

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2020/0470
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<b>Responsible Officer:</b>	Kent Bull
<b>Land to be developed (Address):</b>	Lot 12 DP 867302, 79 B Lauderdale Avenue FAIRLIGHT NSW 2094
<b>Proposed Development:</b>	Alterations and additions to a dual occupancy and strata subdivision
<b>Zoning:</b>	Manly LEP2013 - Land zoned E4 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>	12/05/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	21/05/2020 to 04/06/2020
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	2
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 86,400.00
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### PROPOSED DEVELOPMENT IN DETAIL

The application seeks the alterations and additions to a dual occupancy and strata subdivision. In particular, the works include:

- Demolition of existing concrete stair along the western facade;
- The construction of a new undercover open pergola & stair to upper floor on the western facade;
- A new cantilevered water feature to the rear;
- The construction of an access stairway to the upper floor to the eastern facade;
- New fence/gate to defined proposed strata zones; and
- Strata-subdivision to the dual occupancy (2 dwellings).

## 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 - 6.9 Foreshore scenic protection area

Manly Development Control Plan - 3.4.3 Maintenance of Views

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

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

## 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 (1) allotment located on the southern side of Lauderdale Avenue, Fairlight.</p> <p>The site is irregular in shape with a battle-axe frontage of 2.73m along Lauderdale Avenue and a depth of 57.36m. The site has a surveyed area of 640.4m<sup>2</sup>.</p> <p>The site is located within the E4 Environmental Living zone and accommodates a two storey brick residence containing a dual occupancy and a three car garage. A detached single storey studio is indicated above these garages, however no evidence has been provided of this structure being approved.</p> <p>The slope of the site is 22.8%, falling approximately 13m</p>

from the road frontage to the rear boundary.

The site contains a modified landscape setting, with vegetation consisting of palms, ferns and bamboo for screening. A terraced garden area with retaining wall and paved outdoor entertainment areas exist within the rear yard.

### **Detailed Description of Adjoining/Surrounding Development**

Adjoining and surrounding development is characterised by a mixture of dwelling houses and residential flat buildings of varying age and architectural styles. To the rear of the site is a public reserve containing walkways that adjoins North Harbour.

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:

#### **30 January 1998**

Development Consent No. 492/97 for the strata subdivision of a 12 year old duplex into two lots with car parking provided for each residential lot was granted.

#### **10 February 1998**

Strata Subdivision Application no. 4095/S was authorised by Council with the subsequent release of the linen plan on 11 February 1998.

14 July 2005

Development Consent No. DA231/05 for alterations to the duplex including internal alterations, new windows, balustrade and bi-fold doors to 1st floor granted by Council.

6 January 2006

Section 96 (1A) Modification Application to Development Consent No. DA231/05

## **APPLICATION HISTORY**

12 May 2020

Subject development application received.

14 May 2020

Site inspection undertaken by the development assessment officer.

18 May 2020

Photo evidence provided to Council of the notification sign in place on site.

18 June 2020

View loss inspections undertaken at No. 72 Lauderdale Avenue and No. 7/76 Lauderdale Avenue.

10 July 2020

Request for Withdrawal Letter sent to the Applicant due to inconsistencies with the EP&A Regulations 2000, Manly LEP 2013 and the Manly DCP.

14 July 2020

The applicant provides Council with evidence of previous development consents that detail the existing building as being an approved dual occupancy.

27 July 2020

The applicant provide Council with a Preliminary Geotechnical Assessment Report in relation to the proposed development.

31 July 2020

The applicant provides a written response seeking to justify the non-compliance to the vehicle parking rate applicable under the Manly DCP.

12 August 2020

The applicant confirms to Council that the structure marked "Existing Studio" has not been authorised. As a result, conditions have been recommended to reflect that no approval is granted under this application and that it not form part of the Strata-Subdivision Plan if a Development Consent is issued.

1 September 2020

A report under was made under BLD2020/01622 to Council's Environmental Compliance division in order to investigate the "Existing Studio".

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

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	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)(iia) – 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&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter can be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter can be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;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 of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <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></p>



Section 4.15 Matters for Consideration'	Comments
	<p>The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p><b>(iii) 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>
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	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## 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 21/05/2020 to 04/06/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Mrs Michelle Montgomery	72 Lauderdale Avenue FAIRLIGHT NSW 2094
Mr Lloyd Anthony Stuart Robson	7 / 76 Lauderdale Avenue FAIRLIGHT NSW 2094

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

- View Loss**

Comment:

Concerns were raised submissions from the owners of No. 72 Lauderdale Avenue and No. 7/76 Lauderdale Avenue with regard to the proposed western pergola impeding view corridors towards Sydney Harbour. Following a view loss inspection being undertaken at each property, and an assessment against the planning principle established by the Land and Environment Court in *Tenacity Consulting v Warringah Council (2004) NSWLEC 140*, the proposed development is considered to achieve view sharing. See further discussion in this report under Clause 3.4.3 (Maintenance of Views) of the Manly DCP.

- **Non-compliance with requirements contained for land in a "Foreshore Scenic Protection Area"**

Comment:

Submission were received from the property owners of No. 72 Lauderdale Avenue and No. 7/76 Lauderdale Avenue with regards to the proposed development breaching the requirements relevant for land shown as "Foreshore Scenic Protection Area". Consideration was given that the extent of view loss from the public pedestrian pathway along Lauderdale Avenue would be limited and ultimately acceptable. Further, as this clause is not a principal development standard, a Clause 4.6 (Exceptions to development standards) request is not considered warranted in this particular instance. See further discussion in this report under Clause 6.9 Foreshore scenic protection area of the Manly LEP 2013.

- **Inadequate off-street parking**

Comment:

Concerns were raised in submissions from the owners of No. 72 Lauderdale Avenue and No. 7/76 Lauderdale Avenue with regard to inadequate off-street parking being provided on the site. Based on the parking rates for a two bedroom unit and a three bedroom unit as part of a dual occupancy, the total spaces required would be 3.2. However it is recognised that a study indicated in the two bedroom unit could be of a sufficient size to be used as a bedroom. On this basis, the parking rate would be 3.5 spaces (rounding up to 4 spaces). Whilst providing only 3 spaces on site is technically non-complaint with this requirement, consideration has been given that this arrangement is acceptable on merit. See further discussion in this report under Clause 4.1.6 (Parking, Vehicular Access and Loading) of the Manly DCP.

- **Side Setback Non-compliance**

Comment:

A submission was received from the owner of No. 7/76 Lauderdale Avenue with regard the non-compliance with the western side setback by the proposed entry pergola. Consideration has been given that the non-compliance should be supported on merit, given that the structure is open in style, maintains the amenity of the area through such means as providing privacy, view sharing and equitable access to light. See further discussion in this report under Clause 4.1.4 (Setbacks and Building Separation) of the Manly DCP.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>
Landscape Officer	The proposal is for the strata sub-division, new common entry area

Internal Referral Body	Comments
	<p>and under cover open pergola structure to the existing property. The works include minor landscaping works fencing/gates to define the proposed Strata boundaries.</p> <p>Council's Landscape Referral section have assessed the application against E4 Environmental Living under the Manly Local Environmental Plan 2013 and the landscape controls of Manly DCP 2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types, and specifically: 3.3.1 Landscaping Design; and 4.1.5 Open Space and Landscaping.</p> <p>The proposed development is non-compliant to the Open Space control but no change is proposed to the existing Total Open Space.</p> <p>No existing vegetation is proposed for removal.</p> <p>The landscape component of the application is supported subject to the protection of existing trees and vegetation within the site, and within adjoining properties, and the completion of landscape works as documented on the plans.</p>
NECC (Development Engineering)	<p>The proposed development does not require OSD and connection to the existing system for the proposed alterations is acceptable. The existing driveway crossing, internal driveway and parking is to remain. The number of parking spaces is to be assessed by Planning with respect to the proposed strata subdivision.</p> <p>No objection to approval, subject to conditions as recommended.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</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, dated 29 April 2020).

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 referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

## **Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

The subject property is located within the Sydney Harbour Catchment therefore the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(1) (aims of the SREP), Clause 13 (nominated planning principles) and Clause 21 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

## SEPP (Coastal Management) 2018

The site is subject to SEPP 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 development is unlikely to cause adverse impact to the integrity and resilience of the biophysical, hydrological (surface and ground water) and ecological environment, coastal environmental values and natural coastal process, the water quality of the marine estate, or to marine vegetation, native vegetation and fauna and their habitats, underdeveloped lands and rock platforms. The proposed development does not restrict any existing public open space or safe access along the foreshore for members of the public, including persons with a disability. A recommended condition will be placed to ensure that if any Aboriginal engravings or relics are unearthed as part of the proposed development, works will cease immediately and the relevant authorities notified. The proposed development is not likely to cause an adverse impact to the use of the surf zone.

- (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:

As detailed above, the proposed development has 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 development is not likely to cause an impact on the existing access along the foreshore for members of the public, including persons with a disability and will not cause any overshadowing, wind tunneling or loss of views from public places to foreshores. The visual amenity and scenic qualities of the coast, including the coastal headlands will be preserved. The proposed development will also not have an adverse impact on the cultural and built environment heritage. It is considered that the proposed development has satisfied the requirement to be designed, sited and will be managed to avoid an adverse impact to the above mentioned cultural and environmental aspects. Furthermore, the proposed development is considered to be of an acceptable bulk, scale and size that is generally compatible with the surrounding coastal and built environment.

## 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 development is not likely to cause increased risk of coastal hazards on the subject site or other land.

As such, it is considered that the application does/does not comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

## 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
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#### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	5.3m	-	Yes
Floor Space Ratio	FSR: 0.50:1 (320.2m <sup>2</sup> )	FSR: 0.39:1 (250m <sup>2</sup> )*	-	Yes

**\*Note:** The submitted plans annotate an "existing studio" above the garages. No evidence has been provided of this structure being approved. As the application does not relate to seeking approval for this structure, a condition has been placed stating that no approval has been given to avoid any doubt.

#### Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision—consent requirements	Yes
2.7 Demolition requires development consent	Yes
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
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

#### Detailed Assessment

##### 6.9 Foreshore scenic protection area

The below assessment has been undertaken following a submission raised by a neighbouring property owner with regards to works in a Foreshore Scenic Protection Area:

*(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,*

#### Comment:

The proposed entry pergola to the western side of the existing dual occupancy has been indicated as being open in style to mitigate view impacts from the Lauderdale Avenue frontage. Whilst existing views towards the North Harbour are visible, it is predominately filtered through existing vegetation and sun-shade at the top of the existing stairs (Figure 1)

*(b) measures to protect and improve scenic qualities of the coastline,*

Comment:

As detailed above, the proposed development is seen to mitigate view impacts towards the coastline through measures including an open-style design of the proposed entry pergola.

*(c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,*

Comment:

The proposed entry pergola is considered to be of a scale and design that would be suitable with its surrounding context and the foreshore.

*(d) measures to reduce the potential for conflict between land-based and water-based coastal activities.*

Comment:

The proposed development will not restrict any existing foreshore access, nor is it considered to result in any potential for conflict between land-based and water-based coastal activities.



Figure 1: View from public footpath down the driveway of 79B Lauderdale Avenue.

Consideration has been given that the proposal is acceptable when assessed against the relevant matters of this clause.

## Manly Development Control Plan

### Built Form Controls

Built Form Controls - Site Area: 640.4m <sup>2</sup>	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 2 dwellings (1 unit/300m <sup>2</sup> )	Existing 2 dwellings to be strata subdivided	-	Yes
	Dwelling Size (minimum internal areas): 2 bedroom dwellings: 70m <sup>2</sup> 3 bedroom dwellings: 90m <sup>2</sup>	Ground Floor 3 bedroom dwelling: 125sqm First Floor 2 bedroom dwelling: 125m <sup>2</sup>	-	Yes



4.1.2.1 Wall Height	W: 6.6m (based on gradient 1:60)	5.26m (Top of entry pergola)	-	Yes
	E: 6.6m (based on gradient 1:60)	4.83m (Top of screen to stairs)	-	Yes
4.1.2.2 Number of Storeys	2	2	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line	31.8m, consistent with prevailing setback	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	W: 1.75m (based on wall height)	0.9m (To entry pergola)	48.6%	<b>No</b>
	E: 1.61m (based on wall height)	1.35m (To external stairs)	16%	<b>No</b>
4.1.4.4 Rear Setbacks	8m	>8m	-	Yes
4.1.4.6 Setback for development adjacent to LEP Zones RE1, RE2, E1 and E2	6m (common boundary)	>6m	-	Yes
	8m (rear boundary)	>8m	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area	Existing: 42.3% (271m <sup>2</sup> )	23.1%	<b>No</b>
	Open space above ground 40% of total open space	Existing: 16.3% (44.2m <sup>2</sup> )	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (94.85m <sup>2</sup> )	27.8% (75.4m <sup>2</sup> )	20.6%	<b>No</b>
	3 native trees	2 trees	1 tree	<b>No</b>
4.1.5.3 Private Open Space	12sqm per dwelling	>12 sqm per dwelling	-	Yes
Schedule 3 Parking and Access	4 spaces	3 spaces	1 space	<b>No</b>

**\*Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example:  $38/40 \times 100 = 95$  then  $100 - 95 = 5\%$  variation)

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	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

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.4.4 Other Nuisance (Odour, Fumes etc.)	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
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.5.8 Water Sensitive Urban Design	Yes	Yes
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
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	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
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.7 First Floor and Roof Additions	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
4.4.8 Subdivision	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

### Detailed Assessment

#### **3.4.3 Maintenance of Views**

Two (2) submissions were received from properties to the north being Unit 7/76 Lauderdale Avenue, Fairlight and 72 Lauderdale Avenue, Fairlight, seeking clarification regarding the impact on views as a result of the proposal. A view loss assessment was conducted on each property on 18 June 2020 to understand the level of view impact that would occur as a result of the proposal.

A view loss assessment from these properties were undertaken to assess the impact of the proposal by

utilising the four step planning principal established in *Tenacity Consulting v Warringah Council [2004] NSW LEC 140*.

**Note:** The subject site for the proposed development is 79B Lauderdale Avenue, Fairlight. This is the building southwards (with a grey coloured roof) of the red brick building with terracotta roof tiles and height poles (79A Lauderdale Avenue, Fairlight).

### **Unit 7/76 Lauderdale Avenue, Fairlight**

#### Step 1 - Assessment of views to be affected



*Figure 2: Views at a standing position towards North Harbour from the living room.*

The inspection revealed that the water views of concern were those towards North Harbour. View includes land/water interface, and are considered highly valuable in the context of the Tenacity principles.

#### Step 2 - Consideration from what part of the property the view are obtained

The views are obtained across the Lauderdale Avenue frontage from a seated and standing position from the south facing balcony and living areas. It is noted that the views are across multiple boundaries.

#### Step 3 - Assess the extent of the impact from the entire property

The overall view impact arising from the proposed development at 79B Lauderdale Avenue is considered to be negligible. Existing views towards North Harbour, South Head, Dobroyd Head, Forty Baskets Beach, Wellings Reserve and North Harbour Reserve are retained. Very little if any view loss as a result of the development could be identified.

#### Step 4 - Assess the reasonableness of the proposal causing the impact.

The commissioner of *Tenacity Consulting v Warringah Council [2004] NSW LEC 140* indicated that a proposal that complied with all controls is considered more reasonable than one that breaches them. Whilst the proposed western entry pergola breaches the side setback requirement, the application has demonstrated compliance with relevant height controls and standards. Further, little or no view loss could be identified as a result of the proposal. The proposal has therefore been seen as being acceptable with regards to its built form in relation to the maintenance of views. The deletion of this proposed pergola would not result in a noticeable improvement in views. When accounting for the extent of view impact and the level of compliance of the proposal, the development is considered acceptable and the view sharing reasonable.

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**72 Lauderdale Avenue, Fairlight**

Step 1 - Assessment of views to be affected



*Figure 3: Views at a standing position towards North Harbour from the first floor balcony area.*



*Figure 4: Views at a standing position towards North Harbour from the first floor study.*



*Figure 5: Views at a standing position towards North Harbour from the ground floor terrace.*

The inspection revealed that the water views of concern were those towards North Harbour. View includes land/water interface, and are considered highly valuable.

#### Step 2 - Consideration from what part of the property the view are obtained

The views are obtained across the Lauderdale Avenue frontage from a seated and standing position from the south facing balcony, bedroom and study on the first floor, the living areas and terrace on the ground floor, as well as from the lower ground garden area and TV room. These views are across multiple boundaries.

#### Step 3 - Assess the extent of the impact from the entire property

The overall view impact arising from the proposed development at 79B Lauderdale Avenue is considered to be negligible. Little or no view loss could be identified as a result of the proposal under this application. The submission stated that this application should be assessed giving consideration the recently approved development at 79A Lauderdale Avenue, Fairlight (REV2020/0006). However, this development has not been constructed, and there is no guarantee that it will be constructed. It is therefore difficult to give determining weight to this approval in this regard. However, even if that development does proceed to be constructed, the overall impact is still expected to be negligible to non-existent in terms of view loss. The proposed pergola is to the north of the existing roof on the subject site, and lower overall than the approved development at 79A, and as such, views towards North Harbour, South Head, Dobroyd Head, Forty Baskets Beach, Wellings Reserve and North Harbour Reserve will be predominantly (if not entirely) retained.

#### Step 4 - Assess the reasonableness of the proposal causing the impact.

The commissioner of *Tenacity Consulting v Warringah Council [2004] NSW LEC 140* indicated that a proposal that complied with all controls is considered more reasonable than one that breaches them. Whilst the proposed western entry pergola breaches the side setback requirement, the application has demonstrated compliance with relevant height controls and standards. Considering the negligible or non-existent amount of view loss caused by the proposed entry pergola and its open-style design, the deletion of this structure is seen as unnecessary. When accounting for the extent of view impact and the level of compliance of the proposal, the development is considered acceptable and the view sharing reasonable.

**Note:** See discussion concerning view impacts from the public footpath along Lauderdale Avenue earlier in this report under Clause 6.9 (Foreshore scenic protection area).

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

##### Description of non-compliance

##### **Requirement:**

West: 1.75m (based on wall height)

East: 1.61m (based on wall height)

##### **Proposed:**

West: 0.9m (to entry pergola)

East: 1.35m (to external entry stairs)

The non-compliances to the side setback requirement are due to the proposed additions for external stairs to the eastern side of the dual occupancy and for a new entry pergola providing both ground and first floor access.



Merit consideration:

With regard to the consideration for a variation, 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:

As the subject site is a battle-axe allotment, the alterations and additions proposed as part of this application are well clear of the front setback. Further, with the dual occupancy being located on the lower side of street and generally behind 79 Lauderdale Avenue, the proposal is seen to maintain the existing streetscape.

The proposal seeks to comply with the front setback requirement

*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 entry pergola and external stairs that fall within the side setbacks, both comprise of appropriate architectural screening to help prevent direct overlooking of neighbouring properties. Whilst the entry pergola does result in additional overshadowing towards No. 81 Lauderdale Avenue at 9am, this is eliminated by 12pm, with no overshadowing on neighbouring properties into the afternoon. As discussed earlier in this report, the proposed development has been considered acceptable with regards to providing reasonable view sharing. The proposed setbacks are also seen to provide adequate separation between buildings, while also ensuring that the residential amenity including equitable access to light and air movement for adjoining properties.

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

Comment:

The proposed additions are located within areas that currently provide pedestrian access for the occupants of the dual occupancy. The application does not seek an increase to the floor area of each apartment into the side setback areas. As such, the proposal is seen to provide a practical arrangement to allow appropriate access in relation to the siting of the existing building.

*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 development indicates that the additions will include additional plantings as well as landscape works such as water features. Further, the rear terraced garden that adjoins public open space, is to remain as a landscaped area. No existing native vegetation or bushland is to be removed. See further discussion in this report under Clause 4.1.5 Open Space and Landscaping.

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

Comment:

The subject site is not identified as being on bushfire prone land.

Based on the above, the proposed development is considered acceptable on merit and consistent with the objectives of the clause in this particular instance.

#### **4.1.5 Open Space and Landscaping**

Description of non-compliance

**Requirement:**

Total Open Space: 55%

**Proposed:**

Total Open Space: 42.3% (271m<sup>2</sup>)

**Requirement:**

Landscaped Area: 35%

**Proposed:**

Landscaped Area: 27.8% (75.4m<sup>2</sup>)

The proposed development is technically non-compliant with the control requirements for total open space and landscaped area.

Merit consideration:

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

*Objective 1) To retain and augment important landscape features and vegetation including remnant*

*populations of native flora and fauna.*

Comment:

The site currently contains a modified landscape arrangement that is typical of dwellings in this particular area of Fairlight. The proposal does not seek the removal of any native vegetation or trees and therefore is not seen to impact upon native fauna habitats.

*Objective 2) To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.*

Comment:

The proposed development is not seen to reduce the amount of open space or landscaped area on site. Whilst no additional native trees are proposed as part of this application, consideration has been given that this requirement is difficult to achieve given the sloping, rocky and terraced nature of the rear garden. Council's Landscape Officer has also reviewed the landscape component of the application, providing support subject to appropriate conditions being adhered to.

*Objective 3) To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.*

Comment:

As discussed previously within this report, the proposed development has been considered acceptable when viewed from Lauderdale Avenue and neighbouring properties. The works proposed within the side setback areas have been assessed also and are seen to maintain the amenity of the area with regards to sunlight, privacy and views.

*Objective 4) To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.*

Comment:

The proposed development does not indicate the increase in hard surface areas on site and is therefore considered to minimise stormwater run-off. Council's Development Engineer has also provided comments detailing that an On-Site Stormwater Detention system would not be required.

*Objective 5) To minimise the spread of weeds and the degradation of private and public open space.*

Comment:

The landscaping indicates in the proposal is not considered to result in the spread of weeds. Conditions are also to be placed to ensure that protection measures to appropriately manage sediment and erosion control are in place prior to construction commencing.

*Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.*

Comment:

The proposal does not seek the removal of any native vegetation or trees and is therefore not considered to reduce wildlife habitat or corridors.

Based on the above, the proposed development is considered acceptable on merit and consistent with the objectives of the clause in this particular instance.

#### 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

##### Description of non-compliance

##### **Requirement:**

- 1 resident parking space for each dwelling (irrespective of number of bedrooms), plus
- 0.2 resident parking spaces for each 2 bedroom dwelling, plus
- 0.5 resident parking space for each 3 (or more) bedroom dwelling, and plus
- 0.25 visitor parking space for each dwelling (irrespective of number of bedrooms).

**Total:** 3.5 parking spaces (rounds to 4 spaces)

##### **Proposed:** 3 parking spaces

Based on the parking rates for a two (2) bedroom unit and a three (3) bedroom unit as part of a dual occupancy, the total spaces required would be 3.2 spaces. However, it is recognised that the 'study' indicated in the two bedroom unit could be of a sufficient size to be used as a bedroom. On this basis, the parking rate would be 3.5 spaces (rounding up to 4 spaces).

##### Merit consideration:

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

*Objective 1) To provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).*

##### Comment:

The application has detailed that whilst an existing strata plan for the site (dated 10 February 1998) delineated a 4th parking bay to the western boundary, that this space was unlikely to comply with Australian Standards. Further, the application has identified that an additional parking space in this location would impede both pedestrian access and obstruct turning circles for vehicles entering/exiting the existing garages. Consideration has also been given that visitors could park on a temporary basis behind the existing garages in a tandem style arrangement if necessary. For the occupants of the subject site, the provision of 3 parking spaces is therefore seen as adequate.

*Objective 2) To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.*

##### Comment:

The proposal is not considered to result in an increase to the on-street parking demands along Lauderdale Avenue as an increase in the density of the site has not been indicated. As previously detailed, the existing site constraints mean that the provision for an additional parking space is difficult

to achieve.

*Objective 3) To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape.*

Comment:

The existing garages are not visible from Lauderdale Avenue or from the foreshore area. In this regard, the parking arrangement is not seen to result in any visual impact from the streetscape. The current parking arrangement is also considered to provide for acceptable vehicle access.

*Objective 4) To ensure that the layout of parking spaces limits the amount of site excavation in order to avoid site instability and the interruption to ground water flows.*

Comment:

The application seeks the retention of the existing garages and does not proposed any site excavation or interruption to ground water flows for the provision of parking.

*Objective 5) To ensure the width and number of footpath crossings is minimised.*

Comment:

The application does not seek to change the existing vehicle crossing.

*Objective 6) To integrate access, parking and landscaping; to limit the amount of impervious surfaces and to provide screening of internal accesses from public view as far as practicable through appropriate landscape treatment.*

Comment:

The proposed parking arrangement does not result in an increase to the amount of impervious areas on site and is not visible from public view.

*Objective 7) To encourage the use of public transport by limiting onsite parking provision in Centres that are well serviced by public transport and by encouraging bicycle use to limit traffic congestion and promote clean air.*

Comment:

It is considered that the occupants of the subject site will be encouraged to utilise the existing bus stop (public transport connections) directly in front of the site on Lauderdale Avenue to access local centres like Manly.

Based on the above, the proposed development is considered acceptable on merit and consistent with the objectives of the clause in this particular instance.

## **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 2019**

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this 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 Development Consent to DA2020/0470 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:

## **DEVELOPMENT CONSENT OPERATIONAL CONDITIONS**

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
DA-01, Issue A (Site Analysis Plan)	January 2020	Cradle Design
DA-03, Issue A (Ground Floor Proposed)	January 2020	Cradle Design
DA-04, Issue A (Upper Floor Plan - Proposed)	January 2020	Cradle Design
DA-05, Issue A (Roof Plan, Drainage, Site Management & Erosion Control Strategy)	January 2020	Cradle Design
DA-06, Issue A (North & South Elevations - Existing & Proposed)	January 2020	Cradle Design
DA-07, Issue A (East Elevation - Existing & Proposed)	January 2020	Cradle Design
DA-08, Issue A (West Elevation - Existing & Proposed)	January 2020	Cradle Design
DA-09, Issue A (Proposed Finishes Schedule)	January 2020	Cradle Design
DA-10, Issue A (Proposed Strata Plans)	January 2020	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>
BASIX Certificate Ref. A374830	29 April 2020	Cradle Design
Preliminary Geotechnical Assessment, Ref. AG20172	23 July 2020	Ascent Geotechnical Consulting

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

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

<b>Waste Management Plan</b>		
<b>Drawing No/Title.</b>	<b>Dated</b>	<b>Prepared By</b>
Northern Beaches Council Waste Management Plan	4 May 2020	James Tray

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

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

2. **Compliance with Other Department, Authority or Service Requirements**

The development must be carried out in compliance with all recommendations and

requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Response Ausgrid Referral	15/06/20

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

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

3. **No Approval for "Existing Studio"**

No approval is granted under this Development Consent for the structure marked "Existing Studio" above the garages. For the avoidance of doubt, the "Existing Studio" is to not form part of the Strata-Subdivision Plan associated with this Development Consent.

Reason: To ensure compliance with the relevant Local Environmental Plan.

4. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
  - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
  - (i) in the case of work for which a principal contractor is required to be appointed:
    - A. the name and licence number of the principal contractor, and
    - B. the name of the insurer by which the work is insured under Part 6 of that Act,
  - (ii) in the case of work to be done by an owner-builder:
    - A. the name of the owner-builder, and
    - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must

not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

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

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

Reason: Legislative requirement.

## 5. General Requirements

- (a) Unless authorised by Council:  
Building construction and delivery of material hours are restricted to:
- 7.00 am to 5.00 pm inclusive Monday to Friday,
  - 8.00 am to 1.00 pm inclusive on Saturday,
  - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
  - i) Building/s that are to be erected
  - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
  - iii) Building/s that are to be demolished
  - iv) For any work/s that is to be carried out
  - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
  - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009



- (iii) Swimming Pools Regulation 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

## FEES / CHARGES / CONTRIBUTIONS

### 6. **Security Bond**

A bond (determined from cost of works) of \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

## CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

### 7. **Compliance with Standards**

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

Details demonstrating compliance with the relevant Australian Standard are to be submitted to

the Certifying Authority prior to the issue of the Construction Certificate.

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

**8. Sydney Water "Tap In"**

The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifying Authority demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

- "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

Reason: To ensure compliance with the statutory requirements of Sydney Water.

## **CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**

**9. No Access Through Adjoining Park/Reserves**

Access to the site through an adjoining park/reserve is prohibited without the written approval of the Council.

Reason: To ensure protection of council parks/reserves.

## **CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**

**10. Road Reserve**

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

Reason: Public safety.

**11. Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

**12. Installation and Maintenance of Sediment Control**

Prior to any works commencing on site, including demolition, sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and

Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

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

13. **Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifying Authority.

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

14. **Tree and vegetation protection**

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

- i) all trees and vegetation within the site not approved for removal, excluding exempt vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all trees and vegetation within the road reserve.

b) Tree protection shall be generally undertaken as follows:

- i) all tree protection shall be in accordance with AS4970-2009 Protection of Trees on Development Sites, and the recommendations of the Arboricultural Impact Assessment,
- ii) removal of existing tree roots greater than 25mm is not permitted without consultation with a AQF minimum Level 5 Arborist,
- iii) existing ground levels shall remain under the tree protection zone of trees to be retained, unless authorised by AQF minimum Level 5 Arborist,
- iv) any tree roots exposed during excavation with a diameter greater than 25mm within the tree protection zone must be assessed by an AQF minimum Level 5 Arborist. Details including photographic evidence of works undertaken shall be submitted to the Certifying Authority,
- v) to minimise the impact on trees and vegetation to be retained and protected, no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- vi) no tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a AQF minimum Level 5 Project Arborist on site,
- vii) all structures are to bridge tree roots greater than 25mm diameter unless directed by a AQF minimum Level 5 Arborist on site,
- viii) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with a AQF minimum Level 5 Arborist, including advice on root protection measures,
- ix) should either or all of vi), vii) and viii) occur during site establishment and construction works, a AQF minimum Level 5 Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- x) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works, is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS 4970-2009,
- xi) tree pruning to enable construction shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2009 Pruning of Amenity Trees.

c) All protected trees are to be retained for the life of the development, or for their safe natural life. Trees that die or are removed by approval must be replaced with a locally native canopy tree

Reason: to retain and protect significant planting on development and adjoining sites.

### **CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE**

**15. Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

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

### **CONDITIONS THAT MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF ANY STRATA SUBDIVISION OR SUBDIVISION CERTIFICATE**

**16. Subdivision Certificate Application**

The Applicant shall submit a Subdivision Certificate Application to Council, which is to include a completed Subdivision Certificate form and checklist, a final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919, four copies of the final plan of subdivision and all relevant documents including electronic copies. This documentation is to be submitted to Council prior to the issue of the Subdivision Certificate. All plans of survey are to show connections to at least two Survey Co-ordination Permanent Marks. The fee payable is to be in accordance with Council's fees and charges.

Reason: Statutory requirement of the Conveyancing Act 1919.

**17. Subdivision plan**

The strata subdivision plan is to be amended to remove the "existing studio" shown on the plans. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: This is an unauthorised structure without prior approval.

**18. Provision of Services for Subdivision**

The applicant is to ensure all services including, water, electricity, telephone and gas are provided, located and certified by a registered surveyor on a copy of the final plan. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: To ensure that utility services have been provided to the newly created lots.

**19. Compliance with Relevant Legislation**


Prior to the issue of the Strata Plan of Subdivision, all relevant matters pertaining to this Plan, are to be satisfied to the satisfaction of the Certifying Authority, and evidence provided that the

Plan generally complies with clause 17 Strata Schemes Development Regulation 2016 and the relevant parts of Section 58 Strata Schemes Development Act 2015.

Reason: To ensure compliance with the Consent issued, compliance with relevant legislation, and to ensure adequate provision is made, where required for fire safety, occupant safety, egress, access and appropriate facilities in the premises for building occupants.

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

**Signed**



**Kent Bull, Planner**

The application is determined on 02/09/2020, under the delegated authority of:



**David Auster, Acting Development Assessment Manager**