



Delegated Authority Report

Description of proposed development	Section 96(1A) application to modify approved Development Application No. 145/08 for alterations and additions to an existing dwelling including first floor extension, new decks, swimming pool, minor landscaping works and double carport with tilting or roller door.
Property Description	Lot 2, DP 527793 39A Cutler Road, Clontarf
Application No	145/08
Applicant	Steven Chadban
Owner	Steven and Sonya Chadban
Estimated Cost	\$425,000.00
Zoning	Residential
Statutory Provisions	Manly Local Environmental Plan, 1988 Manly Development Control Plan for the Residential Zone, 2007 (Amendment 1) Manly DCP for Notification, 1999 (Amendment 2)
Date Received	26 July 2010

SUMMARY:

1. Development consent is sought to modify approved Development Application No. 145/08 for alterations and additions to an existing dwelling including first floor extension, new decks, swimming pool, minor landscaping works and double carport with tilting or roller door.
2. The application was notified to all adjoining and nearby property owners with no submissions received.
3. Precinct referral is not required.
4. The application is recommended for Conditional Approval.

RECOMMENDATION

That pursuant to Section 96(1A) of the Environmental Planning and Assessment Act, 1979; Development Application No. 145/08 for alterations and additions to an existing dwelling including first floor extension, new decks, swimming pool, minor landscaping works and double carport with tilting or roller door at 39A Cutler Road, Clontarf be modified, subject to the original conditions of consent, except as modified by Condition No. DA1, the deletion of Condition No ANS06 and addition of Condition Nos ANS14, 1(2AP01) and 2(3MS01) as follows:

DA1

"This approval relates to drawings/plan Nos CALL 7052 Sheet 1, Sheet 6 to Sheet 9, Sheet 11 and Sheet 12 all Issue 1 dated 10 March 2008 and Sheet 10 Issue 1 dated 26 February 2008 all received by Council on 07 May 2008 and drawing Nos Sheet 1 and Sheet 2 undated and received by Council on 03 September 2008. This approval also relates to the following:

- *Statement of Environmental Effects prepared by Urbanesque Planning Pty Ltd dated 01 May 2008 and received by Council on 07 May 2008; and*
- *Bush Fire Assessment Report prepared by Urbanesque Planning Pty Ltd undated and received by Council on 07 May 2008.*

Except where amended by the Section 96(1A) application (DA 145/08) and drawing Nos S96-1, and S96-6 to S.96-11 inclusive all Revision 02 dated 24 March 2010 and received by Council on 26 July 2010 and drawing No 1013-1A dated 21 June 2010 and received by Council on 25 June 2010 and the following documents:

- *Section 96 Statement of Modifications prepared by Steve and Sonya Chadban dated 18 July 2010 and received by Council on 26 July 2010.*
- *Arboricultural Assessment Report prepared by Margot Blues of Blues Arboricultural & Horticultural Services dated 05 March 2010 and received by Council on 26 July 2010.*
- *BASIX Certificate No. A89471 dated 18 July 2010 and received by Council on 26 July 2010.*

ANS06 To be deleted

~~*The Eucalypt tree species located at the north-western corner immediately adjacent the proposed swimming pool is to be retained and protected during all stages of construction. No excavation should be carried out within 3m of the critical root zone. Details are to be submitted to the Council/Accredited Certifier, prior to the issue of the Construction Certificate.*~~

ANS14

An advanced endemic tree is to be planted in an appropriate location to replace the Sydney Blue Gum. The advanced tree shall be 75 Litre in size, 2m in height at planting and reach a height of 8m minimum at maturity. Details shall be submitted to the Council/Accredited Certifier of the species, location, and pot size. Refer Manly Council's list of endemic plants suitable for the Manly Locality with information on typical height guidelines.

Reason: To maintain the existing number of trees and to provide continued amenity to the subject site and neighbouring development.

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

1 (2AP01)

Four (4) copies of architectural drawings consistent with the development consent and associated conditions are to be submitted to the Council/Accredited Certifier prior to the issue of the Construction Certificate.

Reason: To comply with the Environmental Planning and Assessment Act 1979.

CONDITIONS TO BE SATISFIED PRIOR TO ANY COMMENCEMENT

2 (3MS01)

Works in connection with this Section 96 modification are not to be commenced/carried out until a new Construction Certificate is issued.

Reason: The Environmental Planning and Assessment Act 1979 requires a new updated Construction Certificate to cover any or all approved Section 96 modifications involving changes in the design of the development.

Introduction

The subject site is an irregular 'L' shaped allotment located on the southern side of Cutler Road and has an area of 472m². The property does not have a street presence to Cutler Road as it is located substantially below street level and gains vehicular access via a steep, shared driveway. The site has water views to the south-west. Existing development on the site comprises a three storey high brick dwelling, part of which is cantilevered on the western side and supported by two (2) columns.

This application seeks to modify approved Development Application No. 145/08 for alterations and additions to an existing dwelling including first floor extension, new decks, swimming pool, minor landscaping works and double carport with tilting or roller door, encompassing the following amendments:

- Delete condition ANS06, which stipulates retention of an existing Eucalypt tree species located at the north-western corner immediately adjacent the proposed swimming pool.
- Relocate the swimming pool 1m to the north and reduction in length of 0.5m.
- Delete the approved south facing first floor deck.
- Modifying the approved north facing second floor deck by reducing the length from 5.8m to 4.8m and moving it approximately 2.5m to the east.
- Minor changes to the window configurations due to modifications to first and second floor decks.
- Removal of privacy screen to western side of the second floor deck.

Internal Referrals

Engineering Comments

Not applicable.

Building Comments

No objections. Standard conditions of consent advised.

Landscape Comments

A permit to remove the 1 x Eucalyptus located in the north-western corner of the property is ready to be issued. The tree is in an unstable condition and should be removed. No additional conditions required.

Waste Comments

Not applicable.

Traffic Comments

Not applicable.

Environmental Health Comments

Not applicable.

Heritage Comments

Not applicable.

External Referrals

Precinct Community Forum Comments

Not applicable.

Planning Comments

SEPP'S & SREP'S

State Environmental Planning Policy/ Sydney Regional Environmental Plan	Applies Yes/No
SEPP 14 – Coastal Wetlands	No
SEPP 32- Urban Consolidation	No
SEPP 33 – Hazardous and Offensive Development	No
SEPP 55 – Remediation of Land	No
SEPP 64 – Advertising and Signage	No
SEPP 65 – Residential Flat Buildings	No
SEPP 71 – Coastal Protection	No
SEPP Affordable Rental Housing 2009	No
SEPP BASIX 2004	Yes – Revised BASIX Submitted.
SEPP Housing for seniors or people with a disability 2004	No
SEPP Infrastructure 2007	No
SREP Sydney Harbour Catchment 2005	No

Manly Local Environmental Plan 1988:

The site is in zone No 2 – The Residential Zone which permits dwelling houses with the consent of Council. The proposed modifications are permissible within the Zone with Council's consent.

Manly Local Environmental Plan 1988 Clause 10 Objectives

The following comments are made in regard to the objectives for the Residential Zone as stated in Clause 10 of the Manly Local Environmental Plan 1988;

(a) *to set aside land to be used for purposes of housing and associated facilities;*

The proposal maintains the residential use of the site.

(b) *to delineate, by means of development control in the supporting material, the nature and intended future of the residential areas within the Municipality;*

The site is Zoned Residential. The proposal maintains the residential use of the site.

- (c) *to allow a variety of housing types while maintaining the existing character of residential areas throughout the Manly Council area;*

The proposed modifications will cause minimal environmental impact and will result in substantially the same development for which the consent was originally granted.

- (d) *to ensure that building form, including alterations and additions, does not degrade the amenity of surrounding residents or the existing quality of the environment;*

No adverse impacts having regard to views, privacy, overshadowing and visual impacts will result to the site and surrounds. Following notification of the application no submissions were received.

- (e) *to improve the quality of the residential areas by encouraging landscaping and permitting greater flexibility of design in both new development and renovations;*

It is recommended a replacement native tree be planted to replace the removal of the Sydney Blue Gum. A condition to this effect is included within the Recommendation.

- (f) *to allow development for purposes other than housing within the zone only if it is compatible with the character and amenity of the locality;*

Not applicable.

- (g) *to ensure full and efficient use of existing social and physical infrastructure and the future provisions of service and facilities to meet any increased demand;*

No increase in demand on local infrastructure will result.

- (h) *to encourage the revitalisation of residential areas by rehabilitation and suitable redevelopment.*

The proposal modifications will result in substantially the same development as originally approved. The amendments are consistent with the character of the approved building.

- (i) *to encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination, and particularly in relation to the land to which Manly Local Environmental Plan 1988 (Amendment No 57) applies.*

Not applicable.

Manly Development Control Plan for the Residential Zone 2007 Amendment 1:

Issues	Applicable	Not Applicable
Views	√	
Privacy	√	
Heritage – Actual Property		√
Heritage – In Vicinity		√
Threatened Species		√
Foreshore Scenic Protection Area	√	
Excavation		√
Landslip and Subsidence		√
Bushfire	√ (Referral not necessary)	
BASIX	√ Amended BASIX submitted	

Comment:

There are no objections to the proposed modifications from a planning point of view as detailed below:

1. Delete condition ANS06, which stipulates retention of an existing Eucalypt tree species located at the north-western corner immediately adjacent the proposed swimming pool

An arborist report, prepared by Margot Blues dated 05 March 2010 has been submitted as part of the application. The Report finds the subject tree to display both growth related weakness (genetic) as well as the weakening of existing wood by physiological processes resulting in biochemical problems that are predicted to worsen as the tree ages. The report recommends removal of the Eucalyptus Saligna (*Sydney Blue Gum*) and replacement with a native tree species.

Council's Landscape officer concurs to removal of the tree. A Tree Permit has been issued to remove the tree, subject to planting a replacement tree. A condition to this effect is also included within the Recommendation.

2. Relocating the swimming pool 1m to the north and reduction in length of 0.5m

There are no objections to the relocation of the swimming pool and reduction in length to avoid any infringement on an existing Council easement.

3. Deletion of the approved south facing first floor deck

It is proposed to delete the south facing first floor deck and replace the full-length sliding doors with a window (W19) less than half the size of the doors for the following reasons:

- (i) a required post at the south-west corner would infringe upon an existing Council easement;
- (ii) cost containment; and
- (iii) to increase privacy to neighbouring land in Ogilvy Street.

There are no objections to the above modifications from a planning point of view.

4. Modifying the approved north facing second floor deck by reducing the length from 5.8m to 4.8m and moving it approximately 2.5m to the east

The proposed revisions to the north facing second floor deck are proposed to avoid the requirement for a supporting post to be located within the Council easement. The deck will be supported by two posts, as indicated in the submitted drawings. The relocation of the deck away from the western boundary and closer to the eastern boundary is considered reasonable. The deck will maintain a 5m setback from the eastern boundary. The SEE states that the owner's of the adjoining property to the east were advised of the changes to the deck and have no objections. It is further noted, that following notification of the application, no submissions were received.

There are no objections to removing the privacy screen to the western side of the second floor deck as the relocation of the deck some 2.5m to the east will provide sufficient privacy to the western neighbour. Following notification of the application, no submissions were received.

BASIX

A revised BASIX plan has been submitted as part of the application.

EP&A Act

Section 96 (1A) of the Environmental Planning and Assessment Act, 1979 states that “a consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- a) *it is satisfied that the proposed modification is of minimal environmental impact, and*
- b) *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*
- c) *it has notified the application in accordance with:*
 - i. *the regulations, if the regulations so require, or*
 - ii. *a Development Control Plan, if the consent authority is a council that has made a Development Control Plan that requires the notification or advertising of applications for modification of a development consent, and*
- d) *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the Development Control Plan, as the case may be.*

With regards to the above it is considered that the development to which the consent as modified relates is substantially the same development as originally granted. The proposed modifications will not result in any adverse amenity impacts to neighbouring development and is therefore supported for approval.

SECTION 79C EPA ACT 1979

Section 79C (1) (a)(i) – Have you considered all relevant provisions of any relevant environmental planning instrument?	Yes
Section 79C (1) (a)(ii) – Have you considered all relevant provisions of any provisions of any draft environmental planning instrument	N/A
Section 79C (1) (a)(iii) – Have you considered all relevant provisions of any provisions of any development control plan	Yes
Section 79C (1) (a)(iiia) - Have you considered all relevant provisions of any Planning Agreement or Draft Planning Agreement	N/A
Section 79C (1) (a)(iv) - Have you considered all relevant provisions of any Regulations?	Yes
Section 79C (1) (b) – Are the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality acceptable?	Yes

Section 79C (1) (c) – Is the site suitable for the development?	Yes
Section 79C (1) (d) – Have you considered any submissions made in accordance with the EPA Act or EPA Regulations?	N/A (no submissions received)
Section 79C (1) (e) – Is the proposal in the public interest?	Yes

CONCLUSION:

The application has been assessed having regard to Section 79C of the Environmental Planning and Assessment Act 1979, the Manly Local Environmental Plan 1988 and the Development Control Plan for the Residential Zone 2007 Amendment 1 and is considered Satisfactory.

This report is referred to the Manager of Development Assessment for determination in accordance with the delegations granted by the General Manager.

Officer: Philippa Frecklington Date: 02 November 2010

Principal: _____ Date: _____
Planner