

25 February 2025

Northern Beaches Council  
PO Box 82  
MANLY NSW 1655

Dear Sir/Madam,

## **SECTION 4.55(2) APPLICATION**

|                                 |                                                                       |
|---------------------------------|-----------------------------------------------------------------------|
| <b>Premises:</b>                | <b>Lot 6 in DP 8260, No. 150 Queenscliff Road,<br/>Queenscliff</b>    |
| <b>Amendments:</b>              | <b>Amend Plans of Approved Dwelling<br/>Alterations and Additions</b> |
| <b>Development Application:</b> | <b>DA2022/1719</b>                                                    |
| <b>Date of Determination:</b>   | <b>28/06/2023</b>                                                     |

## **INTRODUCTION**

On behalf of the Mr Antony Clarke I seek Council consent pursuant to Section 4.55(2) of the Environmental *Planning & Assessment Act* 1979 to amend Development Consent 2022/1719 relating to the construction of dwelling alterations and additions.

## **BACKGROUND**

Development Consent (DA2022/1719) for the construction of dwelling alterations and additions was approved by Council on 28/06/2023. The approved works included the following:

- Demolition of the existing garage and constructed new 2 car garage with storage (fronting Aitken Avenue).
- New hardstand parking area for a single car with bin storage and pedestrian access fronting Queenscliff Road.
- New front fence to the Queenscliff Road frontage.
- Dwelling alterations and additions

It is noted that works have not yet commenced on site.

## PROPOSED MODIFICATION

The proposal seeks to amend the plans as detailed in the Architectural Plans and summarised below:

### External works

- Delete hardstand parking area, bin storage and pedestrian access from Queenscliff Road.
- Retain existing stair from Queenscliff Road frontage.
- Provide new bin storage area adjacent to existing stair.
- Replace approved cement rendered fence with timber battern fence with a height of 1.8m.
- Modify path design to entry.

### Dwelling Alterations/Additions

#### *Ground Floor*

- Replace existing window to west elevation; infill window on eastern window; provide new window on eastern elevation.
- Modify and extend approved balcony on southern elevation.
- Reduce extent of addition to southeast corner.
- Remove privacy screen on west elevation of proposed balcony.
- Alterations to internal floor plan including modification of internal stair.

#### *Lower Ground Floor*

- Delete approved extension on southern elevation and increase size of balcony – to extend width of southern elevation.
- Modify internal stair.
- Remove one window on northern elevation and brick infill.
- Replace existing doors on northern elevation.

#### *Basement Level*

- Demolish existing internal walls.
- Remove existing floor and excavate as required for new concrete slab.
- New windows on southern elevation.

There are no changes proposed to the approved garage accessed from Aitken Avenue.

In support of the modification the following information is provided:

- Architectural Plans prepared by Scope Architects, Project No. 02201, Revision 4 and dated 13/02/2025.
- BASIX Certificate # 1311187S\_05 and dated 26/02/2025.
- Preliminary Geotechnical Report prepared by White Geotechnical Group, Job No. J4286A and dated 21 February 2025.

The proposed works have not commenced.

## LEGISLATION

### **Environmental Planning & Assessment Act, 1979**

Section 4.55(2) of the Act states:

(2) **Other Modifications** *A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—*

(a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*

**Comment:** Consent was granted for construction of alterations and additions to an existing dwelling. The proposed amendments provide for additions/alterations to the existing dwelling and therefore are considered to be substantially the same as the original development.

(b) *it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*

**Comment:** Consultation with the Minister or other public authority is not required.

(c) *it has notified the application in accordance with—*  
(i) *the regulations, if the regulations so require, or*  
(ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*  
(d) *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

**Comment:** The Council will notify the application, if required, and consider any submissions in accordance with the relevant policy/DCP.

**Warringah LEP 2011**

The site is zoned R2 Low Density Residential under the provisions of the WLEP 2011. Development for the purposes of construction of alterations/additions to an existing dwelling are permissible with the consent of Council within the R2 zone.

The relevant provisions of the WLEP which relate to the proposed development are detailed in the attached table:

| <b>Clause</b>                  | <b>Development Standard</b> | <b>Proposal</b>    | <b>Compliance</b>                                                                                                        |
|--------------------------------|-----------------------------|--------------------|--------------------------------------------------------------------------------------------------------------------------|
| Clause 4.3 Height of Buildings | 8.5 metres                  | Approximately 9.0m | There is no further encroachment of the building height. The proposed modifications reduce the extend of non-compliance. |

Clause 4.6 does not apply to s4.55 modifications. Notwithstanding, the proposed amendments do not extend above the height of the approved additions.

The following controls are also relevant:

**Clause 6.4 Development on Sloping Land**

The site is classified as part Class A and B on Council's Landslip Map. An updated Preliminary Geotechnical Report has been prepared in this regard and forms part of the submission to Council.

There are no clauses that specifically relate to the proposed modification.

**Warringah Development Control Plan 2011**

The following numerical provisions of the DCP are considered relevant to the proposed modification:

| <b>Clause</b>     | <b>Requirement</b> | <b>Compliance</b>                                                |
|-------------------|--------------------|------------------------------------------------------------------|
| B1 – Wall heights | 7.2m               | The proposed modifications do not increase approved wall height. |

| <b>Clause</b>                                                      | <b>Requirement</b>                                                                                                               | <b>Compliance</b>                                                                                                                                                                                                                                                                                     |
|--------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| B3 - Side Boundary Envelope                                        | Building envelope 45 degrees from 5m. Eaves up to 675mm are an allowable encroachment                                            | The proposed modifications do not further encroach the building envelope. However, the modifications proposed reduce overall bulk and scale through the alteration to the approved roof form and reductions in additions.                                                                             |
| B4 – Site Coverage                                                 | Not Applicable                                                                                                                   | Not Applicable                                                                                                                                                                                                                                                                                        |
| B5 - Side Boundary setbacks                                        | Minimum: 0.9m                                                                                                                    | Yes<br>Proposed additions to the dwelling are setback at least 0.92m to the eastern boundary with setbacks retained to the western boundary.<br><br>The proposed secondary dwelling is setback 0.935m to the western boundary.                                                                        |
| B7 – Front Boundary Setbacks                                       | Minimum 6.5m                                                                                                                     | The modifications delete the approved hardstand parking /store within the front setback. The proposal provides for a bin storage area, which is located behind and incorporated into the front fence. The bin structure will not be visible. The modifications reduce works within the front setback. |
| B9- Rear Boundary Setbacks & B10 Merit Assessment of Rear Setbacks | 6.0m<br>Swimming pools and outbuildings that do not exceed 50% of the rear setback area are permissible within the rear setback. | There is no change to approved works within the rear setback area (setback to Aitken Avenue).                                                                                                                                                                                                         |

| <b>Clause</b>                | <b>Requirement</b>                                                                                                                    | <b>Compliance</b>                                                                                                                                                                                                                                                                                 |
|------------------------------|---------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| C3 – Parking Facilities      | Garages not to visually dominate façade<br>Parking to be in accordance with AS/NZS 2890.1                                             | Yes<br>The proposal retains the approved double garage which is accessed from Aitken Avenue. Parking is not required for secondary dwellings (approved under DA2023/1102). The proposal complies with the parking requirements of the DCP.                                                        |
| C4 - Stormwater              | To be provided in accordance with Council's Stormwater Drainage Design Guidelines for Minor Developments & Minor Works Specification. | Yes<br>All collected stormwater will continue to discharge to the existing stormwater system in Aitken Avenue.                                                                                                                                                                                    |
| C7 - Excavation and Landfill | Site stability to be maintained                                                                                                       | Yes<br>Some addition excavation is required for the new floor to the basement level. The excavation is contained within the existing building footprint and does not have any impact on adjoining properties or the public domain. A Geotechnical Report has been submitted with the application. |
| C9 – Waste Management        | Waste storage area to be provided                                                                                                     | Yes<br>The proposed modifications incorporate storage for waste and recycling bins. The storage area is incorporated into the fence design and will not be visible from the public domain.                                                                                                        |

| Clause                                  | Requirement                                                                                                                                                                                                                             | Compliance                                                                                                                |
|-----------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------|
| D1 – Landscaped Open Space and Bushland | Min 40% Landscaped Area to be maintained                                                                                                                                                                                                | Yes<br>The proposal provides for a landscaped open space of 236.5m <sup>2</sup> or 44.2% which complies with this clause. |
| D2 - Private Open Space                 | Dwelling houses with three or more bedrooms<br>Min 60m <sup>2</sup> with min dimension 5m                                                                                                                                               | Yes<br>The proposed amendments do not alter the approved private open space arrangements.                                 |
| D5 – Orientation and Energy Efficiency  | Dwellings to be orientated to receive northern sun<br>Appropriate construction to enhance thermal properties and ventilation/natural cooling<br>Compliance with SEPP (BASIX) requirements                                               | Yes<br>An updated BASIX Certificate has been submitted.                                                                   |
| D6 – Access to sunlight                 | The controls require that sunlight to at least 50% of the private open space of both the subject and adjoining properties' private open space receives not less than three hours sunlight between 9am – 3pm on 21 June winter solstice. | Yes<br>The proposed amendments do not result in any additional overshadowing to adjoining properties..                    |
| D7 - Views                              | View sharing to be maintained                                                                                                                                                                                                           | The proposed amendments reduce the overall height of the approved dwelling.                                               |

| Clause             | Requirement                                                                                                                                                                 | Compliance                                                                                                                                                                                                                                                                            |
|--------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                    |                                                                                                                                                                             | <p>The development on the northern side of Queenscliff Road are well elevated above street level and the proposed works given the change in levels will not obstruct existing views from these properties.</p> <p>There will be no impact on views from the adjoining properties.</p> |
| D8 - Privacy       | This clause specifies that development is not to cause unreasonable overlooking of habitable rooms and principle private open space of adjoining properties.                | See discussion at end of table.**                                                                                                                                                                                                                                                     |
| D9 – Building Bulk | This clause requires buildings to have a visual bulk and architectural scale that is consistent with structures on nearby properties & not to visually dominate the street. | <p>Yes</p> <p>The proposed modifications reduce the approved bulk and scale.</p>                                                                                                                                                                                                      |
| D11 - Roofs        | The LEP requires that roofs should not dominate the local skyline.                                                                                                          | <p>Yes</p> <p>The proposed modifications further reduce the bulk of the approved dwelling and reduce the overall height of the existing and approved dwelling.</p>                                                                                                                    |

| Clause                                 | Requirement                                                                                                                                              | Compliance                                                                                                                                                                              |
|----------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| D13 - Front Fences and Front Walls     | Front fences to be generally to a maximum of 1200mm, of an open style to complement the streetscape and not to encroach onto street.                     | The proposed modification replaces the approved masonry fence with a height of 1.8m on the Queenscliff Road frontage with a more open timber batten fence. This is an improved outcome. |
| D14 – Site Facilities                  | Garbage storage areas and mailboxes to have minimal visual impact to the street<br>Landscaping to be provided to reduce the view of the site facilities. | Yes<br>A waste storage area is incorporated into the fence design.                                                                                                                      |
| D20 – Safety and Security              | Buildings to enhance the security of the community.<br>Buildings are to provide for casual surveillance of the street.                                   | Yes<br>The development will continue to provide a good outlook of the dwelling approach and public streets (both Queenscliff Road and Aitken Avenue).                                   |
| D22 – Conservation of Energy and Water | A BASIX Certificate is required.                                                                                                                         | Yes                                                                                                                                                                                     |
| E10 – Landslip Risk                    | Identified on map as A & B                                                                                                                               | Yes<br>An updated Preliminary Geotechnical Report has been provided.                                                                                                                    |
| E11 – Flood Prone Land                 | Low Risk Precinct                                                                                                                                        | Yes<br>The very rear portion of the site is identified as Low Flow Risk. The proposal does not provide for any works in this area.                                                      |

### D8 Privacy

The proposed modifications are considered to ensure an appropriate level of privacy to the adjoining properties in accordance with the controls of this clause. This is discussed in detail below:

*Lower ground floor:* The proposal deletes the extension to the southern elevation and seeks to extend the balcony the length of this elevation. This has been designed to maximise views of Queenscliff Road and surrounds. The extension to the balcony is provided with ample setback to the western boundary (greater than 3.3m). This provides sufficient setback to the adjoining property, No. 152 Queenscliff Road.

*Ground floor:* The modification seeks to delete the privacy screen to the western elevation of the southern facing balcony. The balcony is proposed to be modified by reducing its length thereby increasing the setback to the western boundary (greater than 8m). The setback provided provides ample separation to the adjoining dwelling at No. 152 Queenscliff Road and serves to improve views from both the subject site and the adjoining property (No. 152).

The new window to the living room on the eastern elevation is a slimline window and is well separated from the adjoining residential flat building to the east (No. 146-148 Queenscliff Road). It is noted that a larger window from this elevation is being removed and infilled as part of this modification.

It is considered that the proposed modifications will continue to provide for an appropriate level of privacy to the adjoining properties.

### **JUSTIFICATION**

The proposed amendments to the approved plans are considered justified in this instance for the following reasons:

- The proposed modifications improve the presentation to Queenscliff Road through the deletion of the hardstand car parking area and modifications to the approved front fence.
- The proposed modifications reduce the approved bulk and scale and reduce the approved building height.
- The proposed modifications have been designed to ensure the privacy and amenity of the adjoining properties is maintained.
- The modified design achieves the objectives of the relevant controls of the DCP.

## **CONCLUSION**

For the reasons stated above it is considered that this application to amend the approved plans should be supported. Should you require any further information please do not hesitate to contact me.

Yours faithfully,



**Natalie Nolan**