



**Development Assessment Unit Report
Residential Zone
Section 96 Modification of Consent**

DA #	504/07
Site Address	68 Birkley Road Manly
Proposal	Alterations and additions including new first floor and extension to existing ground floor cottage
Officer	

<u>Application Lodged:</u>	18 June 2010
<u>Applicant:</u>	Watershed Design
<u>Owner:</u>	Georgi Coward
<u>Estimated Cost:</u>	\$220,000 (original application)
<u>Zoning:</u>	Manly Local Environmental Plan, 1988 - Residential
<u>Surrounding Development:</u>	Residential
<u>Heritage:</u>	Whilst not a listed item, the streetscape nature was considered as part of the original application.

SUMMARY:

1. Council approved the application for Alterations and additions including new first floor and extension to existing ground floor cottage and two new rainwater tanks on the 23 May 2008
2. The current application is for the modification of the consent to extend the first floor, add a second bathroom and balcony at first floor; infill a planned water feature area at ground floor and reconfigure the interior; and change the rear extension roof from hipped to gable.
3. The application was notified to all adjoining and nearby properties and one (1) confidential objection was received.
4. The application was referred to the Ivanhoe Park Precinct care of Fairlight Precinct Community Forum for comments.
5. Additional information was requested on: 21 September following a site visit and a meeting with the objector.
6. Amended plans were received: 08 October 2010
7. The application is recommended for Conditional Approval

LOCALITY PLAN

Shaded area is subject site. (for MIAP reports only – provided by Administration)

RECOMMENDATION

That pursuant to Section 96 (1A) of the Environmental Planning and Assessment Act 1979, the proposed modification to Development Consent No. 504/07 for Alterations and additions including new first floor and extension to existing ground floor cottage at 68 Birkley Road, Manly be Approved subject to the following conditions:

ANS01

The proposed first floor is to be reduced to the length of the originally approved first floor (12.7 metres excluding the balcony) and be set the approved distance from the front boundary (excluding nib walls) without change to the proposed first floor ridge height of RL50.68, nor reduction of the 1.1 metre setback to the southern boundary, nor changes to the ground floor roof form or ridge height.

Amended drawings are to be submitted to Council/Accredited Certifier with the Construction Certificate application.

Reason for the condition: To ensure a first floor addition does not further reduce sunlight access to windows of the adjacent property to the south of the subject site.

GENERAL CONDITIONS RELATING TO APPROVAL

Documents relating to consent.

The development, except where modified by the conditions of this consent, is to be carried out in accordance with the following plans and documentation.

Plans affixed with Council's stamp relating to Development Consent No. 504/07

Plan No. / Title	Issue/ Revision & Date	Date Received by Council
A01 Site Plan	F: 05 October 2010	08 October 2010
A02 Ground Floor Plan	F: 05 October 2010	08 October 2010
A03 Upper Floor Plan	F: 05 October 2010	08 October 2010
A04 Section A-A	F: 05 October 2010	08 October 2010
A05 Section B-B	F: 05 October 2010	08 October 2010
A06 East & West Elevations	F: 05 October 2010	08 October 2010
A07 North & South Elevations	F: 05 October 2010	08 October 2010

Documentation affixed with Council's stamp relating to Development Consent No. 504/07

- Statement of Environmental Effects prepared by Watershed Design dated: June 2010 and received by Council on the 18 June 2010
- Additional material / Letter of Response prepared by Watershed Design dated: 11 October 2010 and received by Council on 08 October 2010.
- Survey prepared by CMS Surveyors dated 3 October 2007 and received by Council on the 18 June 2010.
- BASIX Certificate No A85809 dated 18 June 2010 and received by Council on the 18 June 2010.
- Shadow diagrams drawing N°. SD01 – SD04, all issue F, undated and received by Council on the 08 October 2010.
- Site Analysis drawing N°. A00 issue F dated 05 October 2010 and received by Council on the 08 October 2010.

In the event of any inconsistency between the approved plans and supplementary documentation, the plans will prevail.

Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council

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

1 (2WM02)

A Waste Management Plan is to be submitted with the application prior to a Construction Certificate being issued in accordance with the Manly Development Control Plan for Waste Minimisation and Management 2000.

The plan should detail the type and estimate the amount of demolition and construction waste and nominate how these materials will be sorted and dealt with. Weight dockets and receipts must be kept as evidence of approved methods of disposal and recycling. All demolition and excess construction materials are to be recycled where ever practicable. It should include consideration of the facilities required for the ongoing operation of the premises' recycling and waste management services after occupation. A template is available from the Manly Council website.

Reason: To plan for waste minimisation, recycling of building waste and on-going waste management.

The requirement for a Waste Management Plan is included in the Department of Environment and Climate change (DECC) Waste Service Performance Improvement Payment Criteria (WSPIP).

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.

PRIVATE COVENANTS, etc. Irrespective of and notwithstanding the terms of this development consent you must make sure that covenants on the title of the property are complied with in respect of the proposed development. This consent does not derogate from any such covenants. For more details contact Land and Property Information, NSW Department of Lands - www.lands.nsw.gov.au or call 9228 6713 or contact your solicitor or licensed conveyancer.

Introduction

Site Analysis:

The site is located on the eastern side of Birkley Road and has an east west orientation. It has rear lane access to Lawson Lane.

It is legally described as Lot A, DP 334786.

The site slopes from the rear boundary to the front (approximately one metre) with a cross fall of approximately 0.5 metres. The site is a rectangular shape, 7.01 m wide with side boundaries being 48.768 m. Total site area is 341.5 m² [source: DP].

The site is developed with single storey timber cottage with rear single garage to Lawson Lane. The lot size and cottage is typical of N^os 62 to 72 Birkley Road. The southern side of the existing cottage is within 200 mm of the boundary (at the western side) and part of the guttering appears to encroach on the adjoining property, No 66 Birkley Road. The southern side boundary is unfenced for the majority of the length of the dwelling and the garage.

Proposed development:

The original proposal was for alterations and additions for a new first floor comprising two bedrooms and a bathroom; and ground floor alterations to form stairs and internal laundry to the original cottage; and a glazed link with water feature to an enlarged rear wing comprising dining, kitchen and living room with timber framed pergola.

Development approval is sought for modification to development consent as follows:

- Increase the length of the first floor addition and relocate the internal stairs, to comprise two bedrooms and two bathrooms, new balcony;
- Infill ground floor link area and reduce length of approved ground floor rear wing by infill area and changing roof form to gabled roof, forming terrace with solid roof over and barbecue area.

Applicant's Supporting Statement

In support of the application the applicant has submitted a Statement of Environmental Effects, which is on file.

In response to the submission, the applicant has submitted a written response which outlines the changes made to the submission. These include:

- Reducing the ridge height by 250 mm
- Increasing the setback to the proposed new balcony and providing translucent glass privacy screens
- Reducing the gable roof overhang and wall height to the south

Precinct Community Forum Comments

At the time of writing this report, no comments were received from the Fairlight Precinct Community Forum.

Engineers' Comments

No new Conditions applied.

Building Comments

Building Class: 1(a)

Recommended Condition applied.

Waste Officer's Comments

Recommended Condition applied.

BASIX Certificate

Certificate No: A85809

Dated: 18 June 2010

Planning Comments

Environmental Planning & Assessment Act 1979 – Section 79(C)(1)

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) *the provisions of:*
 (i) *any environmental planning instrument, and*

SEPP & SREP Checklist

State Environmental Planning Policy	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
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.

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 site is zoned residential and will retain its residential use.

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

Council's Development Control Plan for the Residential Zone 2007, Amendment 1 has been considered in the assessment of the proposal.

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

The proposed modifications to the consent for the dwelling are considered compatible with the character and size of housing in the locality, subject to the inclusion of recommended approval conditions.

- (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;*

The proposed design of the modifications to the consent was not considered to maintain acceptable levels of neighbour's amenity in terms of overshadowing and visual impact so modifications were required. It is considered the original length approved for the first floor should not be increased due to amenity impacts.

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

The amended proposal was not reviewed by Council's Landscape Officer.

- (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;*

The proposal will maintain the residential use of the site.

(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;

The proposal will not result in any increase in demand on services and facilities.

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

The proposed modifications to the consent are considered to suitable redevelopment when the recommended approval conditions are included.

(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.

N/A

79C(1)(a)(ii) - any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and

N/A

79C(1)(a)(iii) - any development control plan, and

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

The following is an assessment of the proposal's compliance with the numerical standards of the Development Control Plan. Where a variation is proposed to the standards, an assessment is included in the Planning Comments.

Site Area: 341.5 m ²	<u>Permitted/ Required</u>	<u>Proposed</u>	<u>Complies Yes/No</u>
Density - Sub Zone	1 dwelling/ 250 m ²	1 dwelling/ 341.5 m ²	Yes
Floor space ratio	0.6:1 204.9 m ²	0.53:1 182.5 m ²	Yes
Wall height N side	6.65 m	6.15 m	Yes
S side	6.6 m	5.9 m	Yes
No of storeys	Max 2	2	Yes
Roof height	3.0 m	1.5 m	Yes
Setback Rear	8.0 m	17 m	Yes
Living/Dining Window setback	3.0 m	m	N/A
N setback side	2.05 m	1.5 m	No
S setback side	1.97 m	1.1 m	Yes
Open space - total	187.8 m ² 55%	149.3 m ² 43.7%	No
Open space - soft	65.74 m ² 35%	94 m ² 50%	Yes
Number of Endemic Trees	1	2 existing	Yes
Private Open Space	18 m ²	>18 m ²	Yes

Site Area: 341.5 m ²	<u>Permitted/Required</u>	<u>Proposed</u>	<u>Complies Yes/No</u>
Car Parking – Residents	2 spaces	1 spaces	No, existing
Garage width	6.2 m or 50% of side width	m	N/A
Excavation (other than pool or basement garage)	1.0 m	<1.0 m	Yes
Shadow - adjacent open space	min 2/3 retained	min 2/3 retained	Yes
- adjoining E-W [2 hours]orientation	2 hours retained	<2 hours retained	No
- exist north facing roofs	10 m ²	10 m ²	

<u>Issues</u>	<u>Applicable</u>	<u>Not Applicable</u>
Views		N/A
Privacy		N/A
Heritage – Actual Property		N/A
Heritage – In Vicinity		N/A
Threatened Species		N/A
Foreshore Scenic Protection Area		N/A
Aboriginal Heritage		Low Potential: N/A
Excavation		N/A
Landslip and Subsidence		N/A
BASIX	BASIX report submitted	

Comment:

Side Setbacks/ Overshadowing:

The side setbacks are inadequate, but as approved, therefore any further loss of amenity to adjoining properties cause by the proposed modifications requires careful examination.

The increased first floor length resulted in loss of sunlight to the adjacent dwelling which was unacceptable.

The original proposal [approval: DA504/07] significantly reduced the sunlight to N° 66; removing all sunlight from two windows and the front door and substantially reducing the sunlight to two other windows (one being a sitting room and therefore considered under the DCP) at 9:00 am and midday of June 21st. It would appear there would be no sunlight to any of the north facing windows at 3:00 pm due to shadows cast by the approved additions.

It should be noted the submitted shadow elevations do not show the shadows cast by the existing single storey building. By interpolation, it would appear the occupants currently enjoy sunlight on June 21st to all windows on the northern facade until shortly before 3:00 pm.

It would also appear earlier extensions (as built) were designed to permit sunlight to the adjoining property via the hipped roof form at the rear of the original cottage and to the new wing; and the lower skillion roof between.

Privacy & Security:

The first floor balcony was not part of the original consent, however subsequent drawings in this application have reduced the size and provided additional privacy screening to minimise loss of privacy/sunlight between properties caused by the proposed balcony.

79C(1)(a)(iia)- any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and
No planning agreement has been entered into as part of this application.

79C(1)(a) (iv)- the regulations

The regulations have been considered for this application

79C(1) (b)- the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

The impacts of the proposed modifications have been considered and, subject to the recommended conditions, will minimise negative social and economic effects of the proposal. This is because the proposed amendment is considered to have detrimental impacts to the adjoining property in terms of overshadowing. The original proposal substantially reduced available sunlight on June 21st and the proposed modifications further reduce the remaining sunlight. Since this was in part due to setback non-compliances, the further loss of sunlight has unacceptable impacts.

79C(1) (c)- the suitability of the site for the development,

The site is within the Residential zone and is currently developed with a single storey cottage; and as such the proposed amendment to the approved works is considered unsuitable development, unless recommended approval conditions apply. The proposal as submitted is not considered suitable development.

79C(1) (d)- any submissions made in accordance with this Act or the regulations

The application was notified to nearby and adjoining property owners in accordance with Council's Notification Policy with one (1) confidential submission received.

Comment on submissions:

Concerns raised in the submission have been considered as part of this report.

79C(1) (e) the public interest.

The proposal is considered to be in the public interest, subject to the inclusion of recommended conditions which seek to prevent further reduction of winter sunlight to the adjoining property.

Section 96 (1A) of the Environmental Planning and Assessment Act 1979

(1A) Modifications involving minimal environmental impact

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 any period prescribed by the regulations or provided by the development control plan, as the case may be.*
- (3) *In determining an application for modification of a consent under this section, the consent authority 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.*
- (4) *The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.*

With regards to the above it is considered that the proposed modifications to the original consent, is substantially the same development as the original development that has been consented to. The modifications requested were notified in accordance with Council's DCP for Notification, and one (1) submission received. All matters relating to the proposed modification in terms of impact on neighbouring properties, streetscape and neighbours' concerns have been considered. The submission has been addressed by way of conditions. The proposed modifications are considered to be satisfactory, subject to the additional approval condition to reduce the overall length, and therefore the application is **recommended for approval**.

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 to be acceptable development and is recommended for Conditional Approval.

ATTACHMENTS

Please list any attachments for this report.

Assessment Planner:

Date: 25 November 2010