

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2023/0209
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<b>Responsible Officer:</b>	Brittany Harrison
<b>Land to be developed (Address):</b>	Lot 12 DP 867302, 79 B Lauderdale Avenue FAIRLIGHT NSW 2094
<b>Proposed Development:</b>	Modification of Development Consent DA2020/0470 granted for Alterations and additions to a dual occupancy and strata subdivision
<b>Zoning:</b>	Manly LEP2013 - Land zoned C4 Environmental Living
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Andrew Joseph Condell Eileen Philomena Condell
<b>Applicant:</b>	Cradle Design

<b>Application Lodged:</b>	12/05/2023
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	22/05/2023 to 05/06/2023
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### PROPOSED DEVELOPMENT IN DETAIL

This Section 4.55 (1a) seeks to amend development consent No. 2020/0470 as modified by MOD2021/0515, in the following ways:

- Delete new entry pergola and new stair to upper unit;
- Delete removal and replacement of existing paving beneath the abandoned entry pergola & stairway;
- Delete proposed pergola to south (rear) patio;
- Delete proposed alteration to existing window opening Ground Floor Bedroom 1;
- Delete replacement of existing paving to the Garage & Turning Area;
- Delete redundant finishes from the Finishes Schedule;
- Adjust Strata Plan to correlate with deletions; and

- Delete Development Consent Condition 15 – Stormwater Disposal 15.

## ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

## SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 6.8 Landslide risk

Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area

Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 12 DP 867302 , 79 B Lauderdale Avenue FAIRLIGHT NSW 2094
<b>Detailed Site Description:</b>	<p>The subject site consists of one battle-axe allotment located on the southern of Lauderdale Avenue, Fairlight.</p> <p>The site is irregular in shape with a battle-axe handle frontage of 2.763m along Lauderdale Avenue and a maximum depth of 57.36m. The site has a surveyed area of 640.4m<sup>2</sup>.</p> <p>The site is located within the C4 Environmental Living zone under the provisions of the Manly Local Environmental Plan 2013 and accommodates a two (2) storey dual occupancy development with three car garage and store room.</p> <p>The site falls approximately 13.0m from north (front) to south (rear) and contains landscaping.</p>

### Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by a mixture of residential development types, including dwelling houses and residential flat buildings.

Map:



### SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

#### DA2020/0470

Development Application for the alterations and additions to a dual occupancy and strata subdivision. Determined on 2 September 2020, by Delegated Authority.

#### DA2020/1508

Development Application for the alterations and additions a dwelling house to regularise a storage area above an existing garage. Determined on 20 January 2021, by Delegated Authority.

#### BC2020/0247

Building Information Certificate for existing store room above garages. Determined on 6 May 2021.

#### Mod2021/0515

Modification of Development Consent DA2020/0470 granted for alterations and additions to a dual occupancy and strata subdivision. Determined on 18 October 2021, by Delegated Authority.

### ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2020/0470 as modified by Mod2021/0515, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) - Other Modifications	Comments
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 proposed modification is of minimal environmental impact, and	<p><b>Yes</b></p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <ul style="list-style-type: none"> <li>• Deletion of previously approved entry pergola and stairway to the north-west corner of the site, deletion of new paving, deletion of pergola to southern garden area, deletion of approved window alteration to existing ground floor bedroom window, delete redundant finishes from Finishes Schedule and adjust Start Plan to correlate with the above.</li> <li>• As the modification will include the deletion of various works, this will result in a minimal environmental impact when compared to DA2020/0470 as modified by Mod2021/0515.</li> </ul>
(b) 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	<p>The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2020/0470 as modified by Mod2021/0515 for the following reasons:</p> <ul style="list-style-type: none"> <li>• The essence of the proposed development is maintained, with the extent of proposed work reduced from that approved, but not to the extent</li> </ul>



Section 4.55(1A) - Other Modifications	Comments
	that it is not substantially the same development.
(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 under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application.

#### Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via an existing condition of consent.  <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No

Section 4.15 'Matters for Consideration'	Comments
	<p>additional information was requested.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via an existing condition of consent.</p> <p><u>Clauses 62</u> and/or 64 of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building. This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via an existing condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via an existing condition of consent.</p>
<p>Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p>	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered suitable for the proposed development.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>See discussion on “Notification &amp; Submissions Received” in this report.</p>
<p>Section 4.15 (1) (e) – the public interest</p>	<p>No matters have arisen in this assessment that would justify the refusal of the application in the public interest.</p>

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## **BUSHFIRE PRONE LAND**

The site is not classified as bush fire prone land.

## **NOTIFICATION & SUBMISSIONS RECEIVED**

The subject development application has been publicly exhibited from 22/05/2023 to 05/06/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

## **REFERRALS**

No referrals were sent in relation to this application

## **ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)\***

All, Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

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

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

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

### **SEPP (Biodiversity and Conservation) 2021**

#### **Chapter 6 – Water catchments**

The subject property is located within the Sydney Harbour Catchment and Sydney Harbour Foreshores and Waterways Area therefore the provisions of Chapter 6 Water catchments of *State Environmental Planning Policy (Biodiversity and Conservation) 2021* apply to this development. Accordingly, an assessment under Chapter 6 has been carried out as follows:

### **Part 6.2 Development in regulated catchments - Division 2 Controls on development generally**

#### **6.6 Water quality and quantity**

*(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the following—*

- (a) whether the development will have a neutral or beneficial effect on the quality of water entering a waterway,*
- (b) whether the development will have an adverse impact on water flow in a natural waterbody,*
- (c) whether the development will increase the amount of stormwater run-off from a site,*
- (d) whether the development will incorporate on-site stormwater retention, infiltration or reuse,*

- (e) *the impact of the development on the level and quality of the water table,*
- (f) *the cumulative environmental impact of the development on the regulated catchment,*
- (g) *whether the development makes adequate provision to protect the quality and quantity of ground water.*

(2) *Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied the development ensures—*

- (a) *the effect on the quality of water entering a natural waterbody will be as close as possible to neutral or beneficial, and*
- (b) *the impact on water flow in a natural waterbody will be minimised.*

#### Comment

The proposal includes deleting previously approved works. No other physical works are to be proposed under this application. Therefore, it is considered that any potential impacts to the surrounding natural environment will be reduced, when compared to the original development application.

### **6.7 Aquatic ecology**

(1) *In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the following—*

- (a) *whether the development will have a direct, indirect or cumulative adverse impact on terrestrial, aquatic or migratory animals or vegetation,*
- (b) *whether the development involves the clearing of riparian vegetation and, if so, whether the development will require—*
  - (i) *a controlled activity approval under the Water Management Act 2000, or*
  - (ii) *a permit under the Fisheries Management Act 1994,*
- (c) *whether the development will minimise or avoid—*
  - (i) *the erosion of land abutting a natural waterbody, or*
  - (ii) *the sedimentation of a natural waterbody,*
- (d) *whether the development will have an adverse impact on wetlands that are not in the coastal wetlands and littoral rainforests area,*
- (e) *whether the development includes adequate safeguards and rehabilitation measures to protect aquatic ecology,*
- (f) *if the development site adjoins a natural waterbody—whether additional measures are required to ensure a neutral or beneficial effect on the water quality of the waterbody.*

(2) *Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied of the following:*

- (a) *the direct, indirect or cumulative adverse impact on terrestrial, aquatic or migratory animals or vegetation will be kept to the minimum necessary for the carrying out of the development,*
- (b) *the development will not have a direct, indirect or cumulative adverse impact on aquatic reserves,*
- (c) *if a controlled activity approval under the Water Management Act 2000 or a permit under the Fisheries Management Act 1994 is required in relation to the clearing of riparian vegetation—the approval or permit has been obtained,*
- (d) *the erosion of land abutting a natural waterbody or the sedimentation of a natural waterbody will be minimised,*
- (e) *the adverse impact on wetlands that are not in the coastal wetlands and littoral rainforests area will be minimised.*

#### Comment



The proposal includes deleting previously approved works. No other physical works are to be proposed under this application. Therefore, it is considered that any potential impacts to the surrounding natural environment will be reduced, when compared to the original development application.

## **6.8 Flooding**

*(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the likely impact of the development on periodic flooding that benefits wetlands and other riverine ecosystems.*

*(2) Development consent must not be granted to development on flood liable land in a regulated catchment unless the consent authority is satisfied the development will not—*

*(a) if there is a flood, result in a release of pollutants that may have an adverse impact on the water quality of a natural waterbody, or*

*(b) have an adverse impact on the natural recession of floodwaters into wetlands and other riverine ecosystems*

### Comment

The site is not located within a flood prone area.

## **6.9 Recreation and public access**

*(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider—*

*(a) the likely impact of the development on recreational land uses in the regulated catchment, and*

*(b) whether the development will maintain or improve public access to and around foreshores without adverse impact on natural waterbodies, watercourses, wetlands or riparian vegetation.*

*(2) Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied of the following—*

*(a) the development will maintain or improve public access to and from natural waterbodies for recreational purposes, including fishing, swimming and boating, without adverse impact on natural waterbodies, watercourses, wetlands or riparian vegetation,*

*(b) new or existing points of public access between natural waterbodies and the site of the development will be stable and safe,*

*(c) if land forming part of the foreshore of a natural waterbody will be made available for public access as a result of the development but is not in public ownership—public access to and use of the land will be safeguarded.*

### Comment

The proposed modification are to delete previously approved works only. This application will therefore, not alter or disrupt the existing recreation and/or public access within the catchment area.

## **6.10 Total catchment management**

*In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consult with the council of each adjacent or downstream local government area on which the development is likely to have an adverse environmental impact.*

### Comment

The proposed modifications are not considered to have an adverse environmental impact, as previously approved works are to be deleted. As such consultation with adjoining local government areas was not undertake in this instance.

## **Part 6.3 Foreshores and Waterways Area**

### **Division 3 Development in Foreshores and Waterways Area**

#### **6.28 General**

*(1) In deciding whether to grant development consent to development in the Foreshores and Waterways Area, the consent authority must consider the following—*

*(a) whether the development is consistent with the following principles—*

- (i) Sydney Harbour is a public resource, owned by the public, to be protected for the public good*
- (ii) the public good has precedence over the private good,*
- (iii) the protection of the natural assets of Sydney Harbour has precedence over all other inter*

*(b) whether the development will promote the equitable use of the Foreshores and Waterways Area, including use by passive recreation craft,*

*(c) whether the development will have an adverse impact on the Foreshores and Waterways Area, including on commercial and recreational uses of the Foreshores and Waterways Area,*

*(d) whether the development promotes water-dependent land uses over other land uses,*

*(e) whether the development will minimise risk to the development from rising sea levels or changing flood patterns as a result of climate change,*

*(f) whether the development will protect or reinstate natural intertidal foreshore areas, natural landforms and native vegetation,*

*(g) whether the development protects or enhances terrestrial and aquatic species, populations and ecological communities, including by avoiding physical damage to or shading of aquatic vegetation,*

*(h) whether the development will protect, maintain or rehabilitate watercourses, wetlands, riparian lands, remnant vegetation and ecological connectivity.*

*(2) Development consent must not be granted to development in the Foreshores and Waterways Area unless the consent authority is satisfied of the following—*

*(a) having regard to both current and future demand, the character and functions of a working harbour will be retained on foreshore sites,*

*(b) if the development site adjoins land used for industrial or commercial maritime purposes—the development will be compatible with the use of the adjoining land,*

*(c) if the development is for or in relation to industrial or commercial maritime purposes—public access that does not interfere with the purposes will be provided and maintained to and along the foreshore,*

*(d) if the development site is on the foreshore—excessive traffic congestion will be minimised in the zoned waterway and along the foreshore,*

*(e) the unique visual qualities of the Foreshores and Waterways Area and its islands, foreshores and tributaries will be enhanced, protected or maintained, including views and vistas to and from—*

- (i) the Foreshores and Waterways Area, and*
- (ii) public places, landmarks and heritage items.*

#### **Comment**

The above has been considered as part of the assessment of this application. The subject site is located adjacent to the Zone 2 (Environment Protection). The proposed modifications are to delete previously approved works, and will not impact the Foreshores and Waterways Area. Nor will the works to be retained be seen from the Foreshores and Waterways Area easily. The foreshores and waterways area will continue to be protected and maintained, in relation to its unique visual qualities.

#### **6.29 Areas of outstanding biodiversity value**

(2) Development consent must not be granted to development on land to which this section applies unless the consent authority is satisfied the development will not have a significant adverse impact on the land.

Comment

The proposed modifications will not impact the biodiversity value of the land.

### **Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005**

The Sydney Harbour Foreshores and Waterways Area Development Control Plan, continues to apply to the foreshores and waterways area as identified in Part 6.3 of the Biodiversity and Conservation SEPP 2021. The development control plan includes design guidelines for development and criteria for natural resource protection.

Comment

As mentioned above, the proposed modifications are to delete previously approved works such as additional paving, stairway entrance and pergola. The deletion of these works will not impact the foreshores and waterways area. The overall built form of the development will remain as existing, and will continue to complement the existing character of the area.

Council is satisfied that the proposal is consistent with all relevant requirements and objectives of the SEPP (Biodiversity and Conservation) 2021.

### **SEPP (Resilience and Hazards) 2021**

#### **Chapter 2 – Coastal Management**

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

#### **Division 3 Coastal environment area**

Comment

The site is located within the Foreshores and Waterways Area. Section 2.10 (3) stipulates that "This section does not apply to land within the Foreshores and Waterways Area within the meaning of *State Environmental Planning Policy (Biodiversity and Conservation) 2021, Chapter 6*.

#### **Division 4 Coastal use area**

Comment

The site is located within the Foreshores and Waterways Area. Section 2.11 (2) stipulates that "This section does not apply to land within the Foreshores and Waterways Area within the meaning of *State Environmental Planning Policy (Biodiversity and Conservation) 2021, Chapter 6*.

#### **Division 5 General**

##### **2.12 Development in coastal zone generally—development not to increase risk of coastal hazards**

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment

The proposed modifications are to delete previously approved works, which will in turn reduce the risk of coastal hazards within the locality.

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

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

#### Comment

The proposal is not inconsistent with relevant coastal management programs.

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

### **Chapter 4 – Remediation of Land**

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

### **Manly Local Environmental Plan 2013**

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

#### Principal Development Standards

Standard	Requirement	Approved	Proposed	Complies
Height of Buildings	8.5m	5.8m	No Change	Yes
Floor Space Ratio (FSR)	FSR: 0.5:1 (320.2m <sup>2</sup> )	FSR: 0.39:1 (250sqm)	No Change	Yes

#### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes

Clause	Compliance with Requirements
6.12 Essential services	Yes

#### Detailed Assessment

### 6.8 Landslide risk

The objectives of this clause are to ensure that development on land susceptible to landslide—

- (a) matches the underlying geotechnical conditions of the land, and***
- (b) is restricted on unsuitable land, and***
- (c) does not endanger life or property.***

In this regard, before determining a development application for development on land to which this clause applies, the consent authority must consider the following matters to decide whether or not the development takes into account the risk of landslide—

- (a) site layout, including access,***
- (b) the development's design and construction methods,***
- (c) the amount of cut and fill that will be required for the development,***
- (d) waste water management, stormwater and drainage across the land,***
- (e) the geotechnical constraints of the site,***
- (f) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.***

#### Comment

This application seeks to delete previously approved works, which will in turn result in a lesser impact to the land of the subject site. This application has been accompanied by an addendum letter prepared by 'AscentGeo Geotechnical Consulting', which supports the proposal.

Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and that—

- (a) the development is designed, sited and will be managed to avoid any landslide risk or significant adverse impact on the development and the land surrounding the development, or***
- (b) if that risk or impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that risk or impact, or***
- (c) if that risk or impact cannot be minimised—the development will be managed to mitigate that risk or impact.***

#### Comment

As above, this application seeks to delete previously approved works, which will in turn result in a lesser impact to the land of the subject site. This application has been accompanied by an addendum letter prepared by 'AscentGeo Geotechnical Consulting', which supports the proposal.

### 6.9 Foreshore scenic protection area

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters:



- (a) *impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,*  
 (b) *measures to protect and improve scenic qualities of the coastline,*  
 (c) *suitability of development given its type, location and design and its relationship with and impact on the foreshore,*  
 (d) *measures to reduce the potential for conflict between land-based and water-based coastal activities.*

#### Comment

The original development application (DA2020/0470) and subsequent modification application (Mod2021/0515) was considered acceptable in relation to this clause. The proposed modifications under this application are to delete certain previously approved works, which will not result in any unreasonable impacts to the above mentioned matters.

### **Manly Development Control Plan**

#### Built Form Controls

<b>Built Form Controls - Site Area: 640.4m<sup>2</sup></b>	<b>Requirement</b>	<b>Approved</b>	<b>Proposed</b>	<b>Complies</b>
4.1.4.1 Street Front Setbacks	Prevailing building line	31.2m, consistent with prevailing setback	No Change	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	W: 1.75m (based on wall height)	Entry Pergola: 0.9m	Entry Pergola deleted.	Yes - will remain as existing.
	E: 1.61m (based on wall height)	Rear Stairs: 0.4m Eastern Entry Stairs: 1.35m	No Change	No - as previously approved
4.1.4.6 Setback for development adjacent to LEP Zones RE1, RE2, E1 and E2	8.0m (rear boundary)	Rear Stairs: 6.3m	Rear Stairs: 5.9m - 7.0m*	<b>No</b>

\* The rear stair setback was miscalculated under Mod2021/0515. No change to the rear stairs shall occur under this application.

#### Compliance Assessment

<b>Clause</b>	<b>Compliance with Requirements</b>	<b>Consistency Aims/Objectives</b>
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
Performance, and Water Sensitive Urban Design)		
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	N/A	N/A
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

#### Detailed Assessment

#### **4.1.4 Setbacks (front, side and rear) and Building Separation**

The proposed modifications include the deletion of various elements that were approved under DA2020/0470 and the subsequent Mod2021/0515, with no new physical works to be proposed. The remaining elements (rear access stairs and the eastern building access stairs) that exhibit setback non-compliances, will not be altered and remain unchanged. Therefore, no further assessment is required, in this instance.

Note: The rear access stairs were inaccurately calculated under Mod2021/0515 in the Built Form Control Table, exhibiting a minor variation of 0.4m. These stairs exhibit a non-compliant rear setback between 5.9m - 7.0m, where 8.0m is required. This non-compliance was however approved under Mod2021/0515.

#### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

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

#### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

#### **POLICY CONTROLS**

## **Northern Beaches Section 7.12 Contributions Plan 2022**

Section 7.12 contributions were levied on the Development Application.

### **CONCLUSION**

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

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

### **RECOMMENDATION**

THAT Council as the consent authority grant approval to Modification Application No. Mod2023/0209 for Modification of Development Consent DA2020/0470 granted for Alterations and additions to a dual occupancy and strata subdivision on land at Lot 12 DP 867302,79 B Lauderdale Avenue, FAIRLIGHT, subject to the conditions printed below:

#### **A. Add Condition No.1B - Modification of Consent - Approved Plans and supporting Documentation to read as follows:**

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Modification Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
DA01, Site Analysis Plan, Revision C (Section 4.55-B)	31 March 2023	Cradle Design
DA03, Ground Floor Plan - Proposed, Revision C, (Section 4.55-B)	31 March 2023	Cradle Design
DA04, First Floor Plan - Proposed, Revision C, (Section 4.55-B)	31 March 2023	Cradle Design
DA05, Roof Plan, Drainage, Site Management & Erosion Control Strategy, Revision C, (Section 4.55-B)	31 March 2023	Cradle Design
DA06, North & South Elevations - Existing & Proposed, Revision C, (Section 4.55-B)	31 March 2023	Cradle Design
DA07, East Elevation - Existing & Proposed, Revision C, (Section 4.55-B)	31 March 2023	Cradle Design
DA08, West Elevation - Existing & Proposed, Revision C, (Section 4.55-B)	31 March 2023	Cradle Design
DA09, Proposed Finishes Schedule, Revision C, (Section 4.55-B)	31 March 2023	Cradle Design
DA10, Proposed Strata Plans, Revision C, (Section 4.55-B)	31 March 2023	Cradle Design

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Section 4.55 Modification Letter (Ref. AG 20172.02)	19 April 2023	Ascent Geo Geotechnical Consulting

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

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

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

**B. Amend Condition 14A Geotechnical Issues to read as follows: to read as follows:**

In accordance with 'S4.55 Geotechnical Review Letter' (AG20172C), prepared by Ascent Geotechnical Consulting Pty Ltd dated 21 June 2021 and the 'Section 4.55 Modification Letter' (Ref. AG 20172.02) prepared by Ascent Geotechnical Consulting Pty Ltd dated 19 April 2023, the recommendations outlined in Table 2 of the Preliminary Geotechnical Assessment (AG20172) dated 23 July 2020 remain relevant and applicable. As such these recommendations are to be complied with and adhered to throughout development.

Reason: To ensure all works (i.e. footings) are undertaken in an appropriate manner and structurally sound.

**C. Delete condition No. 15 Stormwater Disposal.**

In signing this report, I declare that I do not have a Conflict of Interest.

**Signed**



**Brittany Harrison, Planner**

The application is determined on 08/06/2023, under the delegated authority of:



**Adam Richardson, Manager Development Assessments**