

Memo

Environment

Subject:	Section 96 (1) Modification
To:	Manager, Development Assessment
From:	Claire Downie, Development Assessment Officer
Date:	30 November 2017
Application Number:	DA105/2013 – Part 4
Address:	112 Sydney Road, Fairlight
Proposal:	Section 96(1) Modification of Development Consent No. 105/2013

Background

The above development consent was granted by the former Manly Independent Assessment Panel (MIAP) on 19 September 2013 for Demolition of existing structures, construction of a boarding house, residential units and Stratum Subdivision.

A Section 96 application involving the modification to the third level to include three one-bedroom units and deletion/modification of conditions of consent was approved by the former MIAP on 16 October 2014. An appeal to the NSW Land and Environment Court (LEC) to increase floor space, convert two units into three and amend conditions of consent was upheld on 19 May 2015. The judgement amended the wording of Condition No. ANS02 to require payment of Section 94 contributions prior to the Occupation Certificate, instead of prior to the Construction Certificate.

A further modification seeking alterations and additions to the approved development was approved by the Northern Beaches Independent Assessment Panel on 26 July 2017. An incorrect reference to payment of Section 94 Contributions prior to Construction Certificate (i.e. contrary to the NSW LEC judgement) was used in the approved conditions of consent.

Details of Modification Application

Under Section 96(1) of the EPA Act 1979, a consent containing an error or mis-description may be amended. Manly DCP does not require the notification of Section 96(1) modification applications as they are considered to be for minor changes that do not affect the development or the amenity of adjoining properties.

The application proposes to correct the wording of ANS02 to require payment of Section 94 contributions prior to the Occupation Certificate, instead of prior to the Construction Certificate, in accordance with the NSW Land and Environment Court judgement of 19 May 2015.

Conclusion

The modifications are minor in nature and consistent with the provisions of Section 96 (1) of the EP&A Act 1979 and are therefore recommended for approval.

Recommendation

That Council as the consent authority approve the modifications to development consent 105/2013 for Demolition of existing structures, construction of a boarding house, residential units and Stratum Subdivision as follows:

The following Condition No.ANS02 is to be amended as per Section 96(1) Application – Part 4:

ANS02 (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 \$116,000.50. This contribution shall be paid to Council prior to the release of the Occupation 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.