



General Manager
Northern Beaches Council
PO Box 82
Manly NSW 1665

12 February 2018

Re: Section 96AA Modification Application to DA 261/08 (NSW Land & Environment Court (LEC) Proceedings No. 10997 of 2008)

We write to submit a Section 96AA Modification Application to Development Consent 261/08 (NSW LEC Proceedings No. 10997 of 2008) for 38 Stuart Street, Manly.

NSW LEC Proceedings No. 10997 of 2008 (Development Application No. 261/08) granted consent for:

"Demolition of the existing residential flat building and the construction of a three storey residential flat building comprising two (2) units including a double garage, swimming pool and associated site landscaping"

The proposed Section 96 Modification seeks to amend condition DA1 to allow the retention of the existing stairs from the subject property to the beach, but maintain the requirement to delete the proposed stairs to the beach.

In this regard, please find attached the following documentation:

- One (1) x USB containing electronic copies of all relevant documentation;
- Completed DA and Credit Card Authorisation Form for \$945 (\$645 application fee + \$300 notification fee); and
- Statement of Support prepared by SJB Planning.

We trust that the attached documentation is satisfactory for your assessment of the application. Your earliest consideration of the application would be appreciated.

Should you wish to discuss this matter please do not hesitate to contact me on 02 9380 9911 or by email at sbarwick@sjb.com.au.

Yours sincerely

A handwritten signature in black ink that reads 'Scott Barwick'.

Scott Barwick
Associate Director

Statement of Support

1.0 Introduction

This Statement of Support is submitted to the Northern Beaches Council in support of an application to modify Development Consent No. 261/08 (NSW LEC Proceedings No. 10997 of 2008) for “Demolition of the existing residential flat building and the construction of a three storey residential flat building comprising two (2) units including a double garage, swimming pool and associated site landscaping” at 38 Stuart Street, Manly.

2.0 The Site

The site is known as 38 Stuart, Manly, and legally described as Lot 2 DP 252420. The site is located on the south western side of Stuart Street, and has a site area of approximately 592m². The site is irregular in shape, and has a frontage to Stuart Street of 12.2m, and a rear boundary/frontage to Little Manly Cove Beach of 10.5m. The side, north western boundary is approximately 59m, and the south eastern boundary is approximately 52m.

Figure 1 shows the location of subject lot.



Figure 1: Site Location (Source: Six Maps)

3.0 Background

Development Application No. 261/08 was lodged with Manly Council on 6 August 2008 for:

“Demolition of the existing residential flat building and the construction of a three storey residential flat building comprising two (2) units including a double garage, swimming pool and associated site landscaping”

On 2 October 2008, applicant lodged an appeal with the NSW Land and Environment Court (NSW LEC) on the basis of a “deemed refusal”. The DA was subsequently refused by Council.

On 7 October 2009, the NSW LEC (Proceedings No. 109997 of 2008) upheld the appeal, and development consent was granted for the proposed development, subject to conditions (including the condition subject of this Section 96AA application).

Since the Court’s approval, a further three (3) separate Section 96 modification of development consent applications have been lodged with Council and approved for various modifications to the development, including:

- Adding an underground basement area under part of the approved building footprint (June 2010);
- Modifying the internal layout and minor amendments to the pool and fences (August 2010); and
- Addition of separate pedestrian walkway and widening of the driveway (August 2011).

4.0 The Proposed Modifications

4.1 Applicable Development Consent

Development Consent No. 261/08 was issued on 7 October 2009 by the NSW LEC (Proceedings No. 109997 of 2008) for:

“Demolition of the existing residential flat building and the construction of a three storey residential flat building comprising two (2) units including a double garage, swimming pool and associated site landscaping”

The above consent has since been modified with three (3) separate Section 96 applications, the latest being approved by Council on 16 August 2011.

This application seeks to modify the development consent as set out in Section 4.2.

4.2 Proposed Modifications

The proposed Section 96 Modification seeks to amended the wording of part of Condition DA1, as shown in red, as follows:

“The landscape plan above is to be amended prior to the issuing of the Construction Certificate in accordance with the red markings and notations as shown in Exhibit F in the proceedings and this includes:

- (a) *deletion of ~~both existing and the~~ proposed stairs from subject property to the beach;*
- (b) *the side boundary fence with No. 36 to be a maximum height of 1.2m for a distance of 18m from the south-western corner with the beach; and*
- (c) *deletion of timber screen and curved portion of deck in vicinity of common boundary with No. 36.”*

The above amendment to part of condition DA1 has the intent of retaining the existing stairs from the subject property to the beach, whilst at the same time maintaining the requirement to not allow construction of new stairs – as originally proposed.

The existing stairs to be retained are shown in Figure 2. The existing stairs are also shown alongside similar stairs servicing the adjoining property at 40 Stuart Street, Manly, in Figure 3.



Figure 2: Existing stairs at the rear of 38 Stuart Street, Manly



Figure 3: Existing stairs at the rear of 40 Stuart Street in the foreground and existing stairs at rear of 38 Stuart Street, Manly in the background

5.0 Section 96 Assessment

5.1 Section 96AA – Modification by consent authorities of consents granted by the court

In accordance with Section 96AA of the *Environmental Planning and Assessment (EP&A) Act 1979*, Council may consent to the modification of a Development Consent if:

- “(a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (b) *it has notified the application in accordance with:*
 - (i) *the regulations, if the regulations so require, and*
 - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (c) *it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and*
- (d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.”*

The application seeks to make modifications to the approved development to maintain the existing stairs between the subject property and the beach, and not construct any new stairs. The proposal does not alter the description of the approved development, nor does it alter the approved building layout, or result in an increase in yield or intensity of development. The modification is administrative, and does not entail any physical works being carried out.

Accordingly, the development as proposed to be amended is considered to be substantially the same development for which consent was granted. The proposal satisfies Section 96AA of the *EP&A Act 1979*.

In regards to subclauses (c) and (d), notification of the application and consideration of any submissions will be undertaken by Council.

Council can be satisfied that the modifications will result in minimal environmental impact, and is a development that is substantially the same as the approved development, and can therefore be considered under Section 96AA.

5.2 Section 96AA(1A)

In accordance with Section 96AA(1A) of the *EP&A Act 1979*, when determining an application to modify a consent, Council “*must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application*”.

Assessment of the proposed modifications with regard to relevant matters referred to in Section 79C(1) is outlined in Section 6.

6.0 Section 79C Assessment

6.1 Section 79C

Section 79C (1) of the *EP&A Act 1979* sets out the statutory matters for consideration against which the proposed development is to be evaluated. The matters for consideration under Section 79C (1) are as follows:

- The provision of any applicable EPI;
- The provisions of any applicable proposed instrument that has been the subject of public consultation;
- The provision of any applicable development control plan (DCP);
- The provisions of any applicable planning agreement entered into under Section 93F of the *EP&A Act 1979*, or draft planning agreement offered;
- The provisions of the relevant regulations;
- The provisions of any applicable coastal zone management plan;
- The likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts;
- The suitability of the site for the development;
- Any submissions made; and
- The public interest.

The relevant matters for consideration identified in Sections 79C (1)(a) to (e) of the *EP&A Act 1979* are addressed below.

6.2 Overview of Statutory and Policy Controls

The EPIs and other statutory planning documents and policies which are relevant to the assessment of the proposed development pursuant to s79C(1)(a) are identified below.

6.2.1 State Environmental Planning Policies

- Sydney Regional Environmental Plan (Sydney Harbour Catchment) (SREP) 2005; and

6.2.2 Local Environmental Plans

- Manly Local Environmental Plan (MLEP) 2013.

6.2.3 Development Control Plans

- Manly Development Control Plan (MDCP) 2013.

6.2.4 Matters prescribed by the Regulations

Nil.

6.3 State Regional Environmental Plan (Sydney Harbour Catchment) (SREP) 2005

The relevant clauses of the SREP 2005 have been considered and the proposed modification to the approved development will not affect the compliance with the SREP.

6.4 Manly Local Environmental Plan (MLEP) 2013

The relevant clauses of MLEP 2013 have been considered and the proposed modification to the approved development will not affect compliance with the MLEP 2013. The amended condition will retain an existing stair. The stairs sit within land zoned RE1 Public Recreation.

Permitted in this zone are "Recreation areas". A recreation area includes a "*public park, reserve, or garden and the like*". Minor stairs are not in conflict with this land use designation, and the design and location of the stairs as they exist do not hinder the community use of the beachfront reserve.

6.5 Manly Development Control Plan (MDCP) 2013

The relevant sections of MDCP 2013 have been considered and the proposed modifications to the approved development will not affect compliance with the MDCP 2013, with no works proposed.

6.6 Other Impacts

The stairs in question that are proposed to be retained, have been in existence for many years, even preceding the original development application subject of this modification application. It is also noted that other similar nearby stairs have also historically serviced adjoining properties.

As demonstrated in Figures 2 and 3 above, the stairs between the subject site and the beach are visually innocuous, and are suitably integrated into the existing dune system. Existing vegetation either side of the stairs, together with the existing materials and finishes, ensures that the stairs satisfactorily blend into the natural setting.

The positioning and integration of the stairs within the existing dunes system ensures that they pose no interruption to public access to the beach.

Furthermore, by virtue of their scale, construction, and positioning, the existing stairs are not considered to have any adverse impacts upon the environment, including native flora and fauna or the existing dunes.

Noting the above, the retention of the existing stairs will not give rise to any adverse impacts upon the environment, or any adverse social or economic impacts.

6.7 Suitability of the Site

Noting the above assessment of the proposal, the site is considered suitable for the proposed development, and will have little impact on the amenity of surrounding properties or the public domain.

6.8 Public Interest

As noted above, the proposed modification will not result in any adverse impacts on the natural and built environments, or any adverse social or economic impacts. Furthermore, noting their construction and integration into the existing dune system, the retention of the existing stairs will not impact upon the public domain, particularly public access to the beach. Accordingly, the proposed modification is not considered to be contrary to the public interest.

7.0 Conclusion

The proposal is consistent with the statutory and policy framework applying to the site, and will not have any significant adverse impacts on adjoining properties or the public domain. Based on the assessment undertaken, Council's approval of the Modification Application is sought.