

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0515
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Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 12 DP 867302, 79 B Lauderdale Avenue FAIRLIGHT NSW 2094
Proposed Development:	Modification of Development Consent DA2020/0470 granted for alterations and additions to a dual occupancy and strata subdivision
Zoning:	Manly LEP2013 - Land zoned E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Andrew Joseph Condell Eileen Philomena Condell
Applicant:	Cradle Design

Application Lodged:	22/07/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	02/08/2021 to 16/08/2021
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks to modify Development Consent No. DA2020/0470 as follows:

- Delete Condition Nos. 3 and 17 which were applied to ensure no consent for the 'existing studio' shown on plans, as Building Certificate No. BC2020/0247 and Development Consent DA2021/1508 have been approved to regularise the structure as a storeroom;
- Modification of approved louvres and screening of entry pergola;
- Modification of approved entry paving and inclusion of a water feature;
- Deletion of the approved southern water feature;
- Construction of a pergola over the approved southern sitting area;
- Retention of the western window to ground floor bedroom 3; and
- Construction of stairs to southern garden.

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 - 6.1 Acid sulfate soils
 Manly Local Environmental Plan 2013 - 6.2 Earthworks
 Manly Local Environmental Plan 2013 - 6.4 Stormwater management
 Manly Local Environmental Plan 2013 - 6.5 Terrestrial biodiversity
 Manly Local Environmental Plan 2013 - 6.8 Landslide risk
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Local Environmental Plan 2013 - 6.12 Essential services
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

SITE DESCRIPTION

Property Description:	Lot 12 DP 867302 , 79 B Lauderdale Avenue FAIRLIGHT NSW 2094
Detailed Site Description:	<p>The subject site consists of one battleaxe allotment located on the southern of Lauderdale Avenue, Fairlight.</p> <p>The site is irregular in shape with a battleaxe handle frontage of 2.763m along Lauderdale Avenue and a maximum depth of 57.36m. The site has a surveyed area of 640.4m².</p> <p>The site is located within the E4 Environmental Living zone and accommodates a two-storey dual occupancy development with three-car garage and store room.</p> <p>The site falls approximately 13m from north (front) to south</p>

(rear) and contains landscaping.

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 for alterations and additions to a dual occupancy and strata subdivision was staff on 2 September 2020 by Council
- DA2020/1508 for alterations and additions a dwelling house to regularise a storage area above an existing garage was approved on 20 January 2021 by Council.
- BC2020/0247 for existing store room above garages was approved on 6 May 2021.

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, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - 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 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	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2020/470, as it retains the approved use, and proposes only minor changes to the approved development.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2020/0470 did not require concurrence from the relevant Minister, public authority or approval body.
(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 2000, 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 96 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	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
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)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	No submissions were received in relation to this application.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

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 02/08/2021 to 16/08/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments					
NECC (Bushland and Biodiversity)	Council's Natural Environment Unit - Biodiversity referral team has no objections to the proposed modification subject to the conditions provided for the previous DA consent (<i>DA2020/0470</i>).					
NECC (Coast and Catchments)	<p>Updated Comments (03/08/2021) Recommended for approval subject to the additional condition below:</p> <ul style="list-style-type: none">• Geotechnical issues (during works). <p>Original comments (28/07/2021) This application was assessed in consideration of:</p> <ul style="list-style-type: none">• Supplied plans and reports;• <i>Coastal Management Act 2016</i>;• Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005;• Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005;• State Environmental Planning Policy (Coastal Management) 2018 (clause 15); and• Relevant LEP and DCP clauses. <p>The application meets the requirements of the relevant Environmental Planning Instruments and policies.</p> <p>Recommended for approval subject to conditions:</p> <ul style="list-style-type: none">• Design impact on coastal processes and public/private amenity (prior to issue of construction certificate).					
NECC (Riparian Lands and Creeks)	Council's Natural Environment Unit - Catchment referral team has no objections to the proposed modification subject to the conditions provided for the previous DA consent (<i>DA2020/0470</i>).					
Property Management and Commercial	<p>The proposal is for minor modifications to an approved DA.</p> <p>Property has no comment to make regarding the proposal.</p>					
Strategic and Place Planning (Heritage Officer)	<table><tr><th>HERITAGE COMMENTS</th></tr><tr><th>Discussion of reason for referral</th></tr><tr><td>This application has been referred because it adjoins a local heritage item, being <i>Item 149 - Esplanade Park and Fairlight Pool, Fairlight Foreshore, North Harbour</i></td></tr><tr><th>Details of heritage items affected</th></tr><tr><td>Details of the heritage item, as detailed in the Manly Heritage Inventory, are: <i>Item 149 - Esplanade Park and Fairlight Pool, Fairlight Foreshore, North Harbour</i> <u>Statement of Significance</u></td></tr></table>	HERITAGE COMMENTS	Discussion of reason for referral	This application has been referred because it adjoins a local heritage item, being <i>Item 149 - Esplanade Park and Fairlight Pool, Fairlight Foreshore, North Harbour</i>	Details of heritage items affected	Details of the heritage item, as detailed in the Manly Heritage Inventory, are: <i>Item 149 - Esplanade Park and Fairlight Pool, Fairlight Foreshore, North Harbour</i> <u>Statement of Significance</u>
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Internal Referral Body	Comments		
	Part of driveway setting leading up to 'Fairlight House' in the 1850's. Part of Manly's foreshore open space system. Aesthetic		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	Comment if applicable
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	
	Consideration of Application		
	<p>This application is a request for modification of a previous development consent (2020/0470) which approved alterations and additions to a dual occupancy and strata subdivision.</p> <p>This modification proposes a number of minor modifications which do not affect the footprint of the dual occupancy building on site. All works are wholly contained within the site. The proposed modifications will not have any impact upon the adjoining heritage listed Esplanade Park.</p> <p>Therefore, no objections are raised on heritage grounds and no conditions required.</p> <p><u>Consider against the provisions of CL5.10 of Manly LEP 2013</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? N/A Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? N/A</p>		
	Further Comments		
	<p>COMPLETED BY: Janine Formica, Heritage Planner DATE: 29 July 2021</p>		

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs, REPs 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, REPs 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 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 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 Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A374830_02 dated 27 May 2021). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

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

Comment:

The proposal was not required to be referred to Ausgrid.

SEPP (Coastal Management) 2018

The site is classified as coastal use area and coastal environment area, pursuant to the State Environmental Planning Policy (Coastal Management) 2018. Accordingly, an assessment under the SEPP has been carried out as follows:

13 Development on land within the coastal environment area

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
 - (b) *coastal environmental values and natural coastal processes,*
 - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
 - (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
 - (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (f) *Aboriginal cultural heritage, practices and places,*
 - (g) *the use of the surf zone.*

Comment:

The proposed modifications are not likely to cause adverse impact to the above matters beyond the original development, which was assessed as acceptable under DA2020/0470.

- (2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
- (a) *the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*
 - (b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment:

The proposed modifications have been designed, sited and will be managed to avoid an adverse impact on the cultural and environmental aspects referred to in subclause (1).

14 Development on land within the coastal use area

- (1) (a) *has considered whether the proposed development is likely to cause an adverse impact on the following:*
- (i) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (ii) *overshadowing, wind funnelling and the loss of views from public places to foreshores,*
 - (iii) *the visual amenity and scenic qualities of the coast, including coastal headlands,*
 - (iv) *Aboriginal cultural heritage, practices and places,*
 - (v) *cultural and built environment heritage, and*
- (b) *is satisfied that:*
- (i) *the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*
 - (ii) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (iii) *if that impact cannot be minimised—the development will be managed to mitigate that impact, and*

- (c) *has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*

Comment:

The proposed modifications are not likely to cause adverse impact to the above matters beyond the original development, which was assessed as acceptable under DA2020/0470.

15 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 minor in nature and are not likely to cause increased risk of coastal hazards on the subject site or other land.

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	% Variation	Complies
Height of Buildings:	8.5m	5.3m	Max. 5.8m	-	Yes
Floor Space Ratio	0.5:1 (320.2sqm)	0.39:1 (250sqm)	Unchanged	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	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
6.12 Essential services	Yes

Detailed Assessment

6.1 Acid sulfate soils

Clause 6.1 Acid Sulfate Soils requires Council to ensure that development does not disturb, expose or

drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works. The site is located in an area identified as Acid Sulfate Soil Class 5, as indicated on Council's Acid Sulfate Soils Planning Map. The proposed modifications are minor in nature, do not rely on significant earthworks, and are acceptable in relation to acid sulfate soils.

6.2 Earthworks

The objectives of Clause 6.2 Earthworks require development:

- (a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, and*
- (b) to allow earthworks of a minor nature without requiring separate development consent.*

In this regard, before granting development consent for earthworks, Council must consider the following matters:

- (a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development*

Comment:

The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

- (b) the effect of the proposed development on the likely future use or redevelopment of the land*

Comment:

The proposal will not unreasonably limit the likely future use or redevelopment of the land.

- (c) the quality of the fill or the soil to be excavated, or both*

Comment:

The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of an suitable quality.

- (d) the effect of the proposed development on the existing and likely amenity of adjoining properties*

Comment:

The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions have been included in the recommendation of this report to limit impacts during excavation/construction.

- (e) the source of any fill material and the destination of any excavated material*

Comment:

The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of an suitable quality.

- (f) the likelihood of disturbing relics*

Comment:

The original development consent contains a condition of consent ensuring protection of relics.

- (g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area*

Comment:

The site is not located in the vicinity of any watercourse, drinking water catchment or environmentally sensitive areas.

(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Comment:

Conditions are included in the recommendation of this report that will minimise the impacts of the development.

6.4 Stormwater management

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

(a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and

Comment:

The development will provide a suitable amount of permeable surfaces given the zoning of the land and the proposed use. In this regard, Council is satisfied that the design will maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water.

(b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and

Comment:

On-site stormwater retention is not required for this development.

(c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.

Comment:

The original development application was assessed by Council's Development Engineers who are supportive of the proposal, subject to conditions. The proposed modifications are minor and are unlikely to impact upon stormwater management. In this regard, Council is satisfied that the development will minimise any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters.

6.5 Terrestrial biodiversity

The objective of this clause is to maintain terrestrial biodiversity by:

(a) protecting native fauna and flora, and

(b) protecting the ecological processes necessary for their continued existence, and

(c) encouraging the conservation and recovery of native fauna and flora and their habitats.

In this regard, before determining a development application for development on land to which this clause applies, the consent authority must consider:

(a) whether the development is likely to have:

- (i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and*

- (ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and*
- (iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*
- (iv) any adverse impact on the habitat elements providing connectivity on the land, and*
- (b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment:

The proposed modifications are minor in nature and are unlikely to have any adverse impact on the above matters. The proposed modifications are located on already disturbed (built upon) land. The modification application has been reviewed by Council's Bushland & Biodiversity team, who are supportive of the application, subject to the original conditions of consent.

Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

- (a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*
- (b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or*
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment:

Given the above, it is demonstrated that the proposed modifications are designed, sited and managed to avoid significant environmental impacts.

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:

The proposed modifications are minor in nature within already built upon land, and do not alter the above matters in relation to risk of landslide.

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:

Given the above, it is demonstrated that the proposed modifications are designed, sited and managed to avoid significant adverse impacts.

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 (DA2020/0470) was assessed as acceptable in relation to this clause. The proposed modifications are minor in nature and do not result in any unreasonable impacts in relation to the above matters.

6.12 Essential services

Under this clause, development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

- (a) the supply of water,
 (b) the supply of electricity,
 (c) the disposal and management of sewage,
 (d) stormwater drainage or on-site conservation,
 (e) suitable vehicular access.

Comment:

The subject site is supplied with the above essential services. The proposed modifications retain and rely upon these services.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 640.4sqm	Requirement	Approved	Proposed	Complies
4.1.4.1 Street Front Setbacks	Prevailing building line	31.8m, consistent with prevailing setback	31.2m, consistent with prevailing setback	Yes

4.1.4.2 Side Setbacks and Secondary Street Frontages (based on wall height)	W: 1.75m	Entry Pergola: 900mm	Unchanged	As approved
	E: 1.61m	Rear Stairs: 400mm	Unchanged	As approved
4.1.4.4 Rear Setbacks / 4.1.4.6 Setback for development adjacent to LEP Zones RE1, RE2, E1 and E2 (Rear)	8m	Water Feature Area: 4.1m	Pergola Over Area: 4.1m	No
		Rear Stairs: 7.3m	Rear Stairs: 6.3m	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	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	No	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	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 development includes a new pergola and reconfigured garden stairs in the rear setback area. With regard to the non-compliance, the development is considered against the underlying objectives of the control as follows:

Objective 1) To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.

Comment:

The proposed modifications do not unreasonably alter the visual impact of the development, particularly in relation to the spatial proportions of the street, the street edge and the street's landscape character.

Objective 2) To ensure and enhance local amenity by:

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*
- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

Comment:

The proposed modifications are designed and sited to retain a suitable level of privacy, access to air and light, and view sharing for the subject site and adjacent sites. The proposed modifications retain the existing character and spatial separation patterns of the locality. The proposed modifications do not alter impact upon the existing vehicular arrangements of the site.

Objective 3) To promote flexibility in the siting of buildings.

Comment:

The proposed modifications allow for suitable flexibility on the site without resulting in any unreasonable impacts on the subject site or surrounding sites.

Objective 4) To enhance and maintain natural features by:

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Comment:

The proposed modifications retain ample deep soil zones and space for vegetation. The subject site does not impact upon the adjoining open space land to the south. The site does not adjoin a National Park or contain bushland.

Objective 5) To assist in appropriate bush fire asset protection zones.

Comment:

Not applicable. The subject site is not classified as bushfire prone land.

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 2021

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 2000;
- 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. Mod2021/0515 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.1A - 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

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA01 Site Analysis Plan Revision B	10 May 2021	Cradle Design
DA03 Ground Floor Plan - Proposed Revision B	10 May 2021	Cradle Design
DA04 First Floor Plan - Option D Revision B	10 May 2021	Cradle Design
DA05 Roof Plan, Drainage, Site Management & Erosion Control Strategy	10 May 2021	Cradle Design
DA06 North & South Elevations Revision B	10 May 2021	Cradle Design
DA07 East Elevation	10 May 2021	Cradle Design
DA08 West Elevation	10 May 2021	Cradle Design
DA10 Proposed Strata Plans	10 May 2021	Cradle Design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Review Letter AG20172C	21 June 2021	Ascent Geotechnical Consulting
BASIX Certificate No. A374830_02	27 May 2021	Cradle Design

b) 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. Delete Condition 3 No Approval for "Existing Studio" as follows:

DELETED

C. Delete Condition 17 Subdivision Plan as follows:

DELETED

D. Add Condition 14A Geotechnical Issues to read as follows:

In accordance with 'S4.55 Geotechnical Review Letter' (AG20172C), prepared by Ascent Geotechnical Consulting Pty Ltd dated 21 June 2021, 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.

E. Add Condition 14B Design Impact on Coastal Processes and Public/Private Amenity to read as follows:

All development and/or activities must be designed and constructed so that they will not adversely impact on surrounding properties, coastal processes or the amenity of public foreshore lands.

Reason: To ensure the development does not impact the coastal process and public/private land.

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

Signed



Claire Ryan, Principal Planner

The application is determined on 18/10/2021, under the delegated authority of:



Rodney Piggott, Manager Development Assessments