

# NOLAN PLANNING CONSULTANTS

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19 December 2017

Northern Beaches Council - Manly  
1 Belgrave Street  
MANLY NSW 2095

Dear Sir,

## SECTION 96(1a) APPLICATION

<b>Premises:</b>	<b>Lot 2 in DP 68123, No. 27 Francis Street, Fairlight</b>
<b>Amendments:</b>	<b>Amend plans</b>
<b>Development Application:</b>	<b>DA 159/2017</b>
<b>Date Determination:</b>	<b>29 September 2017</b>

## INTRODUCTION

On behalf of Mr Cheng I seek Council consent pursuant to Section 96(1a) of the *Environmental Planning & Assessment Act* 1979 to amend the plans of Development Application No. DA159/2017 relating to the construction of dwelling alterations and additions at No. 27 Francis Street, Fairlight.

## PROPOSED MODIFICATION

This proposal seeks to amend the approved plans as follows:

- Extend roof to rear over mezzanine level.
- New window to media room on lower level northern elevation to replace existing double hung window.
- Two new windows on the lower level southern elevation to study and games room.

The following information accompanies the Section 96 Application:

- Architectural Plans prepared by SketchArch, Project No. 1623 and dated 16/11/17.

## LEGISLATION

Section 96(1a) of the Act states:

*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*

Comment: The Consent granted approval for the construction of alterations and additions to the existing dwelling house. The proposed amendments seek approval to provide small modifications as described above. The amendments are considered to be of minimal impact.

- (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*

Comment: The original consent granted approval to the construction of alterations and additions to an existing dwelling house. The amendments provide for minor alterations. This is considered to be substantially the same development.

- (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.*

Comment: The application will be notified in accordance with Council guidelines.

**MANLY LOCAL ENVIRONMENTAL PLAN 2009****Extract of Zoning Map**

The site is zoned R1 General Residential under the provisions of the Manly Local Environmental Plan. Development for the purpose of a dwelling house (and ancillary development) is permissible with Consent in this zone.

The following provisions of the LEP apply to the proposed development:

Clause	Development Standard	Proposal	Compliance
Clause 4.3 Height of Buildings	8.5m	Refer to plans – approx. 10.278m	See comments at end of table.
Clause 4.4 Floor Space Ratio	0.60:1	0.76:1	No change to approved floor space.

**\*\*Height** – Section 96 applications do not rely upon any clause 4.6 variation to enable approval (refer to *North Sydney Council v Michael Standley & Associates Pty Ltd [1998] NSWSC 163*). It was established in this case that section 96 is a ‘free-standing provision’, meaning that “a modification application may be approved notwithstanding the development would be in breach of an applicable development standard were it the subject of an original development application”. Notwithstanding, it is considered that the height as proposed is justified in this instance for the following reasons:

- The non-compliance is a direct result of the slope of the land and the continuation of the existing roof form.
- The additions are at the rear of the site and are not discernible from the street.

- The resultant development is compatible with the existing surrounding development.
- The additional roof is very minor and not visible from the street. Further the additional shadow is very minimal and will continue to maintain reasonable solar access to the surrounding properties.
- The area of non-compliance is very minor and is central on site and not visible from the street.
- The additional roof form provides for improved amenity with increased solar access and ensures compliance with BASIX.

The variation to the building height is inconsequential as it is of negligible impact to the streetscape and the amenity of neighbouring properties.

### **JUSTIFICATION**

The proposed amendments to the plans are considered justified for the following reasons:

- The proposed additional roof form is not visible from the street and does not result in any unreasonable impact on the adjoining properties.
- The proposed amendments to the windows will not have any detrimental. The new windows are on the side elevations to the lower level and as such will not provide any opportunity to the adjoining properties. Further these windows are not visible from the public domain.
- The additional roof form provides for a greater mezzanine to improve amenity and light whilst also ensuring compliance with the BASIX requirements for eaves.

It is therefore considered appropriate that the amendments to amend the plans should be supported.

### **CONCLUSION**

For the reasons stated above it is considered that this application to amend the consent should be supported. Should you require any further information please do not hesitate to contact me.

Yours faithfully,



**Natalie Nolan**