

**DEVELOPMENT APPLICATION REPORT
95 GURNEY CRESCENT SEAFORTH
DECEMBER 2019**



1.0 INTRODUCTION

This report is submitted to Northern Beaches Council in support of a Development Application for 95 Gurney Crescent - for alterations and additions incorporating the existing structure of a building that was started, but never completed. The existing incomplete building has a great deal of history with Manly Council and where relevant to the application this have been described below.

This application was originally intended to be lodged as a Section 4.55 amendment to the (still active) approval however at the recent Pre-DA it was requested to lodge the application as a new DA.

This report provides a summary of the proposed development of New Dwelling and swimming pool at 95 Gurney Crescent Seaforth. While this application is a DA for alterations and additions to the original approval, the original approval was for a different owner and has remained an unfinished construction site for almost 20 years. This application for the new owners Narelle van Gemert and John Ball is to complete the construction works. This includes analysis of the proposed development as well as a summary of the history of existing site with incomplete building works of the previous owner.

This application conforms with all statutory planning requirements with the exception of non-compliance with the Height, FSR and Height planes. These non-compliances have been addressed within the report and Clause 4.6 applications have been included for the LEP departures. The development has no significant adverse environmental effects and no persons would be prejudiced by its approval.

The report contains a description of the proposal and a Statement of Environmental Effects. This report should be read in conjunction with the accompanying architectural plans Nos. A000, A001, A100 to A106, A201 to A204, A221 to A222, SK01 to SK06, SK11 to SK19, also prepared by Mark Hurcum Design Practice.

This existing building works received its first Development consent No149/98 for Single dwelling residence. This was followed by subsequent Section 96 applications, one was approved in 2004 and another (the latest consent) in 2011. This proposed development requests modification to the Section 96 scheme approved in 2011 for the new owner. This includes an enclosed garage and office at the carport level (level 5), a master suite on level 4 and addition of a lift and consequent changes with the internal planning as a result.

The proposed design and development addresses issues raised by council in the assessment of the approved development, especially regarding Neighbour's concerns around privacy, overshadowing, boundary fencing, and structural stability of the existing redundant building works.

2.0 Description of Site

The subject site is identified as Lot 44, DP 11214 and is known as 95 Gurney Crescent, Seaforth. The property is located on the western side of Gurney Crescent, a regular lot with east-west orientation. The site has a steep fall, approximately 26m, from the street down to Pittwater. It has a frontage to Gurney Crescent of approximately 12.6m and approximate side boundaries of 48.3m to the north and 50.2m to the south. The total site area is approximately 594.4 sq.m. The site is zoned E3 Environmental Living.

The existing site is currently occupied by an incomplete 5 storey single dwelling structure. Primarily the structure is built of bondek slab supported by concrete blockworks, steel columns and beams with very few external walls. There are no windows or doors added. The building is located on the upper part of the site with pathways and garden areas down to the foreshore. A new carport with unfinished parapet wall is on the street level with 4 storeys below the street.

The property sits at the end of the dead-end street, with only one property between the subject site and bushland at the end of the street. There are also no built properties on the uphill other side of the street.

3.0 Previous Development Applications and Consent

The existing site has been through alternating construction phases and stop work phases for the last 20 years starting from its very first development consent in the year 1999. A timeline to indicate all consents, concerns, notifications and stop work orders has been prepared to get a better understanding of the history of previous applications. Refer Document – “95 Gurney Crescent timeline” to see the timeline of each stage

1. This existing building works received its first Development consent No149/98 for a single dwelling residence on 26th November 1999. The design was for a new 2 storey dwelling residence with carport on the street level, living dining and kitchen in second floor and bedrooms in the first floor. The council record also shows a Construction Certificate approval on 26 June 2000 for a 3 storey residence with a carport on the street level above the residence and an open entertainment area added below the bedroom level .

Refer Document dated 26 November 1999, 26 June 2000 and Council letter dated 28 February 2003

2. A stop work order was released in 2003 after a couple of site inspections were conducted in 2002 and 2003 due to questions raised by neighbours regarding the construction work on site. The questions raised were regarding the structural stability of the retaining wall built between the proposed site and the neighbours, and non compliance of council's conditions of consent dated 26th November 1999. The client responded back providing certifications by structural engineer. Further concerns were raised around the RL of the ground floor by the neighbour at 97 Gurney Crescent. The bedroom level has minor alterations to several windows, with

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additional floor spaces areas to the northern bedrooms. In addition, the open entertainment area was not constructed in accordance with the approved plans.

Modified S96 was submitted in response and was approved in 2004.

Refer Council letter dated 25 January 2002, the client's response statement dated 06 February 2002, Council letter dated 28 February 2003, Section 96 application dated 07 July 2004 and council approval dated 18 August 2004

3. An Emergency Work order was issued in 2008 in order to demolish or repair partly constructed building structure on site to ensure structural stability of them. Safety and security of access to the site especially fencing the swimming pools was raised in this order.

Refer Documents dated 28 February 2008, 17 March 2008, 14 April 2008

4. A Section 96 was lodged on 22 December 2010 responding to all previous council conditions. This primarily included obtaining report from structural engineer regarding the structural adequacy of the existing building, obtaining certification from geotechnical engineer regarding the stability of site and excavation and a surveyor report to indicate the position of existing building structure. In addition few other conditions were addressed that included providing obscured glass to window in dining and deleting the terrace behind the pool towards west.

Refer Document dated 22 December 2010, 27 January 2011 and the council's approval dated 12 May 2011

Summary

The site consists of 4 storey structure plus a carport on the street level with parapet walls. As this was not originally approved, subsequent S96 approval drawings and documents indicate that this has been accepted. In addition the structural adequacy, stability of the site and excavation and the siting of the building to the boundaries have all been inspected and certified by the respective engineers and surveyors in 2010 which was acknowledged and approved by the council in 2011. Boundary fence and retaining wall along neighbour's boundary were inspected and certified as in stable condition.

The approved documentation is exceptionally vague, which leaves undefined internal and external areas such that it is difficult to determine what would constitute GFA for the purposes of determining the approved FSR. This is covered further below.

4.0 Proposed Development

For the purposes of this application the various levels at the development are described as follows

- Level 5 – Garage Level (originally carport)
- Level 4 – Master Bedroom
- Level 3 – Living Level
- Level 2 – Bedroom Level
- Level 1 – Open Space Entertainment Level and Pool

The proposed design involves demolition of the existing unfinished carport and construction of a new enclosed garage along with entry foyer from the street level. The structure of the existing building works has been assessed by a qualified structural engineer and has advised to be in good condition to be retained for the proposed work. Hence the design is aimed at retaining the majority of the building skeleton as it is and redesigning the layout in order to accommodate lift access to all 5 storeys. This level also includes an office located behind the garage. The office space is setback and located with adequate offset from the boundary in order to prevent shadow impact and privacy issue with the neighbours.

The level 4 now is proposed with master bedroom, ensuite and a walk in robe. Again the master bedroom's southern wall is completely enclosed with no windows facing 97 Gurney crescent. As this was raised in the past as a concern of privacy, the main window opening is located at the rear side(west) of the room providing the best view of the middle harbour.

The level 3 is pretty much retained with same functions as in the previous Section 96 application. It includes living, dining and the kitchen with additional storage and circulation space. The living and dining are located in the exact location receive a great view to the middle harbour.

The level 2 consists of 4 bedrooms and 2 bathrooms. All rooms are provided with windows facing the western boundary in order to utilise the view and avoid privacy issue.

The level 1 consists of an open entertainment area, laundry and a bathroom. As noted above, the existing approval was unclear where external area turns into internal area. This is clarified in the proposed application. This level also included the outdoor swimming pool surrounded landscape area and this is developed further, with a proposed removal of existing concrete areas to provide more greenery.

5.0 Development Controls

5.1 HEIGHT

LEP Clause 4.3 – Height of buildings

DCP Clause 4.1.2 – Height of Buildings – Non Compliance

Maximum building height for the subject site as per LEP is 8.5m.

Maximum Wall height as per DCP is 8m.

Maximum Parapet height as per DCP is 0.6 on top of wall height

The overall building height proposed exceeds the 8.5m height.

The proposed site is located on a land with a steep slope with a ratio of 1:1.7. The existing building at the street level consists of an open carport with un finished parapet wall. The proposal is to demolish the parapet wall and build a closed garage at this level similar to the neighbouring residences at 97, 83 and 81 Gurney crescent. Since the garage is located at the street level the proposed garage is still within the building height of 8.5m.

In addition to the closed garage, this level will contain an entry foyer and an office space which is located exactly behind the garage. To the north No.97 is a residence with similar function of entry foyer, garage at street front with living and master bedroom behind garage. To the south No.95 is a open carport.

Hence we believe the proposed part of the building which exceeds the building height does not affect the street character nor impact the views or privacy of adjacent neighbours.

A clause 4.6 variation is included in the application and more detail is provided in that document.

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5.2 FSR

LEP Clause 4.4 – Floor Space Ratio

DCP Clause 4.1.3 – Floor Space Ratio (FSR) – Non Compliance

Maximum FSR permitted for this site as per LEP is 0.4:1 which gives a Gross Floor Area (GFA) of 237.8 sq.m. However under DCP there is an exception to FSR for undersized lots in areas U on the LEP LSZ map where the maximum floor area is a calculation of FSR based on 750 sqm lot size/ site area, which equals to 300sq.m, which is 0.5:1

The site area is 594.4 sq.m

Existing Building GFA is 240.6 sq.m which equals to an FSR of 0.40:1

The allowable GFA is 300 sq.m which equals to an FSR for this site of 0.50:1

The Proposed building GFA is 382.9 sq.m which equals to an FSR of **0.64:1** when calculated against the site area (594.4) or 0.51:1 if calculated against the 750 sq.m lot size.

The proposed building therefore exceeds the allowable FSR by 0.14:1, or 14%

However, it is noted that it would appear that the approved (current) scheme really contains large areas of unenclosed space that do not count at FSR. Filling this in as proposed increased the GFA without increasing bulk and scale. Further, they actually constructed on site a larger building area than approved (one of the reasons for previous stop-work orders). Counting this in then the existing building doesn't match the FSR number as approved. In terms of the new works, only the garage, office and Master bedroom is actually a floor area increase that also increases the bulk and scale.

To demonstrate this, we have broken down the floor area into sections, as shown in the table below.

The proposed additional FSR is primarily due to office space added on the garage level and the addition of a master bedroom suite in the first floor. Apart from them the remaining areas are distributed in all floor levels and is mainly added towards the retaining wall in the east. Hence there is no bulk addition to the existing building structure which can cause overshadow or impact privacy to the neighbour building.

5.2 FSR (Continued)

Proposed GFA Breakdown

SITE AREA	ORIGINAL APPROVED DA	ADDITIONAL AREA INSIDE OF APPROVED ENVELOPE	PROPOSED ADDITIONAL FLOOR AREA OUTSIDE APPROVED ENVELOPE	PROPOSED TOTAL PER FLOOR
				594.4m²
LEVEL 5			39.7m ²	39.7m ²
LEVEL 4	38.7m ²		48.2m ²	86.9m ²
LEVEL 3	100.7m ²	13.0m ²	5.0m ²	118.7m ²
LEVEL 2	101.2m ²	9.6m ²	2.6m ²	113.4m ²
LEVEL 1		24.2m ²		24.2m ²
TOTAL	240.6m²	46.8m² + 240.6m² = 287.4	95.5m² + 287.4m² = 382.9	382.9m²
FSR	0.40:1	0.48:1	0.64:1	0.64:1

It is noted that a number of development applications for either new dwellings or alterations and additions also greatly exceed both height and FSR. This is probably reflective of the value of the land and the quality of the location but the relatively small scale size of the lots. Below is a summary of similar applications. Some of these do not have the "small lot" FSR variation applied to them:

- 97 Gurney Crescent – Approved FSR of 0.54:1
- 91 Gurney Crescent – Approved FSR of 0.6:1
- 89 Gurney Crescent – Approved FSR of 0.46:1
- 81 Gurney Crescent – Approved FSR of 0.68:1
- 34 Gurney Crescent – Approved FSR of 0.48:1
- 36 Gurney Crescent – Approved FSR of 0.48:1

A clause 4.6 variation is included in the application and more detail is provided in that document.

5.3 Sunlight Access and Overshadowing

Shadow diagrams have been prepared to assess the impact of the proposal on the adjoining properties. Refer drawings submitted.

In summary, the proposed building volume does not cast any unreasonable additional shadowing or eliminate more than 1/3rd of the existing sunlight accessing the private open space of the neighbouring property on 93 Gurney Crescent. Especially design consideration was made to setback the proposed office space behind the garage and the master bedroom in first floor so that the impact on the neighbour on the southern side is minor. It is estimated that shadows cast for proposed building for the main part of the day between 9.00am and 3.00 pm particularly during winter will not have any significant impact on the neighbouring properties.

With regard to the solar access available to the proposed development, the building has been designed to maximise solar access to west facing windows and living areas. In order to cut the harsh western sun during summers, louvred sunshade is proposed to the deck area to the living/dining rooms in ground floor.

5.4 Privacy and Security

The proposal has been designed to minimise visual privacy impacts and be sympathetic with neighbouring properties.

To the north No 97 is not impacted as they have very less opening in their southern elevation and have installed privacy screen in their deck area looking at the southern boundary into the proposed site. Also an adequate setback is maintained in the proposed building facing north where a window opening is proposed. All the window openings proposed in the northern elevation are provided with adequate setback from the neighbouring building as well as located beyond the building line of the neighbour.

To the south No 93 is not impacted as no windows are proposed on the southern elevation except for an obscured window for a bathroom in lower ground floor.

In addition to above, the proposed building is designed with all primary main windows and balconies located to the rear to avoid overlooking into the neighbours property. In addition privacy screens are added to avoid any overlooking into neighbours

Window from the office space in carport level and master bedroom in first floor are located with adequate setback thereby making no impact to both neighbours especially No 93.

5.5 Maintenance of Views

The proposed building has been sited within a reasonable footprint and position on the site as per the existing building structure. The proposed building is generally contained within the permissible building envelope and related to the predominant character of

development in the locality in terms of height, size and scale to allow a reasonable and equal sharing views.

It is noted that there are no properties to the East overlooking the site.

5.6 Open Space and landscaping

The minimum total open space required by the DCP is achieved. Refer drawings submitted.

Required:

Total Open Space for Area OS4 - minimum of 60% of site area = 356.64 sq.m

Landscape Area – minimum 40% of TOS = 142.7 sq.m

Above ground – maximum of 25% of TOS = 89 sq.m

Swimming Pool – maximum of 30% of TOS = 107 sq.m

Complies

Proposed:

Proposed Landscape Area – minimum 40% of TOS = 287.2 sq.m

Proposed Above ground – 89 sq.m

Proposed Swimming pool – 50 sq.m

Private Open Space – 83 sq.m (entertainment area)

+ 35.2 sq.m (principal private open space)

Proposed Total Open Space – 508.8 sq.m

Complies

5.7 Parking, Vehicular Access and Loading (including Bicycle Facilities)

The proposed Garage is designed keeping in mind the visual impact on the streetscape and neighbouring properties. The Garage will be an enclosed space and is designed to blend with the rest of the building and not dominate the street frontage. The width of the garage is maintained to the maximum of 6.2m as per DCP. The garage door is set back from the boundary to improve access.

While there are many areas in Seaforth where the “Crown-of-the-road” policy is applied to reduce the visual impact on water views being blocked by garages, by only allowing carports, it is recognised that a) this is the 2nd last property on a one-sided dead-end street and b) that the neighbour to the North currently has an approved garage. This considered, it is reasonable that our Clients can request a garage.

5.8 Biodiversity, Flora and Fauna Assessment

The site sits within the E3 Environmental Protection zone, but what must be recognised here for this site is that it is a pre-existing approval that has been under construction for 20 years. The site has therefore been thoroughly cleared of vegetation with the exception of the area below the pool retaining wall and the retaining wall most likely is already an impediment to fauna traversing the site. As such it is unnecessary to undertake a site specific biodiversity report for this DA.

5.9 Bushfire

The site is situated close to bushland and as such a Bushfire report was required, which has been undertaken and has determined that the building requires a BAL40 rating on the North and East facades, and BAL 29 on the West and South facades.

6.0 Conclusion

This DA proposal is designed to incorporate the conditions required in the approved consent of Section 96 dated 5 May 2011 then developed to suit the requirements of a modern home. As mentioned above, the latest approval from 2011 is essentially only for a 2-bedroom home, but split over 5 levels. It is submitted that the original design was never intended to stay that way. Level 4 under the approved carport doesn't even have any internal space as approved but it is believed it would always have been filled in.

So the proposed S4.55 application is utilising the framework of the approval and the structural works already constructed to create an appropriate and enjoyable lifestyle home that fits into the locality.

Also, as demonstrated above, only some of the additional floor area actually creates additional building envelope. Much of the additional area is enclosure of space left purposefully vague in the original approval, but this does not increase the bulk and scale or any other impacts at all. Further, due to the extreme depth of the approved and constructed excavation and retaining wall, the vast majority of the residence cannot be perceived from the outside.

Further, an analysis of surrounding approvals of the past number of years show that there are multiple examples of buildings that exceed both FSR and Height. Some of these do so in very evident and potentially impactful ways. This proposal however, while it does exceed both FSR and Height the extent that this is additional to the current construction is limited.

The extent of impact especially to the neighbour to the South has been carefully reviewed. The current approval and as-built construction already has a shadow impact on their building and the new works, due to stepping back the office on the top level for example, reduces this impact as much as possible.

Overall, the proposal is reasonable in terms of its scale and proportion. As stated earlier, one of the greatest benefits for the S4.55 is allowing the new Clients to finally complete what has been a construction site eye-sore for almost 20 years. They would like the opportunity to do the site justice and they want to do it properly.