



## Development Assessment Unit Report

<b>DA #</b>	259/2013
<b>Site Address</b>	22 Central Avenue, Manly
<b>Proposal</b>	Section 96(1A) to modify approved Alterations and additions to an existing building to create an additional dwelling (caretakers flat) with balcony-involving relocation of internal ensuite, changes to window, modification to ANS01 to remove the restriction that the unit be used as caretakers unit on perpetuity- Part 2
<b>Officer</b>	Glen Hugo

<b><u>Application Lodged:</u></b>	13 October 2014
<b><u>Applicant:</u></b>	Baxter & Jacobson Architects
<b><u>Owner:</u></b>	Proprietors of Strata Plan 7114
<b><u>Estimated Cost:</u></b>	\$40,000
<b><u>Zoning:</u></b>	Manly Local Environmental Plan, 2013 – B2 Local Centre
<b><u>Surrounding Development:</u></b>	Residential Flat buildings, multi use buildings and the Town Centre
<b><u>Heritage:</u></b>	No but adjoins the Town Centre Conservation Area.

### **SUMMARY:**

1. COUNCIL APPROVED THE APPLICATION FOR ALTERATIONS AND ADDITIONS TO AN EXISTING BUILDING TO CREATE AN ADDITIONAL DWELLING (CARETAKERS FLAT) WITH BALCONY ON THE 28 MAY 2014
2. THE CURRENT APPLICATION IS FOR THE MODIFICATION OF THE CONSENT.
3. THE APPLICATION WAS NOTIFIED TO ALL ADJOINING AND NEARBY PROPERTY OWNERS AND THERE WERE ONE (1) SUBMISSION WAS RECEIVED.
4. THE APPLICATION IS RECOMMENDED FOR CONDITIONAL **APPROVAL**.

### **RECOMMENDATION**

That pursuant to Section 96 (1A) of the Environmental Planning and Assessment Act 1979, the proposed modification to Development Consent No. 259/2013 for Alterations and additions to an existing building to create an additional dwelling (caretakers flat) with balcony involving relocation of internal ensuite, changes to window, modification to ANS01 to remove the restriction that the unit be used as caretakers unit on perpetuity at 22 Central Avenue, Manly be **Approved** subject to:

1. The original conditions of consent as approved by DAU on 28 May 2014.
2. As modified by Section 96(1A) – Part 2 – to modify condition Nos. DA1 and ANS01 and the addition of condition No 20 (3MS01).

**The following Condition No. DA1 is to be amended as per Section 96(1A) – Part 2:**

DA1

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. 259/2013:*

<b>Plan No. / Title</b>	<b>Issue/ Revision &amp; Date</b>	<b>Date Received by Council</b>
335.01 01 / Location and Site Analysis	Issue B / 12 June 2012	19 December 2013
335.01 02 / Site Plan and Section	Issue B / 12 June 2012	19 December 2013

335.01 03 / Proposed Floor Plans	Issue B / 12 June 2012	19 December 2013
335.01 04 / Section	Issue B / 12 June 2012	19 December 2013
DA01	Undated	28 January 2014

Documentation affixed with Council's stamp relating to Development Consent No. 259/2013:

- Statement of Environmental Effects prepared by Baxter Jacobson Architects Pty Ltd dated 13 December 2014 and received by Council 19 December 2013.
- SEPP 65 assessment prepared by Baxter Jacobson Architects Pty Ltd dated 13 December 2013 and received by Council 19 December 2013.
- Clause 4.6 MLEP 2013 – Floor Space Ratio Variation, dated 16 September 2013 and received by Council 19 December 2013.

**Except as amended by:**

Plan No. / Title	Issue/ Revision & Date	Date Received by Council
335.01 03 / Proposed Floor Plans	Issue C / 15 August 2014	13 October 2014
335.01 04 / Section	Issue C / 4 September 2014	13 October 2014

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

**The following Condition No. ANS01 is to be amended as per Section 96(1A) – Part 2:**

#### **ANS01**

**The unit is not to be separately titled on the strata plan and is to be listed as common property. The unit is not to be sold separately and is to remain the property of the body corporate.**

Reason: to insure that the unit available to be used as a caretaker flat.

#### **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.

##### 2 (2CD01)

Pursuant to Section 97 of the Local Government Act, 1993, Council requires prior to the issue of Construction Certificate, or commencement of any excavation and demolition works, payment of a Trust Fund Deposit of \$1,300. The Deposit is required as security against damage to Council property during works on the site. The applicant must bear the cost of all restoration works to Council's property damaged during the course of this development. All building work must be carried out in accordance with the provisions of the Building Code of Australia.

Note: Should Council property adjoining the site be defective e.g. cracked footpath, broken kerb etc., this should be reported in writing, or by photographic record, submitted to Council at least seven (7) days prior to the commencement of any work on site. This documentation will be used to resolve any dispute over damage to infrastructure. It is in the applicants' interest for it to be as full and detailed as possible.

Where by Council is not the Principal Certifying Authority, refund of the trust fund deposit will also be dependent upon receipt of a Final Occupation Certificate by the Principal Certifying Authority and infrastructure inspection by Council.

Reason: To ensure security against possible damage to Council property.

### 3 (2CD05)

Detailed engineering drawings of all work must be submitted for approval by the Council/Accredited Certifier prior to the release of the Construction Certificate.

Reason: To ensure the provision of public infrastructure of an appropriate quality arising from the development works to service the development.

### 4 (2CD07)

A Certificate of Adequacy signed by a practising structural engineer stating the existing structure is capable of supporting the proposed additions, is to be submitted to the Council/Accredited Certifier prior to the issue of the Construction Certificate.

Reason: The existing building must be able to support proposed additional loading.

### 5 (2FR01)

A Fire Safety Schedule specifying the fire safety measures (both current and proposed) which should be implemented in the building premises must be submitted with the Construction Certificate application, in accordance with Part 9 Clause 168 of the Environmental Planning and Assessment Regulation 2000.

Note: A Construction Certificate cannot be issued until a Fire Safety Schedule is received.

Reason: Compliance with the Environmental Planning and Assessment Act 1979.

### 6 (2US01)

A Section 94 contribution is to be paid for the provision of or increase the demand for public amenities and public services as a consequence of the development in the area. The total contribution for this development is \$20,000, being \$20,000.00 per additional dwelling. This contribution shall be paid to Council prior to the release of the Construction Certificate.

Note: The Section 94 Contribution fees are indexed annually in accordance with movements in the Consumer Price Index (All Groups Index) for Sydney issued by the Australian Statistician.

Reason: To enable the provision of public amenities and services required/anticipated as a consequence of increased demand resulting from the development.

### 7 (2WM01)

Details of waste management facilities are to be submitted with the application for a Construction Certificate in accordance with the Manly Development Control Plan 2013.

Reason: To ensure appropriate management of waste.

### 8 (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 2013.

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.

## CONDITIONS TO BE SATISFIED PRIOR TO ANY COMMENCEMENT

### 9 (3BM01)

The floor surfaces of bathrooms, shower rooms, laundries and WC compartments are to be of an approved impervious material properly graded and drained and waterproofed in accordance with Australian Standard AS 3740. Certification is to be provided to the Principal Certifying Authority from a licensed applicator prior to the fixing of any wall or floor tiles.

Reason: To prevent the penetration of dampness through walls and floors.

### 10 (3CD01)

Building work, demolition or excavation must not be carried out until a Construction Certificate has been issued.

Reason: To ensure compliance with statutory provisions.

### 11 (3CD02)

Demolition must be carried out by a registered demolition contractor. Documentary evidence of registration must be submitted to Council prior to the commencement of demolition work.

Reason: To ensure demolition is carried out in an appropriate manner that is non-disruptive to the locality and the public.

### 12 (3CD03)

An adequate security fence is to be erected around the perimeter of the site prior to commencement of any excavation or construction works, and this fence is to be maintained in a state of good repair and condition until completion of the building project.

Reason: To protect the public interest and safety.

## CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

### 13 (4AP02)

A copy of all stamped approved drawings, specifications and documents (including the Construction Certificate if required for the work incorporating certification of conditions of approval) must be kept on site at all times so as to be readily available for perusal by any officer of Council or the Principal Certifying Authority.

Reason: To ensure the form of the development undertaken is in accordance with the determination of Council, public information and to ensure ongoing compliance.

### 14 (4CD01)

All of the following are to be satisfied/complied with during demolition, construction and any other site works:

- 1) All demolition is to be carried out in accordance with Australian Standard AS 2601-2001.
- 2) Demolition must be carried out by a registered demolition contractor.
- 3) A single entrance is permitted to service the site for demolition and construction. The footway and nature strip at the service entrance must be planked out.
- 4) No blasting is to be carried out at any time during construction of the building.
- 5) Care must be taken during demolition/ excavation/ building/ construction to prevent any damage to adjoining buildings.
- 6) Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.
- 7) Any demolition and excess construction materials are to be recycled wherever practicable.
- 8) The disposal of construction and demolition waste must be in accordance with the requirements of the Protection of the Environment Operations Act 1997.
- 9) All waste on the site is to be stored, handled and disposed of in such a manner as to not create air pollution (including odour), offensive noise or pollution of land and/or water as defined by the Protection of the Environment Operations Act 1997. All excavated material should be removed from the site in an approved manner and be disposed of lawfully to a tip or other authorised disposal area.

- 10) Section 143 of the Protection of the Environment Operations Act 1997 requires waste to be transported to a place which can lawfully accept it. All non-recyclable demolition materials are to be disposed of at an approved waste disposal depot in accordance with legislation.
- 11) All materials on site or being delivered to the site are to generally be contained within the site. The requirements of the Protection of the Environment Operations Act 1997 must be complied with when placing/stockpiling loose material, disposing of concrete waste, or other activities likely to pollute drains or water courses.
- 12) Details as to the method and location of disposal of demolition materials (weight dockets, receipts, etc.) should be kept on site as evidence of approved methods of disposal or recycling.
- 13) Any materials stored on site must be stored out of view or in such a manner so as not to cause unsightliness when viewed from nearby lands or roadways.
- 14) Public footways and roadways adjacent to the site must be maintained and cleared of obstructions during construction. No building materials, waste containers or skips may be stored on the road reserve or footpath without prior separate approval from Council, including payment of relevant fees.
- 15) Building operations such as brickcutting, washing tools or paint brushes, and mixing mortar not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
- 16) All site waters during excavation and construction must be contained on site in an approved manner to avoid pollutants entering into waterways or Council's stormwater drainage system.

17) Any work must not prohibit or divert any natural overland flow of water.

Reason: To ensure that demolition, building and any other site works are undertaken in accordance with relevant legislation and policy and in a manner which will be non-disruptive to the local area.

15 (4CD02)

In order to maintain the amenity of adjoining properties, audible site works must be restricted to between 7.00am and 6.00pm, Monday to Friday and 7.00am to 1.00pm Saturday. No site works can be undertaken on Sundays or public holidays.

Unless otherwise approved within a Construction Traffic Management Plan, construction vehicles, machinery, goods or materials must not be delivered to the site outside the approved hours of site works.

Reason: To prevent disturbance to the surrounding community.

16 (4CD03)

Toilet facilities are to be provided at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 person or part of 20 persons employed at the site, by effecting either a permanent or temporary connection to the Sydney Water's sewerage system or by approved closets.

Reason: To maintain sanitary conditions on building sites.

17 (4CD07)

Anyone who removes, repairs or disturbs bonded or a friable asbestos material must hold a current removal licence from Workcover NSW. Before starting work, a work site-specific permit approving each asbestos project must be obtained from Workcover NSW. A permit will not be granted without a current Workcover licence.

All removal, repair or disturbance of or to asbestos material must comply with the following:

- The Occupational Health and Safety Act 2000,
- The Occupational Health and Safety Regulation 2001,
- The Code of Practice for the Safe Removal of Asbestos [NOHSC: 2002 (1998)],
- The Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998)] <http://www.nohsc.gov.au/> ], and

- The Workcover NSW Guidelines for Licensed Asbestos Removal Contractors.

Note: The Code of Practice and Guide referred to above are known collectively as the Worksafe Code of Practice and Guidance Notes on Asbestos. They are specifically referenced in the Occupational Health and Safety Regulation 2001 under Clause 259. Under the Occupational Health and Safety Regulation 2001, the Worksafe Code of Practice and Guidance Notes on Asbestos are the minimum standards for asbestos removal work. Council does not control or regulate the Worksafe Code of Practice and Guidance Notes on Asbestos. Those involved with work to asbestos should be made aware of the requirements by visiting [ww.workcover.nsw.gov.au](http://ww.workcover.nsw.gov.au) or one of Workcover NSW's offices for further advice.

Reason: To ensure the health of site workers and the public.

18 (4MS01)

Should you appoint Council as the Principal Certifying Authority (PCA) to undertake inspections during the course of construction, then the following inspection/certification are required:

- Framework inspection,
- Wet area moisture barrier,
- Final inspection.

The cost of these inspections by Council is \$885 (being \$295 per inspection inclusive of GST). Payment of the above amount is required prior to the first inspection. Inspection appointments can be made by contacting the Environmental Services Division on 9976 1414.

At least 24 hours notice should be given for a request for an inspection and submission of the relevant inspection card. Any additional inspection required as a result of incomplete works will incur a fee of \$165.

Reason: To ensure that the development is completed in accordance with the terms of the development consent and with the Building Code of Australia.

## **ONGOING CONDITIONS RELATING TO THE OPERATION OF THE PREMISES OR DEVELOPMENT**

19 (6MS02)

No person shall use or occupy the building or alteration which is the subject of this approval without the prior issue of an Occupation Certificate.

Reason: Statutory requirement, Environmental Planning and Assessment Act 1979.

**The following Condition No. 20 is to be added as per Section 96(1A) – Part 2:**

### **CONDITIONS TO BE SATISFIED PRIOR TO ANY COMMENCEMENT**

20 (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**

### **Subject site and surrounding area**

The subject site is commonly known as 22 Central Avenue, Manly and legally known as Strata Plan 13245. The site is located on the western side of Central Avenue. The property is rectangular in shape and has a frontage of approximately 90.72 m to Central Avenue and a depth of 30.7m and an overall site area of 2808m<sup>2</sup>. The property has a rear frontage to Short Street. The property currently contains a 23 storey building with vehicular access via Central Avenue to the existing car park. The building is a mixed use development comprises of a multi storey car park to the lower levels, a level of retail shops, a level of commercial office space and residential units above.

The surrounding area includes residential flat buildings, small businesses, shop top housing and the Manly CBD.

### **Description of original development**

The original proposal included alterations to an existing building including converting the existing common space in the stairwell into a studio apartment dwelling for the purposes of a caretaker flat. The unit also has a balcony included for private open space.

### **Description of proposed modification**

The proposal seeks to amend the original proposal to;

- Amend condition ANS01 to remove the requirement for the unit to be used as a caretakers flat.
- Amend the plans to relocate the bathroom lower the window sill and add louvers.

### **Applicant's Supporting Statement**

The applicant provided a statement of modification in support of the application.

## **Internal Referrals**

### **Engineers Comments**

The Council's Engineers offered no objections to the proposal.

### **Building Surveyor Comments**

The Council's Building Surveyor offered no objections to the proposal subject to inclusion of recommended conditions of consent.

### **Waste Officer Comments**

The Council's Waste Officer offered no objections to the proposal.

## **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 65 – Quality of Residential Flat Development.**

The proposal is not considered to be a substantial redevelopment or a substantial refurbishment of the existing building and accordance with clause 4(1) SEPP 65 does not apply. It is noted that the proposed modification substantially increases the amenity of the proposed unit.

### Manly Local Environmental Plan 2013

The subject site is located in Zone B2 Local Centre under Manly LEP, 2013 the proposed development is considered to be shop top housing within an existing mixed use development and is defined below:

*“shop top housing means one or more dwellings located above ground floor retail premises or business premises.”*

The proposal is considered to be permitted with development consent.

Under the Manly LEP 2013, the site is:

### Zone B2 Local Centre

#### Objectives of zone

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*

The original proposal is for caretakers flat, which while for a residential use is related to the provision of services to the residents of the area.

- *To encourage employment opportunities in accessible locations.*

The proposal is related to employment opportunities.

- *To maximise public transport patronage and encourage walking and cycling.*

The proposal increases the density for public transport patronage.

#### Part 4 Principal development standards

The provisions of the Manly LEP 2013 have been referred to as part of the assessment. The proposed modification does not alter the principal development standards.

#### Part 5 Miscellaneous Provisions

The provisions of the Manly LEP 2013 have been referred to as part of the assessment. The proposed modification is not affected by the miscellaneous provisions.

#### Part 6 Local Provisions

The provisions of the Manly LEP 2013 have been referred to as part of the assessment:

<b>6.</b>	<b><u>Local Provisions</u></b>	<b><u>Applies</u></b>	<b><u>Complies</u></b>	<b><u>Comments</u></b>
6.9	Foreshore Scenic Protection Area	Yes	Yes	<i>Proposal complies with the clause</i>
6.12	Essential services	Yes	Yes	<i>Proposal complies with the clause</i>

**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**

There is no applicable draft environmental planning instrument that affects the modification of consent.

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

#### Manly Development Control Plan 2013:

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



### Part 3 General Principles of Development

<u>Issues</u>	<u>Consistent with principle</u>	<u>Inconsistent with principle</u>
Townscape	✓	
Privacy and Security	✓	
Sustainability	✓	

#### Part 4 - Development Controls

The proposed modification does not alter the sites compliance with the part 4 development controls.

#### Part 5 - Special Character Areas and Sites

<u>Special Character Areas and Sites</u>	<u>Applicable</u>	<u>Not Applicable</u>
Conservation Area		✓
Foreshore Scenic Protection Area	✓	
Threatened Species and Critical Habitat		✓
Flood Control Lots		✓
Riparian Land and Watercourses		✓
Road Widening		✓

#### Comment:

##### Foreshore Scenic Protection Area

The property is located within the Foreshore Scenic Protection Area however the area is within the existing footprint of the building and is not considered to increase visual bulk and is not visible from the foreshore. As a result the proposal is consistent with the additional matters for consideration contained within paragraph 5.4.1.1 of the DCP.

##### ***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***

There is no planning agreement or draft planning agreement applicable to the subject site.

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

The proposed works are considered to be in accordance with the regulations.

##### ***79C(1)(a)(v) - any coastal zone management plan (within the meaning of the Coastal Protection Act 1979)***

There is no coastal zone management plan applicable for the subject site.

##### ***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 proposed development is considered to have acceptable impacts both on the natural and built environments and social and economic impacts. The improved amenity with the proposed unit associated with the amendments area as such that it is acceptable for rental as a general unit and as a caretakers unit.

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

The proposed development is considered to be suitable for the site.

**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 Development Control Plan 2013 Section 2.2 with one (1) submission received from the following objectors raising the following concerns:

1. W.A, Tricttler
  - No in principal concerns about the development.
  - Concerns over the requirement to pay special levy for the replacement of sliding doors and windows throughout the building.
  - Request that Manly Council delays decision until the window contract has been completed.

*Comment on submissions:*

It would be inappropriate for council to withhold a determination on a development application due to an unrelated a dispute within a strata body.

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

The public interest is best served by the consistent application of the relevant Environmental Planning Instruments, and by the consent authority ensuring that any adverse impacts on the surrounding area are avoided. This is considered to have been achieved in this instance noting the increased amenity of the unit.

**S94 Contribution towards provision or improvement of amenities or services**

This part of the Act relates to the collection of monetary contributions from applicants for use in developing key local infrastructure. The Act reads as follows:

- '(1) If a consent authority is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the consent authority may grant the development consent subject to a condition requiring:*
- (a) the dedication of land free of cost, or*
  - (b) the payment of a monetary contribution,*
- or both.*
- (2) A condition referred to in subsection (1) may be imposed only to require a reasonable dedication or contribution for the provision, extension or augmentation of the public amenities and public services concerned.'*

**Comments:**

In this case, the existing condition requires a section 94 contribution of \$20,000 which is unchanged by the proposal.

**CONCLUSION:**

The application has been assessed having regard to Section 79C of the Environmental Planning and Assessment Act 1979, the Manly Local Environmental Plan 2013 and the Manly Development Control Plan 2013 and is considered to be acceptable.

Assessment Planner: \_\_\_\_\_

Date: \_\_\_\_\_