

Memo

Department

To: Development Determination Panel - 12 April 2023

Cc: Max Duncan – Acting Manager Development Assessments

From: Principal Planner – Alex Keller

Date: 11 April 2023

Subject: **Item 3.8 DA2022/0736 – 35 Pine Street, Manly**

Alterations and additions including a change of use from backpackers accommodation to a pair of semi-detached dwellings including subdivision, construction of new two (2) swimming pools and ancillary works.

Record Number: TRIM 2023230718

1.0 Purpose

The purpose of this Memo is to advise the Panel of matters raised by the Applicant seeking to vary or clarify selected conditions and relevant consideration of *SEPP Housing 2021* for development resulting in a reduction of availability of affordable rental housing.

2.0 Content

2.1 Submission to DDP by Applicant

The applicant has raised the following matters regarding recommended conditions “7”, 8(i) and 17(i)

1. **“Condition 7 – Floor Level – C3** – *It is requested that the condition be amended so as to only apply to the new building only. It is not feasible or practical to apply such a requirement to the existing building.*
2. **Condition 8(i)** – *Objection is raised to the requirement to delete the decks located between the proposed “dining” and “living” rooms. The reason for the condition is identified as being to minimise amenity impacts upon the neighbours. The property and the proposed deck are adjoined to the east by a dwelling which supports its own raised deck and which is enclosed by a full height privacy screen along its western elevation (refer to the attached photo). It is clear that the proposal will not impact upon this property. In relation to the adjoining western property, it is advised that this property supports a child care centre. Any impacts would accordingly be upon the occupants of the proposed dwelling rather than the child care centre. It is also advised that the width of the space between the proposed “dining” and “living” rooms is not sufficient to incorporate stairs and the like were the deck to be deleted. The deletion of the decks would completely go against the rationale behind this portion of the development.*
3. **Condition 17(i)** – *It is requested that the landscape plan be amended so as to replace the proposed *Banksia itegrifolia* within the front yards with Blueberry Ash trees. It is understood that this is agreed with by Council’s landscape officer.”*

2.1.1 Assessment Comment:

1. **Condition 7 – Floor Level – C3** - Discussion with Council’s Flood Engineer has resolved that “[the condition] *it needs only for the extension area. They have already put the new area on piers. so I just added a condition to not closed the under floor area.*”
2. **Condition 8(i)** – The subject deck is a trafficable connected floor between the kitchen and living area with operable walls both sides. Amenity concerns were discussed with during site inspection. A landscape courtyard would provide a green space along the side setbacks consistent with Clause 4.1.4 and Clause 4.1.5 of the Manly DCP. It is noted that No.37 Pine Street has subsequently provided a submission of support stating that “*We own the neighbouring property at 37 Pine Street and confirm that we support the DA, including the proposed decks between the living and dining rooms.*”

The use of the childcare centre to the west does not operate at night time and generally has higher noise levels than the proposed semi-detached dwelling on that side of the site also.

In consideration of the above factors and the applicants submission no objection is raised to the deletion of condition 8(i).

3. **Condition 17(i)** Discussion with Council’s Landscape Officer has resolved that the 2 x *Banksia Integrifolia* should be located in the rear yard (as per Clause 4.1.5.2 of the MDCP) and that 2 x Blueberry Ash are suitable for the constrained ground space adjacent the driveway apron.

In consideration of the above, no objection is raised to the condition wording be adjusted to suit the advice from Council’s Landscape Officer.

2.2 SEPP Housing 2021 - Reduction of availability of affordable housing

In consideration of the development proposal the DDP has raised concern regarding Chapter 2 Part 3 of the SEPP which states:

“Part 3

47 Reduction of availability of affordable housing

(1) Development for the following purposes, in relation to a building to which this Part applies, is permitted with development consent—

- (a) *demolishing the building,*
- (b) *altering or adding to the structure or fabric of the inside or outside of the building,*
- (c) *changing the use of the building to another use,*
- (d) *if the building is a residential flat building—strata subdivision of the building.*

(2) In determining whether to grant development consent, the consent authority must take into account the guidelines and the following—

- (a) *whether the development will reduce the amount of affordable housing in the area,*
- (b) *whether there is available sufficient comparable accommodation to satisfy the demand for the accommodation,*
- (c) *whether the development is likely to result in adverse social and economic effects on the general community,*
- (d) *whether adequate arrangements have been made to assist the residents who are likely to be displaced to find comparable accommodation,*

- (e) *the extent to which the development will contribute to a cumulative loss of affordable housing in the local government area,*
- (f) *whether the building is structurally sound, including—*
 - (i) *the extent to which the building complies with relevant fire safety requirements, and*
 - (ii) *the estimated cost of carrying out work necessary to ensure the building is structurally sound and complies with relevant fire safety requirements,*
- (g) *whether the imposition of an affordable housing condition requiring the payment of a monetary contribution would adequately mitigate the reduction of affordable housing resulting from the development,*
- (h) *for a boarding house—the financial viability of the continued use of the boarding house.*
- (3) *Sufficient comparable accommodation is conclusively taken not to be available if, for the 3 months occurring immediately before the development application is lodged, the average vacancy rate in private rental accommodation for Sydney, as published monthly by the Real Estate Institute of New South Wales, is less than 3%.*
- (4) *The continued use of a boarding house is financially viable if the rental yield of the boarding house, as determined under section 48(4), is at least 6%*

2.2.1 Legislative Definition

The Manly LEP 2013 defines **backpacker accommodation** as:

“a building or place that:

- (a) *provides temporary or short-term accommodation on a commercial basis, and*
- (b) *has shared facilities, such as a communal bathroom, kitchen or laundry, and*
- (c) *provides accommodation on a bed or dormitory-style basis (rather than by room).*

Note.

Backpackers’ accommodation is a type of tourist and visitor accommodation—see the definition of that term in this Dictionary.”

The Manly LEP 2013 also defines a **boarding house** as:

“a building that:

- (a) *that provides residents with a principal place of residence for at least 3 months, and that contains shared facilities, such as a communal living room, bathroom, kitchen or laundry, and*
 - (b) *-*
 - (c) *that contains rooms, some or all of which may have private kitchen and bathroom facilities, and*
- used to provide affordable housing, and*
- (d) *-*
 - (e) *if not carried out by or on behalf of the Land and Housing Corporation—managed by a registered community housing provider,*

but does not include backpackers’ accommodation, co-living housing, a group home, hotel or motel accommodation, seniors housing or a serviced apartment.”

2.2.3 Historical Background

- The applicant has provided summary details of the site history as *“It is understood that the existing facility has been in existence since the 1960’s as a boarding house and the 1980’s as backpacker’s accommodation.”*

Council's (Manly Council) "Minutes of a Round Table Forum" dated 19 April 1999, includes the following land use information:

A boarding house is permissible with development consent from Council. There was no distinction or separate definition for boarding house and a backpackers hostel when the premises was used for short and long term accommodation prior to the new owners taking over in November. The change to a backpackers was therefore not recognised as a change of use. The premises was last licenced as a Boarding House in 1992."

- Perusal of Council file associated with development application No.0099/97 and Building application No.0116/97 appear to use the terms of boarding house and backpackers as inter-changeable references to the same operations within the building.
- Perusal of Council file associated with building application No.612/94 shows the building described as "boarding house" with a survey plan attached for the building application identifying the main building as "2 Storey Brick Motel No.35 Ocean Waves"
- Perusal of Council consent register file for 1966 (for No.37 Pine Street) includes a description of No.35 Pine Street as "a 2-storey brick and slate roofed private hotel"
- Perusal of Council consent register file for 1966 also includes an approval for an advertising sign with the following information for "Pines Private Hotel" and that "*The premises are licensed as a Lodging House and situated in an area zoned Residential Class C in which Motels are permitted under the Ministers Scheme although at this juncture, as Council would be aware, the area is of a predominantly residential nature*"

On the balance of probabilities, it is concluded that the premises has been principally used for *short-term accommodation* since (and before) the 1960's but some occupants may have stayed longer depending on their circumstances. Perusal of Council files also shows the boarding house or backpacker use at No.35 Pine Street has caused on-going concerns as perceived by surrounding neighbours. Complaints to Council include, but are not limited to noise disturbances, waste, hours of operation, fire safety, illegal alterations, parking, crowded occupancy and operational management concerns.

2.2.4 Summary Consideration of SEPP Housing 2021

- **Part 3 Clause 47 Subclause (1)**

Notwithstanding the historical particulars between "boarding house" and "backpacker" the proposal of DA2022/0736 is partly demolishing, altering and changing the use of the present building known as "Manly Bunkhouse" which provides cheap rental accommodation in the Manly area. The building principally caters for short term accommodation, but persons may stay longer if permitted by the operator. A search of Council records has not identified a

condition of consent restricting the length of stay for lodgers to be more or less than 3 months either way.

- **Part 3 Clause 47 Subclause (2)(a) to (h)**

- (a) The proposal will reduce the available accommodation for backpackers in the area and for others that may not be “backpackers” but might still consider the premises as suitable accommodation for a period of time. It should be noted that Council is also currently in receipt of DA2022/2256 to redevelop “Stokes Beach House” which also caters for backpackers.
 - (b) There are 3 prominent “backpacker” style tourist facilities in Manly submarket at the “low end” of the rental market as per popular search engines such as “stayz”. Alternative accommodation may include “Airbnb”.
 - (c) The subject premises has gone through a period of low vacancy due to COVID and associated decline in tourism. The development application has identified that the past operations of the premises has raised concerns from surrounding neighbours. Expressions of support for the redevelopment of the site for 2 x semi-detached dwellings, rather than continued use as a ‘boarding house / backpackers’ have been received for the DA.
 - (d) The applicant may address DDP on this issue as Council is not privy to the personal circumstances of any current lodgers.
 - (e) The applicant may address DDP on this issue as Council is not in a position to undertake detailed market analysis.
 - (f) The building is currently occupied / being used for backpacker accommodation and the applicant has not notified Council of any structural concerns or fire safety compliance issues.
 - (g) – (h) Not applicable as the building changes seek to end the use of the premises as boarding house / backpackers. Such condition could therefore not be imposed.
- (3) – (4) The applicant may address DDP on this issue as Council is not in a position to undertake detailed analysis of market yield vs rental return.

3.0 Conclusion

A. The changes to **Condition 7 – Floor Level – C3, Condition 8(i)** and **17(i)** are supported given the supplementary advice provided by Council’s Flood Engineer, Landscape Officer and adjacent neighbours written submission of support.

B. The requirements and consideration of *SEPP Housing 2021* have been made in so far as the DDP can ascertain from Council’s records and as may be available by the applicant, where relevant.

The above information is provided to the DDP for their assistance in considering the subject Item 3.8 in the re-development of the subject land use.

4.0 Recommendation

A. The DDP have regard to the above details for Item 3.8 the consideration of Assessment Report DA2022/0736 alterations and additions including a change of use from backpackers accommodation to a pair of semi-detached dwellings including subdivision, construction of new two (2) swimming pools and ancillary works.

B. The DDP include following changes to the recommended conditions as follows:

“Condition 7 – Floor Level – C3 – The underfloor area of the new rear addition building where below the 1% AEP flood level is to be designed to allow clear passage of floodwaters. At least 50% of the perimeter of the new underfloor area must be of an open design from the natural ground level up to the 1% AEP flood level of 6.02m AHD”.

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Condition 8(i) – Deleted

Condition 17(i) – The 2 x *Banksia Integrifolia* shown to be planted adjacent the driveway area (as per the landscape plan) shall be substituted for 2 x ‘Blueberry Ash’ trees. One (1) *Banksia Integrifolia* shall be planted in a suitable space within the rear setback area for each of the proposed lots.”

C. Consideration of Chapter 2 Part 3 SEPP Housing 2021 be noted by the DDP.