



DElegated Authority Report

DA #	202/09 – Section 96 (1A) Modification
Site Address	45 Eurobin Avenue, Manly
Proposal	Alterations and addition to the existing residential flat building including new front entry, rear first floor deck, pool and new carport roof.
Officer	

<u>Application Lodged:</u>	15 January 2010
<u>Applicant:</u>	Rebecca Cook
<u>Owner:</u>	Rebecca Ann Cook
<u>Estimated Cost:</u>	\$80,000
<u>Zoning:</u>	Manly Local Environmental Plan, 1988 - Residential
<u>Surrounding Development:</u>	Residential dwellings and residential flat buildings
<u>Heritage:</u>	The site is a locally heritage listed item and is located in the vicinity of several heritage listed items.

SUMMARY:

1. Council approved the application for alterations and addition to the existing residential flat building including new front entry, rear first floor deck, pool and new carport roof on the 7 October 2009.
2. The current application is for the modification of the consent.
3. The application was notified to all adjoining and nearby property owners and no submissions were received.
4. The application was referred to the The Corso and Ocean Beach Precinct Community Forums for comments.
5. 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. 202/09 for alterations and addition to the existing residential flat building including new front entry, rear first floor deck, pool and new carport roof at 45 Eurobin Avenue, Manly be Approved subject to the original conditions:-

ANS06 - Deleted

ANS13

Where the drawings relate to alterations, additions, or Section 96 modifications, only those works shown in colour, clouded, notated or highlighted are approved, except where modified by a condition of this consent.

Reason: To ensure that only those works considered by Council form part of the consent.

ANS14

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 locality

The subject site is commonly known as 45 Eurobin Avenue, Manly and is legally known as SP 54561. The site is irregular in shape with an area of 503.7m². The site is located on the northern side of Eurobin Avenue.

The site has an existing two storey residential flat building consisting of two units with a detached single garage which is heritage listed under the Manly Local Environmental Plan 1988 and is a part of a group of two storey residential flat buildings located along the northern side of the street. The site is located within Class 3 of the Manly LEP Acid Sulphate Soils map.

Surrounding development is residential in nature consisting of dwelling houses and residential flat buildings.

Background

A development application was approved by Council under Development Consent Number 260/07 for conversion of the existing two units into a single dwelling including new single garage, swimming pool, rooftop terrace and other alterations and additions.

A development application was approved by Council on the 7 October 2009 for alterations and addition to the existing residential flat building including new front entry, rear first floor deck, pool and new carport roof. The work will convert the existing residential flat building into a residential dwelling.

An application is currently under assessment by Council for alterations and additions to the existing dwelling including new flat roof and new garage roof.

Current proposal

The proposal has modified the plans to comply with relevant condition of the original consent

Ground Floor

- Modification to the internal layout of ground floor
- Entry door is to be relocated along the eastern side of the dwelling
- Proposed storeroom is to be deleted.
- Extension with two new windows to the new kitchen area to be consistent with the existing setbacks of the dwelling.
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First Floor

- Relocation of the internal stairs
- Reconfiguration of the internal layout to the first floor

- Window to be installed to previous location of the first floor external access on the eastern elevation
- Extension with new window and door to balcony to the new bathroom area to be consistent with the existing setbacks of the dwelling.
- Balcony to the rear is to be modified to have round edges to be consistent with the design of the house.
- Provide solid balustrade to the balcony
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External

- Change to the pool shape from rectangle to kidney shape pool.
- Lawn area within the front setback to comply with condition ANS08
- Construction of an entry awning to the eastern elevation in circular style to match the existing dwelling.
- Awning in line with roof around whole building.
- Flat carport roof to comply with ANS
- Two circular windows to the ground and first floor on the street front elevation
- Modification to the pool fence location.
- Replace the existing roof over the gazebo
- Maintain the existing roof over the external toilet & shower room
- Addition of a gas and electrical service box in the front setback

Precinct Community Forum Comments

The development application was referred to the Ocean Beach & The Corso Precinct Community Forums for comment on the 15 February 2010. At the time of writing this assessment report no comments had been received from the Forum. It was therefore considered that, given the time elapsed, it was expedient to undertake the assessment without including such comments. The assessment process considered neighbouring amenity and any submissions received relating to the proposal.

Engineers Comments

No new conditions required for the Section 96 Modification.

Building Comments

No objection to the proposed modification subject to the inclusion of the conditions contained within the recommendation.

Landscape Architects Comments

Amendments satisfy condition ANS08. No new landscape conditions are required.

Heritage Comments

Comments

1. The heritage report prepared on behalf of the applicants in 2007 concluded that the house “does not warrant listing as an individual item”, and that its significance is limited to the contribution to the Eurobin Avenue streetscape (SHI p. 43). Albeit this point is debatable, I tend

to agree that the essence of significance of 45 Eurobin Avenue is in its position as part of the group of buildings, rather than in its individual features.

2. Majority of the proposed changes are readily approvable, being relatively minor in that context, and generally in keeping with the architectural style of the residence. Notably, this includes the newly proposed flat roof which, in my opinion, would help refine the strongly Modernist architectural style of the house. In general, it is deemed that the proposed changes present an improvement of the architectural values of the house.

3. One important question to examine is that of the external stairs, the retention of which was conditioned under the consent to the original DA/202/2009 with intention to demonstrate the former use of the building as a block of flats.

The place is listed as part of a group of blocks of flats, but originally may have been an individual residence. In the recent decades, the building was used as a “duplex” (block of two flats, each flat occupying one whole floor); however, it is not clear from the available information (including the submitted heritage report) is that the original configuration, or was the whole building originally a single dwelling. The heritage report provides only a couple of sentences on the original creation of the building, but suggests it initially was a “house built in 1938” (SHI, p.10), repeatedly refers to it as a “dwelling” or “individual dwelling” (SHI, *passim*), and confirms that the whole property was in a single ownership until 1977 (SHI, p. 10).

That makes the importance of demonstrating the former use as a block of flats very relative. The external stairs are not highly visually prominent in the streetscape and do not make a strong positive contribution to the aesthetic values of the building or the group of buildings. Given those factors, it is fair to say that the external stairs do not make an important contribution to the significance of the heritage item.

In combination with the structural engineer's recommendation to demolish the existing stairs, I am of opinion that this part of the proposal can be supported without conditions.

4. It is noted that the schedule of finishes and colours for the house was not submitted.

5. It is also noted that details of the fence were not submitted.

Conclusion – DA/202/2009

The works proposed under the S.96 application to DA/202/2009 satisfy the Council's heritage requirements and can be supported.

Waste Comments

No objection to the proposed modification subject to the inclusion of the conditions contained within the recommendation.

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***

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 modification is considered to be ancillary to the existing use of the property as a 'residential use' as defined under the Manly Local Environmental Plan 1988.

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 proposed modification is considered to be ancillary to the existing residential use of the property.
- (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 proposed modification is on an existing residential property and is consistent with the relevant controls and objectives of the Manly Development Control Plan for the Residential Zone, Amendment 1, 2007.

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

The proposed modifications are minor in nature and will maintain the existing character of the residential area.

- (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 modification will not degrade the amenity of the adjoining residents. The modification is for minor alterations to the approved layout and external facade and will not affect the existing quality of the environment.

- (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 proposed modification is considered to encourage greater flexibility for the existing facade with the internal alterations.

- (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 proposed modification is ancillary to the existing residential use of the property and is not considered to be 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;*

The proposed modification is not considered to increase demand on the provision of services and facilities.

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

The proposed modification is considered to be suitable redevelopment for the existing approval.

- (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.*

The subject site is not located within the Tourist Zone.

Clause 17 of MLEP, 1988 – Foreshore Scenic Protection Area:

Clause 17 of Manly Local Environmental Plan, 1988 relates to the Foreshore Scenic Protection Area:

“The Council shall not grant consent to the carrying out of development unless it is satisfied that the development will not have a detrimental effect on the amenity of the Foreshore Scenic Protection Area”

The proposal will not have any detrimental effect by way of visual bulk on the amenity of the Foreshore Scenic Protection Area.

Clause 18 of MLEP 1988 – Items of the environmental heritage

Clause 18 of the Manly Local Environmental Plan, 1988 relates to Items of environmental heritage:

- (1) *A person shall not, in respect of a building, work, relic or place that is an item of the environmental heritage:*
 - (a) *demolish, renovate or extend any such building or work,*
 - (b) *damage or despoil any such relic or any part of any such relic,*
 - (c) *excavate any land for the purpose of exposing or removing any such relic,*
 - (d) *erect a building on the land on which that building, work or relic is situated or the land which comprises that place, or*
 - (e) *subdivide the land on which that building, work or relic is situated or the land which comprises that place,*
except with the consent of the council.
- (2) *The council shall not grant consent to a development application made in pursuance of subclause (1) unless it has made an assessment of:*
 - (a) *the significance of the item as an item of the environmental heritage of the Municipality of Manly,*
 - (b) *the extent to which the carrying out of the development in accordance with the consent would affect the historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the item and its site,*
 - (c) *whether the setting of the item, and in particular, whether any stylistic, horticultural or archaeological features of the setting should be retained, and*
 - (d) *whether the item constitutes a danger to the users or occupiers of that item or to the public.*

The proposed development is considered to be minor in nature and it is considered that the proposed development will not affect the historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the item and its site.

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

No draft planning instrument related to the proposed modification.

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

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

<u>Issues</u>	<u>Applicable</u>	<u>Not Applicable</u>
Views		✓
Privacy	✓	
Heritage – Actual Property	✓	
Heritage – In Vicinity		✓
Threatened Species		✓

Foreshore Scenic Protection Area	✓	
Excavation		✓
Landslip and Subsidence		✓
BASIX		✓

Comment:

Privacy

The proposed modifications will not impact upon the adjoining neighbors privacy. The extension to the ground floor and first floor will have a minimal impact from the ground floor however the proposed first floor window will be obscured glass as the area is to be a bathroom.

Heritage

The proposed modifications are mainly internal and external modifications are considered to be minor and will not detract from the heritage significance of the item.

Condition ANS06 has been deleted upon heritage officers comments above.

Foreshore Scenic Protection Area

The property is located within the Foreshore Scenic Protection Area. As the works are minor internal and external alterations to the approved development it is considered that the proposed works will not have a detrimental effect on the amenity of the Foreshore Scenic Protection Area.

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 draft planning agreement has been entered into in relation to the proposed development.

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

The Environmental Planning and Assessment Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia. Accordingly, appropriate conditions of consent are recommended for imposition should this application be considered worthy of approval.

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 modification will have a minimal impact upon the natural and built environment as the external facade of the structure already exists. The proposal is not considered to have significant social and economic impacts upon the locality.

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

The site is considered to be suitable for the proposed modification due to the existing residential use of the property subject to the conditions contained within this consent.

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

No submissions were received in relation to the proposed modification.

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

The public interest has been served by the detailed assessment of the application and due consideration of any submissions.

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

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 consent was originally granted and before that consent as originally granted was modified (if at all) under this section, 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 under section 72 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 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 no submissions received. All matters relating to the proposed modification in terms of impact on neighbouring properties, streetscape and neighbours' concerns have been considered. The proposed modifications are considered to be satisfactory, subject to conditions and therefore 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 satisfactory for approval.

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

Officer: _____ Date: _____

Manager: _____ Date: _____