No
		6.29m Level 1 main wall elements 1.0m bin holding area	3.2%	No
		6.29m Level 2 main wall element	N/A	Yes
		7.2m Roof Terrace edge		
B9 Rear Boundary Setbacks (50% of setback area to remain open and free of structures)	6.0m	5.1m Basement	15%	No
		8.4m to 9.0m Ground Level to wall glazing (1.0m for pools)	N/A	Yes
		8.4m to 12m Level 1 Terraces to wall glazing	N/A	Yes
		11.3m to 15m Level 2 Terraces to	N/A	Yes

		wall glazing 16.7m Roof Terrace edge (Ground level area) >50% remains open landscaping		
D1 Landscaped Open Space (LOS) and Bushland Setting (must be 2m wide, ground level and deep soil area)	40% (380sqm)	38.8% (369 sqm) (Ground level)	2.9%	No *

*The development application is submitted on the basis of *existing use rights* under the *EPA Act 1979* and therefore the numerical standards in the WDCP (and LEP) do not strictly apply (see the approach and reasoning taken by the NSW LEC in *Stromness Pty Limited v Woollahra Municipal Council* [2006] NSWLEC 587, including *Fodor Investments v Hornsby Shire Council* [2005]). Consideration of the objectives of the controls is still made to address the merits of the DCP variations shown in the above table (based on the amended plans, dated up to 17.7.2023).

Note: Within the R3 medium density residential zone (adjacent) a residential flat building would be subject to a 4.5m side setback, 50% landscaped open space, a 2m setback for excavation, building height limit (not wall height) and SEPP 65 requirements if applicable. Front and rear setbacks are the same as the R2 zone. This creates "crossover" circumstances for the site between that of low density controls applying to the zone of the site but the design being of a medium density development (which are normally confined to areas with medium density controls).

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	No	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	No	Yes
D12 Glare and Reflection	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
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of non-compliance

The maximum wall height is up to 8.2m on the eastern side and 7.7m on the western side walls. The street wall frontage is 5.4m with the rear elevation wall height 8.2m.

The roof top planting and terrace create additional vertical elements to the walls above what the DCP encourages to be only roof and eaves for a dwelling house in the R2 zone.

Walls are not to exceed 7.2 metres from ground level (existing) to the underside of the ceiling on the uppermost floor of the building (excluding habitable areas wholly located within a roof space).

Merit consideration:

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

- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

Comment:

The non-compliance with the wall height control is subject to the existing ground line that varies and steps up across parts of the site, however the proposal will demolish and regrade the site levels for landscaping works (including excavate). The proposal will present as 2 storey to the street with a compliant wall height to the public domain. At the street frontage the building sits 5.7m above existing ground level for the habitable floor to upper ceiling. Along the side and rear the non-compliance is influenced by the slope of the land combined with 2.7m (ADG compliant) floor to ceiling and slab thickness of 0.4m that create an overall higher wall height plane toward the southern side of the building. Amendments have been made to the plans to increase

setbacks along the side walls as well as to provide articulation and visual interest to the wall plane (screens, windows etc). When viewed from a distance such as from Manly lagoon area teneally the building is sits below the backdrop of higher buildings along Queenscliff Road and is consistent with the height / scale and density of surrounding dwellings. Landscape elements are included for the rear and side elevations to break up the southern wall massing / setback zone. The wall height will not create an unreasonable visual impact on surrounding land, or public areas.

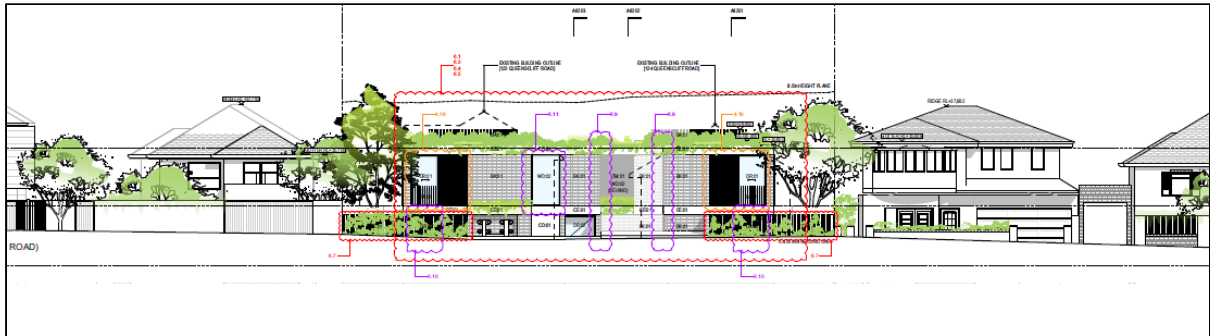


Image: Wall height and streetscape presentation in context with ground levels and visual impact with adjacent dwellings outlined.

- *To ensure development is generally beneath the existing tree canopy level.*

Comment:

The steep nature of the site is part of the natural topography around Queenscliff and influences the pattern of surrounding development whereby houses are positioned to capitalise on views to the south and the sandstone terrain allows limited opportunity for large canopy trees due to the shallow top soil space. The site is on a broad south facing slope with higher land to the north therefore buildings on the north side of Queenscliff Road having opportunity to view over the site toward the Manly lagoon area. A detailed landscape plan is provided that has various tree and shrub planting of appropriate height for the building setting and that are suitable size for the front and rear setbacks as well as for roof planting. The proposal is consistent with this objective as planting of trees or taller plants on the roof would raise view concerns from surrounding properties.

- *To provide a reasonable sharing of views to and from public and private properties.*

Comment:

The non-compliance with the wall height is limited to marginal sections across the top of the side walls and across the rear elevation however the part 2 part 3 storey format of the building steps down to minimise wall height non-compliance. The wall height will have no unreasonable impact on view sharing with regard to public land. Issues of view sharing from surrounding private property is addressed in detail under the heading *D7 Views* within this report.

- *To minimise the impact of development on adjoining or nearby properties.*

Comment:

The non-complying sections of wall height is influenced by the 3 storey format at the rear of the residential flat building and the minor cross slope of the land with variable existing ground level as the building transitions down the site. Impacts on views from adjoining and nearby properties are not unreasonably impacted in the context of the pattern of surrounding

development. No unreasonable amenity impacts of overshadowing, privacy, or spatial separation impacts will result from the non-compliant wall height with regard to adjoining private properties.

- *To ensure that development responds to site topography and to discourage excavation of the natural landform.*

Comment:

The site has a moderate slope and the new basement will require substantial excavation to create adequate parking for the building and ensure 1m soil cover over the basement ceiling slab at the rear. Landscape space at the front and rear setbacks will be retained with excavation at the front and sides stepped down / terraced to assist in retaining cross-boundary levels and deep soil landscaping zones with buffer area for planting. The basement area is not considered excessive for the size of the building.

- *To provide sufficient scope for innovative roof pitch and variation in roof design.*

Comment:

The proposal seeks to use a contemporary styling and therefore a flat roof form with low parapet sections is used for the built form (including roof planting and roof terrace). Variation and visual interest (including light and ventilation) is provided by the skylights, planter boxes, side articulation, brick-style detailing, and some selected curved edging that provides feature work to the wall plane at the front. Overall the flat roof format minimises view impact and the roof design seeks to provide innovative design to have a landscaped roof with 2 private terraces to improve private open space of the upper 2 units.

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

B3 Side Boundary Envelope

Description of non-compliance

The control allows for a side boundary envelope of 5 metres (m) and 45 degrees. The development breaches the control along the eastern elevation up to 400mm in the south-eastern corner.

Merit consideration

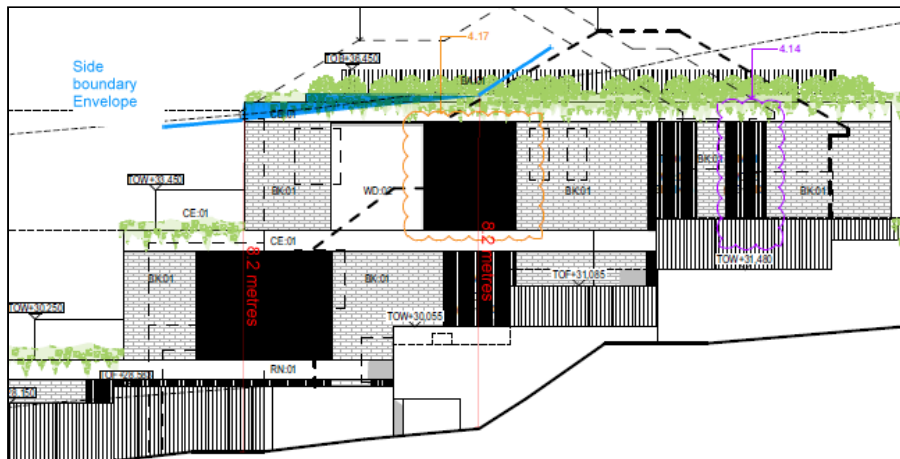
With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To ensure that development does not become visually dominant by virtue of its height and bulk.*

Comment:

The proposed development has been subject to amendments to reduce its building bulk and minimise non-compliance along the side boundary envelope. Normally a residential flat building would also require a 4.5m side setback in the medium density areas, however this site is within

the low density residential zone that has a 0.9m side setback for ground level. Amendments to the plans were made to address concerns with the upper storey setbacks, given the size of the building and overall width of the site. Changes provided (by way of Revisions 2, 3 and 4 of the plan set) further stepped in sections and introduced changes to other minor elements (balcony / planter box areas, screens) to reduce visual dominance and maintain consistency with *Part D9 Building Bulk*. Side wall articulation, contemporary styling, stepping of the floor plate assist to maintain natural light, visual interest, outlook and spatial separation to adjacent land. In this regard the proposal is consistent with this objective.



- Image: East elevation demonstrating non-compliance (top corner) with side boundary envelope.
- *To ensure adequate light, solar access and privacy by providing spatial separation between buildings.*

Comment:

Adequate physical separation is achieved between buildings through the articulation and minor stepping in of the upper level (up to 3.3m for the top level) and at mid level sections which combined with privacy screens, ensures no unreasonable loss of privacy or unreasonable solar amenity impacts on the adjoining land. Submitted shadow diagrams (Drawing No.A2603 dated 20.3.2023) demonstrate compliant solar sunlight is provided to adjoining properties pursuant to Warringah DCP. However, it is noted that this is attributed to space that contains the swimming pool of No.120 Queenscliff Road and therefore not purposeful. Side elevation (wall shadow) diagrams provide additional representation to solar access for living area decks and windows that allow for direct sunlight to internal living space. The proposal is consistent with this objective having consideration to the south facing slope and self shadow of adjacent dwellings.

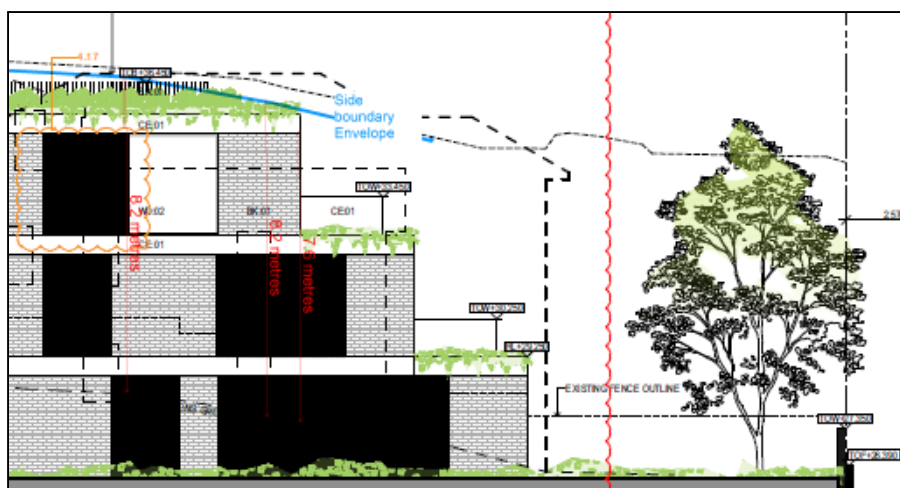


Image: West elevation demonstrating side boundary envelope and 8.5m height line.

- *To ensure that development responds to the topography of the site.*

Comment:

The proposed development responds to the site topography by the use of excavation to provide 12 off-street basement parking spaces and landscaped open space around the curtilage of the building. The excavated basement level does not create unreasonable impact on the side boundary envelope by 'pushing up' the building for vehicle clearance since it uses a lift for access and the rear is set down to allow 1m soil cover over the basement ceiling. The site levels around the perimeter of the building are tiered to assist with terraced landscaping and deep soil to graduate the transitions to the adjacent land levels along the side and front boundary.

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

B7 Front Boundary Setbacks

Description of non-compliance

The proposal includes a minor structure for the entry pathway which contains bin storage, letterboxes adjacent the pedestrian gate. The main building and basement carpark is 6.29m from the front boundary and does not comply with the 6.5m front setback.

Merit consideration:

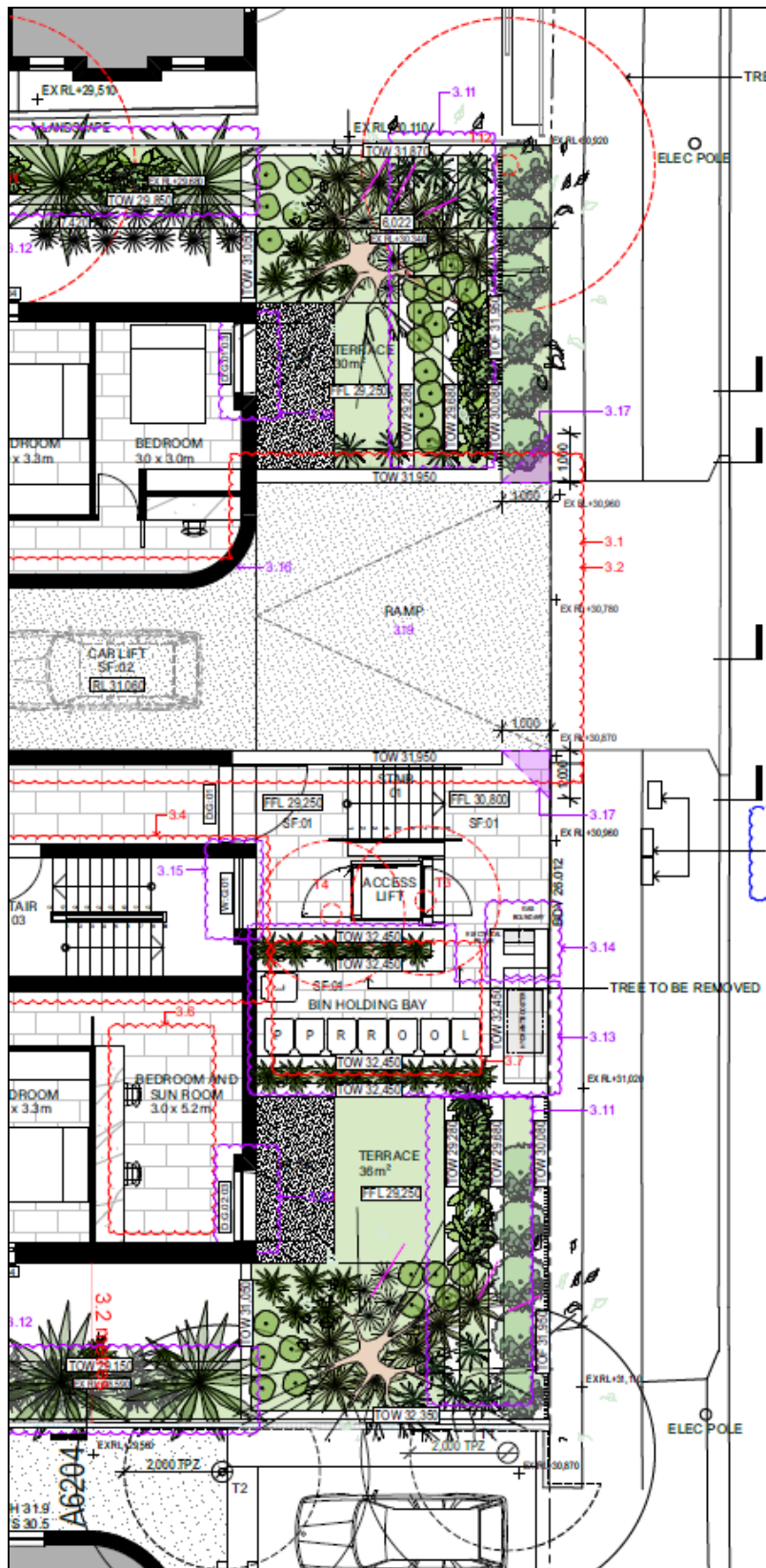
With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To create a sense of openness.*

Comment:

The front yard has a landscaped open space area that maintains a sense of openness with

open style fencing and landscape elements including lawn area and terraced garden. The driveway entry, bin alcove and associated structure is permitted in the front setback and meets Council's requirements for bin servicing and vehicle crossing point. Space is also shown for fire hydrant connection. The proposed bin storage building beside the entry point is consistent with this objective due to its open style format and that this is only a holding space for collection days (the main bin store is in the basement).



- Image: Front setback elements including landscaping, entry point and basement below on 6.0m alignment.

- *To maintain the visual continuity and pattern of buildings and landscape elements.*

Comment:

The basement parking and landscaped front setback is consistent with other buildings in the street where there are part basement edge structures, wall line, driveways and garden space within the front setback. However, on this site the the carparking is integrated under the building via a car-lift and open style fencing with native landscape planting will maintain the landscape setting and continuity of the site as the land is terraced down to the building. Landscape terraces are provided in the front setback, however these are not principal private open space and serve to provide light and ventilation to the front bedroom / study rooms of the mid level apartments. All principal POS is at the rear balcony space for the living areas that all face south. The bin storage has part open side walls with a flat roof and partly screened to provide suitable visual appearance to the street. The proposal is consistent with this objective.



Image: Impression montage of the street presentation of the building. Note the car lift is likely to have a safety "box" enclosure and not be an open platform as shown in the "up" position.

- *To protect and enhance the visual quality of streetscapes and public spaces.*

Comment:

The proposal has not sought to comply with the front setback for the basement and main building. Visual quality will be maintained by ensuring the front setback area includes open style fencing, native landscape planting, lawn and open style structures for the bin facility.

- *To achieve reasonable view sharing.*

Comment:

The front setback space and ancillary structures do not create any unreasonable impact on any coastal or district views from surrounding properties.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

B9 Rear Boundary Setbacks

Description of non-compliance

The rear setback for the basement is 5.1m which is non-compliant with the 6.0m rear setback. At ground level more than 50% of the landscaped area is retained as deep soil zone, excluding the structures of pools and OSD tank / paving.

Merit consideration:

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

- *To ensure opportunities for deep soil landscape areas are maintained.*

Comment:

At ground level more than 50% of the landscaped area is retained as deep soil zone, excluding the structures of pools and OSD tank / paving which is permitted for low density residential areas. The setback to the rear terrace is 8.4m and to the glazed wall at ground level is 9.0m. Therefore, in relation to structures (pool, basement, terraces, fencing) the landscape opportunity provided across the larger space of the the rear setback is consistent with this objective.

- *To create a sense of openness in rear yards.*

Comment:

The rear garden area is open with only the rear boundary / pool fencing, landscape planting, ground level terracing and the in-ground pools that provide a general open appearance across the main setback area. The ground level open space for Units G-02 and G-01 exceed 110sqm. For the mid-level the building is setback to 12m for the Unit rear wall which assists to provide a sense of openness are solar access to the rear yard.

- *To preserve the amenity of adjacent land, particularly relating to privacy between buildings.*

Comment:

Additional screening for balconies and planter boxes are recommended to the mid and upper level balconies to minimise amenity impacts on adjacent land. Given the existing 2 duplex have wider rear setbacks and less balcony space (or they have been enclosed) the amenity of adjacent land is affected by the change from 4 Units to 6 Units within the Low Density residential setting and a new part 3 storey building. Land to the south is screened by the rear fencing and landscape screening proposed (toward Aitkin Avenue). Boundary fence screening also provides a buffer along the side setbacks for No.120 and No.126 Queenscliff Road.

- *To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.*

Comment:

The site currently has minimal landscape tree planting and the proposal includes substantial new landscaping works to enhance the existing planting on adjacent land (along side and rear

setbacks). Excavation near the side boundary is to be terraced and stepped down to minimise level changes by excavation and assist in retaining continuity between rear gardens and landscape elements.

- *To provide opportunities to maintain privacy between dwellings.*

Comment:

At ground level the proposal maintains adequate privacy will be protected by standard height fencing and border planting. Generally the land is not built up in the rear setback higher than it currently is. For the mid and upper level terraces additional privacy related conditions are recommended to give landscape planter boxes for separation (similar as shown on the inside dividing line of the rear balconies) and custom privacy screens to restrict cross viewing toward adjacent swimming pools (restrict sideways overlooking to neighbouring land).

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

C2 Traffic, Access and Safety

The objectives and requirements of *Clause C2 Traffic, Access and Safety* are considered as follows:

Comments:

- *To minimise traffic hazards.*

Comment:

The proposal will comply with *Australian Standards* for the driveway access to ensure safe access, sight distances and vehicle access. The entry area will not cause unreasonable traffic hazard for the street and conditions are included for low front fencing and Traffic Engineering conditions as detail in the referral response by Council's Traffic Engineer (See heading "Internal Referrals" within this report).

- *To minimise vehicles queuing on public roads.*

Comment:

The existing driveway will be deleted for the new basement access and traffic control device for the lift in that the "default" holding position is "up" for entering vehicles and a passing space is provided at the front so exiting cars can leave, while a waiting car is off the road reserve to ensure minimal queueing. The building contains 12 car spaces including and therefore queueing is unlikely to cause any unreasonable impact on vehicle access or passing traffic.

- *To minimise the number of vehicle crossings in a street.*

Comment:

The number of vehicle crossings for the site will remain as one (1) only with the existing crossovers / layback re-instated.

- *To minimise traffic, pedestrian and cyclist conflict.*

Comment:

The proposal will comply with *Australian Standards* for the driveway access to ensure safe access, sight distances and vehicle access. The entry area will not cause unreasonable traffic hazard for the street. Council's Traffic engineer and Development engineer are satisfied with the access and parking arrangements, subject to conditions.

- *To minimise interference with public transport facilities.*

Comment:

The site has convenient access to public bus services and no change to existing bus stop facilities is required. The site therefore has convenient access to public transport to assist with minimising reliance on car trips.

- *To minimise the loss of "on street" kerbside parking.*

Comment:

The proposal has not allocated any 'visitor' parking but has provided sufficient parking in the basement for each unit. In consideration of future vehicle use EV charging points are also to be shown in the basement area with the construction certificate. While the Queenscliff area experiences congested overnight residential parking this is partly influenced by other houses / older style apartments not using their own garages for off street parking, but instead for storing domestic items. Conditions are therefore recommended that the proposal maintain all car spaces exclusively for car parking and that car spaces are not obstructed by miscellaneous items.

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

C3 Parking Facilities

The objectives and requirements of *Clause C3 Parking Facilities* are considered as follows:

Comments:

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

- *To provide adequate off street carparking.*

Comment:

The development provides the following on-site car parking:

Use	Appendix 1 Calculation	Required	Provided	Difference (+/-)
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Residential Flat Building	1.5 spaces per 3 bedroom dwelling	5 x 1.5 = 7.5	8	+0.5
	1.2 spaces per 2 bedroom dwelling	1 x 1.2 = 1.2	2	+0.8
	· 1 visitor space per 5 units or part of dwellings	6 Units = 2	2 (incl. 1 x AS1428 car space)	0
Total	=	10.7	12	+0.5

The site has "existing use rights" being a development for "flats" that is no longer permissible in the *R2 Low Density Residential Zone*. While existing uses are not strictly required to meet numerical controls that otherwise apply to permitted uses this does not warrant expansion or intensification of the use to be "unfettered" in contrast to the surrounding residential character and planning controls. The study room shown for "G.02" is not fitted with a door and shows a building deck and therefore is not included as a bedroom. The provision of adequate car parking is a principal consideration in the surrounding area due to the density of existing development around Queenscliff. The proposal contains only 6 dwellings, with 12 car spaces proposed and therefore has adequate parking spaces per dwelling. Council's Traffic engineer raise no issues or objection to approval of the proposal.

- *To site and design parking facilities (including garages) to have minimal visual impact on the street frontage or other public place.*

Comment:

The proposed parking facilities involve car lift instead of a conventional ramp down the side setback for car access below the building and therefore more landscaping across either side of the building and along both side setbacks can be achieved. The lift access is integrated into the front of the building to appear as a courtyard type area and some landscaping features to minimise the visual impact along the front facade.

- *To ensure that parking facilities (including garages) are designed so as not to dominate the street frontage or other public spaces.*

Comment:

Parking facilities as shown on the submitted plans (in a basement arrangement) will not dominate the street frontage and a landscaped setting to the streetscape is to be maintained.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the *Environmental Planning and Assessment Act, 1979*. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

C4 Stormwater

The objectives and requirements of *Clause C4 Stormwater* are considered as follows:

Merit consideration

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

- *To ensure the appropriate management of stormwater.*

Comment:

The proposal has been subject to amended plans for stormwater in order to ensure compliance with Council's stormwater management policy. The amended plans are satisfactory and assessment details are provided under the heading "Internal Referrals" within this report from Development Engineering. The proposal also includes use of an easement to transfer water through to Council's stormwater infrastructure in Aikin Avenue, downslope of the site.

- *To minimise the quantity of stormwater run-off.*

Comment:

The proposal has been subject to a detailed assessment by Council's Development Engineer and the OSD system will be satisfactory to minimise stormwater run-off impacts in accordance with Council's water management policy. Conditions are recommended to ensure the construction of the OSD is satisfactory to council standards.

- *To incorporate Water Sensitive Urban Design techniques and On-Site Stormwater Detention (OSD) Technical Specification into all new developments.*

Comment:

The proposal will be satisfactory to achieve WSUD and Council's OSD, subject to conditions as recommended.

- *To ensure the peak discharge rate of stormwater flow from new development is no greater than the Permitted Site Discharge (PSD).*

Comment:

The proposal will be able to comply with the PSD requirements in order to minimise adverse impacts of normal peak stormwater flows and comply with this objective.

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

C7 Excavation and Landfill

Merit consideration

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

- *To ensure any land excavation or fill work will not have an adverse effect upon the visual and natural environment or adjoining and adjacent properties.*

Comment:

The proposal requires the construction of a basement down to 7.3m below existing ground level and as such a geotechnical assessment and detailed engineering plans will be required at construction certificate stage. Conditions are recommended to ensure safe engineering practices and appropriate excavation methods, dilapidation protection and like, to ensure no adverse impact on adjoining land.

- *To require that excavation and landfill does not create airborne pollution.*

Comment:

Standard work practices will apply to ensure dust suppression for excavation work to meet this objective as part of the pre-construction certificate phase, and during works.

- *To preserve the integrity of the physical environment.*

Comment:

The site does not have any significant natural landform features (rock outcrops, drainage lines, bushland or the like). Native landscaping will be used as the dominant planting regime for the site and the broad front and rear setback areas will be retained for landscape open space.

- *To maintain and enhance visual and scenic quality.*

Comment:

The basement area does not protrude out of the ground and landscaping is provided above the side areas to maintain visual setting post excavation.

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

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

The site will maintain 38.8% (369sqm) of the site area for landscaped open space. This is a 2.9% variation for the R2 Low Density Residential zone (for a permitted dwelling house) however the site has 2 existing flat buildings on it (based on historical approval). In consideration of the use context is

also given to the 50% landscape requirement of WDCP for medium density development. (See heading under SEPP 65 for landscape considerations under the SEPP)

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 proposal will contribute to a decrease in the net landscaped open space on the combined site area, however landscaping is still concentrated at the front and rear setback. Minor landscape elements along the side will be widened to 3m (from existing narrower setbacks) and other planting elements integrated to the building (balconies and roof top). Overall the planting scheme will provide an acceptable streetscape presentation despite the numerical shortfall of landscape space (as per the definition).

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

Comment:

The overall landscape area allocated and design of those spaces (including planting regime) will not have an unreasonable impact on existing trees and shrub vegetation adjacent the site on adjacent private property. An arborist report has been provided to assess trees (roots) close to the boundary. Council's Landscape officer is satisfied with the works proposed and associated landscape treatment, including tree assessment and new planting required subject to conditions.

- *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 new landscaping regime provided is of sufficient native species with a mix of appropriate mature height / size and dimensions to provide for trees and shrubs. Ancillary element such as fencing and entry areas have landscape elements to ensure landscaping is maintained as dominant feature to the street and assist to soften the building bulk and scale. The topography of the site is moderately sloping and does not create unreasonable impacts in terms of finished levels by way of amended design inclusions to terrace and step down the excavation to minimise any radical cross boundary changes along the side boundary and provide deep soil space for plant along the curtilage of the site. Conditions are also included for roof area planting to ensure appropriate soil depth and plant species to minimise view impacts.

- *To enhance privacy between buildings.*

Comment:

The position of boundary planting and use of planter boxes as well as principal landscape setbacks assists to create reasonable buffer for privacy and reduce / screen overlooking for adjacent land at ground level, in conjunction with normal fencing structures. At the upper levels

balconies face the street or the wide rear setback and privacy is assisted by balcony screens for the ground level and upper level. The wide setback planting for the roof terraces ensures minimal opportunity for overlooking of adjacent buildings of No.120 and No.126 Queenscliff Road and toward Aitkin Avenue.

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

Comment:

Sufficient space is retained for the outdoor recreational opportunities of the occupants. The proposal provides private open space for the ground level units and balconies for the ground level and upper level. Open space for ground level is also improved through the planting concentrated around the perimeter of the lawn areas and along fence edge to complement existing planting on adjacent land.

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

Comment:

Sufficient space is maintained for service functions, including domestic space for clothes drying for occupants.

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

Comment:

A new OSD is proposed for stormwater management system within the property that will be connected by easement (piped) to Aitkin Avenue.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D3 Noise

The objectives and requirements of *Clause D3 Noise* are considered as follows:

- *To encourage innovative design solutions to improve the urban environment.*
- *To ensure that noise emission does not unreasonably diminish the amenity of the area or result in noise intrusion which would be unreasonable for occupants, users or visitors.*

Comment:

- The proposal includes the use of a car lift as an alternative to a driveway ramp to access the basement parking. A residential lift is also included with internal access. The car lift is centrally located which enables the side setbacks to better utilised for landscape setbacks and internal residential amenity rather than requiring a long concrete driveway down one side of the

building.

- The central location of the car and residential lift will minimise noise on adjacent land as noise is generally projected toward the street. An acoustic report and summary of the car-lift mechanism has been provided to demonstrate that no unreasonable operational noise levels will result in noise intrusion for the residential surroundings.

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

D6 Access to Sunlight

Part D6 Access to Sunlight seeks that at least 50% of the required area of private open space of each dwelling and at least 50% of the required area of private open space (POS) of adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21.

In this case the building bulk and height of the proposed dwelling will retain a similar shadow regime as demonstrated in the shadow diagrams (DA600 to DA 602) drawn by PBD Architects. Therefore, the proposal has better access to sun in the front yard than the rear and suitable natural light is maintained along the side setback for the residential environment. The use of smaller windows on the side setbacks for the proposal is intentional to assist in maintaining privacy to adjacent dwellings, but windows still assist in providing internal natural light amenity. Generally the proposal will create no unreasonable change to solar access between 9am and 3pm on the 21 June for neighbours private opens space, by comparison to the existing shadow regime.

In addressing the non-compliance outlined above, the following matters within *Benevolent Society v Waverley Council (2010) NSWLEC 1082* of relevance and have been factored in with the merit consideration of the WDCP objectives:

- *"The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. (However, even at low densities there are sites and buildings that are highly vulnerable to being overshadowed.) At higher densities sunlight is harder to protect and the claim to retain it is not as strong.*
- *The amount of sunlight lost should be taken into account, as well as the amount of sunlight retained.*
Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.
- *For a window, door or glass wall to be assessed as being in sunlight, regard should be had not only to the proportion of the glazed area in sunlight but also to the size of the glazed area itself. Strict mathematical formulae are not always an appropriate measure of solar amenity. For larger glazed areas, adequate solar amenity in the built space behind may be achieved by the sun falling on comparatively modest portions of the glazed area.*
- *For private open space to be assessed as receiving adequate sunlight, regard should be had of the size of the open space and the amount of it receiving sunlight. Self-evidently, the smaller the open space, the greater the proportion of it requiring sunlight for it to have adequate solar amenity. A useable strip adjoining the living area in sunlight usually provides better solar*

amenity, depending on the size of the space. The amount of sunlight on private open space should ordinarily be measured at ground level but regard should be had to the size of the space as, in a smaller private open space, sunlight falling on seated residents may be adequate.

- Overshadowing by fences, roof overhangs and changes in level should be taken into consideration. Overshadowing by vegetation should be ignored, except that vegetation may be taken into account in a qualitative way, in particular dense hedges that appear like a solid fence.

In areas undergoing change, the impact on what is likely to be built on adjoining sites should be considered as well as the existing development."

120 QUEENSCLIFF ROAD_SOLAR ACCESS TO PRIVATE OPEN SPACE_TOTAL POS: 275M2									
SOLAR ACCESS	09:00	10:00	10:30	11:00	11:30	12:00	12:30	15:00	TOTAL HOURS
PROPOSED POS AREA	66m ²	67m ²	77m ²	59m ²	49m ²	48m ²	54m ²	45m ²	6 HOUR
MINIMUM TOTAL PRIVATE OPEN SPACE - 60m2 MINIMUM REQUIRED SOLAR TO PRIVATE OPEN SPACE - 30m2 (50% OF TOTAL POS)									
120 QUEENSCLIFF ROAD_SOLAR ACCESS TO LIVING ROOM WINDOW									
SOLAR ACCESS	10:30	11:00	11:30	12:00	12:30	TOTAL HOURS			
EXISTING	START 1m ²		1 HOUR 1.5m ²		2 HOUR 1.5m ²	2 HOUR			
PROPOSED	START 1m ²		1 HOUR 1.5m ²		2 HOUR 1.5m ²	2 HOUR			

Image: Solar access consideration calculations for ground level POS and living room windows for 120 Queenscliff Road.

Merit consideration

With regard to the consideration of Part D6 of the Warringah DCP, the development is considered against the underlying Objectives of the Control as follows:

- *To ensure that reasonable access to sunlight is maintained.*

Comment:

The subject building design has been amended to reduce upper bulk and overall the building provides a wide front and rear setback which assists to maintain solar access to adjacent land. The proposal demonstrates compliant side setbacks for the low density zone, however as a residential flat building is a prohibited use and would normally require 4.5m side setback in a medium density zone. In this regard access to sunlight is subject to merit assessment considerations as an "existing use". This includes consideration of properties either side at No. 120 and No.126 Queenscliff Road as well as Aitkin Avenue to the south. Hourly 'sun-eye' diagrams are used to show solar impact of the proposal. Solar access for No.126 is minimally impacted between 9am and 3pm due to the offset of the land to a direct north alignment. Properties in Aitkin Avenue are on a lower slope and rear fencing creates part of the overshadowing across their rear setbacks despite direct sunlight in both of the proposed ground level rear yards from

12pm to 3pm (see Shadow drawing A2602 by ESS Architects dated 20.3.2023)

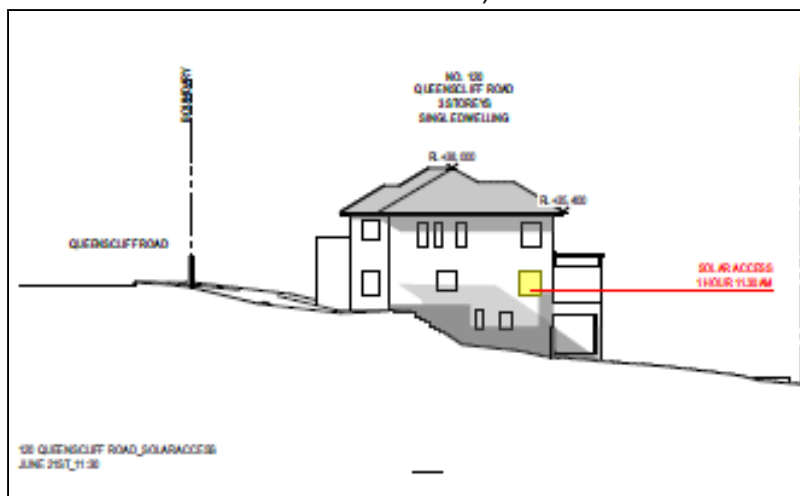
With complete demolition and a larger overall building the shadow regime has changed and with the south facing aspect some direct solar access is reduced to adjacent land. Generally however the adjacent buildings create their own self shadow across their own rear yards between 11am to 1pm. The rear terrace provides private open space that has an open outlook toward Manly (from upper storey levels) whereby surrounding properties also seek to capitalise on a similar southerly outlook. The southerly slope of the land influences the shadowing toward the rear yard areas within the site and across the eastern and western boundary than what would otherwise occur in flatter topography or and an east-west property orientation. The proposed building has a near compliant building height and the flat roof form is considered to maintain reasonable access to sunlight. By comparison the existing building and narrow setbacks already cast a substantial shadow outline as shown overlaid against the new building profile. During the assessment process changes were made to the building for increased upper setbacks to ensure reasonable solar access to adjacent land is maintained by reducing the upper bulk wider wider side setbacks to the upper level.

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

Comment:

The proposed design is responsive to the topography and site constraints and does not create an unreasonable impact on the surrounding urban environment in consideration of the south facing slope and arrangement of different private open space on adjacent land. The proposal also achieves reasonable internal amenity for the occupants of the site in response to the southerly outlook and building height and setbacks. The amended design includes design solutions to maintain solar access to side windows and balcony areas on adjacent properties which have a similar aspect in this section of Queenscliff Road.

Within the subject site the position of the living area balcony / terraces allow for reasonable natural light and amenity despite the southerly aspect in that an open front (north facing) front yard acts as an alternative open space (but for the purpose of this assessment are not included as POS for solar access calculations).



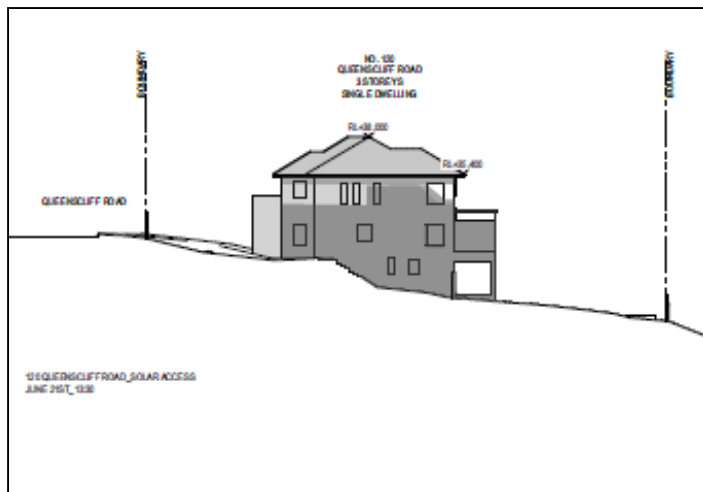
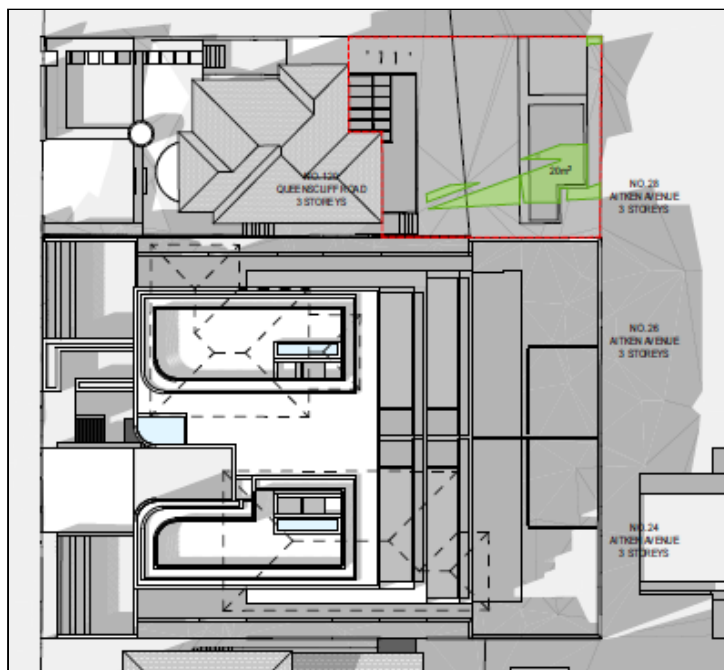
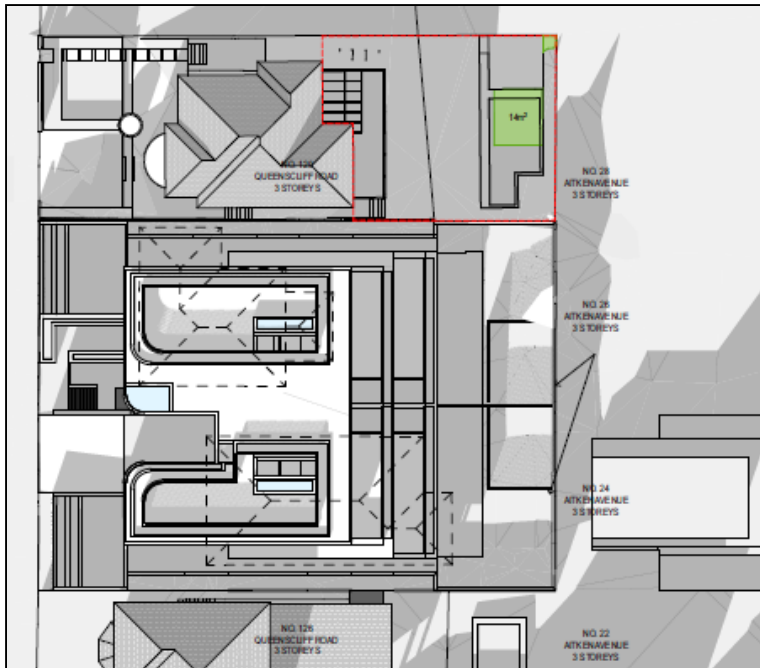


Image: Side wall elevation impact begins around 11:30 to fall toward No.120 Queenscliff Road. At 3pm most side wall in shade with lower deck in shade and upper level part shade. At ground level majority rear yard in shade except for part of pool surface as can be seen below in plan view:





Images of solar access at 11:30, 21 June and 3pm for No.120 Queenscliff Road.

- *To maximise the penetration of mid winter sunlight to windows, living rooms, and high use indoor and outdoor areas.*

Comment:

The proposal has been designed to ensure reasonable penetration of mid-winter sunlight within the building by the use of a flat roof and stepped design which enables direct natural light along the side elevations and natural light to afford solar amenity to living areas and high use areas. Overshadowing cast across swimming pool space is not considered "high use" area for mid winter even though these structures often take up broad areas of ground level POS. The shadow diagrams demonstrate suitable mid winter solar access to adjacent private open space on the 21 June.

- *To promote passive solar design and the use of solar energy.*

Comment:

The proposal includes passive solar design elements and does not have an unreasonable impact of passive solar access to adjacent land. It is noted that adjacent sites have similar circumstances with southerly outlook over Manly as a 'trade off' to retaining an open front setback area given the configuration of site and its position within a low density residential zone. For the subject land the position of the wide street frontage maintains alternative access to sunlight with the front yard area that allows direct solar access for the ground floor apartment. On balance the proposal is considered to be consistent with this objective.

- *To minimise the need for artificial lighting.*

Comment:

The design of the proposal provides a suitable flat roof form that ensures no unreasonable impact on the need for artificial lighting given the density and pattern of surrounding development, consistency with the built form controls (acceptability of some reduction in solar access for new buildings) and circumstances of the existing site constraints. "Sun-eye view"

images are provided for hourly intervals between 9am and 3pm to demonstrate solar access across the site and for the rear POS of adjacent land including building structures.

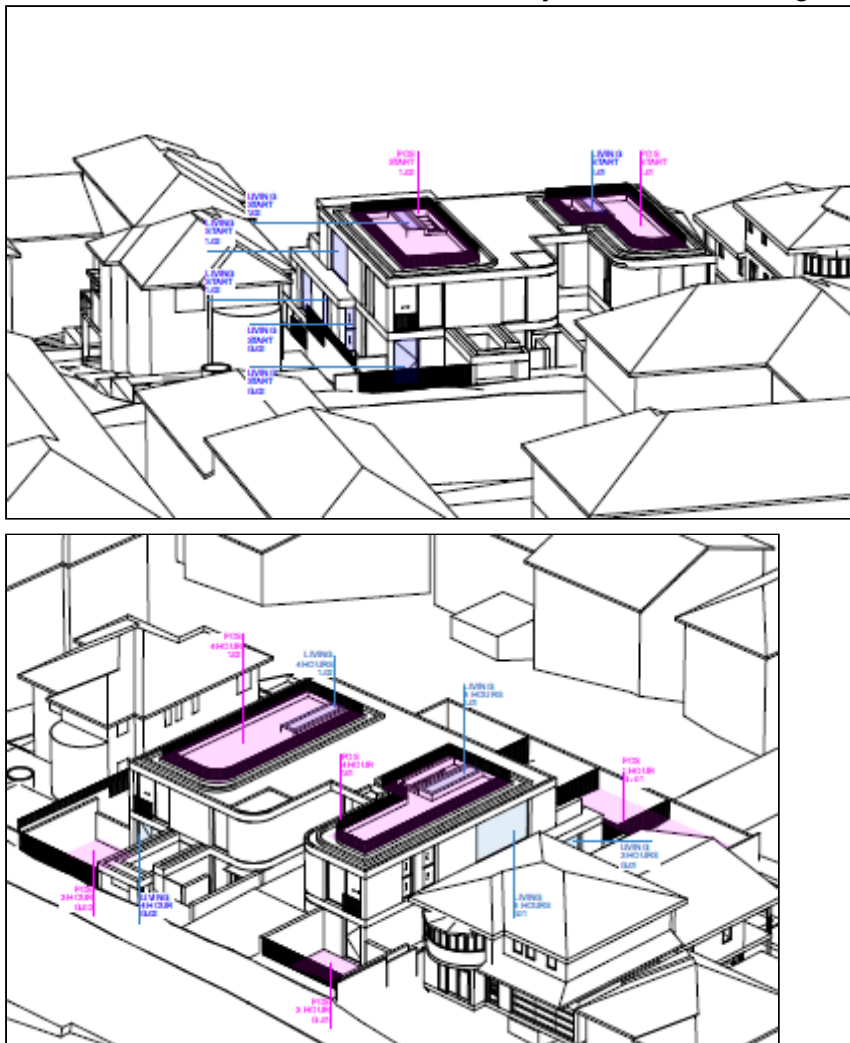


Image: "Sun Eye" view to adjacent properties and solar access within the development at 9am and 3pm on 21 June.

Having regard to the above assessment, (including the planning principle established in the *Benevolent Society v Waverley Council (2010) NSWLEC 1082*) it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D7 Views

Merit consideration

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

Comment:

In determining the extent of potential view loss to adjoining and nearby properties, the four (4)

planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council* (2004) NSWLEC 140, are applied to the proposal. Note: Specific view loss issues are raised by No.120 Queenscliff Road (toward Manly Lagoon) and general view impact from apartments overlooking the roof space of the existing building from the opposite side of Queenscliff Road are considered. General consideration is made based on the surrounding pattern of development and district view setting evident for surrounding land (this include public views of the site).

1. Nature of the views affected

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

Comment to Principle 1:

Views currently are limited to a southerly direction due to the existing height of buildings along the southern side of Queenscliff Street (unless particular buildings or rooms are positioned higher to or benefit from a "gap" toward Manly Beach since side views toward the coast are fairly restricted. However some views are gained of parts of Manly Lagoon from adjacent / surrounding land around the site. For No.120 Queenscliff Road street has broad district views at the upper level to the south. Views toward Manly Beach are limited / obscured by adjacent sites to the east. Focal points of interest include sections of the Manly lagoon, and adjacent area to the south and south west for when looking over the side boundary. There are no significant views at ground level from adjacent sites. There is no significant public view corridor through the site (at street level).

A detailed inspection within no.120 Queenscliff Road was conducted, including general viewing of the surrounding area from accessible vantage points along the street and within the site to consider various views across the site and for the broad surroundings as a whole. Properties on the north side of Queenscliff Road are at least in proximity of RL37 to RL40 at floor levels 2 and 3 which enable views over the subject proposal (being maximum height at RL36.4). At ground level (generally garages) and first floor for properties on the northern side of Queenscliff Road there is no significant loss or gain in views. Overall the lower profile flat roof proposed views are generally consistent in terms of the qualitative view as a whole when looking southward over the site as demonstrated in the street image below.



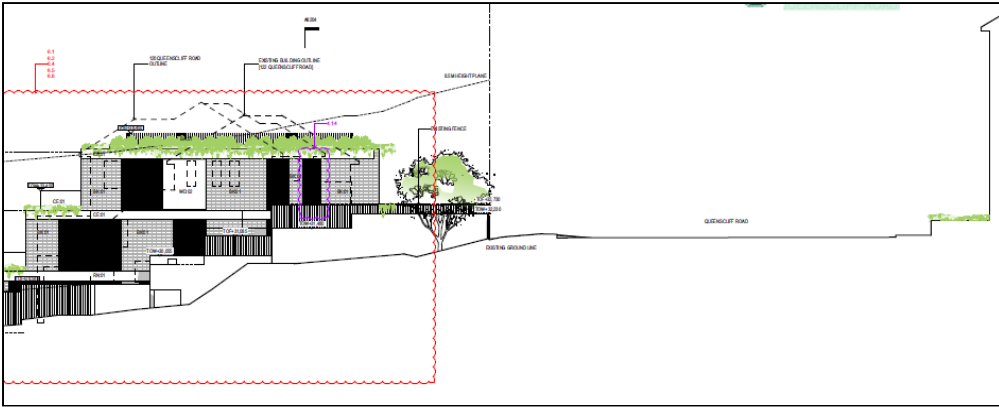


Image: Street level view through the site obscured by existing pattern of development.

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

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

Comment to Principle 2:

Queenscliff Road

Views from the living areas and balcony / terraces have a southerly outlook from properties opposite the site in Queenscliff Road and due to the much higher position of these apartments above ground level associated with the slope, road alignment and higher land levels the proposal does not create any unreasonable view impact from the opposite (north) side of Queenscliff Road.

For No.120 Queenscliff road, views from the ground floor (natural ground level) are mainly obscured due to the height of the existing structures (fence / landscaping and adjacent buildings). Views from the mid and upper level are generally obscured to the east but a district outlook is gained by the upper living level with views to the south and south west balcony area.

View across site from living level at No.69 Queenscliff.





Image: Property view from balcony at No.120 toward lagoon with diagonal view and direct (90 degree) view across side boundary.

3. Extent of impact

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

Comment to Principle 3:

Due to the higher position of dwellings on the northern side of Queenscliff Road the surrounding topography gives broad views to the south generally above RL35.0 depending on the topography and viewing angle across surrounding development. On the southern side of Queenscliff Road views are generally obtained from above RL29 as the land slopes away broadly toward Manly Lagoon. Much of the lagoon (water) area is obscured by tree canopies within the urban landscape. The view impact, being across a side boundary and broadly and urban outlook of the hinterland around Manly Lagoon is impacted moderately. This is ranked due to the 'better' part of the outlook being more westerly than southerly. From the upper bedroom level balcony the impact is minor.

4. Reasonableness of the proposal that is causing the impact

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

Comment on Principle 4:

The proposal responds appropriately to the available views through the close analysis of view corridors using survey information, photos from submissions, site inspection and discussions regarding the DA plans. As a result the amended plans provide an acceptably skillful design to

minimise view loss impacts on neighbouring properties that overlook the proposed building (including side views) with no unreasonable impact when taking in context of whole view and alternative upper level viewing positions available. The non-compliance with the wall height and side boundary envelope does not create any unreasonable design issues with regard to view loss. Conditions for roof top planting (species that have a low natural height) are recommended to ensure no unreasonable view impact from roof terrace area. Conditions are also included that no shade / weather structures are placed on the roof so that views are not adversely impacts by the roof terrace structure.

Warrigah DCP

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

Comment

The built form of the proposal creates a centralised position for the building with living areas facing south to capitalise on views toward Manly area. The proposal is consistent with this objective to maintain the major views / outlook for surrounding dwellings with no unreasonable impact in the sharing of views.

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

Comment

The proposal seeks to use an art deco styling with a flat roof format and is positioned centrally on the site. Overall the building retains a landscape setting and allows for the views to be retained consistent with the existing overall outlook for properties that overlook the site (from the northern side of Queenscliff Road) with an innovative design for the urban area. Views across the side boundary from adjacent neighbours are not unreasonably impacted.

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

Comment

The proposal does not seek to remove any significant trees on the site at the rear and new planting is proposed to retain consistency with this objective.

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

D8 Privacy

Merit consideration

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

- *To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.*

Comment:

The proposal generally concentrates private open space areas toward the rear of the site which is consistent with that of a dwelling house, however two roof top terraces and access to the front setback are also proposed. The Units have southerly outlook for their kitchen / dining

living areas and master bedrooms.

- **Units LG.01 and LG.02** (lower ground) have a rear yard and pool with a finished RL that is in order of 400mm lower than No.120 or No.126 Queenscliff Road across the middle area of the rear yards. The use of landscape screening and the existing boundary fencing (or replacement) will ensure suitable residential privacy at ground level. The proposal includes a low wall at the side and rear (RL27.35 up to 1.3m above FFL) to provide surrounding structure for the lawn / landscaping elements. Toward the northern end of these units the side windows of the kitchen and secondary bedrooms are in the order of 1m to 3m below existing ground levels and therefore well screened by boundary fencing, landscaping and excavated side setbacks. Selected screens are shown for Unit G.01 living room side window.
- **Units G.01 and G.02** (ground / mid level) have terraces facing south. These terraces are positioned at RL29.25 and therefore given the 2.2m side setback the terraces overlook the adjacent rear private open space (rear yard and pool areas) for No.120 and No.126 Queenscliff Road. Privacy screens (for the outer balustrades) are therefore recommended that are 1.65m high with angle fixed louvres that will assist views from No.120 and No.126 but afford screening to the rear POS and pool (this is addressed by conditions). The side windows for G.01 and B.02 of the kitchen / dining / living area and bedrooms show fixed privacy screens. The front terraces are in the order of 2.0m below road level and therefore do not warrant screens.
- **Units 1.01 and 1.02** (upper level) have terraces facing south and a roof terrace each. The rear terraces are positioned at RL32.45 and as per the mid level with only a 3.2m side setback are not shown to include side screens to protect privacy from overlooking either No.120 or No.126 Queenscliff Road for the outer balustrades. A residential flat building would normally be required to be setback 4.5m from the side boundary in a medium density area (which creates 9.0m of separation between dwelling) however in this case a narrower setback is proposed and therefore additional screening is warranted to limit overlooking. It is noted that most windows are offset to the adjacent side setback windows however W:1.02:01 and W:1.01:01 show only half screening despite the large floor to ceiling height. It is recommended that the side windows for the kitchen / living / dining rooms have side screens similar to the Ground and Lower Ground level units.
- **Roof Terraces** Roof terraces have potential to create overlooking opportunities and privacy impacts to surrounding land and in Low Density Residential areas are generally less suitable due to different expectations in low density environments (such as private pools rather than a shared pool in an apartment complex). Roof terraces offer overlooking advantages to the viewer toward surrounding properties. In this case the roof terraces are no communal spaces for the building and are setback sufficiently from the building edge with landscaped surrounds to prevent downward viewing for any POS close to the site. Additionally, the seating area is situated toward Queenscliff Road with a stair, skylight and built in BBQ on the southern side that limits viewing opportunities toward the south. It is considered that any lighting for the roof terrace be fixed below balustrade height and conditions included to restrict the erection of roof / shade covers on the terrace. Therefore, they are only suitable for use during fair weather conditions. The restriction on roof / shade covers should be included a provision in the by-laws of the Strata Scheme which increases the effectiveness of the condition.



Images: Adjacent rear of No.120 Queenscliff Road (left photo) and No.126 Queenscliff Road (right photo) are dwellings and have pools in their yards.

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

Comment:

The building proposes a contemporary and modern open plan floor layout. Innovative use of internal space has been achieved to ensure the building does not create unreasonable amenity impacts on surrounding land, subject to conditions. The acoustic and visual privacy associated with the front yard is semi-private being attributed to the front ground level bedrooms and not as a communal space. Generally, the proposal maintains an outlook toward the street and rear yard (south), with the upper storeys able to view toward Manly area. The balcony areas are of a suitable size for functionality without being excessively large.

Overall the proposal is consistent with this objective in maintaining residential privacy and noise privacy for occupants and neighbours, subject to conditions. The proposal has been amended and suitable changes were made to improve privacy considerations to adjacent land, including reduced bulk, landscape screening and allocation of private open space areas.

- *To provide personal and property security for occupants and visitors.*

Comment:

The design will include appropriate security including residential style fencing, basement garage parking, landscaped setbacks as well as a well defined front entry area to the flat building. Front fencing will maintain a suitable delineation between the road boundary and the front yard (open style fencing with landscaped setting / border planting) subject to conditions.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives of this clause and accordingly, this assessment finds that the proposal is supported in this particular circumstance.

D9 Building Bulk

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

- *To encourage good design and innovative architecture to improve the urban environment.*

Comment:

The amendments provided to the plans assist to minimise non-compliance with the 8.5m height plane and side boundary envelope. The proposal has reduced the previous extent of non-compliance on the side boundary envelope pursuant to this objective (with no encroachment on the western side and minor parapet non-compliance on the eastern side). The increased upper level setbacks, including changes to balcony areas and reduced building bulk achieve the desired objectives to ensure that the development does not become visually dominant in relation to the height of surrounding development within the visual setting in close proximity to the site. In this regard consideration is also relevant the existing building profile (as shown on the elevations) in context of the new part 2 part 3 storey building.

The proposal will maintain adequate daylight, solar access and privacy to adjacent living areas (subject to conditions) for neighbouring properties by providing wide separation between buildings and to ensure that development responds to the topography of the site given the southerly aspect of the land slope. The architecture of the building seeks to use contemporary modern styling with landscaping forming a distinctive element that the building relies on for amenity and streetscape appearance.

- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

Comment:

The proposal ensures a compliant landscaped front setback and rear setback areas with landscaping and residential outlook toward the street. The building bulk has been suitably articulated with appropriate driveway and pedestrian entry areas to the streetscape. The site is situated within a low density residential area and is consistent with the built form controls for that zone and does not create any unreasonable visual impact for apartment buildings and other dwellings nearby that overlook the site. The proposal satisfies this objective.

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

D11 Roofs

The residential flat building includes two (2) roof top terrace elements for the building that serve as private space for the upper level Units.

Merit consideration

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

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

Comment:

The site is within a low density residential environment and generally roof terraces may create concerns for surrounding occupants as they are less shielded than a semi-enclosed balcony that may principally face only one direction. The roof terraces are partly concealed by the surrounding landscape garden toward the outer edges of the roof space. Access to the roof is via an internal stair and low open style fencing is proposed to minimise any view impact and provide an innovative usable space for the occupants of the building.

- *Roofs are to be designed to complement the local skyline.*

Comment:

The existing roof profiles of the 2 building on the land are in a "hipped" style with the new building having a lower flat roof. A number of other apartment buildings have flat roof forms in the vicinity along Queenscliff Road. Generally, the older style buildings (inter-war or immediate post-war) in the vicinity have pitched roof forms.

- *Roofs are to be designed to conceal plant and equipment.*

Comment:

The building service plant and building equipment / storage is located in the basement and therefore the roof appearance is dominated by the landscaped roof planting area around the outer edge. These will be low height plants suitable for the roof environment (shallow soil).

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$50,685 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$5,068,491.

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 2021;
- 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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environment Plan 2011 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and

b) There are sufficient environmental planning grounds to justify the contravention.

2) The proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

PLANNING CONCLUSION

This application has been referred to the Northern Beaches Planning Panel (NBLPP) as the proposal

has a height variation of more than 10% for a residential flat building.

The Clause 4.6 height variation to the 8.5m maximum height is minor and does not create unreasonable impact on general amenity, views or solar access and the like. The variation arises from the proposal being on a sloping site with some minor existing excavation below the existing building footprints. The non-compliance relates to the roof terrace and the balustrade for that creates a 13.5% variation (1.15m) for a section of the roof terrace balustrade that is 9.65m above EGL. The southern edge of the roof area and parapet also breach the 8.5m height plane to a lesser degree, however this is limited to the rear of the building and overall most of the roof area complies with the maximum height control. The Clause 4.6 is assessed as being adequately well founded and is supported in that the elements of non-compliance do create unreasonable environmental impacts.

The critical assessment issues included privacy considerations, side boundary envelope non-compliance, building bulk and potential residential amenity impacts on adjacent property by the balconies and scale of the building comparative to adjacent development. These have been addressed by way of amended plans, which also address submission issues raised during the notification (and re-notification periods). Existing use rights circumstances applying to the land have been considered in context of the proposal to demolish the 4 units on the land (2 buildings) and build one larger building of 6 units within the R2 Low Density Residential zone.

A series of amendments made during the assessment period assisted to address considerations of non-compliance with the Warringah DCP, improve consistency with SEPP 65 and accommodate neighbours concerns about privacy, views, overshadowing, traffic, landscaping and general amenity impacts.

Therefore, the proposal is supported for approval, subject to conditions.

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

DEFERRED COMMENCEMENT APPROVAL

A. Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

- a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
- b) There are sufficient environmental planning grounds to justify the contravention.

2) The proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant a Deferred Commencement Development Consent being subject to a two (2) year time frame for Deferred Commencement Consents detailed within Clause 76 of the Environmental Planning and Assessment Regulation 2021 to DA2022/0646 for Demolition works and construction of a residential flat building on land at Lot 5 DP 16941, 124 Queenscliff Road, QUEENSCLIFF, Lot 6 DP 16941, 122 Queenscliff Road, QUEENSCLIFF, subject to the conditions printed below:

B. THAT once the matters detailed within the Deferred Commencement Development Consent conditions are satisfactorily addressed then an operational development consent be issued subject to the time frames detailed within Part A of this recommendation.

Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

DEFERRED COMMENCEMENT CONDITIONS

1. Stormwater Drainage Easement

As the natural fall of the land is towards the rear of the site the disposal of stormwater drainage is to be in accordance with the drainage plan submitted by Van der Meer Consulting, drawing SY222-006 DAC401 Revision D dated 05/05/23. The easement is to be created under Sections 46 and/or 46A of the Real Property Act 1900 No 25 or under Sections 88B and/or 88K of the Conveyancing Act 1919.

The applicant must provide Council with evidence of the created easement on title in order to activate the consent.

Reason: To ensure adequate provision is made for stormwater drainage from the site in a proper manner that protects adjoining properties.

Evidence required to satisfy the deferred commencement condition/s must be submitted to Council within two (2) years of the date of this consent, or the consent will lapse in accordance with Clause 76 of the Environmental Planning and Assessment Regulation 2021. This evidence is to be submitted along with a completed 'Deferred Commencement Document Review Form' (available on Council's website) and the application fee, as per Council's Schedule of Fees and Charges.

Upon satisfaction of the deferred commencement condition/s, the following conditions apply:

GENERAL CONDITIONS

2. **Approved Plans and Supporting Documentation**

The development must be carried out in compliance with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A1050 Rev 1 Demolition Plan	22.3.2022	ESS Lifestyle
A2201 Rev 3 Plan General Arrangement Basement	20.2.2023	ESS Lifestyle
A2202 Rev 4 Plan General Arrangement Ground 1	20.3.2023	ESS Lifestyle
A2203 Rev 4 Plan General Arrangement Ground	20.3.2023	ESS Lifestyle
A2204 Rev 4 Plan General Arrangement Level 01	17.7.2023	ESS Lifestyle
A2205 Rev 4 Plan General Arrangement Roof	17.7.2023	ESS Lifestyle
A3101 Rev 4 Elevation East (Queenscliff Road)	17.7.2023	ESS Lifestyle
A3102 Rev 3 Elevation West	20.3.2023	ESS Lifestyle
A3103 Rev 4 Elevation North	17.7.2023	ESS Lifestyle
A3104 Rev 4 Elevation South	17.7.2023	ESS Lifestyle
A3110 Rev 3 Elevation East (Queenscliff Rd)	17.7.2023	ESS Lifestyle
A3111 Rev 2 Elevation West	20.3.2023	ESS Lifestyle
A3112 Rev 3 Elevation North	17.7.2023	ESS Lifestyle
A3113 Rev 3 Elevation South	17.7.2023	ESS Lifestyle
A3201 Rev 3 Section: Section A	20.3.2023	ESS Lifestyle
A3202 Rev 3 Section: Section B	20.3.2023	ESS Lifestyle
A6201 Rev 2 Detail: Section A	17.7.2023	ESS Lifestyle
A6202 Rev 1 Detail: Section B	29.11.2022	ESS Lifestyle
A6203 Rev 1 Detail: Section C	29.11.2022	ESS Lifestyle

A6204 Rev 1 Detail: Section D	29.11.2022	ESS Lifestyle
A6204 Rev 1 Detail: Section E	29.11.2022	ESS Lifestyle
A6250 Rev 1 Detail: Section Privacy and Solar Access Ground 1	20.2.2023	ESS Lifestyle
A6251 Rev 2 Detail: Section Privacy and Solar Access Ground	20.3.2023	ESS Lifestyle
A6252 Rev 3 Detail: Section Privacy and Solar Access Level 1	17.7.2023	ESS Lifestyle
A7101 Rev 4 Schedule Window and Door	17.7.2023	ESS Lifestyle
A8201 Rev 2 Finishes External Reference	17.7.2023	ESS Lifestyle

Engineering Plans		
Drawing No.	Dated	Prepared By
DAC201 Rev A Erosion and Sediment Control	21.10.2022	Van Der Meer Consulting
DAC401 Rev D Drainage Layout	5.5.2023	Van Der Meer Consulting
C402 Rev A Drainage Details Sheet 1	17.3.2023	Van Der Meer Consulting
DAC403 Rev B Drainage Details Sheet 2	5.5.2023	Van Der Meer Consulting
HCP CL2 002 Car lift cabin details	17.9.2020	Hercules Carparking Systems

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate 1276224M_04 See Basix update as per 18.6.2023 by Chapman Environmental Services	3.5.2023	Chapman Environmental Services
Access Report 22016 – R1.1	21.3.2022	Access-i
BCA 2019 Compliance Report BCA220119	17.3.2022	Building Regulation Services
Geotechnical Investigation Report G22006QUE-R01F	22.3.2022	Geo-environmental Engineering
Arboricultural Impact Appraisal	9.3.2022	Naturally Trees

b) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

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

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

Landscape Plans	
Drawing No.	Dated
LS01 D Landscape Site Plan	4.5.2023
LS02 D Landscape Lower Ground	4.5.2023
LS03 D Landscape Ground Floor	4.5.2023
LS04 D Landscape Level 1 + Roof Terrace	4.5.2023
LS05 D Landscape Plant Species	4.5.2023
LS06 D Landscape Notes	4.5.2023
LS07 D Landscape Typical Details	4.5.2023

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Demolition and Construction Waste Management Plan	23.3.2021	LID Consulting

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.

3. Compliance with Other Department, Authority or Service Requirements

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	14.8.2023.

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

4. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- (i) showing the name, address and telephone number of the Principal Certifier for the work, and
- (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

5. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place

- iii) Building/s that are to be demolished
- iv) For any work/s that is to be carried out
- v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

 - (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2018
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
 - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
 - (4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$50,684.91 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$5,068,491.00.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

7. Security Bond

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the Certifier prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at www.northernbeaches.nsw.gov.au).

Reason: To ensure adequate protection of Council's infrastructure.

8. Construction, Excavation and Associated Works Security Bond (Road works)

The applicant is to lodge a bond with Council of \$20,000 as security against failure to complete the construction of any vehicular crossings, kerb and gutter, any footpath works and removal of any redundant driveways required as part of this consent. The bond will be held until the satisfactory submission of works-as-executed drawings and final acceptance of construction works by Council.

Details confirming payment of the bond are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

9. Amended Landscape Plan

An amended landscape plan shall be issued to the Certifier prior to the issue of a Construction Certificate to include the following details:

- a) Drawing LS02 - add 1 x *Tristaniopsis laurina* in the southern corner of the rear setback; substitute 5 x *Banksia ericifolia* on the north-west boundary with a suitable alternative with a maximum height of 1.8 metres (m).
- b) Drawing LS03 - substitute 2 x *Syncarpia glomulifera* with one of the following species; *Angophora hispida*, *Buckinghami celsissima*, *Melaleuca linariifolia* 'Snow in Summer', *Xanthostemon chrysanthus*.
- c) Drawing LS04 - the planters located immediately around the perimeter of the rooftop terraces shall include plant species with a 1 metre mature height for the northern, eastern and western sides. Species shall be selected in response to the available soil depth noting the requirement of minimum 300 millimetre (mm) for grasses and 500mm for shrubs.

Certification shall be provided to the Certifier that these amendments have been documented.

Reason: Landscape amenity.

10. On Slab Landscape Works

Details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided.

Landscape treatment details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, and services connections.

The following minimum soil depths are required to support landscaping: 300mm for groundcovers, perennials, and grasses; 500mm for shrubs.

Design certification shall be submitted to the Certifier by a qualified Structural Engineer, that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

Reason: To ensure appropriate soil depth for planting and ensure waterproofing and drainage is installed.

11. Erosion and Sediment Control Plan

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:

- Site Boundaries and contours

- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities)
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected.
- North point and scale.

Details demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: Protection of the receiving environment.

12. **Detailed Design of Stormwater Treatment Measures - Major**

A certificate from a Civil Engineer, stating that the stormwater treatment measures have been designed in accordance with the approved Stormwater Plans drawn by *Van der Meer Consulting* in this consent and Council's *Water Management for Development Policy*.

The water quality model results representing the stormwater plan need to be included in the certificate and should as a minimum match table 5 general water quality targets of the water policy for developments.

The certificate shall be submitted to the Certifying Authority prior to the release of the Construction Certificate.

Reason: Protection of the receiving environment.

13. **Construction Traffic Management Plan**

As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by a TfNSW accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate.

Due to heavy traffic congestion throughout the town centre, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm. Truck movements must be agreed with Council's Traffic Engineer prior to submission of the CTMP.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the

structure within the site. Wherever possible mobile cranes should be located wholly within the site

- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
- Proposed protection for Council and adjoining properties
- The location and operation of any on site crane

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

14. Removal of Redundant Driveways

All redundant driveways shall be removed and reinstated to Council standard kerb and gutter. Suitably prepared plans shall be submitted to for an approval under and approved by Council prior to the issue of the Construction Certificate. All costs associated with the works shall be borne by the applicant.

A plan checking fee (amount to be advised) and lodgement of a performance bond may be

required from the applicant prior to the release of the approval.

Reason: To maximise on street car parking by removing driveways that are no longer needed in accordance with Council policy.

15. Building Code of Australia Fire Safety Requirements

The Building Code of Australia (BCA) fire safety requirements for the building as detailed and recommended in the BCA 2019 Compliance Report prepared by Building Regulation Services dated 17/3/2022, Report No.BCA220119, issue B are to be considered including any Performance Engineered Solutions as part of the assessment of the Construction Certificate.

Details demonstrating compliance are to be provided to the Certifying Authority, prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for Health, Amenity, access and Fire safety for building occupant health and safety.

16. Access and Facilities for Persons with Disabilities

Access and facilities to and within the building are to be provided for Persons with a Disability in accordance with the Building Code of Australia and AS1428. In this regard the recommendations proposed in the Access Report prepared by Access – I, dated 21/3/2022, Ref. 22016 are to be considered as part of the Construction Certificate assessment.

Details are to be provided to the Certifying Authority prior to the issue of the Construction Certificate and be implemented prior to occupation of the building.

Reason: To ensure adequate provision is made for access to and within the building for Persons with a disability.

17. On-site Stormwater Detention Details

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy and generally in accordance with the concept drainage plans prepared by Van der Meer Consulting, drawing number SY222-006 DAC401 Rev D, C402 Rev A and DAC403 Rev B dated 05/05/23 & 21/10/22. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

1. Access grate levels for the OSD tank.
2. Top Water Level to ensure 15,000 litres of volume in the tank and to set the overflow pipe level.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater and stormwater management arising from the development.

18. Submission Roads Act Application for Civil Works in the Public Road

The Applicant is to submit an application for approval for infrastructure works on Council's roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include Civil Engineering plans for the design of the driveway crossing, footpath along the frontage of the site and reinstatement of the existing driveway crossing which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plans shall be prepared by a qualified Civil Engineer. The design must include the following information:

1. 5.5 metre wide driveway crossing in accordance with Council's Normal profile.
2. 1.5 metre wide concrete footpath along the entire frontage of the property with 2.5% cross fall to the kerb.
3. Reinstatement of the existing driveway crossing to kerb, footpath and turf.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.

19. Shoring of Council's Road Reserve (Temporary road anchors)

Should the proposal require shoring to support an adjoining property or Council land, the Applicant shall provide the adjoining properties with engineering drawings, detailing the proposed shoring works for their consideration and approval.

Written approval from Council under Section 138 of the Roads Act 1993 is required if temporary ground anchors are to be used within Council's road reserve. The Owner's approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that owners consent is obtained for ancillary works, and to ensure the protection of adjoining properties and Council land.

20. Erosion and Sediment Control Plan

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities);
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls;
- North point and scale.

Details demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

21. Compliance with Standards

The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards.

22. Privacy Screening

The following additional privacy screening measures are to be included:

i) A 1.65 metre privacy screen (measured from finished floor level) is to be erected to extend 1.0m rearward for the side balustrades of balconies to the mid level units and upper level units. The privacy screen shall be of fixed panels or custom louver style construction (with a maximum spacing of 20 millimetres to limit direct line of sight across the adjacent side boundary), in materials that complement the design of the approved development. On the outside edge (outside the balustrade screen) a 50cm wide planter box is to be provided for additional screen planting

ii) Window W:1.01:01 and W:102:01 are to include a full height full width angled privacy screens across the whole of the window glazing area.

Details demonstrating compliance are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

Reason: In order to maintain privacy to the adjoining properties and maintain general amenity toward adjacent private open space and neighbouring dwellings.

23. Waste and Recycling Requirements

Details demonstrating compliance with Northern Beaches Waste Management Guidelines, are to be submitted to and approved by the Certifying Authority prior to the issue of any Construction Certificate.

Note: If the proposal, when compliant with the Northern Beaches Waste Management Guidelines, causes inconsistencies with other parts of the approval i.e. architectural or landscaped plans, a modification(s) to the development may be required.

Reason: To ensure adequate and appropriate waste and recycling facilities are provided.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

24. Work Zones and Permits

Prior to commencement of the associated works, the applicant shall obtain a Work Zone Permit where it is proposed to reserve an area of road pavement for the parking of vehicles

associated with a construction site.

A separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane

Reason: To ensure Work zones are monitored and installed correctly.

25. Road Occupancy Licence

Prior to commencement of the associated works, the applicant shall obtain a Road Occupancy License from the Transport Management Centre (TMC) for any works that may impact on traffic flows on Queenscliff Road.

Reason: Requirement of TMC for any works that impact on traffic flow.

26. Demolition Traffic Management Plan

As a result of the site constraints, limited vehicle access and parking, a Demolition Traffic Management Plan (DTMP) shall be prepared by an suitably accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to commencing any demolition work.

Due to heavy traffic congestion throughout the area, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm.

The DTMP must:-

- Make provision for all construction materials to be stored on site, at all times.
- The DTMP is to be adhered to at all times during the project.
- Specify construction truck routes and truck rates. Nominated truck routes are to be distributed over the surrounding road network where possible.
- Provide for the movement of trucks to and from the site, and deliveries to the site. Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site is not permitted unless prior approval is granted by Council's Traffic Engineers.
- Specify that, due to the proximity of the site adjacent to ##### School, no heavy vehicle movements or construction activities effecting vehicle and pedestrian traffic are permitted in school zone hours (8:00am-9:30am and 2:30pm-4:00pm weekdays).
- Include a Traffic Control Plan prepared by an TfNSW accredited traffic controller for any activities involving the management of vehicle and pedestrian traffic.
- Specify that a minimum fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measures.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes, structures proposed on the footpath areas (hoardings, scaffolding or temporary shoring) and extent of tree protection zones around Council street trees.
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the DTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities. These communications must be documented and submitted to Council prior to work commencing on site.
- Specify spoil management process and facilities to be used on site.
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of demolition. At the direction of Council, the applicant is to undertake remedial treatments such as patching at no cost to Council.

The DTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Demolition Traffic Management Plan is submitted.

Reason: This condition is to ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems. The DTMP is intended to minimise impact of construction activities on the surrounding community, in terms of vehicle traffic (including traffic flow and parking) and pedestrian amenity adjacent to the site.

27. Pre-Construction Dilapidation Report

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifier prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Property / Properties:

- No.120 Queenscliff Road, Queenscliff
- No.124 Queenscliff Road, Queenscliff
- No.24 Aitkin Avenue, Queenscliff
- No.26 Aitkin Avenue, Queenscliff
- any other adjacent private property assets or adjacent public property that may be adversely affected by site works or activity during site works.

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifier and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifier must be satisfied that the requirements of this condition have been met prior to commencement of any works.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

28. Public Liability Insurance - Works on Public Land

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council’s road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

29. Installation and Maintenance of Sediment and Erosion Control

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site

DURING BUILDING WORK

30. Tree and Vegetation Protection

a) Existing trees and vegetation shall be retained and protected, including:

- i) all trees within the site not approved for removal, including trees and vegetation nominated for retention on the approved Plans,
- ii) all trees and vegetation located on adjoining properties,
- iii) all trees and vegetation within the road reserve.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Principal Certifier,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
- ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period,

and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

c) The arboricultural works listed in a) and b) are undertaken and certified by an Arborist/Project Arborist as complaint to AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.

31. Road Reserve

The applicant shall ensure the public footways and roadways adjacent to the site are maintained in a safe condition at all times during the course of the work.

Reason: Public safety.

32. Installation and Maintenance of Sediment and Erosion Controls

Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan prepared by <INSERT> prior to commencement of any other works on site.

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: Protection of the receiving environment.

33. Dewatering Management

Tailwater (surface water and rainwater): Please contact catchment@northernbeaches.nsw.gov.au for advice on Council's water quality requirements for a single instance of dewatering tailwater that collects in an excavation during works. A dewatering permit application must be made for expected multiple instances or continuous dewatering of tailwater.

All approvals, water discharges and monitoring results are to be documented and kept on site. Copies of all records shall be provided to the appropriate regulatory authority, including Council, upon request.

Reason: Protection of the receiving environment and groundwater resources.

34. Installation and Maintenance of Sediment and Erosion Controls

Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan prepared prior to commencement of any other works on site.

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and vegetation cover has been re-established across 70

percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: Protection of the receiving environment.

35. Substitution of Stormwater Treatment Measures

The substitution of an "equivalent" device for the stormwater treatment measure approved under the Development Consent must be submitted to the Principal Certifying Authority for approval prior to installation.

Reason: To ensure stormwater is appropriately managed and in accordance with the Water Management for Development Policy.

36. Implementation of Demolition Traffic Management Plan

All works and demolition activities are to be undertaken in accordance with the approved Demolition Traffic Management Plan (DTMP). All controls in the DTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate TfNSW accreditation. Should the implementation or effectiveness of the DTMP be impacted by surrounding major development not encompassed in the approved DTMP, the DTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved DTMP is to be kept onsite at all times and made available to the accredited certifier or Council on request.

Reason: To ensure compliance and Council's ability to modify the approved Construction Traffic Management Plan where it is deemed unsuitable during the course of the project.

37. Implementation of Construction Traffic Management Plan

All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate TfNSW accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

Reason: To ensure compliance of the developer/builder in adhering to the Construction Traffic Management procedures agreed and are held liable to the conditions of consent.

38. Geotechnical Recommendations of detailed Site Stability (Geotechnical) Report

All recommendations (Section 6) included in the *Geotechnical Investigation Report* G22006QUE-R01F referenced in this consent with the approved plans / supporting documents are required to be complied with during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

39. Survey Certificate

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details. This includes any retaining walls or masonry fencing structures adjacent the side, front or rear boundary. Any new masonry structures along the front side or rear boundary are to be

constructed with a 100 millimetre (mm) offset to adjacent land and confirmed by survey marking to ensure they are constructed entirely within the subject land.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier.

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

40. Civil Works Supervision

The Applicant shall ensure all civil works approved under Section 138 of the Roads Act 1993 are supervised by an appropriately qualified and practicing Civil Engineer.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority and/or Roads Authority.

Reason: To ensure compliance of civil works with Council's specification for engineering works.

41. Notification of Inspections (infrastructure works to be handed over to Council)

Council's Development Engineer is to be given 48 hours notice when the works reach the following stages:

- (a) Prior to pouring of driveway crossing, kerb and gutter and layback
- (b) Prior to pouring of footpath

NOTE: Any inspections carried out by Council do not imply Council approval or acceptance of the work, and do not relieve the developer/applicant from the requirement to provide an engineer's certification.

Reason: To ensure new Council infrastructure is constructed in accordance with Auspec 1 Council's design and specification standards.

42. Waste Management During Development

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

Details demonstrating compliance must be submitted to the Principal Certifier.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

43. Waste/Recycling Requirements (Waste Plan Submitted)

During demolition and/or construction the proposal/works shall be generally consistent with the submitted Waste Management Plan.

Reason: To ensure waste is minimised and adequate and appropriate waste and recycling facilities are provided.

44. Waste/Recycling Requirements (Materials)

During demolition and/or construction the following materials are to be separated for recycling:

timber, bricks, tiles, plasterboard, metal, concrete, and evidence of disposal for recycling is to be retained on site.

Reason: To ensure waste is minimised and recovered for recycling where possible.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

45. **Landscape Completion**

Landscape works are to be implemented in accordance with the approved amended Landscape Plan(s), and inclusive of the following conditions:

- a) landscape works are to be contained within the legal property boundaries,
- b) all tree planting shall be a minimum pre-ordered planting size of 75 litres or as otherwise scheduled if greater in size; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
- c) tree, shrub and groundcover planting shall be installed as indicated on the approved Landscape Plan(s),
- d) mass planting shall be installed at minimum 1 metre intervals for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,
- e) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone.

Prior to the issue of an Occupation Certificate, details (from a landscape architect, landscape designer or qualified horticulturalist) shall be submitted to the Principal Certifier, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

46. **Certification of Civil Works and Works as Executed Data on Council Land**

The Applicant shall submit a certification by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) that the completed works have been constructed in accordance with this consent and the approved Section 138 Roads Act 1993 plans. Works as Executed data certified by a registered surveyor in relation to boundaries and/or relevant easements, prepared in accordance with Council's 'Guideline for preparing Works as Executed data for Council Assets' in an approved format shall be submitted to the Roads Authority for acceptance prior to the issue of an Occupation Certificate.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

Reason: To ensure compliance of works with Council's specification for engineering works.

47. **Certification for the Installation of Stormwater Treatment Measures**

A certificate from a Civil Engineer, who has membership to Engineers Australia and the National Engineers Register must be provided, stating that the stormwater treatment measures have been installed in accordance with the CC approved plans. The certificate must confirm

that stormwater treatment measures are completed, online, in good condition and are not impacted by sediment.

The certificate shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

48. **Positive Covenant, Restriction as to User and Registration of Encumbrances for Stormwater Treatment Measures**

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the stormwater treatment measures in accordance with the standard requirements of Council, the manufacturer and as required by the Stormwater Treatment Measures Operation and Maintenance Plan.

A restriction as to user shall be created on the title over the stormwater treatment measures, restricting any alteration to the measures.

The terms of the positive covenant and restriction as to user are to be prepared to Council's standard requirements (available from Council) at the applicant's expense and endorsed by the Northern Beaches Council's delegate prior to lodgement with the Department of Lands. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user is to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To identify encumbrances on land, ensure ongoing maintenance, and ensure modification to the stormwater treatment measures is not carried out without Council's approval.

49. **Stormwater Treatment Measures Operation and Maintenance Plan**

An Operation and Maintenance Plan is to be prepared to ensure the proposed stormwater treatment measures remain effective.

The Plan must be attached to the Positive Covenant (and the community or strata management statement if applicable) and contain the following:

1. Detail on the stormwater treatment measures:

- a) Work as executed drawings
- b) Intent of the stormwater treatment measures including modelled pollutant removal rates
- c) Site detail showing catchment for each device
- d) Vegetation species list associated with each type of vegetated stormwater treatment measure
- e) Impervious area restrictions to maintain the water balance for the site
- f) Funding arrangements for the maintenance of all stormwater treatment measures
- g) Identification of maintenance and management responsibilities
- h) Maintenance and emergency contact information

2. Maintenance schedule and procedure - establishment period of one year following commissioning of the stormwater treatment measure:

- a) Activity description, and duration and frequency of visits

Additionally for vegetated devices:

- b) Monitoring and assessment to achieve an 80 percent survival rate for plantings
- c) Management of weeds, pests and erosion, with weed and sediment cover limited to a maximum of 5 percent of the total area of the stormwater treatment measure

3. Maintenance schedule and procedure - ongoing

- a) Activity description, and duration and frequency of visits
- b) Routine maintenance requirements
- c) Work Health and Safety requirements
- d) Waste management and disposal
- e) Traffic control (if required)
- f) Renewal, decommissioning and replacement timelines and activities of all stormwater treatment measures (please note that a DA may be required if an alternative stormwater treatment measure is proposed)
- g) Requirements for inspection and maintenance records, noting that these records are required to be maintained and made available to Council upon request.

Details demonstrating compliance shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

50. Works as Executed Drawings - Stormwater Treatment Measures

Works as Executed Drawings for the stormwater treatment measures must be prepared in accordance with Council's Guideline for Preparing Works as Executed Data for Council Stormwater Assets.

The drawings shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

51. Installation of Rainwater Tanks

Rainwater tanks shall comply with the following:

- a) Be fitted with a first-flush device that causes initial rainwater run-off to bypass the tank and must drain to a landscaped area. The first flush device will not be permitted to connect to the stormwater system
- b) Have a sign affixed to the tank stating the contents is rainwater
- c) Be constructed or installed in a manner that prevents mosquitoes breeding, such as the use of mesh to protect inlets and overflows
- d) Have its overflow connected to an existing stormwater drainage system that does not discharge to an adjoining property, or cause a nuisance to adjoining owners
- e) Pumping equipment must be housed in a soundproof enclosure
- f) Where the rainwater tank is interconnected to a reticulated water supply, it must be installed in accordance with Plumbing Code of Australia, particularly backflow/cross connection prevention requirements

A certificate from a licenced plumber shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: To conserve potable water.

52. Strata Management Statement

The Strata Management Statement must specifically list the stormwater treatment measures that will be maintained under strata title. The statement must also include the Stormwater Treatment Measure Operation and Maintenance Plan.

Details demonstrating compliance shall be submitted to the Principal Certifying Authority prior to the release of the **Occupation** Certificate.

Reason: To ensure maintenance of all stormwater management assets and protection of the receiving environment.

53. Car Lift Traffic requirements

- To prevent vehicles reversing to or from Queenscliff Road signage must be erected at both the street level and basement level entry points to the lift advising drivers to enter in a forwards direction
- the lift must return to street level as a default mode of operation once a vehicle has exited it at basement level (to minimise waiting time for traffic entering from the road)
- Details of the system, including the system operation, components and placement within the development, must be specified by a practising Traffic Engineer. This engineer is to submit a compliance certificate to the Principal Principal Certifier that the system has been installed and operating as designed, in accordance with the requirements of this condition, prior to the issue of an Occupation Certificate issued for the development.

Reason: To reduce potential for vehicle conflicts entering or exiting the basement carpark.

54. Allocation of parking spaces (strata title)

All carparking spaces are to be assigned to individual units. All residential 3 bedroom units must be assigned minimum 2 parking spaces.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of any Occupation Certificate.

Reason: To ensure parking availability for all residents.

55. Post-Construction Dilapidation Report

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

- Compare the post-construction report with the pre-construction report,
- Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To maintain proper records in relation to the proposed development.

56. Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures

The Applicant shall lodge the Legal Documents Authorisation Application with Council. The application shall include the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), and Civil Engineers' certification.

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater disposal structures within this development consent. The terms of the positive covenant and restriction as to user are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgment with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user is to be submitted.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

57. Garbage and Recycling Facilities

i) All internal walls of the waste rooms shall be rendered to a smooth surface, covered at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

ii) Waste room floors shall be graded and drained to an approved Sydney Water drainage system.

iii) Waste rooms shall be clear of any other services or utilities infrastructure such as gas, electricity air-conditioning, plumbing, piping ducting or equipment.

Reason: To prevent pollution of the environment, provide a safe workplace for contractors and residents and to protect the amenity of the area.

58. House / Building Number

House / building street address number is to be affixed to the front fence / gate to be readily visible from the public domain.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: Proper identification of buildings.

59. Unit Numbering for Multi Unit Developments (Residential)

The units within the development are to be numbered in accordance with NSW Address Policy and User Manual.

In this regard, the numbering is to be as per the Unit Numbering for Multi Unit Development

Table available on Council's website Unit Numbering for Multi-Unit Developments Form

External directional signage is to be erected on site at driveway entry points and on buildings and is to reflect the numbering in the table provided. Unit numbering signage is also required on stairway access doors and lobby entry doors.

It is essential that all signage throughout the complex is clear to assist emergency service providers in locating a destination within the development with ease and speed, in the event of an emergency.

Details are to be submitted with any Occupation Certificate or Strata Subdivision Certificate certifying that the numbering has been implemented in accordance with this condition and the Unit Numbering for Multi Unit Development Table.

Reason: To ensure consistent numbering for emergency services access.

60. Waste Management Confirmation

Prior to the issue of an Occupation Certificate, evidence / documentation must be submitted to the Principal Certifier that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

61. Fire Safety Matters

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and the NSW Fire Brigade.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Occupation Certificate.

Each year the Owners must send to the Council and the NSW Fire Brigade an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Part 9 Division 4 & 5 of the Environmental Planning and Assessment Regulation 2000.

62. Waste and Recycling Facilities Certificate of Compliance

The proposal shall be constructed in accordance with the Northern Beaches Waste Management Guidelines.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: To ensure waste and recycling facilities are provided.

63. Waste/Recycling Compliance Documentation

Evidence of disposal for recycling from the construction/demolition works shall be submitted to the Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To ensure waste is minimised and recycled.

64. Positive Covenant for Council and Contractor Indemnity

A positive covenant shall be created on the title of the land prior to the issue of an Interim/Final Occupation Certificate requiring the proprietor of the land to provide access to the waste storage facilities. The terms of the positive covenant are to be prepared to Council's requirements, (Appendix E of the Waste Management Guidelines), at the applicant's expense and endorsed by Council prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

Reason: To ensure ongoing access for servicing of waste facilities.

65. Authorisation of Legal Documentation Required for Waste Services

The original completed request form (NSW Land Registry Services form 13PC) must be submitted to Council for authorisation prior to the issue of the Interim/Final Occupation Certificate. A copy of the work-as-executed plan (details overdrawn on a copy of the approved plan) must be included with the above submission.

Where required by Council or the Certifying Authority, a Compliance Certificate shall also be provided in the submission to Council.

If Council is to issue the Compliance Certificate for these works, the fee is to be in accordance with Council's Fees and Charges.

Reason: To create encumbrances on the land.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

66. Landscape Maintenance

Ongoing landscape conditions apply:

a) if any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components.

b) trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

c) if any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved amended Landscape Plan(s) and any conditions of consent.

d) a maintenance activity schedule for on-going maintenance of planters on slab shall be incorporated to monitor and replenish soil levels as a result of soil shrinkage over time.

e) the approved landscape planted areas, whether containing lawn, gardens or planters, or other shall in perpetuity remain as planting under the development consent, and shall not be replaced with any hard paved surfaces or structures.

f) roof top planting shall be maintained with a mix of species as per the landscape plans, however growth height of the plants is to be maintained to ensure plants are generally kept 1.0m high or less (either by their natural growth height or by routine maintenance).

Reason: To maintain local environmental amenity.

67. Maintenance of Stormwater Treatment Measures - Major

Stormwater treatment measures must be maintained at all times in accordance with the Stormwater Treatment Measure Operation and Maintenance Plan, manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

Where replacement cartridges or other necessary components for the system become unavailable, an alternative system is required to be retrofitted into the development to achieve an equivalent pollutant reduction outcome. Evidence supporting the replacement must be retained on site and made available to Council as required.

Northern Beaches Council reserves the right to enter the property and carry out appropriate maintenance of the device at the cost of the property owner.

Reason: Protection of the receiving environment.

68. Parking Enclosure

No parking spaces, or access thereto, shall be constrained or enclosed by any form of structure such as fencing, cages, walls, storage space, or the like, without prior consent from Council.

Reason: To ensure accessibility is maintained.

69. Landscaping adjoining vehicular access

The applicant must ensure that the planting or landscaping chosen for any land immediately adjacent to the driveway must not exceed a height of 1.1m above footpath level

Reason: To maintain unobstructed sight distance for motorists.

70. Front fence height and street front vegetation

All fencing and/or vegetation along the frontage road(s) shall not impede pedestrian or driver visibility. This requires that fencing/vegetation does not exceed 1.1 metres above footpath levels within the 2.0 x 2.5m pedestrian sightline splay on either side of the driveway to ensure this condition is met. Front fencing shall be of "open style" (at least 50% open across each panel / span) construction with no solid fence panels 0.9m above ground level

Reason: To ensure maximum vehicular and pedestrian visibility.

71. Use of Street Level Bin Holding Bay

The street level bin holding bay is only to be used for the presentation of bins for collection. It is not to be used for the storage of any goods and other materials at any time.

Reason: To ensure the appropriate presentation of bins for collection. To ensure access to the bins by collection staff is not obstructed.

72. Swimming Pool/Spa Motor Noise

The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.

73. **Roof terraces**

No shade / weather structures / roofing or the like are to be erected on the roof terrace area.

(Note: This requirement should be included as a by-law for the building if Strata Titled as part of the Body Corporate management of the building structure)

Reason: To prevent view impacts properties that overlook the site.

74. **Transfer of bins between the basement bin room and the street level holding bay**

Bins are to be available for collection from the street level holding bay between 6.00am to 6.00pm on the scheduled day/s of collection.

- Bins are to be transferred from the basement bin room to the street level holding bay no earlier than 4.00 pm on the day prior to the scheduled day of collection.
- Bins are to be transferred from the street level holding bay to the basement bin room as soon as possible after collection but no later than the evening of the day of collection.

Reason: To ensure bins are available for collection staff at the appropriate time. To ensure bins do not remain in the street level holding bay for an excessive period of time.