

STATEMENT OF ENVIRONMENTAL EFFECTS

**Demolition of the existing
residential flat building and
construction of a new
residential flat building**

**24 Aitken Avenue,
Queenscliff**

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1 Introduction

1.1 Overview

This report accompanies and supports a Development Application (DA) for redevelopment of the existing residential flat building for a new residential flat building containing 4 apartments at 24 Aitken Avenue, Queenscliff.

Breakspear Architects have responded to the client's brief with an exceptional design that is responsive to the established built form, neighbourhood context, planning provisions and amenity considerations relevant to the site and location.

In overall terms, the proposal will add significant utility, quality and amenity to the existing apartment development so that the existing housing is transformed to meet contemporary design standards. Notably, the proposal will provide vehicle access and on-site car parking, increased side setbacks, reduced maximum building height, improved private open space, privacy screens, bicycle parking, concealed bulky goods and waste storage; features / characteristics not provided by the existing development.

The proposal is well separated from the sensitive interfaces of neighbouring dwellings. The proposal has considered the relevant amenity considerations relating to solar access, privacy and views. The proposal design is responsive to its development context and is compatible with the local neighbourhood character. The proposal will not result in any unacceptable amenity impacts.

The proposed development relates to a non-conforming use, being a residential flat building within the R2 Low Density Residential zone. Being an existing approved residential flat building of 3 to 4 storeys and with a roof ridge RL 28.230, containing 3 apartments, the proposed residential flat building of mainly 3 storeys, with a upper building level of RL 25.160, containing 4 apartments is an appropriate and reasonable 'replacement' of the existing development. The proposal will not cause an unreasonable enlargement, expansion, or intensification of the existing and approved development.

1.2 Pre-lodgement Meeting

A Pre-DA lodgement meeting was held on 17 April 2018 with Council planning officers to discuss key issues associated with the proposed redevelopment of the site. The meeting was held at the early stage of concept development with the revised scheme submitted to Council on 29 May 2018 which addressed comments made by Council staff at the Pre-DA lodgement meeting.

This application has been prepared in response to the matters discussed at the pre-lodgement meeting and the pre-lodgement meeting report issued by Council. A number of modifications to the design have resulted from the advice provided at the meeting. In summary the following changes are noted:

- Roof-top terrace for communal use removed
- Balconies to east and west sides of the proposed apartments removed
- Car stackers removed

- Number of cars – reduced to the minimum number of cars required
- Front setback increased from approx. 4m to 5.320 (west) 5.040 (east)
- Rear setback increased from 1.215m to 5.320m
- Existing Use Rights – justification provided herein
- Height of the top apartment – habitable elements deleted
- Landscape open space – area increased; additional landscaping planting provided
- Excavation extent - justification provided
- Building bulk – addressed and significantly reduced from the design scheme presented to Council on 17 April 2018

Other issues are addressed within this report and the documentation accompanying the proposal.

1.3 Statement of Environmental Effects

This report is a Statement of Environmental Effects (SEE), pursuant to Section 4.15 of the Environmental Planning and Assessment Act 1979. The proposal has been considered under the relevant provisions of Section 4.15 of the Environmental Planning and Assessment Act 1979.

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

- Environmental Planning and Assessment Act, 1979
- Local Environmental Plan
- Relevant planning principles
- Relevant State Environmental Planning Policies
- Development Control Plan

The proposal is permissible and generally in conformity with the relevant provisions of the above planning considerations.

Overall, it is assessed that the proposed development is satisfactory, and the development application may be approved by Council.

1.4 Supporting documentation

The proposal is also accompanied and supported by the following expert inputs:

- Architectural plans – Breakspear Architects
- Shadow diagrams – Breakspear Architects
- Materials and finishes schedule – Breakspear Architects
- Photo montages – Breakspear Architects
- Detail land survey – Veris
- Town planning – BBF Town Planners

- SEPP 65 Design Verification Statement and Apartment Design Guide Report - Breakspear Architects
- Landscaped plan and statement– Spirit Level Designs
- Accessibility assessment report – City Plan Services
- BCA design compliance – City Plan Services
- Traffic and parking assessment – CBRK consulting engineers
- Waste management – Manly Development 2016 Pty Ltd
- Stormwater and hydraulic (plans and report)– Insync Services consulting engineers
- Geotechnical assessment report – Geo-environmental engineering consultants
- Arboriculture assessment report - Complete Aborcare consulting arborists
- Traffic management plan – AAA Traffic Control
- Construction Methodology Plan – Manly developments 2016 Pty Ltd

2 Site Analysis

2.1 Site Description

The site is located 24 Aitken Avenue, Queenscliff. It is legally described Strata Plan 30021. The total site has an area of approximately 525.8m².

The site is rectangularly shaped with dimensions as follows: 40.59m long; 13.005m wide.

2.2 Features of the site and its development

The key features of the site and its development include:

- The land is developed with a residential flat building, masonry unit block with pitched and tiled roof containing 3 x 2 bedroom apartments and associated balconies and landscaping.
- The property is within a hill side setting overlooking Manly Lagoon to the south.
- The property is sloping with a level difference of approximately 14.5m between the rear and the front boundaries, being: RL24.5 (rear) to RL 10 (front).
- The site and the adjoining properties have a north east / south west orientation to Aitken Avenue.
- The adjacent properties occupy similar sloping topography to the subject site. They each contain large single dwellings that are terraced and occupy different levels of their land.
- The properties to the rear are sited on flatter terrain, atop the hillside and generally enjoy an outlook above, and over the subject site.
- The existing development at 24 Aitken Ave Queenscliff comprises:
 - a 3-4 storey building, with pitched tile roof, displaying a maximum height of approximately 12.330m from RL 15.90 to RL 28.230 (ridge).
 - elevated private open space in the form of decks/balconies to the north (rear) and south (front). These are the principle private recreational spaces serving the existing dwellings
 - no waste storage
 - no vehicle access, or on-site car parking
 - with a height of 11.530m, the building exceeds the maximum height standard (8.5m) applicable to the location – a 3m exceedance to the building height standard
 - side setbacks of approximately: east side 1.4 – 2.0m; west side 1.5 -1.8m (proposed 3m both sides).
- The building is the tallest structure and one of the most visually prominent buildings within the streetscape and when viewed from public spaces within the open space reserve to the south.
- The site is within a location with mixed residential housing form with the character comprising of large 2 – 3 storey single dwellings with some residential flat buildings intermixed (for example at 18, 20, and 24 Aitken Ave).

- A characteristic of the streetscape in the presence of garaging fronting the street. There are various examples of garages and driveways occupying the entire frontages of properties.
- Figures below depict the character of the property and its existing development.

2.3 Zoning and key environmental considerations

The property is zoned R2 Low Density Residential under the Warringah Local Environmental Plan 2011 (LEP) as is most of the surrounding land.

The property contains a non-conforming use, being a residential flat building within the R2 Low Density Residential zone and therefore existing use rights are applicable to the property.

The site is not affected by key environmental considerations like, for example heritage, bush fire, biodiversity, flood, waterways, and acid sulfate soils. The property is affected by sloping topography and coastal planning considerations. These are addressed within Section 4 of this report.

There are no permissibility or environmental characteristics that present impediments to the improvements proposed to the land.

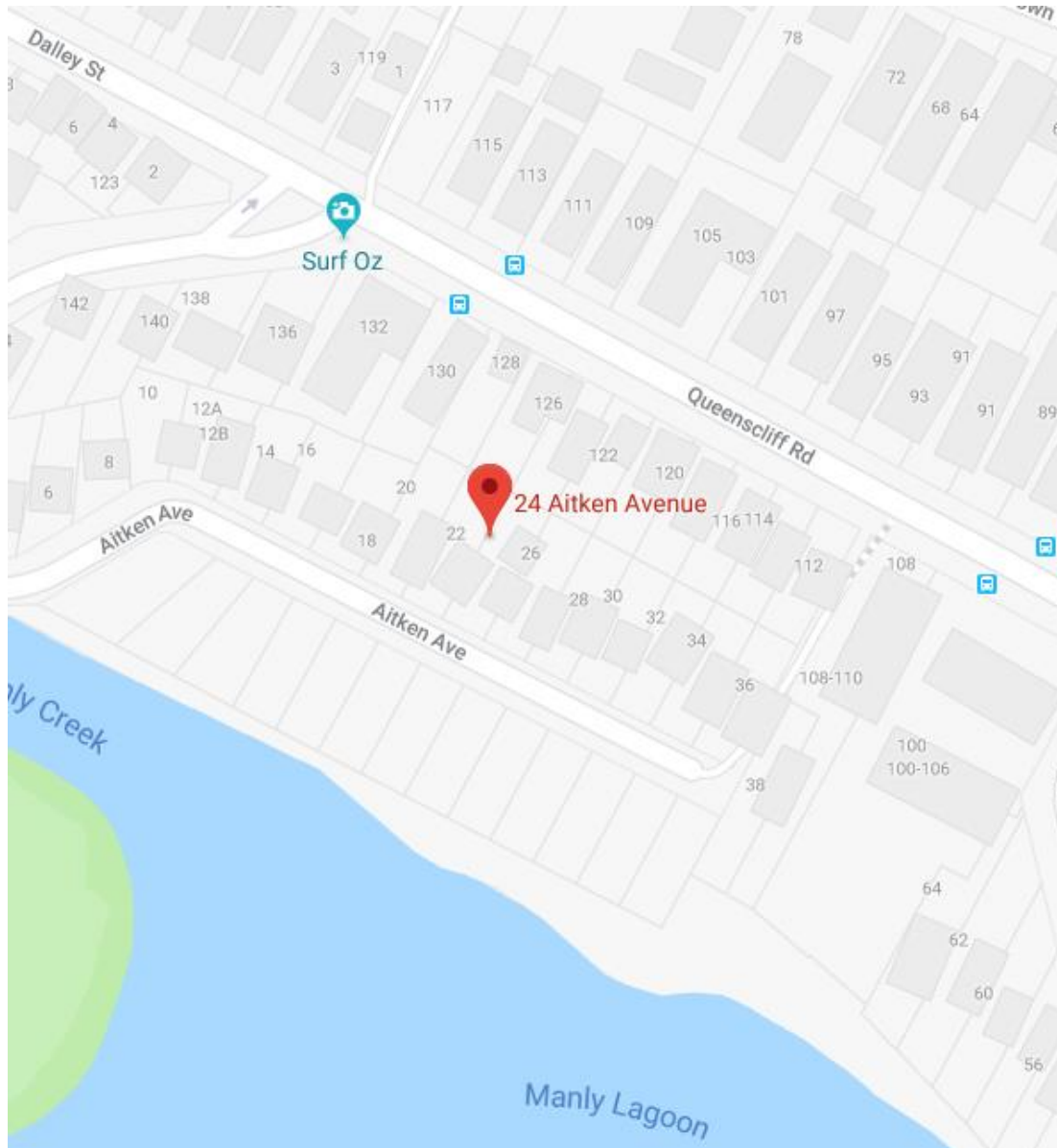


Figure 1 – Location of the site within its wider context (courtesy Google Maps)

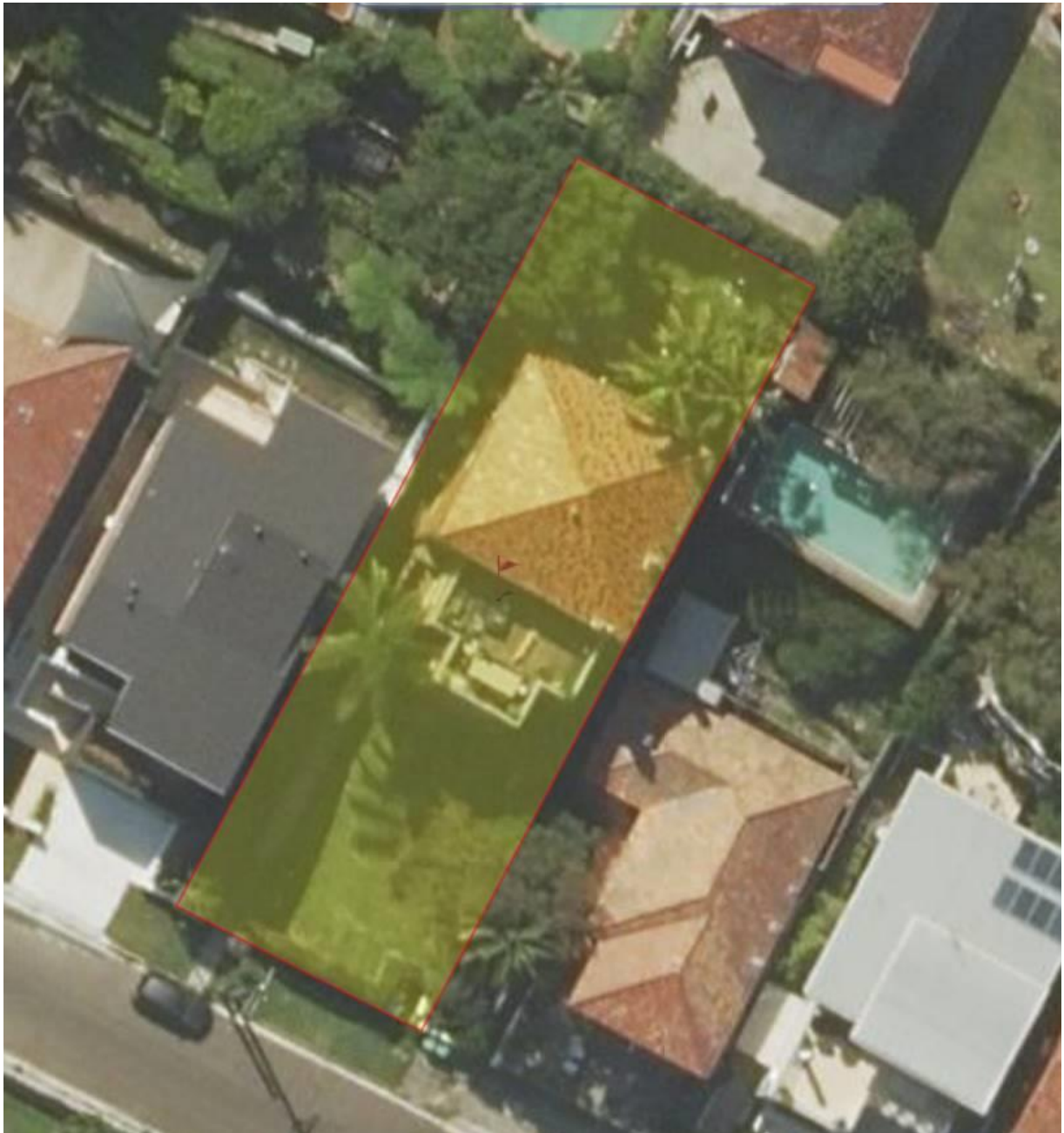


Figure 2 – Location of the site (courtesy Six Maps)



Figure 3 – existing site / building character



Figure 4 - existing site / building character



Figure 5– existing site character and adjoining development to the east (left of image)



Figure 6 – existing site character - front upper level terrace



Figure 7 – existing site character – front upper level terrace

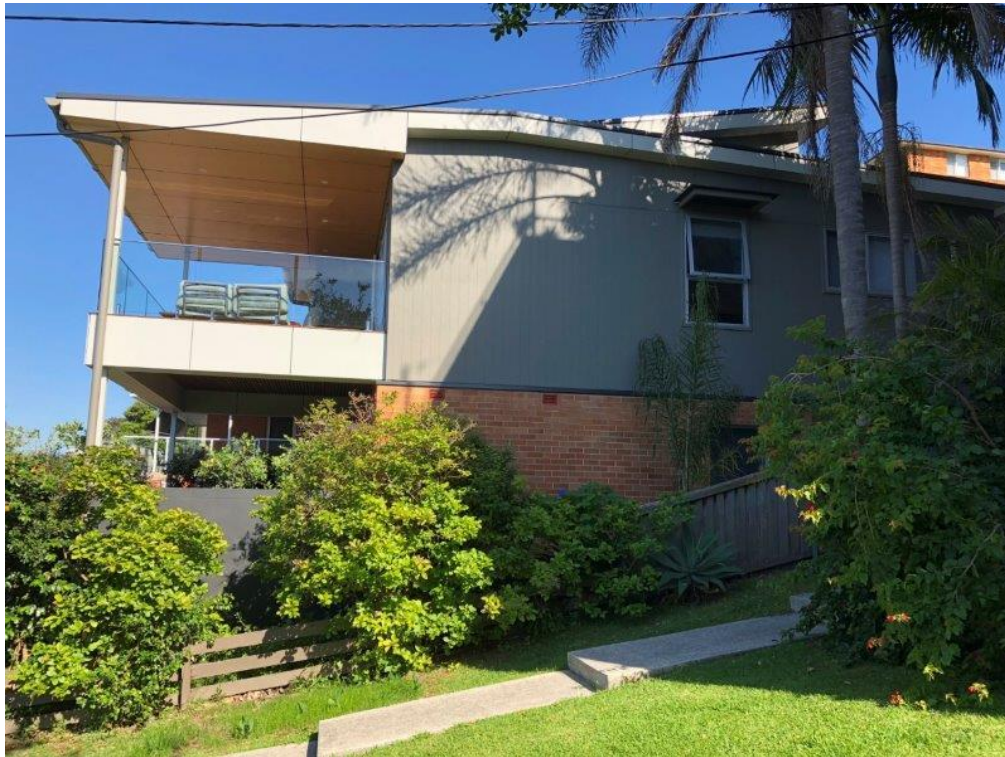


Figure 8– western interface with development at 22 Aitken Avenue



Figure 9 – view of development at 22 Aitken Avenue from existing elevated balcony



Figure 10 – Existing view to the west from existing front roof-top terrace



Figure 11 – existing view to the west from existing front roof-top terrace



Figure 12 – existing view to the north – rear neighbouring dwelling is significantly higher than the subject site



Figure 13 – existing view to the north east from the existing RFB showing the neighbours elevated rear pool at 26 Altken Avenue



Figure 14 - existing view to the east from existing upper level terrace

STREETSCAPE



Figure 15 - Streetscape character looking east (28 Altken Ave)



Figure 16 – Streetscape character looking east (26 Aitken) – there are numerous examples of garages and driveways occupying entire site frontages within the streetscape



Figure 17 – mixed streetscape character (residential flat buildings) to the west at 18 and 20 Aitken Ave



Figure 18 – Streetscape character to the east – large 2-3 storey dwelling

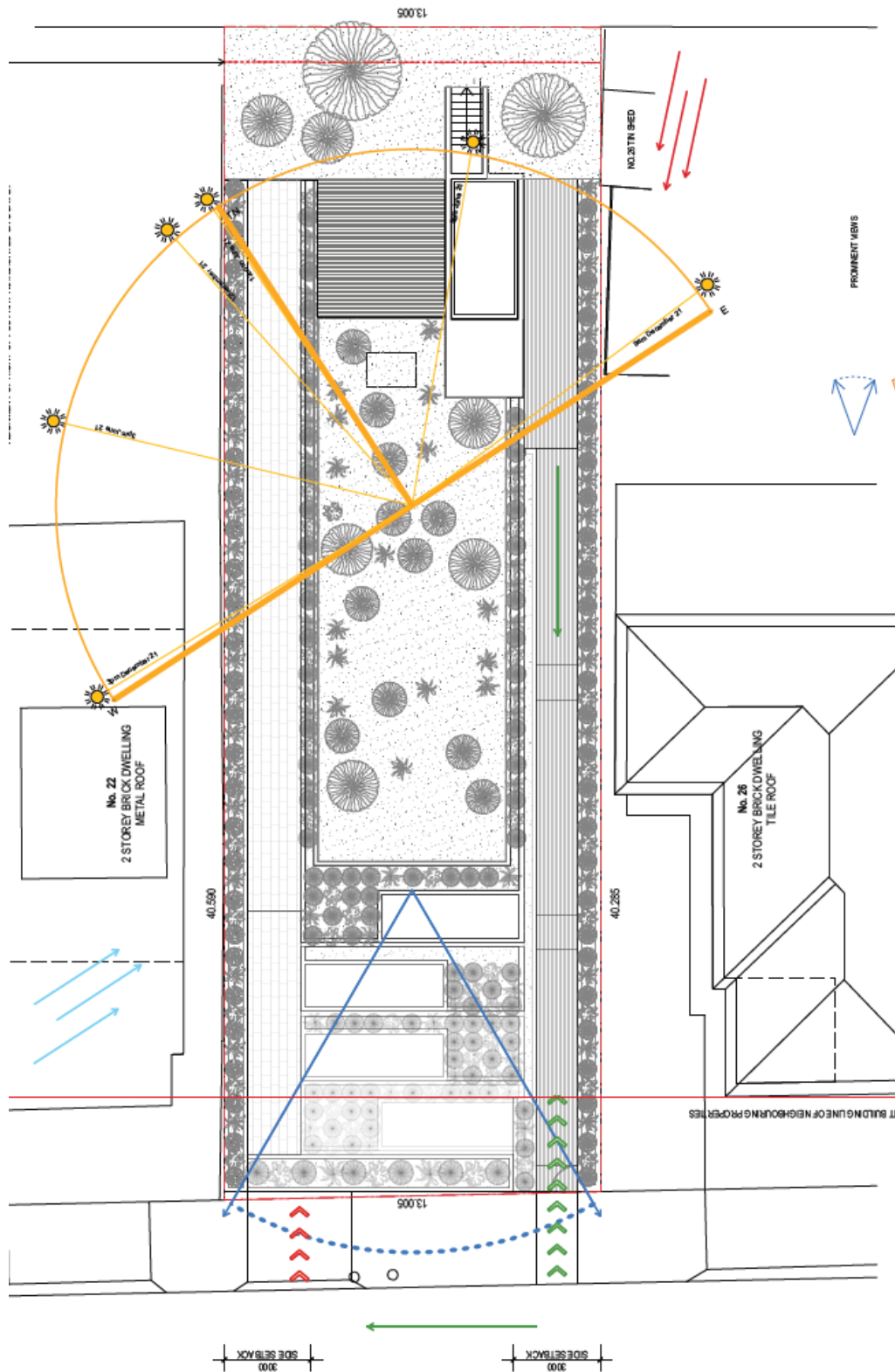
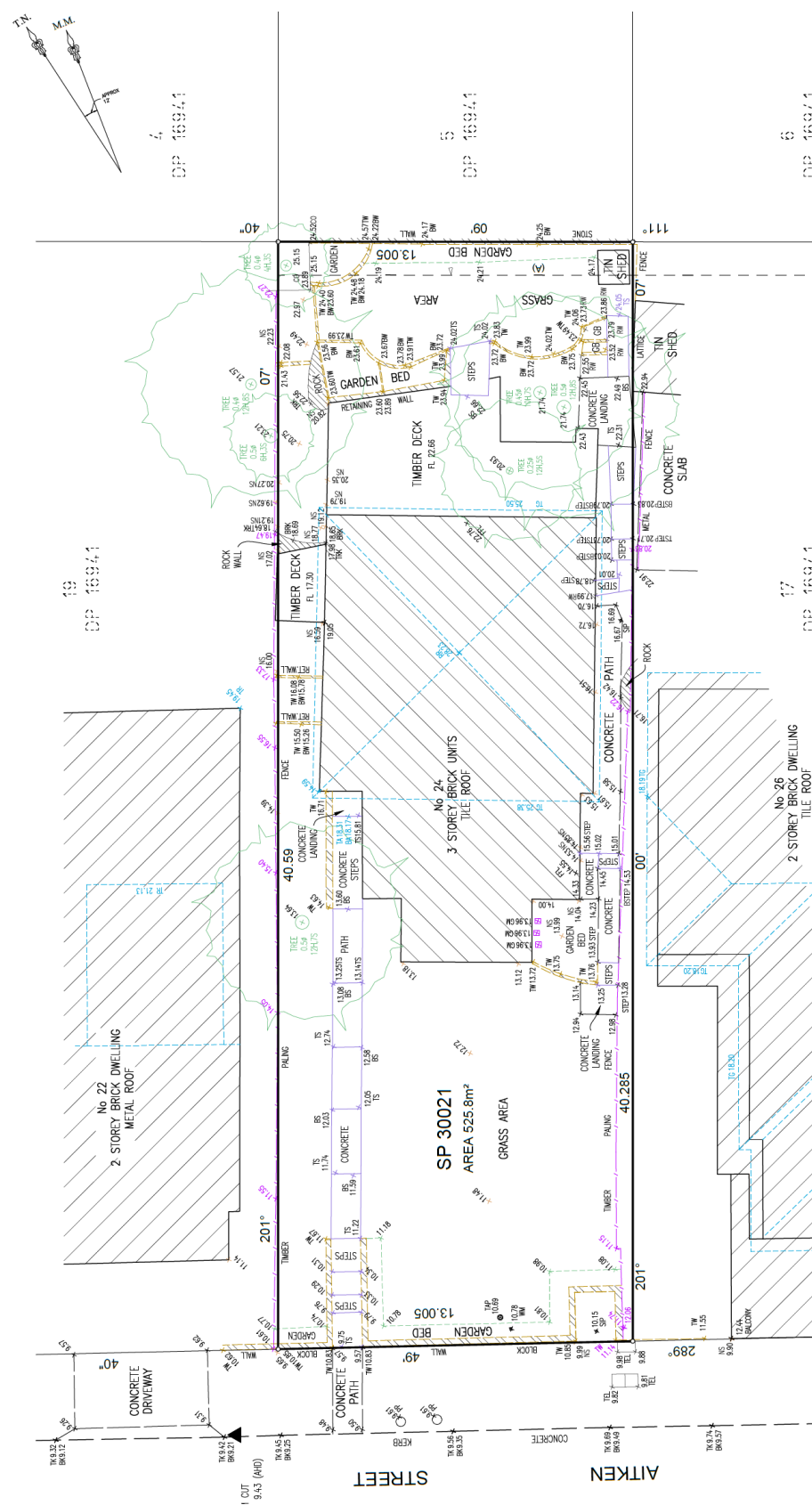


Figure 19 – Site analysis plan (Breakspear Architects)



3 Description of Proposed Development

3.1 Overview

The application seeks development consent for redevelopment of the existing residential flat building for 4 apartments at 24 Aitken Avenue, Queenscliff.

In summary, the proposal involves demolition of the existing structures, excavation, construction of a residential flat building, various landscaping works, and strata subdivision for 4 dwellings.

The extent of the proposal is depicted within the accompanying plans and reports. A breakdown of the key aspects of the proposal are noted as follows:

3.2 Proposed development Profile

Basement Level (Reduced Level 7.560)

- Car parking for 7 vehicles
- Mechanical plant
- NBN service infrastructure
- Onsite Stormwater Detention
- Fire Pump Room
- Bicycle storage
- Goods storage for units 1 to 4
- Bin store
- Bulky Goods and Waste Store

Ground Level - Apartment 1 and 2 (Reduced Level 11.160)

Apartment 1 –

- 2 bedrooms
- Study
- 2 bathrooms
- Open plan kitchen, living, dining room
- Balcony to the south connected to main living spaces
- Lift and stair access

Apartment 2 –

- Third bedroom, ensuite bathroom and courtyard

First Floor Plan - Apartment 2 and 3 (Reduced Level 14.110)

Apartment 2 –

- 2 bedrooms

- Study
- 2 bathrooms
- Open plan kitchen, living, dining room
- Balcony to the south connected to main living spaces
- Lift and stair access

Apartment 3 –

- Third bedroom and ensuite bathroom

Second Floor Plan - Apartment 3 and 4 (Reduced Level 17.660)

Apartment 3 –

- 2 bedrooms
- Study
- 2 bathrooms
- Open plan kitchen, living, dining room
- Balcony to the south connected top main living spaces
- Lift and stair access

Apartment 4 –

- Third bedroom and ensuite bathroom

Third Floor Plan - Apartment 3 and 4 (Reduced Level 20.910)

Apartment 4 –

- 2 bedrooms
- Study
- 2 bathrooms
- Open plan kitchen, living, dining room
- Balcony to the south connected top main living spaces
- Lift and stair access

Roof terrace Plan - Apartment 4 (Reduced Level 24.160)

- Private open space, garden and BBQ area for apartment 4 only
- Non-trafficable, roof-top garden area
- Lift and stair access

Site and landscaping

- Works as depicted in the accompanying architectural and landscaping plans

Excerpts from the accompanying architectural plans showing the proposal are provided below.

3.3 Architectural images



Figure 21 – proposed street elevation and the adjoining properties



Figure 22 – proposed streetscape perspective looking east

4 Environmental Assessment

The following section of the report assesses the proposed development having regard to the statutory planning framework and matters for consideration pursuant to Section 4.15 of the Environmental Planning & Assessment Act, 1979 as amended.

Under the provisions of the Environmental Planning and Assessment Act 1979 (the Act), the key applicable planning considerations, relevant to the assessment of the application are:

- Environmental Planning and Assessment Act, 1979
- Warringah Local Environmental Plan 2011
- Relevant NSW Land and Environment Court planning principles
- State Environmental Planning Policies – as relevant
- Warringah Development Control Plan

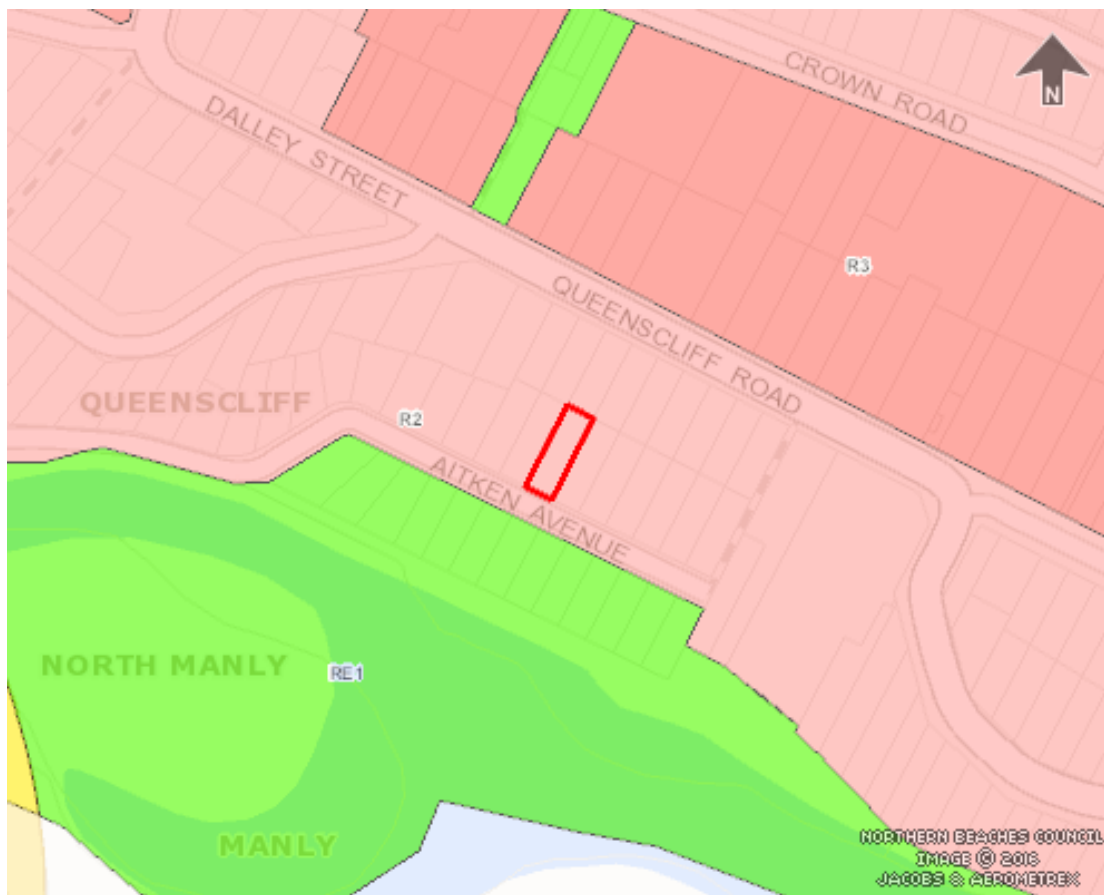
The application of the above plans and policies is discussed in the following section of this report.

The application has been assessed against the relevant heads of consideration under Section 4.15 of the Act; a summary of these matters are addressed within Section 9 of this report, and the town planning justifications are discussed below.

5 Warringah Local Environmental Plan 2011

5.1 Zoning

As previously noted, the site is zoned R2 Low Density Residential pursuant to the provisions of the Warringah Local Environmental Plan 2011 (LEP).



WARRINGAH LAND ZONING MAP

Neighbourhood Centre	Light Industrial
Local Centre	Low Density Residential
Commercial Core	Medium Density Residential
Mixed Use	Public Recreation
Business Development	Private Recreation
Business Park	Primary Production Small Lots
National Parks and Nature Reserves	Special Activities
Environmental Conservation	Infrastructure
Environmental Management	Natural Waterways
Environmental Living	Deferred matter
General Industrial	

Figure 23 – zone excerpt (NBC website)

The proposal constitutes redevelopment of the existing residential flat building for 4 apartments. The proposal is permitted within this zone with Development Consent.

The objectives of the zone are as follows:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

We have formed the considered opinion that the proposed development is consistent with the zone objectives as it will provide for the housing needs of the community within a low density residential environment compatible with the surrounding development.

5.2 Existing Residential Flat Building

Existing on the site is a strata-titled residential flat building development which, under WLEP 2011 means:

‘a building containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling housing.’

Under WLEP 2011, these forms of housing are prohibited within the R2 Low Density Residential zone. We have concluded that the property benefits from existing use rights under section 4.11 of the Environmental Planning and Assessment Act.

In brief, existing use rights are established on the property taking into account the following historical records as provided in email from Northern Beaches Council on 12 December 2017 (copy at Appendix 1):

Councils records show that the property at 24 Aitken Avenue was built in 1949. Councils records do not reveal the zone of the site at that time. The registration of the strata for this block occurred in 1985 utilising existing use rights. A copy of the strata plan accompanies the application at Appendix 1 and is dated 20 February 1985.

24 Aitken is currently zoned R2 Low Density Residential under Warringah Local Environmental Plan 2011, meaning that it is a non-conforming land use.

It is evident from a physical inspection of the property that the nature, scale, character and layout of the structure reveals that it was designed, constructed and exists today as a residential flat building.

In addition to the above, copies of documentary evidence relating to the above matters are provided within Appendix 1 of the report. These include: A copy of the strata plan for existing residential flat building; copies of emails received from Council; an excerpt from a Council DA assessment report from 1996 describing the building as appearing to benefit from existing use rights.

Proposed upon the site is a contemporary residential flat building containing 4 dwellings.

With regards to the key relevant existing use rights planning provisions we note:

- Under clause 41(1)(a) of the Environmental Planning and Assessment Regulation (the Regulation), an existing use may 'be altered or extended'.
- Under clause 42 of the Regulation, the works do not involve significant or unreasonable enlargement, expansion or intensification of the use.
- Under clause 43 of the Regulation, the works are related to and for the existing use of the building.

It is assessed that there is sufficient documentary and physical evidence to reasonably conclude that the property benefits from existing use rights. It is also assessed that the proposal conforms with the relevant existing use right provisions. A merit assessment of the proposal against the relevant heads of consideration is provided within the section below.

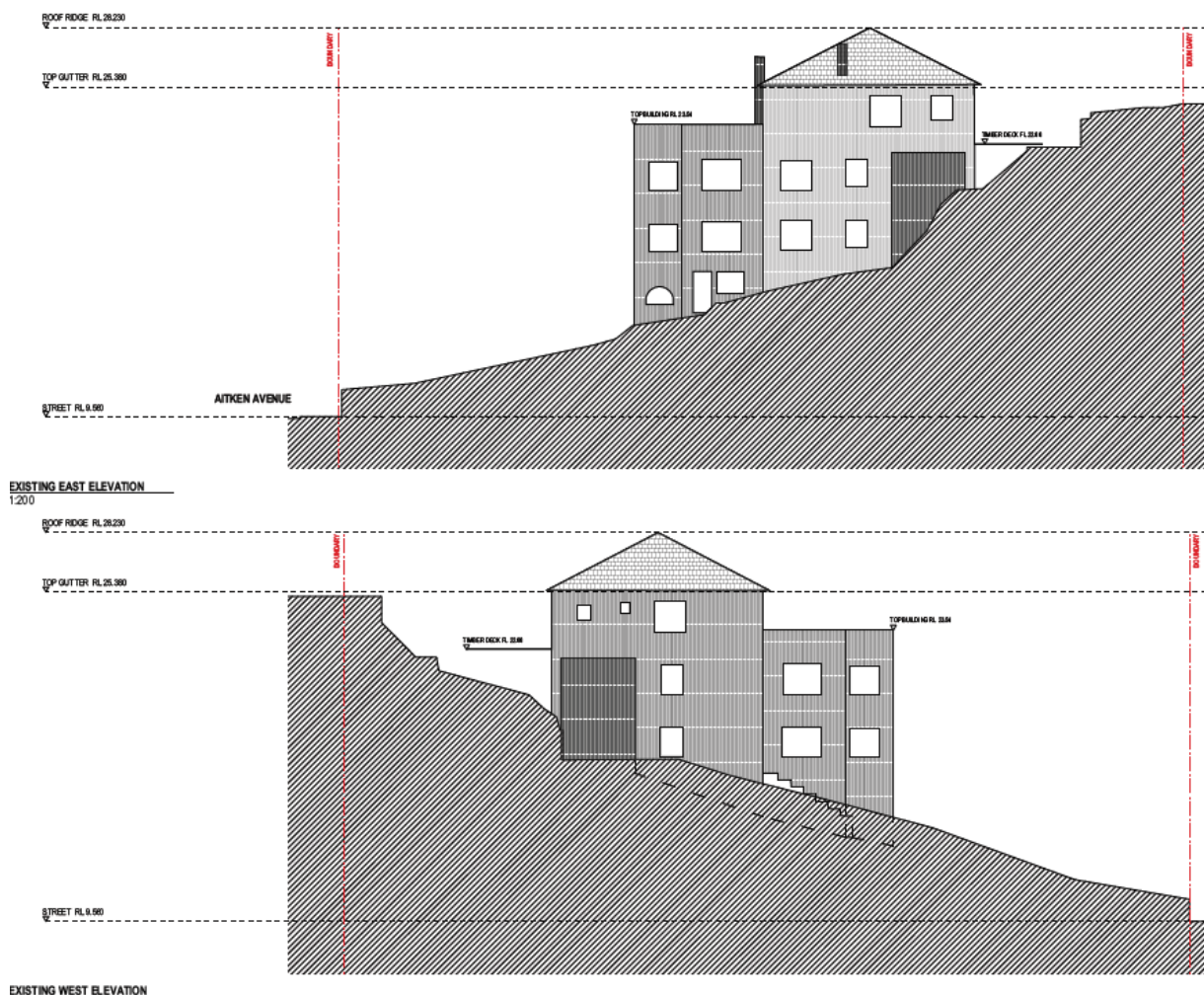


Figure 24 – side elevations of existing residential flat building

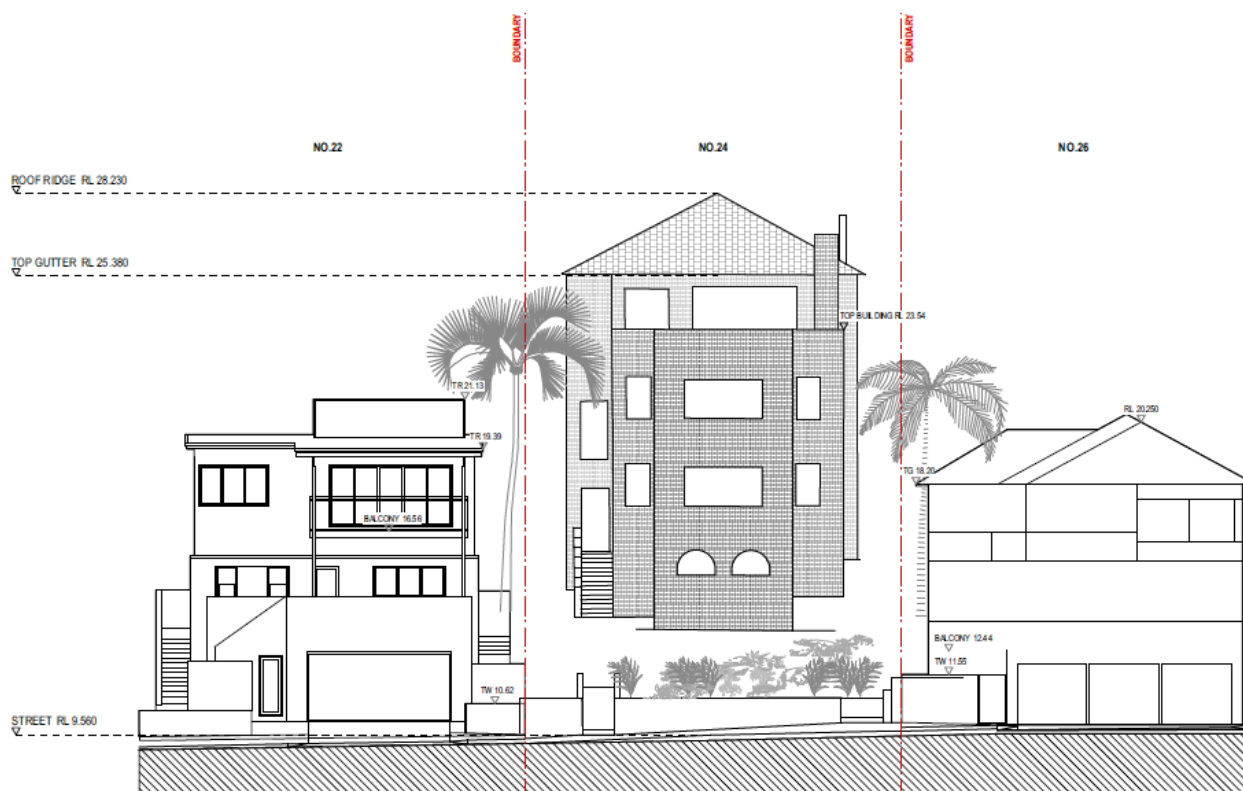


Figure 25 – front elevation of existing residential flat building and adjacent developments

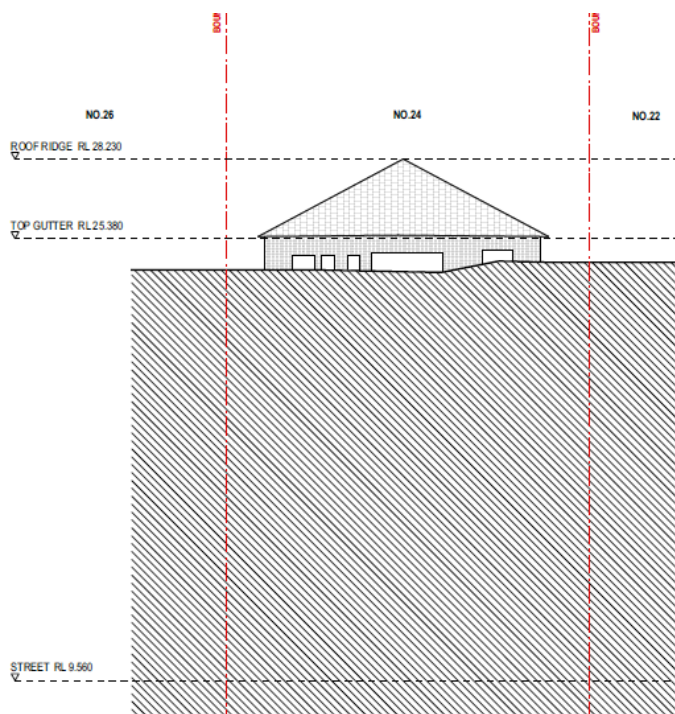


Figure 26 – rear elevation of existing residential flat building



Figure 27 – site and floor plan of existing residential flat building

5.3 Existing use rights and merit assessment

The principles to be considered when undertaking a merits assessment of a proposed development of a property with existing use rights were dealt with by Roseth SC in *Fodor Investments v Hornsby Shire Council* [2005] NSWLEC 71.

The Planning Principle that was established in this judgment at section 17 is copied and addressed within the section below:

<https://www.caselaw.nsw.gov.au/decision/549f84c63004262463ac0f68>

However, it is noted that the planning principle from this judgment states, in part:

'...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'.

In these circumstances the zoning provisions, development standards under the LEP and planning controls under the DCP are not applicable to the property. For these reasons clause 4.6 does not apply because the development standard for height of building does not apply.

5.3.1 Planning principle: Assessment of proposals on land with existing use rights

Four questions usually arise in the assessment of existing use rights developments, namely:

• 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 assessment.

• What is the relevance of the building in which the existing 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.

• 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.

- 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.

In response:

The proposal involves a contemporary redevelopment that is responsive to the site conditions, sloping topography, street frontage character, orientation of the block, existing building envelope/height/scale, planning control parameters, and the existing use rights which apply to the land.

Consideration of the existing and proposed developments' compliance with the existing planning controls and the subject court planning principal has been made. The assessment within Sections 5 to 10 of this report make consideration of the proposal against:

- The character (e.g. scale, height, setbacks) of the existing development and the character of the proposed development
- Warringah LEP
- SEPP 65 and its accompanying Apartment Design Guide.
- Warringah DCP
- Other relevant NSW Land and Environment Court planning principles

Herein, within this section, the following key aspects of the existing and proposed developments are summarised in justification of the change proposed, principally in response to the subject court planning principal.

5.3.2 Demolition of the existing building

The proposed development involves demolition of the existing building.

Being an existing approved residential flat building of 3 to 4 storeys (as defined) with a maximum building height to (roof ridge) of RL 28.230; containing 3 apartments, the proposed residential flat building of mainly 3 storeys with a maximum building height to RL 25.160 (3.070m lower than the existing building), containing 4 apartments, is an appropriate and reasonable 'replacement' of the existing development. It is therefore assessed that the proposal will not cause a significant or unreasonable enlargement, expansion, or intensification of the existing and approved development.

The proposed building will result in a lowering the overall maximum building height by approximately 3.070m; excavation to accommodate basement car parking, services, and building elements that will ultimately be concealed by the sloping topography of the land, the development of the underutilised south (front setback) area of the site.

It is concluded that the demolition of the existing building is entirely appropriate in facilitating the excavation of the site for:

- the provision of onsite car parking
- the provision of a basement and concealment of utilities such as waste, storage, mechanical plant, vertical access, and car parking.
- the concealment of various building elements within the northern portion of the development footprint / floor plates
- the improved architectural merit of the proposed development outcome

It is also noted that appropriate amenity outcomes will be achieved in relation to solar access, privacy and view sharing in relation to neighbouring properties (further assessed within section 7 of this report).

In these ways the proposed demolition of the existing building is appropriate, will achieve a superior development outcome and will not result in any unreasonable off-site amenity impacts to neighbouring properties.

5.3.3 *The proposed development intensity/density*

The density of the residential flat building is proposed to be increased from 3 to 4 dwellings. This increase in development intensity is assessed as being modest and appropriately offset by the provision of:

- Onsite vehicular parking within a new basement level
- Onsite waste management
- Excavation, and concealment of utilities within the basement level.
- A proposed building of lesser overall height
- Onsite stormwater detention
- A proposed building that steps in response to the land topography, unlike the existing building, a large proportion of which will be visually concealed by the topography of the land

5.3.4 *Excavation and building bulk*

The building bulk is minimised by the extent of excavation proposed. Furthermore, the building bulk is minimised by a design that steps in response to the land topography, unlike the existing building. The proposal is accompanied and supported by various plans that show:

- The elevations and siting of the existing development
- A comparison between the elevations and siting of the existing and proposed developments
- The elevations and siting of the existing and proposed developments along with the adjacent residential dwellings

These plans are effective in understanding of the existing and proposed building's bulk, the way the proposed building will sit within the hillside and the adjacent development character; the manner in which the existing and proposed developments are and will be viewed within the streetscape; the relative height bulk and massing of the existing and proposed developments.

It is noted that the proposed development involves lowering the overall maximum building Reduced Level (height) by approximately 3.070m (existing roof ridge RL 28.230 to RL 25.160); excavation to accommodate basement car parking, services, and building elements that will ultimately be concealed by the sloping topography of the land, and the development of the underutilised south (front setback) area of the site.

It is concluded that the extent of the proposed excavation reflects the site topography and is entirely appropriate in facilitating:

- The concealment of various building elements within the northern portion of the development footprint / floor plates due to the topography, terraced design, and extent of proposed excavation.
- The provision of onsite car parking.
- the provision of a basement and concealment of utilities such as waste, storage, mechanical plant, vertical access, and car parking.
- The bulk (size, height and setbacks) of the building is entirely appropriate having regard to the circumstances of the case and the high architectural merit of the design.

In these ways the proposed increase in development intensity will not result in increased off-site impacts. In fact, it is evident that the proposed increase in development intensity will result in a reduction of the impacts of the existing development, the provision of off-street vehicle parking for 6 cars being a key example.

5.3.5 Building setbacks

The building setbacks will be altered by the proposal. Most significantly, the side boundary setbacks will be increased by the proposal. The following key aspects are noted:

- Side (east and west) building setbacks – increased from approximately: east side 1.4 to 2.0m; west side 1.5 to 1.8m; to the proposed setbacks of 3m each sides
- Front building setback – decreased to align with street character which is assessed as entirely appropriate within the established streetscape context
- Rear building setback – modest change: increased from approximately 5m (to existing rear deck) to 5.260m.

5.3.6 Internal amenity

The internal amenity of the development will achieve a significant net improvement when assessed against the character of the existing development.

The numerical requirements for sunlight access are achieved and these are documented within the accompanying Apartment Design Guide compliance report by Breakspear Architects.

The numerical requirements for private open space are achieved and these are documented within the accompanying Apartment Design Guide compliance report by Breakspear Architects.

Further to the above the floor plan design provides improved connections between the main living spaces and the private open spaces. Furthermore, the main living, sleeping and utility spaces (vertical access, bathrooms, laundry) are more appropriately arranged to maximise light, ventilation, solar access and views to provide amenity-levels meeting and exceeding contemporary standards.

The design provides improved privacy to the proposed private open spaces through appropriate location and integration of landscape planting and privacy screens.

It is assessed that, overall, the proposed design will provide higher amenity than the existing development satisfying the 4 key tests of the above NSW Land and Environment Court planning principle. The internal amenity of the proposal is assessed as appropriate and acceptable.

5.4 Conclusion

it is assessed that the proposal entirely satisfies the provisions of the Land and Environment Court planning principle for development relating to Existing Use Rights.

The assessment within Sections 5 to 10 of this report provides further details in response to the above criteria and a comprehensive assessment of the proposal against the planning principle.

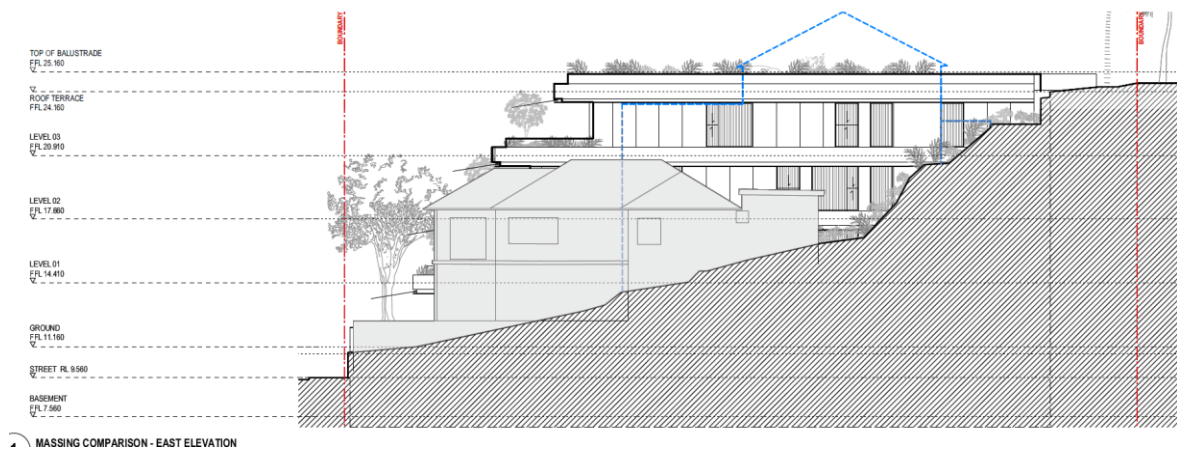


Figure 28 – east elevation: existing, proposed and adjacent dwelling

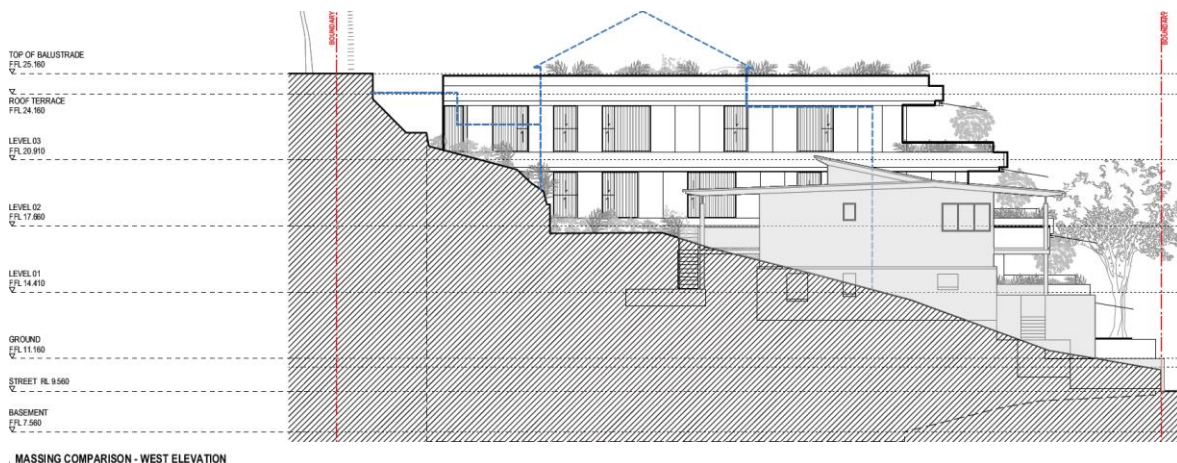


Figure 29 – west elevation: existing, proposed and adjacent dwelling

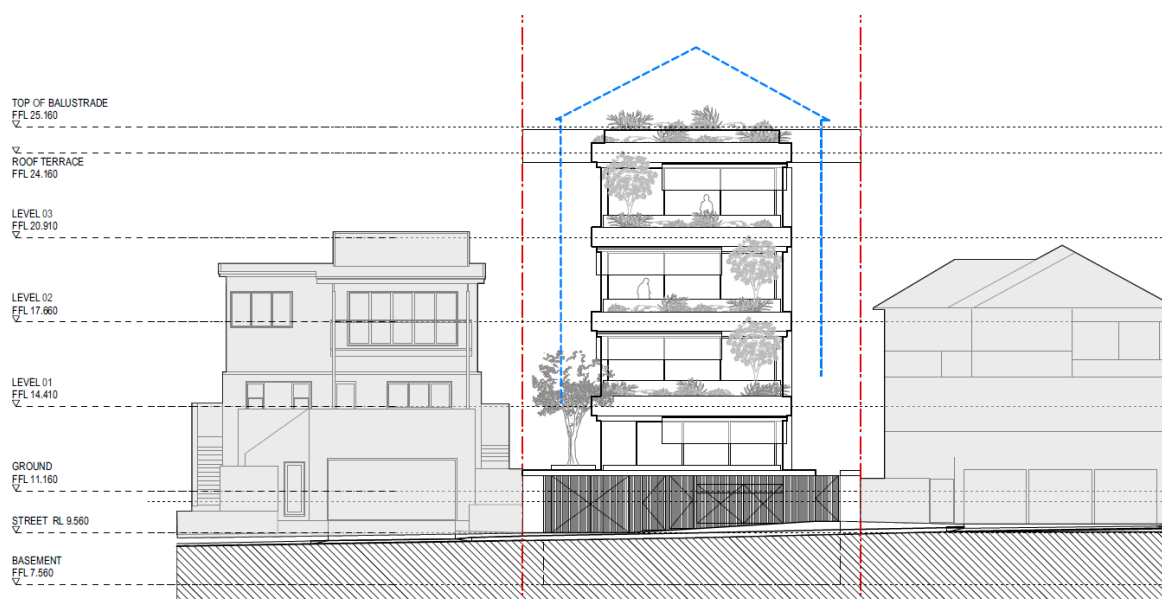


Figure 30 – south elevation: existing, proposed and adjacent dwellings

5.5 LEP Part 4 - Development Standards

Not applicable.

5.6 LEP Part 6 – Additional Local Provisions

Part 6 of the LEP contains Additional Local Provisions. The provisions of relevance to the proposal are:

- Clause 6.4 Development on sloping land

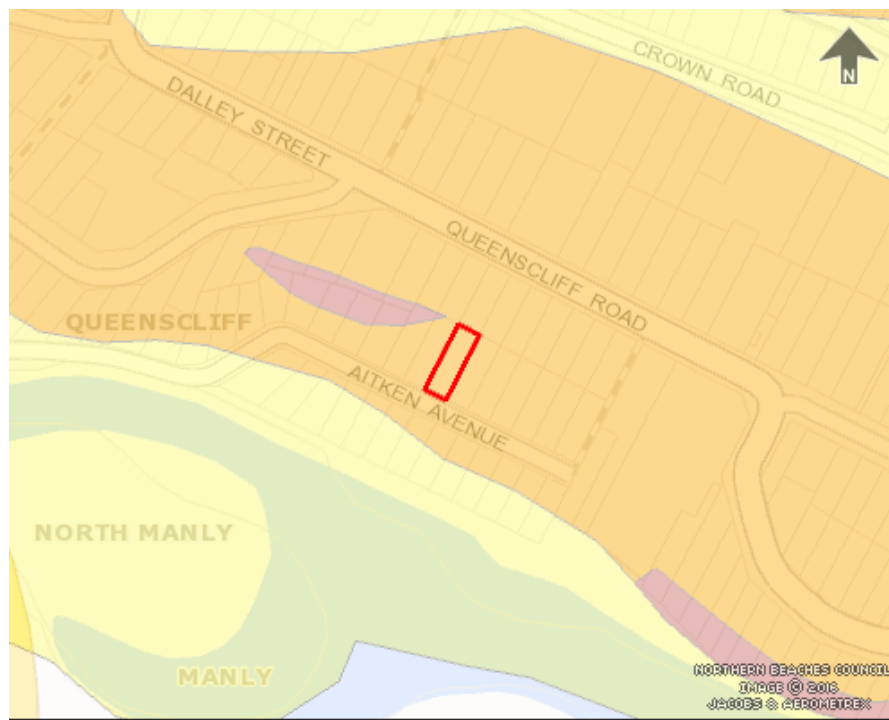
5.6.1 LEP Clause 6.4 Development on sloping land

The site is within Land Slip Risk Area A and as a result is accompanied and supported by a preliminary geotechnical assessment by Geo-environmental Engineering Consultants.

Having regard to clause 6.4 (3) of the LEP, given the characteristics of the land along with the nature and scale of the proposal, Council can be satisfied that the development has been designed appropriately and the proposal will not:

- Result in any unacceptable or inappropriate risk associated with landslides in relation to both property and life
- Cause significant detrimental impacts due to stormwater discharge from the site
- Impact on or affect the existing subsurface flow conditions.

The assessment provisions of this control are satisfied by the proposal.



WARRINGAH LANDSLIP RISK MAP

- Area A - Slope less than 5 degrees
- Area B - Flanking Slopes from 5 to 25 degrees
- Area C - Slopes more than 25 degrees
- Area D - Collaroy Plateau Area Flanking Slopes 5 to 15 degrees
- Area E - Collaroy Plateau Area Slopes more than 15 degrees

Figure 31 – sloping land affectation map

6 State Environmental Planning Policy

6.1 State Environmental Planning Policy (Coastal Management) 2018

The Coastal Management Act 2016 replaces the Coastal Protection Act 1979 and establishes a new strategic framework and objectives for land use planning in relation to designated coastal areas within NSW. The Act is supported by the State Environmental Planning Policy (Coastal Management) 2018 which came into effect on 3 April 2018. It is applicable because the site is within the designated:

- Clause 13 coastal environment area
- Clause 14 coastal use area

As relevant to these affectations, the aims of the SEPP within clauses 13 and 14 addressed below. In summary, the proposal is assessed as being consistent with the aims and objectives of the SEPP.

6.1.1 Clause 14 Development on land within the coastal environment area

The provisions of clause 13 *Development on land within the coastal environment area* are addressed as follows:

13 Development on land within the coastal environment area	Response
<i>(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:</i>	
<i>(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,</i>	▪ The land and its development are established on the site. The extent of proposed excavation is supported by geotechnical, hydraulic and structural engineering assessments. ▪ The proposal is assessed as satisfactory in relation to this consideration.
<i>(b) coastal environmental values and natural coastal processes,</i>	▪ The land and its development are established on the site. The extent of proposed excavation is supported by geotechnical, hydraulic and structural engineering assessments. ▪ The proposal is assessed as satisfactory in relation to this consideration.

13 Development on land within the coastal environment area	Response
<i>(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,</i>	▪ The subject site is established for residential purposes. Development is established on the site. ▪ The proposal does not relate to <i>sensitive coastal lakes identified in Schedule 1</i> ▪ Consideration and provision of appropriate stormwater management is made by the proposal referred to within Section 7 of this report. ▪ The proposal is assessed as satisfactory in relation to this consideration.
<i>(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,</i>	▪ The subject site is established for residential purposes. Development is established on the site. ▪ The proposal is assessed as satisfactory in relation to this consideration.
<i>(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,</i>	▪ The proposal will not adversely impact upon existing access provisions. ▪ The proposal is assessed as satisfactory in relation to this consideration.
<i>(f) Aboriginal cultural heritage, practices and places,</i>	▪ The proposal is not known to be located in a place of Aboriginal cultural heritage significance. ▪ The proposal is assessed as satisfactory in relation to this consideration.
<i>(g) the use of the surf zone</i>	▪ Not relevant to the assessment of the proposal. ▪ The proposal is assessed as satisfactory in relation to this consideration.
(2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:	
<i>(a) to the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or</i>	▪ Responses have been made above in relation to the considerations within subclause (1). ▪ The proposal is assessed as satisfactory in relation to these considerations.
<i>(b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or</i>	▪ The proposal is assessed as satisfactory in relation to this consideration.
<i>(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.</i>	▪ Aside from compliance with relevant codes, standard conditions of consent, and Australian Standards there are no other mitigation measures foreseen to be needed to address coastal impacts. ▪ The proposal is assessed as satisfactory in relation to this consideration.
(3) This clause does not apply to land within the	▪ Noted; not applicable.

13 Development on land within the coastal environment area	Response
<i>Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.</i>	

6.1.2 Clause 14 Development on land within the coastal use area

The provisions of clause 14 *Development on land within the coastal environment area* are addressed as follows:

14 Development on land within the coastal use area	Response
(1) <i>Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:</i> (a) <i>has considered whether the proposed development is likely to cause an adverse impact on the following:</i>	
(i) <i>existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,</i>	▪ The proposal will not adversely impact upon existing access provisions. ▪ The proposal is assessed as satisfactory in relation to this consideration.
(ii) <i>overshadowing, wind funnelling and the loss of views from public places to foreshores,</i>	▪ The proposal will not result in any significant or excessive overshadowing of the coastal foreshore. Nor will result in significant loss of views from a public place to the coastal foreshore. ▪ Given the nature of development contained within the site and the local context, particularly the nature, scale, and siting of development within properties to the east and west along the foreshore, the proposal is assessed as satisfactory in relation to this consideration.
(iii) <i>the visual amenity and scenic qualities of the coast, including coastal headlands,</i>	▪ The proposal will not result in any significant additional visual impact on the coastal foreshore. Nor will result in significant loss of views from a public place to the coastal foreshore. ▪ The proposal is assessed as satisfactory in relation to this consideration.
(iv) <i>Aboriginal cultural heritage, practices and places, cultural and built environment heritage, and is satisfied that:</i>	▪ The proposal will not impact this matter for consideration. The proposal is assessed as satisfactory in relation to this consideration.

14 Development on land within the coastal use area	Response
<i>(i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or</i>	▪ The proposal is not known to be located in a place of Aboriginal cultural heritage significance ▪ The proposal is assessed as satisfactory in relation to this consideration.
<i>(ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or</i>	▪ See above response.
<i>(iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and</i>	▪ See above response.
<i>(c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.</i>	▪ The subject site is established for residential purposes. Development is established on the site. Relatively modest alterations and additions are the subject of this DA. ▪ The proposal will not result in any significant additional visual impact on the coastal foreshore. Nor will result in significant loss of views from a public place to the coastal foreshore. ▪ The proposal is assessed as satisfactory in relation to this consideration.
<i>(2) This clause does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.</i>	▪ Noted; not applicable.

6.2 State Environmental Planning Policy No. 55 – Remediation of Land

Council shall not consent to the carrying out of any development on land unless it has considered the provisions of SEPP No. 55 – Remediation of Land (“SEPP 55”). In this regard, the likelihood of encountering contaminated soils on the subject site is extremely low given the following:

- Council’s records indicate that site has only been used for residential uses.
- The subject site and surrounding land are not currently zoned to allow for any uses or activities listed in Table 1 of the contaminated land planning guidelines of SEPP 55.
- The subject site does not constitute land declared to be an investigation area by a declaration of force under Division 2 of Part 3 of the Contaminated Land Management Act 1997.

Given the above factors no further investigation of land contamination is warranted. The site is suitable in its present state for the proposed development. Therefore, pursuant to the provisions of SEPP 55, Council can consent to the carrying out of development on the land.

6.3 State Environmental Planning Policy 65 Design Quality of Residential Flat Development

State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65) aims to improve the design quality of residential flat developments to provide sustainable housing in social and environmental terms that is a long-term asset to the community and presents a better built form within the streetscape.

It also aims to better provide for a range of residents, provide safety, amenity and satisfy ecologically sustainable development principles. In order to satisfy these aims the policy sets design principles in relation to context, scale, built form, density, resources, energy and water efficiency, landscaping, amenity, safety and security, social dimensions and aesthetics to improve the design quality of residential flat building in the State.

SEPP 65 applies to new residential flat buildings, the substantial redevelopment/- refurbishment of existing residential flat buildings and conversion of an existing building to a residential flat building.

Clause 3 of SEPP 65 defines a residential flat building as follows:

“Residential flat building means a building that comprises or includes:

3 or more storeys (not including levels below ground level provided for car parking or storage, or both, that protrude less than 1.2 metres above ground level), and

4 or more self-contained dwellings (whether or not the building includes uses for other purposes, such as shops), but does not include a Class 1a building or a Class 1b building under the Building Code of Australia.”

The proposed development is for the construction of a 3-storey residential flat building comprising 4 apartments un existing use rights. As per the definition of a ‘Residential Flat Building’ and the provisions of Clause 4 outlining the application of the Policy, the provisions of SEPP 65 are applicable to the proposed development.

SEPP 65 requires any development application for residential flat development to be assessed against the 10 design quality principles contained in clauses 9 - 18 of SEPP 65. The proposal’s compliance with the design quality principles is detailed in the accompanying report by Breakspear Architects. The required design verification statement accompanies this submission.

Pursuant to clause 30 of SEPP 65 in determining a development application for consent to carry out residential flat development the consent authority is required to take into consideration the Apartment Design Guide (ADG). The proposal’s compliance with the ADG is detailed in the accompanying report by Breakspear Architects.

The provisions of SEPP 65 are satisfied by the proposal.

6.4 State Environmental Planning Policy - BASIX

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies to the of the development and aims to encourage sustainable residential development.

A BASIX certificate accompanies the development application and demonstrates that the proposal achieves compliance with the BASIX water, energy and thermal efficiency targets.

6.5 Building Accessibility

The proposed design has considered compliance with pedestrian access and National Construction Code requirements. The application is accompanied and supported by a accessibility assessment report by City Plan Services. The report concludes:

The design as proposed is capable of complying with the requirements of BCA Parts D3 and F2.4. Silver level requirements of the Livable Housing Design Guidelines to satisfy SEPP 65 and Council's DCP have been considered and applied to Apartment 02. This report indicates the design intent to demonstrate compliance through to design detail.

Overall the proposal is capable of satisfying the relevant standards. On these grounds, the building is suitable for its proposed purpose and capable of meeting the contemporary accessibility requirements.

7 Key assessment considerations

7.1 Solar access and shadowing of adjoining land

Solar access and shadowing has been considered in the proposed design and satisfies the relevant objectives.

The design comprises a 2 to 3 to 4 storey, stepped building form, that is terraced responsive to the sloping topography, and that is appropriately setback from adjoining residential properties to the east and west.

The proposal is accompanied by shadow diagrams demonstrating the extent of proposed shading. The following points are noted in the assessment of the proposal:

- Shade will be cast over the side and front areas of 22 Aitken Avenue during the morning period, then over the side and front areas of 26 Aitken Avenue during the afternoon period. This provides a relatively even distribution of shade, consistent with the development pattern along the street.
- The proposal will provide appropriate levels of solar access to each of its 4 apartments. This is further addressed within the accompanying ADG report by Breakspear Architects.
- The proposed building setbacks at the front of the property increase with each subsequent level of the development providing space and relief for access to the southern portions of the adjoining properties.
- The principal private open space areas for solar access within the adjacent properties are located to the rear / north of these dwellings. The proposal will not excessively or unreasonable overshadow these spaces.
- In terms of the existing residential flat building, it provides lesser side boundary setbacks, a pitched roof and a building of greater overall building height than the proposal. The increased side setbacks (3 metres) and reduced overall building height (less 3.070m) are features of the proposal that will benefit sunlight access to surrounding land during various times of the year.
- Given the slope of the site, regular pattern of adjoining development, the location, configuration stepping of the proposed building form, the proposal will achieve a satisfactory shading outcome.

Accordingly, it is concluded that the proposal will not significantly or unreasonably reduce the available sunlight to the adjoining properties and the consideration of solar access to adjoining land is satisfied by the proposal.

7.2 Views

View sharing has been considered in the proposed design and satisfies the relevant objectives. New development is to be designed to achieve a reasonable sharing of views available from surrounding and nearby properties. Consideration has been given to the views planning principle Land and Environment Court Case Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140.

Views exist to the south of the property from the hillside which forms part of the Queenscliff Headland. There are valuable views available from this location depending upon the relative vantage points within the hillside. The views include the open space reserve comprising Manly Lagoon to the south

(foreground view), district views to the south beyond Manly Lagoon, more distant ocean views to the east.

Given the topography, height and location/siting of adjacent development, and the compliance of the proposal with the key built form controls, the proposal is not anticipated to significantly or unreasonably impede any established views from surrounding residential properties or public vantage points.

The proposed building footprint is lower in overall height (which may benefit neighbouring properties, that are 'up-slope' to the north), but extends forward towards the street and the south. This proposed extension has the potential to impact upon existing views to the south from the adjacent properties.

Assessment 'in-principle' of the potential view sharing impact (it is noted that access has not been gained to nearby properties in assessing this aspect; this may be undertaken when the DA is publicly exhibited to neighbouring properties) finds that the proposal is reasonable because:

- Any views obtained from these properties would be across the side boundaries of the properties and are therefore more difficult to retain.
- The proposed building elements at the front of the property principally comprise open balconies rather than solid side walls and therefore present opportunities for maintaining views
- The proposed building elements at the front of the property are terraced in accordance with the topography and maintain modest building height.
- The proposed building setbacks at the front of the property increase with each subsequent level of the development providing space for view access across the front of the property.
- There are no building elements proposed/foreseen that will give rise to unreasonable view impacts.

At this stage, it is our opinion that the proposal will not significantly or unreasonably impede on established views from surrounding residential properties or public vantage points.

7.3 Privacy

Privacy has been considered in the proposed design and satisfies the relevant objectives as referenced previously within Section 5.3 of this report.

It is our assessment that the proposal is satisfactory and appropriately designed to reasonably address privacy considerations. The following features of the design and its relationship with adjoining land are noted:

- Each apartment is principally orientated to the south / the site's Aitken Avenue street frontage
- The design provides appropriate setbacks to the side boundaries of 3m which are increased from the existing building as assist in providing an appropriate privacy outcome.
- Window openings within the side elevations have been designed to provide high levels of privacy and include vertical timber screens (figure 31 below). These are an effective design treatments that will reduce the potential for direct visual privacy impacts into the adjoining properties.

- The window openings within the east and west side elevations of the existing residential flat building and those within the adjacent developments have been surveyed and are depicted within figures 27 and 28 below.
- In terms of the existing residential flat building, it contains a range of significantly sized side facing windows (Figure 29 below) that are unscreened that will be removed from the property. It also contains an existing front roof-top terrace that will be removed from the property. In these ways the proposal will improve existing levels of visual privacy to the adjacent neighbours.
- The size of the each proposed apartment's south facing balcony has been reduced minimised to provide an appropriate outdoor space for occupants but limit the intensity of their use. Screening devices are also proposed to ensure that acceptable levels of privacy and visual amenity are maintained between adjoining properties.
- Noting the proposed 3m setbacks to each side boundary, there will be appropriate spatial separation and relative height difference between the proposed balconies and neighbouring property balconies to achieve appropriate levels of privacy.
- Noting the site topography and floor levels proposed and the relative levels of the surrounding development, there are not significant or unreasonable privacy impacts associated with the upper level terrace associated with proposed Apartment 4.
- ; the communal room and rear garden will be 'set down' below the level of neighbouring properties and not result in visual privacy impacts.

Noting these characteristics, it is concluded that the proposal will not significantly or unreasonably affect the visual privacy of the neighbouring properties and will achieve an appropriate privacy outcome.

Given the above it is assessed that the proposal:

- will not significantly alter the visual privacy relationship between the existing and proposed residential flat buildings
- will not significantly or unreasonably increase the extent of visual privacy impacts of the existing development
- will not significantly or unreasonably affect the visual privacy of the neighbouring properties
- will achieve an appropriate privacy outcome.

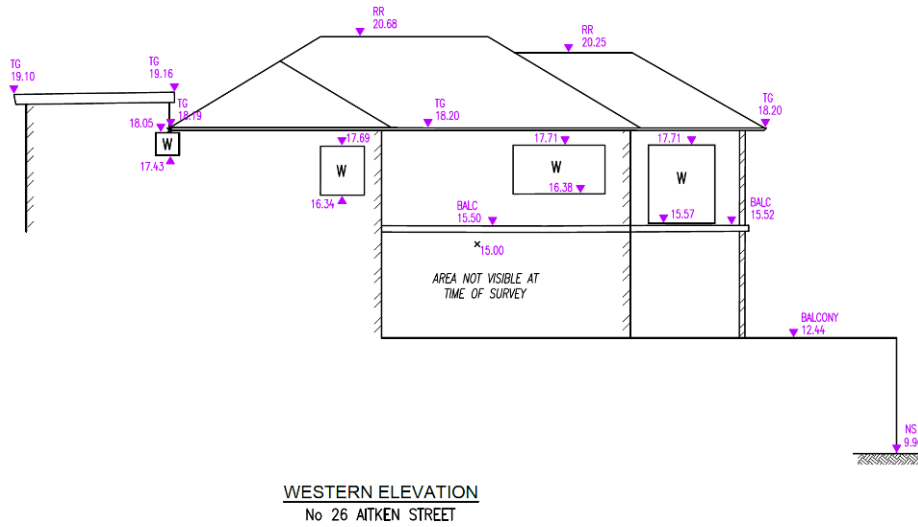


Figure 32 – window openings and front balcony within the west side elevation of the adjacent development at 26 Aitken Avenue

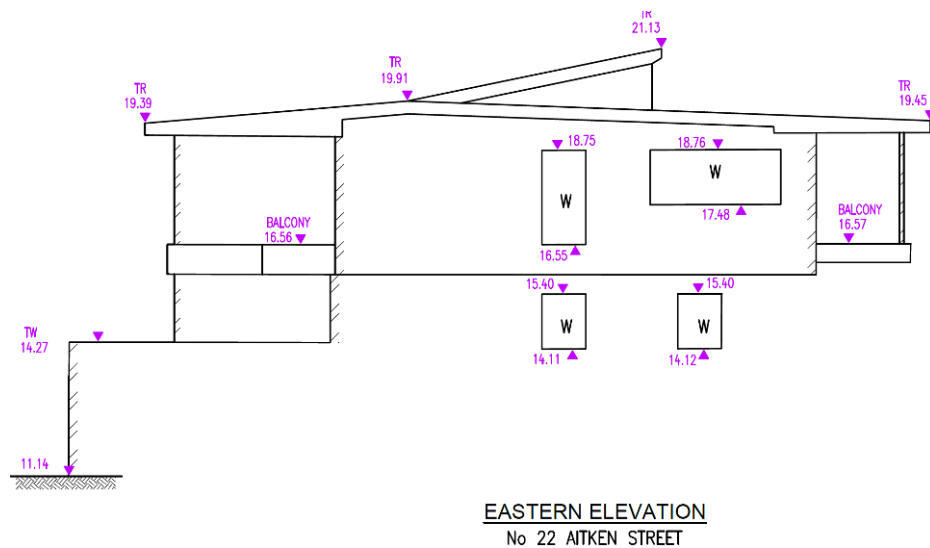


Figure 33 – window openings and front balconies within the east side elevation of the adjacent development at 22 Aitken Avenue



KEY ASSESSMENT CONSIDERATIONS

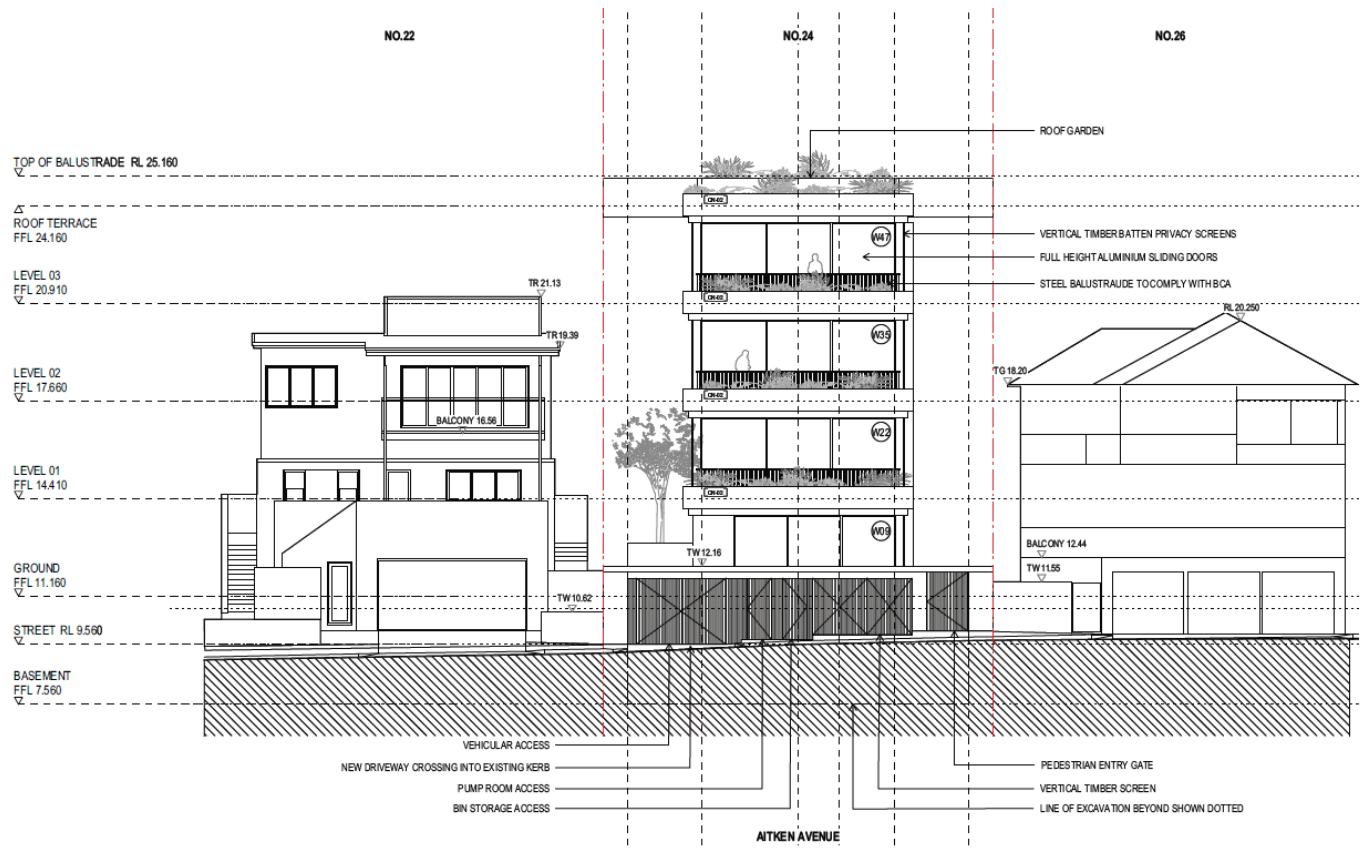


Figure 36 – proposed balconies to southern elevation and their separation and relative level relationship with south facing balconies on the adjacent properties



Figure 37 - vertical timber screens to window openings within the east and west side elevations

7.4 Vehicle access and car parking

Vehicle access to the site is established and proposed to be maintained from the existing north western corner of the site and vehicle parking is proposed within a single basement level.

The proposed vehicle access and parking arrangement is supported by an assessment prepared by CBRK consulting engineers. Key conclusions from this assessment are noted as follows:

Vehicle access to the site is established and proposed to be maintained from the existing north western corner of the site and vehicle parking is proposed within a single basement level.

The proposed vehicle access and parking arrangement is supported by an assessment prepared by CBRK consulting engineers. Key conclusions from this assessment are noted as follows:

- *In summary, the main points relating to the transport implications of the proposed development are:*
- *i) the proposed development is in accordance with government objectives and would increase residential densities close to public transport services;*
- *ii) the proposed parking provision satisfies the DCP;*
- *iii) access, servicing and internal layout will be provided in accordance with AS 2890.1:2004; and*
- *iv) the minor increase in traffic from the proposed development would have no material effect on the operation Aitken Avenue or the intersection of Aitken Avenue/Pittwater Road.*

Further in relation to car parking the report states:

- *Parking within the basement will be allocated to residents with visitor parking (0.8 spaces) provided on street. The existing building on the site (three apartments) would generate parking for at least 3.6 spaces and provides no off street parking. Thus the proposed development with all resident parking off street and visitor parking on street would result in a reduced on street parking demand of at least 2.8 spaces.*
- *Bicycle parking will be provided on site for residents within the allocated storage areas.*

Based on the above the proposal is assessed as satisfactory in addressing vehicle access and car parking considerations and satisfies the DCP.

7.5 Stormwater drainage

The proposal is accompanying and supported by an engineering assessment and design by Insync Services consulting engineers that addresses stormwater disposal from the property. The following overview is provided from their documentation:

- The plan shows the roof and hard surfaces draining into an onsite detention basin to be located on the eastern side of the site.
- Outflows from the detention basin are discharged into the existing Council system at the front of the site. It is proposed

to provide a new drainage pit in the kerb & gutter to facilitate this.

- An erosion and sediment control plan accompanies the proposal within the architectural plan set.

Based on the above the proposal is assessed as satisfactory in addressing stormwater drainage considerations.

7.6 Trees and vegetation

Pursuant to Clause E1 of the DCP 'Private Property Tree Management', the application proposes building within proximity to established trees located on / adjacent to the property.

The application is accompanied and supported by an arboricultural assessment report dated 25 October 2018 by Complete Aborcure consulting arborists.

The assessment report assesses the Tree Retention Value of various vegetation on and near the site. The report identifies two trees and makes recommendations for the appropriate site management of these trees during excavation / construction. Based on the findings of the assessment report, the provisions of this clause are assessed as being satisfied by the proposal.

7.7 Waste

Waste management is provided for by the proposed development as shown on the architectural plans. The application is also accompanied and supported by a waste management plan prepared by the proponent.

A garbage bin and bulky waste storage area is proposed within the basement level, and a bin holding area accessible from the front of the property is proposed adjacent to the pedestrian entry at the front of the site.

Provision is made for the accommodation of bins with a space separate space for a accessible bulky waste storage area. The storage areas have been designed to meet the DCP requirements.

The DCP provisions relating to waste management are satisfied by the proposal.

7.8 BCA considerations

The application is accompanied and is supported by an assessment of the design against Section J of the NCC 2016 by City Plan Services.

The purpose of the report is to outline those areas where compliance is not achieved. The Report concludes

'The design as proposed is capable of complying with the Building Code of Australia and will be subject to construction documentation that will provide appropriate details to demonstrate compliance. This report has identified areas of non-compliance with the deemed-to-satisfy provisions and indicates the design intent to modify the design or demonstrate compliance with the Performance Requirements of the BCA. Whilst the performance-based solutions are to be design developed, it is my view that the solutions will not impact on the current design'.

It is therefore concluded that, subject to further detailed assessment at construction certificate stage, the building will be suitable for its proposed purpose and is capable of meeting the BCA's requirements.

7.9 Acoustic considerations

Potential for acoustic impacts have been considered in the design and the following aspects are noted:

- Space for mechanical plant is provided within the basement.
- Internal vehicle noise from the basement/driveway is not anticipated to be significant, noting that:
 - the basement level has been designed for a maximum capacity of 6 cars;
 - the basement level is below ground and enclosed except for its entry way
- Given the modest size of the proposed basement level, a relatively small mechanical ventilation system will be provided to the carpark. Compliance with AS1668 (for ventilation) and relevant acoustic standards can reasonably form conditions of consent to the development.

Based on the above, the proposal is assessed as satisfactory in addressing potential acoustic impact considerations.

7.10 Summary of key assessment considerations

The physical impacts of the proposal, including, overlooking, overshadowing, its side setbacks, building height, massing / scale, traffic / parking, acoustic emissions, waste management have been considered and resolved in the design of the proposal.

It is assessed that the proposal will not unreasonably impact upon the existing amenity or constrain the future development potential of the surrounding land.

8 Development Control Plan

8.1 Overview

The proposal involves a new residential flat building on a property that has existing use rights. In these circumstances the R2 zone's local planning controls under the DCP are not applicable to the site.

Despite the R2 zone's local planning controls not being applicable, as noted previously with Section 5.1.1, they have some relevance (albeit limited) to the assessment *'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 assessment'*.

The proposed changes are responsive to the site conditions, prevailing development character of nearby development, orientation of the block, the existing building envelope and the planning control parameters, which apply to the land.

The proposal:

- is compatible with the architectural form and style of the established and likely future development character and will complement the site's appearance when viewed from the street and public spaces;
- will be located within a landscaped setting and will be appropriately treated in terms of its materials and finishes to blend with the character of the property and the locality.

8.1.1 Principal Built Form Controls

Clause	Requirement	Proposed	Complies?
B1 Wall Height	7.2m	From 1.1m (at grid line P) to 5.28 (at grid line M) to 10.0m (at grid line G)	No
B3 Side Boundary Envelope	5m at 45 degrees	Based on 3m side setbacks proposed, wall heights of up to 8m along the sides of the building are within the Side Boundary Envelope. Proposed wall heights range from 6.900m to 8.390m.	Partial. The majority of the proposal is within the Side Boundary Envelope
B5 Side Setback	900mm	Setbacks range between approx. 3m both sides to proposed building	Yes

Clause	Requirement	Proposed	Complies?
B7 Front Setback	6.5m or street average	street average: zero metres	Complies with street average
B9 Rear Setback	6m	5.260m (similar to existing)	No
D1 Landscaped Open Space	40%	215m ² and 40.9%. Note. 1m minimum soil depth provided to roof top landscaped area	Yes

8.1.2 Broader DCP Compliance Assessment

Clause	Compliance with Requirement	Consistent with aims and objectives
Part B - Built Form Controls – addressed above		
Part C - Siting Factors		
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Drain to existing - Yes	Yes
C5 Erosion and Sedimentation	Shown on architectural plans - Yes	Yes
C8 Demolition and Construction	Shown on architectural plans - Yes	Yes
C9 Waste Management	Yes	Yes
Part D - Design		
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D6 Access to Sunlight Addressed separately within Section 7 of this report	Yes Shown on shadow plans	Yes
D7 Views – Addressed separately within Section 7 of this report.	Yes	Yes

Clause	Compliance with Requirement	Consistent with aims and objectives
D8 Privacy – Addressed separately within Section 7 of this report.	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D16 Swimming Pools and Spa Pools	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
Part E - The Natural Environment		
E1 Private Property Tree Management	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E5 Native Vegetation – NA	Yes	Yes
E8 Waterways and Riparian Lands – NA	Yes	Yes
E10 Landslip Risk – report accompanying DA	Yes	Yes
E11 Flood Prone Land – NA	Yes	Yes

9 Section 4.15 the Environmental Planning and Assessment Act 1979

The proposal has been assessed having regard to the matters for consideration pursuant to S.4.15 of the Act and to that extent Council can be satisfied of the following:

- There will be no significant or unreasonable adverse built environment impacts arising from the proposed physical works on the site.
- The site is appropriate for accommodating the proposed development. The proposal has sufficiently addressed environmental considerations in relation to potential geotechnical considerations. There will be no significant or unreasonable adverse environmental impacts arising from the proposal.
- The proposal will result in positive social and economic impacts, noting:
 - Employment during the construction phase of the works;
 - Economic benefits, arising from the investment in improvements to the land;
 - Social (and environmental) benefits arising from the retention and the improvement of existing housing stock.
- The proposal is permissible and consistent with the objectives of the zone, pursuant to the LEP. The proposal satisfies the provisions of the relevant provisions of the council's DCP.
- It is compatible with the current and likely future character of development within the local context.
- It will not result in any significant unacceptable offsite impacts that limit the use or enjoyment of nearby or adjoining land.
- The proposal will have an acceptable impact when considering key amenity issues such as visual impact, views, overshadowing, noise and privacy.
- Given the site's location and established function, the site is assessed as being entirely suitable for the proposed development.
- The public interest is best served through the approval of the application.

10 Conclusion

The application seeks development consent for redevelopment of the existing residential flat building for 4 apartments at 24 Aitken Avenue, Queenscliff.

Breakspear Architects have responded to the client's brief with an exceptional design that is responsive to the merit assessment considerations applicable to the site.

This merit assessment of the proposal demonstrates that it succeeds when assessed against the Heads of Consideration pursuant to section 4.15 of the Environmental Planning and Assessment Act, 1979 and should be granted development consent.

The proposed development has been assessed with consideration to the relevant statutory policies. In summary:

- The proposal is permissible given that there is sufficient documentary and physical evidence to conclude that the property benefits from existing use rights, and it will be compatible with the land use and development character established upon the land.
- As a development with existing use rights the proposal is consistent with the relevant assessment considerations which are summarised within the case *Fodor Investments v Hornsby Shire Council* [2005] NSWLEC 71.
- The proposal will not cause an unreasonable enlargement or expansion or intensification of the existing and approved development.
- The proposal design is responsive to its context and is compatible with the local character. The proposal will not result in any unacceptable amenity impacts.
- The proposal will result in a range of significant benefits including: off street carparking vehicle access, increased side setbacks, reduced maximum building height, improved private open space, privacy screens, bicycle parking, concealed bulky goods and waste storage; features / characteristics not provided by the existing development.
- The proposal represents appropriate improvements to the land that will not give rise to any significant or unreasonable adverse environmental consequences.
- The proposed development is in the public interest.

In view of the above, we conclude that the proposed development will provide a significantly positive impact and should be approved.

BBF Town Planners



Michael Haynes
Director

11 Appendix 1 – excerpts relating to the property's existing use rights

The following are copies of documents referenced within Section 5 of this report relating to the property's existing use rights.

FORM 1

WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

CONVEYANCE CERTIFICATE

TO: PETER ROBERT JOHNSON
OF: 41 DAKES AVE, DUNSMITH, 2140NS
FROM: THE STRATA COMPANY OF 214 AITKEN AVE, DUNSMITH, 2140NS
DATE: 20-8-85
BY: [Signature]
WITNESSED BY: [Signature]

PLAN OF LOT 18 DP 16741

Area/Title: WARRINGAH
Locality: QUEENSLAND
Parish: MANLY COVE
County: CUMBERLAND
Reduction Ratio: 1:250
Locality are in metres

STRATA PLAN 30021

Registered: 2-9-1985
CA: N° 112/85 OF 205-1985
Purpose: STRATA PLAN
Ref Map: UH860-94
Last Plan: D.P. 16741

THE PROPRIETORS-STRATA PLAN N° 30021...
N° 214 AITKEN AVE, QUEENSLAND 2036

Signature, name and address for service of notices on the body corporate:
[Signature]
[Signature]
[Signature]

Signature, name and address of the proprietor or proprietors as in plan:
[Signature]
[Signature]
[Signature]

THIS DRAWING SHALL BE FILED IN THE STRATA PLAN BOOKS OF THE STRATA COMPANY OF 214 AITKEN AVE, DUNSMITH, 2140NS

Table of area

MPD

STRATA PLAN 30021

5794 AITKEN AVE

Plan Drawing only to appear in this space

Plan Drawing only to appear in this space

RIGHT OF FOOTWAY 12.2 M WIDE (0.66725)

19

18

17

16

15

14

AITKEN AVENUE

AK. COTTAGE 1922

WALL-BDY. ART. 174

40-205

40-205

9 STOREY BRICK MALLORY UNITS 1924

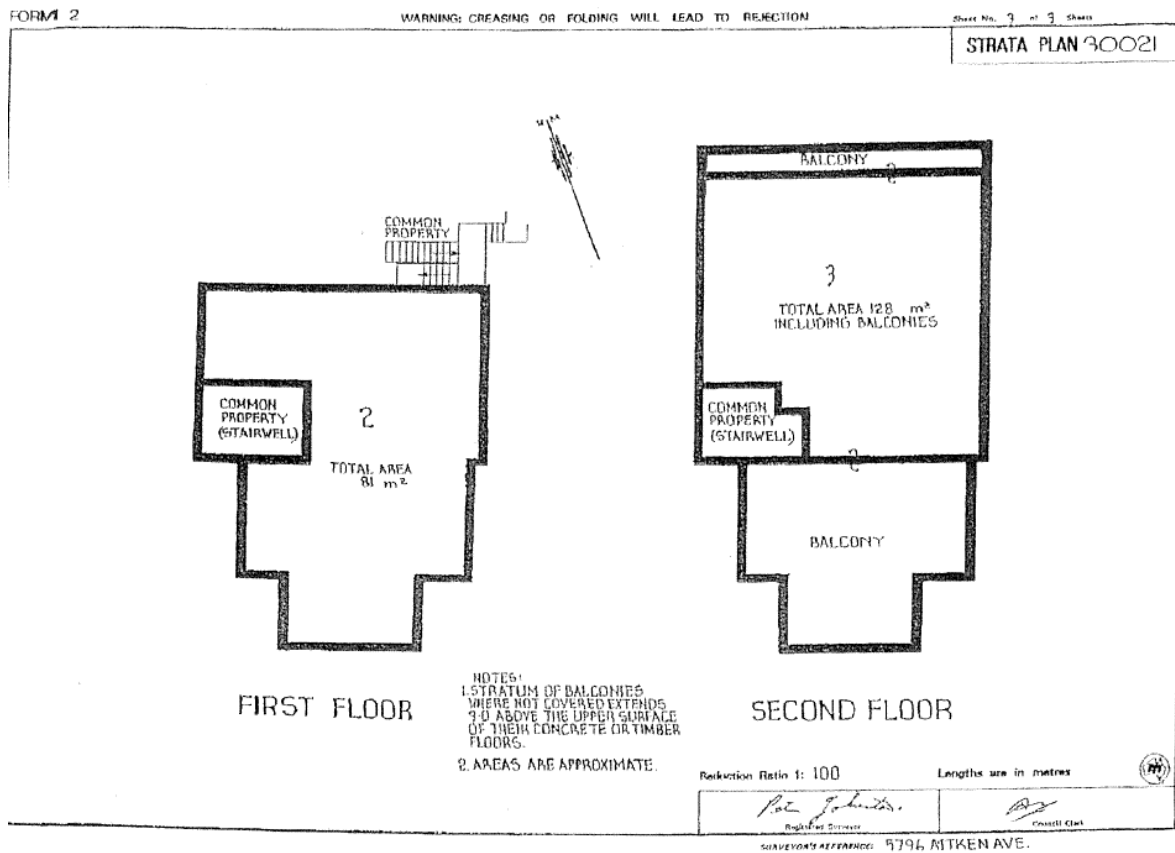
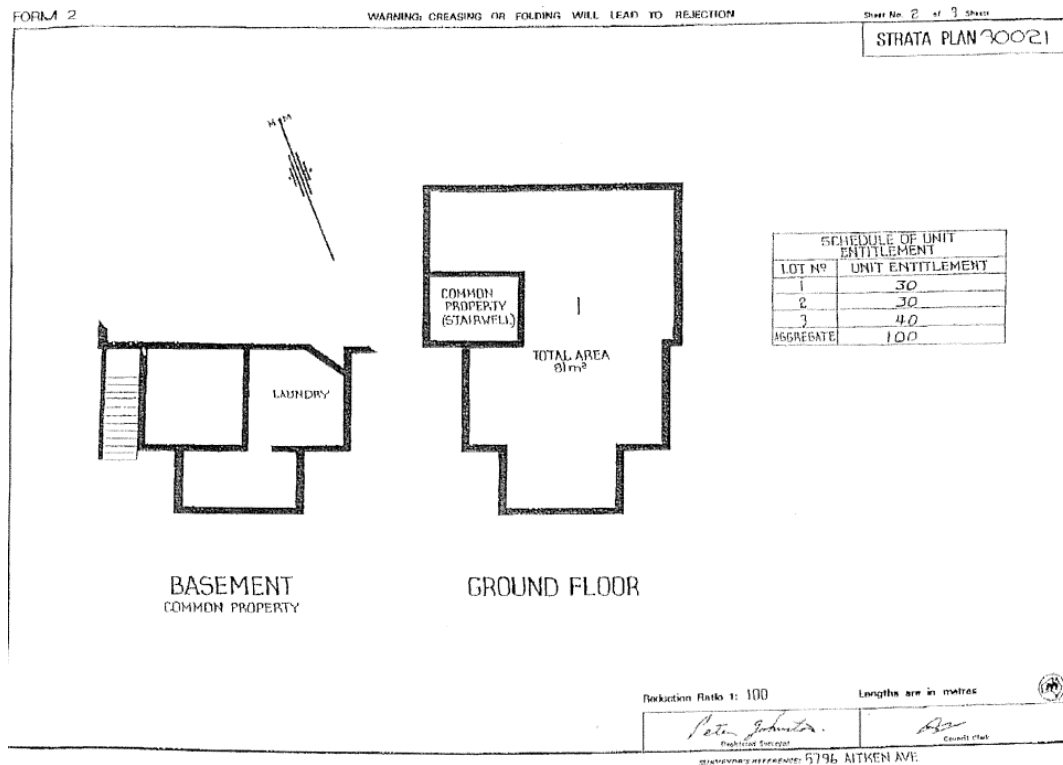
AK. UNITS 1921

WALL-BDY. ART. 136

PATHWAY 3.66 M WIDE

(A) COVENANT - C-605099
(B) COVENANT - C-170164

Figure 38 – excerpt of strata plan for existing residential flat building



APPENDIX 1 – EXCERPTS RELATING TO THE PROPERTY'S EXISTING USE RIGHTS

From: Carol Freshwater <Carol.Freshwater@northernbeaches.nsw.gov.au>
Date: 12 December 2017 at 10:51:11 am AEDT
To: "jack@wtmalouf.com.au" <jack@wtmalouf.com.au>
Subject: 24 aitken

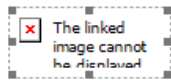
Jack

Please see below advice supplied by our duty planner .

Carol

Carol Freshwater
Information Access Officer

Information Management
t 02 9942 2676
carol.freshwater@northernbeaches.nsw.gov.au
northernbeaches.nsw.gov.au



Jack

Councils records show that the property 24 Aitken Avenue was built in 1949. Councils records do not reveal the zone of the site at that time. The registration of the strata for this block occurred in 1985 utilising existing use rights.

24 Aitken is Currently zoned R2 Low Density Residential under Warringah Local Environmental Plan 2011.

This address was zoned G8 Queenscliff under Warringah Local Environmental Plan 2000.

Subsequent to that the property was zoned 2a Residential under Warringah Local Environmental Plan 1985

The last known zone of the property was under Warringah Planning Scheme Ordinance 1963 which zoned the property Residential A

Regards

All enquiries are to be sent to council@northernbeaches.nsw.gov.au

Figure 32 – Email response from council duty planner dated 12 December 2017 In relation to the property's existing use rights

From: Carol Freshwater <Carol.Freshwater@northernbeaches.nsw.gov.au>
Sent: Thursday, 30 August 2018 2:37 PM
To: 'Michael Haynes' <michael@bbfplanners.com.au>
Subject: AITKEN AVENUE 24 LOT 18 QUEENSCLIFF NSW LU2

Michael

Page11 of attached property file is all I could find.

Carol

CAROL FRESHWATER
INFORMATION ACCESS OFFICER
Northern Beaches Council- Information Management and Technology
T 02 9942 2111 D 9942 2676
carol.freshwater@northernbeaches.nsw.gov.au

Figure 39 – Email from council records officer in relation to request for further archival search request made. Copy of page 11 (as referenced above) provided below

DK \604357.DOC\1

File No: PF 30/24
Computer No: 6B10

Track 'A' Development Application Determination

JOINT DEVELOPMENT / BUILDING APPLICATION DETERMINATION

No: 1996/151
Lodged: 20/5/96

Development Proposal

Addition of a timber deck to the northern side of Unit 2. Lattice screens and railings to be provided.

Site Description

Lot 2 SP 30021) 2/24 Aitken Avenue, Queenscliff.
The site has an area of 524 square metres.

Applicant's Name and Address

Colleen Mooney
2/24 Aitken Ave
Queenscliff

Owners Name and Address

As above

Zoning Details

The site is zoned residential 2(a) under Warringah Local Environmental Plan, 1985. It is proposed to be zoned 2/500 under Warringah Draft Local Environmental Plan, 1995. Clause 7 of the Draft Plan however, maintains the provisions of the existing planning instruments prior to gazettal of the Draft Plan.
The existing building is classified as a residential flat building incorporating three separate strata titled dwellings. The residential 2(a) zoning of the site makes this a prohibited use. However it appears that the flat building has existing use rights as established by Section 106 of the Environmental Planning and Assessment Act, 1979. Thus the proposed additions to the building are permissible with development consent.

Figure 40 – Excerpt of council report in 1996 where council concluded that the development appeared to benefit from existing use rights

