

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/2380
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Responsible Officer:	Nick Keeler
Land to be developed (Address):	Lot 1 DP 348277, 3 Birdwood Avenue COLLAROY NSW 2097 Lot 2 DP 9667, 3 Birdwood Avenue COLLAROY NSW 2097
Proposed Development:	Subdivision of an existing Residential Flat Building into four (4) Strata Lots including remedial works
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	No
Existing Use Rights:	Yes
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Bentag Pty Ltd
Applicant:	Bentag Pty Ltd

Application Lodged:	07/12/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Subdivision only
Notified:	13/12/2021 to 18/01/2022
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 91,080.00
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PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for the strata subdivision of the existing residential flat building into four strata lots. Remedial building works to facilitate fire safety upgrades are also proposed in accordance with the recommendations of the submitted Fire Safety Assessment Report. No alterations to the existing built form of the building and site conditions are proposed.

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

Warringah Development Control Plan - C1 Subdivision
Warringah Development Control Plan - C3 Parking Facilities

SITE DESCRIPTION

Property Description:	Lot 1 DP 348277 , 3 Birdwood Avenue COLLAROY NSW 2097 Lot 2 DP 9667 , 3 Birdwood Avenue COLLAROY NSW 2097
Detailed Site Description:	The subject site consists of two (2) allotment located on the southern side of Birdwood Avenue. The site is irregular in shape with a frontage of 12.19m along Birdwood Avenue and a maximum depth of 44.82m. The site has a surveyed area of 553m². The site is located within the R2 Low Density Residential zone and accommodates a part three storey residential flat building containing four units and a detached single garage at the rear. The site falls approx. 4m from the south towards the north. The site is mostly paved surface apart from a small landscaped strip along the western boundary. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by a mix of low and medium density residential dwellings and buildings. Collaroy Beach Reserve is located opposite the site.

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:

Land Use Consent No. **66/146** for a residential flat building containing four flats was approved on 05/08/1966.

Application **DA2020/0060** for Construction of a retaining wall and front boundary fence was approved on 04/05/2020 by Council staff.

Building compliance investigations have occurred at the site throughout its history investigating the alleged unauthorised conversion of the undercroft area of the building to a fifth unit. An investigation into this allegation occurred in 1989 where it was identified that the undercroft area had been converted to a fifth unit. There are no records indicating further action taken by Council in relation to this investigation.

Council again investigated the allegation that the unauthorised fifth unit was still being occupied in 2008. Investigation revealed that occupancy of the unauthorised unit had continued. A Notice of Intention to Give an Order was issued with the requirement to cease its use for habitable purposes and remove unauthorised kitchen and bathroom works. A request was made by the property owner the retain the bathroom facilities, including a shower, toilet and wash basin. Council allowed the retention of the toilet and wash basin, but required removal of the shower. There are no records indicating that the requirements of the Notice were followed.

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	Warringah 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)	<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 of consent. <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. <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. <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 of consent. <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. <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 condition of consent. <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 of consent. <u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission

Section 4.15 Matters for Consideration	Comments
	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.
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	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (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.
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

- Does the existing use satisfy the definition of "existing use" under the *Environmental Planning and Assessment Act 1979* (the 'Act')?

Section 4.65 of the Act defines an existing use as:

"(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part, have the effect of prohibiting that use, and

(b) the use of a building, work or land:

- (i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
- (ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse."*

This necessarily requires the following questions to be answered:

1. Was the use of the building, work or land a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or

Division 4 of this Part 4 of the Act, have the effect of prohibiting that use?

Comment:

The Applicant has provided evidence in the form of Land Use Consent No. 66/146, which reveals that the use of the land commenced as a lawful purpose of a residential flat building containing four flats on 5 August 1966, prior to the coming into force of Warringah Local Environmental Plan 2011 on 9 December 2011.

2. Was the use of the land granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?

Comment:

The use of the land was lawfully approved by Council on 5 August 1966, prior to the coming into force of Warringah Local Environmental Plan 2011 on 9 December 2011.

3. Has the use of the land been carried out within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse?

Comment:

A site inspection revealed the use of the land remains consistent with Land Use Consent No. 66/146 for a residential flat building containing four flats.

- **What is “the land on which the existing use was carried out” for the purposes of cl 42(2) (b) of the Environmental Planning and Assessment Regulation 2000 (“the Regulation”)?**

Meagher JA in *Steedman v Baulkham Hills Shire Council* [No. 1] (1991) 87 LGERA 26 stated (at 27) the rule to be applied as follows: “if the land is rightly regarded as a unit and it is found that part of its area was physically used for the purpose in question it follows that the land was used for that purpose”.

Comment:

Having regard to the above case law, it is noted that the whole of the area of the land was physically used for the purpose in question and therefore, it is considered that the land was used for that purpose and that existing use rights apply to the whole of the subject site.

- **What are the planning principles that should be adopted in dealing with an application to alter enlarge or rebuild and existing use?**

The judgement in *Fodor Investments v Hornsby Shire Council* (2005) NSWLEC 71, sets out the planning principles that should be applied in dealing with development applications seeking to carry out development on the basis of existing use rights.

The following four principles adopted by the NSW Land and Environment Court in this case will have general application in dealing with development applications that rely on existing use rights:

1. How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?

While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessments.

Comment:

The proposed strata subdivision does not alter the built form of the existing building.

2. What is the relevance of the building in which the existing use takes place?

Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.

Comment:

The bulk and scale of the existing building will not be altered by the proposed strata subdivision.

3. What are the impacts on adjoining land?

The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.

Comment:

No impacts will occur to adjoining land as a result of the proposal.

4. What is the internal amenity?

Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.

Comment:

No change to the internal amenity of the building will occur.

Conclusion

The use has been approved under a previous environmental planning instrument (Warringah Planning Scheme Ordinance 1963) and, therefore, is a lawful use. Subsequently, the use can be retained under

the current environmental planning instrument (WLEP 2011).

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 13/12/2021 to 18/01/2022 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 process council is in receipt of 2 submission/s from:

Name:	Address:
Mr Christopher Douglas Hunt Kristine Mary Hunt	5 Birdwood Avenue COLLAROY NSW 2097
John Tuinman	1 Birdwood Avenue COLLAROY NSW 2097

The following issues were raised in the submissions:

- Alleged use of unauthorised unit
- Building condition
- Parking and access
- Retaining wall along eastern boundary
- Landscaping
- Unauthorised building work
- Waste management

The above issues are addressed as follows:

- **Alleged use of unauthorised unit**

The submissions raised concerns that the building undercroft area behind the garages is being used as an unauthorised fifth unit.

Comment:

Council records indicate that past investigations by the Building Control team into allegations of the construction and use of an unauthorised fifth unit within the building undercroft have been undertaken. The most recent investigation undertaken in 2008 required the property owner to cease use of the unauthorised unit and remove the kitchen and shower.

Any allegations that there is ongoing occupation of this area as an additional unit should be directed to Council's Building Control team for investigation.

- **Building condition**

The submissions raised concerns that the building is in poor condition and remedial works need to be undertaken prior to strata subdivision.

Comment:

The proposed strata subdivision includes fire safety remedial works to ensure the building is compliant with the relevant fire safety standards. This application focuses on the strata subdivision of the building. As such, all other remedial works that the building may require are not matters for consideration in this assessment.

- **Parking and access**

The submissions raised concerns that the existing parking and access conditions on the site are unacceptable and need to be altered.

Comment:

While the existing parking situation on the site does not comply with current planning requirements, the proposed strata subdivision does not alter the intensity of the use of the site and therefore parking demand. Council is not in the position under this application to require changes to the existing parking conditions on the site. Vehicle access to the detached garage at the rear is possible by a B85 vehicle as the overall width for such a vehicle is 1.87m.

- **Retaining wall along eastern boundary**

The submissions raised concerns that the existing dilapidated retaining wall along the eastern boundary has not been fixed.

Comment:

Matters relating to the retaining wall along the eastern boundary and front fence were considered in the assessment of DA2020/0060. Council does not have the ability to force a property owner to commence works relating to an approved development consent. This is a matter that should be discussed between private property owners. Matters relating to the retaining wall do not form part of this assessment.

- **Landscaping**

The submissions raised concerns that the site is significantly deficient of landscaping.

Comment:

While the site contains little soft landscaped areas, the scope of the application pertains to the strata subdivision of the building. No works, other than fire safety upgrades, are proposed. As such, it is not within the scope of this assessment to require changes to the existing site conditions, including landscaping.

- **Unauthorised building work**

The submissions raised concerns that unauthorised works to the building have been carried out.

Comment:

Any allegations of unauthorised building works should be directed to Council's Building Control team for investigation.

- **Waste management**

The submissions raised concerns that the existing waste management and bin storage is unacceptable.

Comment:

A waste management plan is not required to be submitted with an application for a strata subdivision and existing waste service functions will not be altered by the proposal.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below. Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.

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)

Nil

Warringah Local Environmental Plan 2011

Is the development permissible?	No
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	Strata subdivision only	N/A	As existing

Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision - consent requirements	Yes
4.1 Minimum subdivision lot size	N/A
4.3 Height of buildings	N/A
6.1 Acid sulfate soils	N/A
6.2 Earthworks	N/A
6.4 Development on sloping land	N/A

Detailed Assessment

4.1 Minimum subdivision lot size

Subclause (4) states that this clause does not apply in relation to the subdivision of any land by the registration of a strata plan or strata plan of subdivision under the Strata Schemes Development Act 2015.

As the proposed development involves the strata subdivision of the existing residential flat building, the minimum subdivision lot size development standard does not apply to the proposal.

Warringah Development Control Plan

Built Form Controls

This application proposes the strata subdivision of the existing lots. No physical works are proposed, apart from fire safety remedial works. As such the WDCP built form controls do not apply.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	N/A	N/A
B3 Side Boundary Envelope	N/A	N/A
B5 Side Boundary Setbacks	N/A	N/A
B7 Front Boundary Setbacks	N/A	N/A
B9 Rear Boundary Setbacks	N/A	N/A
C1 Subdivision	N/A	N/A

Clause	Compliance with Requirements	Consistency Aims/Objectives
C2 Traffic, Access and Safety	N/A	N/A
C3 Parking Facilities	No	Yes
C4 Stormwater	N/A	N/A
C7 Excavation and Landfill	N/A	N/A
C8 Demolition and Construction	N/A	N/A
C9 Waste Management	N/A	N/A
D1 Landscaped Open Space and Bushland Setting	N/A	N/A
D2 Private Open Space	N/A	N/A
D3 Noise	N/A	N/A
D6 Access to Sunlight	N/A	N/A
D7 Views	N/A	N/A
D8 Privacy	N/A	N/A
D9 Building Bulk	N/A	N/A
D10 Building Colours and Materials	N/A	N/A
D11 Roofs	N/A	N/A
D12 Glare and Reflection	N/A	N/A
D14 Site Facilities	Yes	Yes
D20 Safety and Security	N/A	N/A
E1 Preservation of Trees or Bushland Vegetation	N/A	N/A
E2 Prescribed Vegetation	N/A	N/A
E6 Retaining unique environmental features	N/A	N/A
E10 Landslip Risk	N/A	N/A

Detailed Assessment

C1 Subdivision

As the proposal is a strata subdivision, the provisions this part of WDCP do not apply.

C3 Parking Facilities

Merit consideration

The development is considered against the underlying Objectives of the Control as follows:

- *To provide adequate off street carparking.*

Comment:

The development provides the following on-site car parking:

Use	Appendix 1 Calculation	Required	Provided	Difference (+/-)
Residential	1.2 spaces per	4 x 2	3 spaces	-2 spaces

Flat Building	2 bedroom dwelling	bedroom dwellings - 5 spaces		
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While the existing building is deficient in onsite parking spaces, the proposed subdivision does not alter the existing intensity of use of the site. The onsite parking provisions at the time of development of the building were substantially different to those that are in force at present. As such, it would be unreasonable to expect that additional onsite parking be provided.

- *To site and design parking facilities (including garages) to have minimal visual impact on the street frontage or other public place.*

Comment:

No change to the existing parking provisions are proposed.

- *To ensure that parking facilities (including garages) are designed so as not to dominate the street frontage or other public spaces.*

Comment:

No change to the existing parking provisions are proposed.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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

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;
- Warringah Local Environment Plan;
- Warringah 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 DA2021/2380 for Subdivision of an existing Residential Flat Building into four (4) Strata Lots including remedial works on land at Lot 1 DP 348277, 3 Birdwood Avenue, COLLAROY, Lot 2 DP 9667, 3 Birdwood Avenue, COLLAROY, 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

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
11147SD Issue A Sheet 1 of 4	Undated	Paul Barry Byrne
11147SD Issue A Sheet 2 of 4	Undated	Paul Barry Byrne
11147SD Issue A Sheet 3 of 4	Undated	Paul Barry Byrne
11147SD Issue A Sheet 4 of 4	Undated	Paul Barry Byrne

Reports / Documentation – All recommendations and requirements contained within:

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Report No. / Page No. / Section No.	Dated	Prepared By
Fire Safety Assessment Report (Ref: P210171 - Issue 1)	28/10/2021	BCA Vision

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

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. 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.

3. 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 2018
- (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

4. **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).

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

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

5. **Building Code of Australia Upgrade requirements and Fire Safety Upgrade**

The Building Code of Australia works for fire upgrading measures of the building as detailed and recommended in the Building Code of Australia Assessment Report prepared by BCA Vision, dated 28/10/2021, Report Ref No.P210171 are to be carried out in full to the building as part of the assessment of the Construction Certificate. In addition all window and door openings in the Eastern and Western external walls of the building are to be protected in accordance with Part C3 of the Building Code of Australia.

Details demonstrating compliance including any Alternate Solutions are to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for Health, Amenity, access and Fire safety for building occupant health and safety.

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

6. Compliance with Relevant Legislation

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



Nick Keeler, Planner

The application is determined on 10/03/2022, under the delegated authority of:



Steven Findlay, Manager Development Assessments