



Agenda

Land Use Management Committee

Notice is hereby given that a Land Use Management Committee of Council will be held at Council Chambers, 1 Belgrave Street, Manly, on:

Monday 6 December 2004

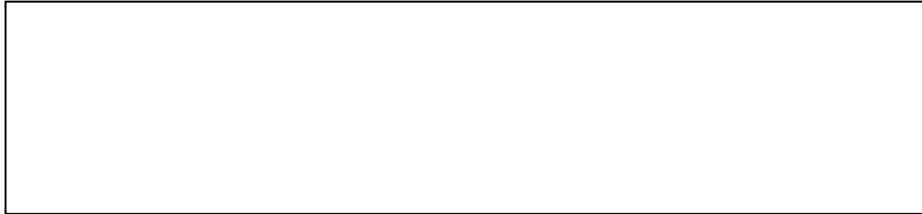
Commencing at 7:30 pm for the purpose of considering items included on the Agenda.

Persons in the gallery are advised that the proceedings of the meeting are being taped for the purpose of ensuring the accuracy of the Minutes. However, under the Local Government Act 1993, no other tape recording is permitted without the authority of the Council or Committee. Tape recording includes a video camera and any electronic device capable of recording speech.

*Copies of business papers are available at the Customer Services Counter at Manly Council, Manly Library and Seaforth Library and are available on Council's website:
www.manly.nsw.gov.au*

Seating Arrangements for Meetings

Staff Staff General
Manager Chairperson Staff Minute
Taker



Mayor Dr Peter
Macdonald

Clr Mark Norek

Clr Joanna Evans

Clr Barbara Aird

Clr Brad
Pedersen

Deputy Mayor
Clr Richard
Morrison



Clr Jean Hay AM

Clr Adele Heasman

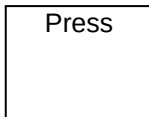
Clr Dr Judy Lambert

Clr Simon Cant

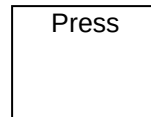
Clr David Murphy

Clr Pat Daley

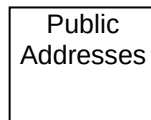
Press



Press



Public
Addresses



Public Gallery

Chairperson: Clr Dr Judy Lambert
Deputy Chairperson: Clr Simon Cant

LAND USE MANAGEMENT COMMITTEE**APOLOGIES AND LEAVE OF ABSENCE****DECLARATIONS OF INTEREST****CONFIRMATION OF MINUTES**

The Land Use Management Committee of 1 NOVEMBER 2004

PUBLIC ADDRESSES**SITE INSPECTIONS**

Inspections will be held at the following sites on:

MONDAY 6 DECEMBER 2004.

Time	Property Address	Time	Property Address
8:10am	17 Adelaide Street, Balgowlah Heights	9.25am	273 Sydney Road, Fairlight
8:35am	33 - 37 Ethel Street, Seaforth	9:50am	51 Whistler Street, Manly
9:00am	1 Harbourview Street, Clontarf	10.20am	243 - 259 Pittwater Road, Manly

ENVIRONMENTAL SERVICES DIVISION REPORTS

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Environmental Services Division Report No. 96
Development Applications Being Processed During December, 2004 **131**

Environmental Services Division Report No. 97
List of Appeals for December, 2004 **135**

CLOSED COMMITTEE ITEMS

******* END OF AGENDA *******

TO: Land Use Management Committee - 6 December 2004

REPORT: Environmental Services Division Report No. 86

SUBJECT: 87 Ellery Parade, Seaforth

FILE NO: DA361/01

PREVIOUS ITEMS: 81, Land Use Management Committee (1 November 2004)

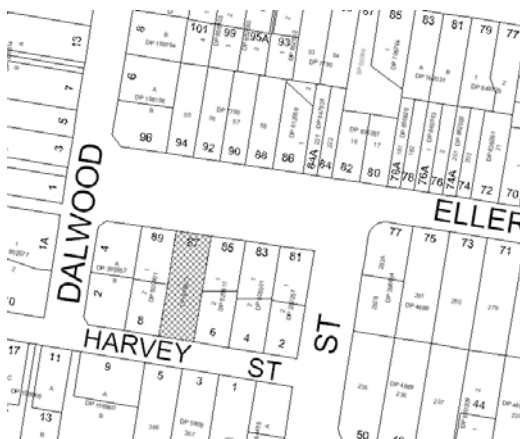
<u>Application Lodged:</u>	21st July 2004
<u>Applicant:</u>	C Kritsotakis
<u>Owner:</u>	C and CF Kritsotakis
<u>Estimated Cost:</u>	\$360,000
<u>Zoning:</u>	Manly Local Environmental Plan, 1988 - Residential
<u>Surrounding Development:</u>	Residential dwellings
<u>Heritage:</u>	Not applicable

SUMMARY:

1. DEVELOPMENT CONSENT WAS SOUGHT FOR DEMOLITION OF EXISTING RESIDENCE AND ERECTION OF TWO NEW DWELLINGS AND SUBDIVISION OF THE PROPERTY INTO TWO LOTS.
2. COUNCIL APPROVED THE APPLICATION AT THE DEVELOPMENT CONTROL UNIT MEETING OF THE 13TH FEBRUARY, 2002.
3. CONSTRUCTION OF THE FIRST HOUSE, FACING HARVEY STREET, HAS TAKEN PLACE AND IS NEARING COMPLETION.
4. COUNCIL IS IN RECEIPT OF A REQUEST FOR MODIFICATION UNDER SECTION 96 OF ENVIRONMENTAL PLAN ASSESSMENT ACT TO ALLOW INCREASED HEIGHT OF THE PARAPET WALL.
5. THE APPLICATION WAS NOTIFIED AND SUBMISSIONS RECEIVED.
6. THE APPLICATION WAS REFERRED TO THE SEAFORTH PRECINCT COMMUNITY FORUM AND COMMENTS RECEIVED.
7. THE MATTER WAS ORIGINALLY CALLED TO THE LAND USE MANAGEMENT MEETING BY COUNCILLOR MACDONALD AND CANT.
8. THE APPLICATION WAS CONSIDERED BY COUNCIL AT IT'S LAND USE MANAGEMENT MEETING OF 1 NOVEMBER, 2004, WHERE THE MATTER WAS DEFERRED.
9. REFUSAL OF THE APPLICATION IS RECOMMENDED.

LOCALITY PLAN

Shaded area is subject land.



Environmental Services Division Report No. 86 (Cont'd)**REPORT****Introduction**

The original development application for demolition of the existing residence and erection of two new residences and land subdivision was approved by Council at the development control unit meeting of the 13th appropriate 2002. Construction of the building fronting Harvey Street, took place however, surrounding neighbours advised the Council that the parapet and central turret on the roof were constructed higher than the approved plans. It should be noted that the owner approached Council staff with the engineering plans and referred to inconsistencies between these plans, and the architectural plans. However, inadequate information was presented to the staff member and notwithstanding a positive note, given to the owner a letter was subsequently sent advising that the building should be built to the architectural plans. In spite of this letter, the owner continued construction, completing the additional parapet Heights, as well as rendering the entire structure this gave rise to correspondence from Council to the owner in relation to the illegal works.

As a result of this correspondence Council is now in receipt of a request for modification under section 96. This request for modification asks for "lifting parapet wall" however, it is noted that the letter sent out to surrounding neighbours refers to raising the parapet 300 millimetres in the turret 400 millimetres. The plans submitted as part of the section 96, illustrate the parapet height one metre above the slab, rising to RL of 89.00 which is 750 millimetres above the original parapet height. In the absence of a letter accompanying the application that will be taken at the plans illustrate a true reflection of what is being requested.

The matter was considered by Council at it's Land Use Management Meeting of 1 November 2004 where it was resolved as follows;

"That consideration of the Section 96 application be deferred pending Councillors being briefed on recent Land and Environment Court decisions relating to Section 96 approvals for building works already completed and the history of this particular application."

The General Manager will brief Councillors on the recent Land and Environment Court decisions prior to the meeting of 6 December 2004 and below is a history of the relevant development applications in respect of the subject property.

History DA316/01

A check of Council records shows the following;

Development Application No.361/01 for demolition of the existing dwelling and, erection of two new dwellings and land subdivision was received by Council 9 August 2001. The applicant was Baka Organic Design. Owner C & CF Kritsotakis.

The application was notified to nearby and adjoining property owners with four submissions received which raised the following concerns;

- The height of the central portion of the building under the ground level is a breach of Council regulation.
- The use or failure to rule out the use of the roof as an observation platform and/or deck is objected to.
- The bulk of buildings would have an impact on the enjoyment of surrounding properties.
- The buildings are not in keeping with the general streetscape and amenity of the neighbourhood.
- There is a loss of view, which will impact on the amenity of the adjacent property.
- The height from the natural ground level and the building placed on artificial structure above this level does not comply with Council regulations.

Environmental Services Division Report No. 86 (Cont'd)

- The development does not comply with the minimum site area requirements of 600m².
- Concern is raised at the proposed depth of excavation is a neighbouring houses built on the same rock face. Geologically we are concerned in terms of cracks of the rock face where our foundations are.
- The proposed plan of subdivision does not reveal adequate room for car parking.
- There will be an infringement of our privacy in a courtyard at No.6 Harvey St. As both new properties have a balcony at ground, first floor looking into a courtyard. Either the balcony design should be amended or the existing fence made higher to maintain privacy.
- Size and height of the skylight means that the roof could be accessed. Does this comply with Council regulations?
- The north points are inconsistent which exaggerates the loss of sun in the mornings of the adjacent property. The proximity of the dwelling No.2, it's excessive height casts unreasonable shadows the morning sun is important because they can not benefit from the afternoon sun due to the present two-storey house to the west at No.10 Harvey St built to within 0.5m of this side boundary.
- Site drainage shows a 200 mm pipe running along the common boundary with the manhole indicated inside the property No.8. It is difficult to imagine the route of the pipe considering the fact that the garage is located on the boundary. The land slopes towards number eight Harvey St and cause flooding and bogging.
- Plan indicates the new dwelling 2 could easily be moved further northeast away from the common boundary. Site falls to No.6 Harvey St and this would neither obstruct views nor cause overshadowing of the proposal number two, and vice versa. This will allow the retention of the Ficus tree close to the common boundary.
- Boundary wall height is approximately 2.6 metres on the common boundary which is unacceptable.
- The proposed garage built against boundary would prevent any possible trees and shrubs being planted or the retention of existing vegetation. The existing illegally built inhabited space should not be used as a reason to build on boundary.
- There will be loss of privacy due to the proximity of the proposal and the lack of screening vegetation.
- The subdivision is 10% below Council's planning code.
- Vehicular access from Harvey St to the development is not detailed in the plans currently there is a rough vehicular access to the existing carport.
- The proposed soft landscaping is of poor standard, the removal of existing Ficus tree is unnecessary. Unfortunately a big branch has already been cut. The landscape drawing shows planting on top of the garage whereas the architectural drawings show a 200mm slab with no planted box. If there is a planted box the wall would become even higher.
- There are numerous false statements in the Much Property Services report.
- The proposed height exceeds that allowable due to the atrium on top of the roof. This would blockhouse it is which is one of the reasons why we purchased the property.

The application was considered by Council at it's Development Control Unit Meeting of 13 February 2002 where it was approved subject to a number of conditions including the following special conditions;

2. The central skylight on each dwelling is to be reduced in height, by reduction of the walls to one metre in height above the rear slab. In this regard the plans are to be amended prior to issue of the Construction Certificate.
3. The building fronting Harvey St is to be moved 0.5m to the east and the plans amended accordingly prior to issue of the Construction Certificate.
4. The drainage details shown on the architectural drawings 2/7 dated August 2001 should be amended to be consistent with the stormwater concept plans submitted on the 21st of January 2002.

Environmental Services Division Report No. 86 (Cont'd)

5. A Geotechnical Engineers report is to be submitted to the principal certifying authority (PCA) to ensure the stability of rock formation with the excavation required.
6. Each of the dwellings are to be used or occupied solely as single dwelling house.
100. The Landscaping Plan submitted with the Development Application being amended by replacement of the Eucalyptus Haemastoma with a suitable species determined in consultation with the owner of No.8 Harvey St and Council's Landscape Architect. An amended plan incorporating the amendments is to be submitted to the Principal Certifying Authority with the application for a Construction Certificate.

24 May, 2002, Council received an application under Section 96(1) of the Environmental Planning and Assessment Act 1979 to modify conditions 40, 42 and 43 of the Consent which relate to provision of easements and inter allotment cut off drain. The modification sought to alter the staging of registration of the necessary easement from Construction Certificate stage to Subdivision Certificate stage. The modification was approved on 6 June 2002.

22 December, 2003, Council received a complaint from A Cantafio of No.8 Harvey Street concerning building of a garage on the boundary.

17 February, 2004, Council received a separate Development Application (DA95/02) which proposed "inclusion of a basement level with concrete driveway to be used as a garage". The applicant was B Farias NB Design. Owner C Kritsotakis. For clarity the history of this application is dealt with separately later in this report.

26 March, 2004, Council received a further letter from A and A Cantafio raising concern with alleged unauthorised works at No.87 and stating that they have raised the matter with the Private Certifier.

Following contact between the Private Certifier and Council officers the Certifier verbally confirmed works were in accordance with the approval and Council replied to A and A Cantafio on **5 April, 2004**, advising of same.

Council's file contains a copy of a fax transmission dated 5 April 2004 from the Private Certifier to Paul Frischknecht (Architect representing A and A Cantafio) advising that C Kritsotakis had followed engineers details that indicate 1.0m parapet and that Manly Council agrees with this course of action. The Certifier advised that he had requested written confirmation of same from Council. The Certifier also stated that as the works are in accordance with Manly Council's instructions no further action as the Principal Certifying Authority is required.

Some time **prior to 25 May, 2004**, C Kritsotakis visited Council's office and met with Hugh Watson of Council's Development Assessment section. On that day Mr Watson was shown structural engineers plans which showed a parapet 1.0m high and was ---requested to provide written comment that a 1.0m parapet height is acceptable. The file contains a hand written note which is not addressed and is signed by Hugh Watson advising that a 1.0m high parapet in accordance with the Engineers drawing is acceptable to Council. Mr Watson has advised that this note was made without the benefit of viewing the file and made on the assumption that the engineers drawings were consistent with the Construction Certificate plans.

27 May, 2004, Council received a further letter from A and A Cantafio advising of discussions with Hugh Watson and requesting Council revoke the approval stated in the hand written note.

4 June, 2004, Council sent a letter to C Kritsotakis advising the memo signed by Hugh Watson dated 25 May 2004 is revoked as it was written without the necessary authority and the work requires a modification of Development Consent.

Environmental Services Division Report No. 86 (Cont'd)

6 June, 2004, Council received a letter from M Bessey of No.6 Harvey Street raising concern as to process and potential roof access.

7 June, 2004, the Private Certifier served a Notice of Intention to Issue an Order to require compliance with Development Consent (DA361/01) and Construction Certificate No. 02034-CC. Reasons for the notice are – parapet height and turret walls constructed above the approved height. The notice stated an intended period of compliance of 30 days and invited representations to the PCA no later than 18 June 2004.

16 June, 2004, Council received a further letter from A and A Cantafio advising work is continuing with rendering of brick parapet and turret and requesting confirmation of Council's action.

18 June, 2004, Council received a fax transmission from the Private Certifier (which included a copy of letter to the PCA from C Kritsotakis) advising that the owner intends to submit a Section 96 application to modify the consent.

18 June, 2004, Council wrote to A and A Cantafio advising of the then current situation and possible future action to pursue the matter by Council issuing an Order and the possibility of further action through the Land and Environment Court.

13 July, 2004, Council wrote to C and CF Kritsotakis advising Council had not received a Section 96 application and requesting a written undertaking to cease building works until a section 96 application has been lodged and assessed by Council.

16 July, 2004, Council received a response from C Kritsotakis advising of reasons for the delay in lodgement of a Section 96 application and that the Section 96 application had been drafted and will be lodged Monday 19 July (sic July) 2004.

21 July, 2004, Council received the subject application under Section 96 to modify the consent. The application proposes "lifting parapet wall"

History DA95/04

17 February, 2004, Council received a separate Development Application (DA95/02) which proposed "inclusion of a basement level with concrete driveway to be used as a garage". The applicant was B Farias NB Design. Owner C Kritsotakis.

DA95/04 was notified to nearby and adjoining owners with submissions received from M Bessey of No.6 Harvey Street and A and A Cantafio of No.8 Harvey Street. The submissions raised the following concerns;

- We object to the new DA 95/2004 where our neighbour has submitted plan to turn his new roof at 87 Ellery Parade into an entertainment area. This is being constructed today using plans which were rejected by Council in the DA361/01. In these plans he was required to lower the turret by 1.0m. Builders have not only completed formwork for a turret that is 1.0m too high, they have also put in formwork for an illegal staircase to provide access to this full roof entertainment area. We ask that Chris cease and desist constructing his unapproved height turret.
- The Cantafios have no objection to changes proposed to the approved DA. 361/01 which relate to the incorporation of a ramp and underground car park. They do, however, object to the following aspects of the proposal - the turret on top of the two buildings (one building being under construction) still show the same maximum level as stated in the original DA 361/01, even though development consent conditions dated 13 Feb 2002 stipulate that the turrets have to be lowered by one metre. The applicant's site plan DA 01 still shows the

Environmental Services Division Report No. 86 (Cont'd)

building P2 basement built hard against the common boundary with No.8 Harvey St, even though the consent conditions dated of 13 Feb 2002 stipulate a minimum setback of 0.5m.

The application was considered by Council at its Development Assessment Unit meeting of **25 May, 2004**, which resolved to issue deferred commencement consent, the deferred commencement condition being,

“Architectural plans must be submitted to Council which are in accordance with the original architectural plans approved by Council on the Development Application 361/01, as amended by the conditions of that consent. Particular attention must be paid to the height of the proposed building.”

11th of August 2004. The applicant submitted revised plans, which conformed with the deferred commencement conditions and consent 95/04 was issued by Council on 17th of August, 2004.

(End of comments in respect of DA 95/04)

Submissions

In response to the notification Council received submissions objecting to the development from A and A Cantafio of 8 Harvey Street; S Timbury of 9 Harvey St and M Bessey of 6 Harvey St. Concerns raised include the following:

- Loss of privacy
- Non-compliance with original approval
- Looking at the house it appears the work has already been done prior to Council approval.
- It seems that many alterations have taken place since the original plans were circulated. It makes it confusing especially as the latest plans were drawn by different people, and measurements don't always correspond.
- The applicants seek to extend the height of the parapet walls and turret and intend to use this as a stairwell to provide rooftop access for a rooftop entertainment area.
- The modification is subject to objection on privacy noise and overshadowing effect.
- In determining an application under 96 (3) Council must take into consideration matters in section 79 C(1) which are relevant including any environmental planning instrument or development control plan. Council must not exercise its discretion, unless it is satisfied that " the development to which consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent was originally granted was modified,(if at all)
- Approving the modification, would diminish our privacy and amenity. People on the top entertaining area, would have an unobstructed view of both my front and backyards.
- The development control plan for the residential zone 2001 provides objectives to screen between closely spaced buildings and mitigate direct viewing into windows from others. To achieve the objectives DCP provides that building should be oriented to address the street to allow for maximum street surveillance to provide a sense of security, rather than being oriented towards the street. The outdoor entertainment area is oriented towards my residence the application is contrary to the objectives of DCP.
- The proposal to extend the height of the parapet walls and turret is to facilitate access to the rooftop as outdoor entertaining area the premises scale over my premises and the entertaining would generate noise.
- The proposed modification would cause overshadowing my front and back yards which is contrary to the objectives of the DCP.
- The proposal will have an adverse effect on the value of my property and the use of our outdoor living space due to the increased overshadowing.
- A rooftop entertaining area was never envisaged in the original development application, and I believe Council imposed height limitations of both the parapet walls and construction

Environmental Services Division Report No. 86 (Cont'd)

of the turret. Approval of the modification would result in a development that is not substantially the same as originally consented to by Council

Precinct Community Forum Comments

The application was referred to the August Seaforth Precinct Community Forum meeting and the following comments were received:

DA 361/01 87 Ellery Parade/6A Harvey St – S96

The Chair noted that this appears to raise an existing parapet to a flat roof by 300millimetres, 1 meter above the roof of the building. The turret is to be raised by 400millimetres which makes wall height the same as the parapet.

Neighbour Angelia Cantafio at No 8 Harvey St raised a number of concerns:

- Have already built an extended parapet and turret without approval – it is obvious that the applicant plans to use the roof space as an entertaining area
- S96 plans provided are misleading and unclear.
- Stated that the parapet is to be raised 300millimeters, but is already 700 millimeters
- Approved plan height was 89.75m New drawing show 90.75m
- Affected by bulk & overshadowing plus privacy into back yard and sides.

The Chair noted that this had been the subject of discussion for some time and the process is in question where private certifiers are involved and are prepared to certify something Council has not approved.

Neighbour Mr. Mike Bessey at 6 Harvey St stated that he believed that this development had been built in a way that did not reflect the original approved plan or neighbours amendments. Mr. Bessey will be extremely impacted by the lack of privacy by the already built changes that appear to be reflected in the S96 albeit misleading.

Roy Travers questioned whether Council is able as a condition of consent to require a covenant on the title not to use a roof area as an entertainment area? Mr. Morrison confirmed that this was possible.

Richard Morrison spoke of the degree of difficulty Council has with the designs of this particular Architect (Baka Organic Designs) where builders have considerable trouble converting the designs to practical building applications.

In concluding the Chair noted that the drawing were misleading and that from a site inspection it was difficult to ascertain whether what is on the drawings was correct or that the applicant intends to build 300 higher than is currently built. It appears from the drawings that the intention is to raise the front balconies as well and to take higher wall all the way around. If this is the case the Precinct objects strongly as it changes the bulk of the building and impacts strongly on the residents behind in Ellery Parade who had it lowered in the first place. The Chair noted it appears quite well proportioned as it stands today and would support Council approval on what exists, providing that the roof top not be used for entertaining and used only for maintenance. In addition the turret should only be built to one metre as exists on the S96 plans and not exceed any further height. More parapets are not acceptable.

Councilor Morrison stated that any modifications would go to a full Council meeting where objectors could have their say.

Building Comments

Environmental Services Division Report No. 86 (Cont'd)

No objection to the proposed Section 96 modification.

Planning Comments

The original development application for demolition of existing residence and erection of two new residences and land subdivision was approved by Council at the Development Control Unit meeting of the 13th of February 2002 subject to a number of conditions. Condition 1 referred to the plan numbers and condition 2 required.

"2. The central skylight on each dwelling is to be reduced in height by reduction of the walls to 1 metre in height above the roof slab level. In this regard, the plans are to be amended to prior to the issue of the Construction Certificate."

Construction of the building fronting Harvey Street took place however surrounding neighbours advised the Council that the parapet and central turret on the roof were constructed higher than the approved plans. Council was in correspondence with the owner however work continued.

Council is now in receipt of request for modification of details of development consent the form submitted to Council asks for "lifting parapet wall" the letter sent out to surrounding neighbours refers to raising the parapet 300 millimetres and the turret 400 millimetres, however, the plans submitted as part of the Section 96 illustrate a parapet height one metre above the slab, rising to height of 89.00, which is 750 millimetres above the original parapet height. In the circumstances with inconsistent information and no attached letter describing the requested modification it will be taken that the information shown on the plans represents the actual request for modification.

The increased parapet height is the increasing of the apparent bulk of the development caused by this large profile element at the extremities of the roof. It is considered that this is an inappropriate architectural treatment and is not in keeping with the neighbourhood and one that should not be approved.

The applicant has made his intentions known of applying through a separate DA for a rooftop deck accessed through the turret structure, however no application has been made in this regard to date. A number of the objections received have been related to the potential impact of the use of this rooftop area in terms of loss of privacy and noise generation, resulting in a reduction in the amenities of the neighbourhood however this additional use of the roof is not part of the current application.

The Clause 10 objectives of the Manly Local Environmental Plan 1988 in relation to the proposed development are addressed as follows:

(a) to set aside land to be used for purposes of housing and associated facilities;

This is a request for modification of details of development consent in relation to one of the dwellings approved by Council so that this objective does not apply to this modification.

(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 development does not comply with a number of the objectives of the Development Control Plan for the Residential Zone and therefore cannot meet this objective.

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

The proposed increased parapet this will increase the bulk of the building and will be out of keeping with the existing character of the area and does not meet this objective.

Environmental Services Division Report No. 86 (Cont'd)

(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 modifications will cause additional shadow to be cast over the adjacent premises as well as the potential for overlooking and noise caused by possible future use of this roof as a roof deck.

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

This objective does not apply.

(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;

This objective does not apply.

(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;

This objective does not apply.

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

This objective does not apply.

(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.

This objective does not apply.

CONCLUSION:

This is a request for modification and involves work that has already taken place notwithstanding notices served on the owner. The modifications requested have adverse effects in terms of the amenity of the adjacent neighbours however they also have the potential to introduce additional activity on the roof in the future, thereby having a far greater impact than the original application. It is considered that the modifications would not be in the public interest, and should not be approved.

The proposal has been considered pursuant 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 2001 and is considered to be unsatisfactory and is therefore recommended for refusal.

RECOMMENDATION

Environmental Services Division Report No. 86 (Cont'd)

It is recommended that the application for modification of details of development consent for Development Application 361/01 for demolition of the existing dwelling and construction of 2 dwellings and subdivision at 87 Ellery Parade Seaforth be refused for the following reasons:

1. The proposed increase in heights will introduce additional impacts on the amenity of the adjacent neighbours having regard to Section 79 C.(1)(b) of the Environmental Planning Assessment Act 1979.
2. The works that are the subject of the section 96, modification have already taken place notwithstanding notices from Council and it would not be in the public interest to approve this work.
3. The applicant has not addressed concerns raised by the neighbours having regard to Section 79 C.(1)(d) of The Environmental Planning Assessment Act 1979.

ATTACHMENTS

There are no attachments for this report.

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***** End of Environmental Services Division Report No. 86 *****

TO: Land Use Management Committee - 6 December 2004
REPORT: Environmental Services Division Report No. 87
SUBJECT: 17 Adelaide Street, Balgowlah Heights
FILE NO: DA340/04

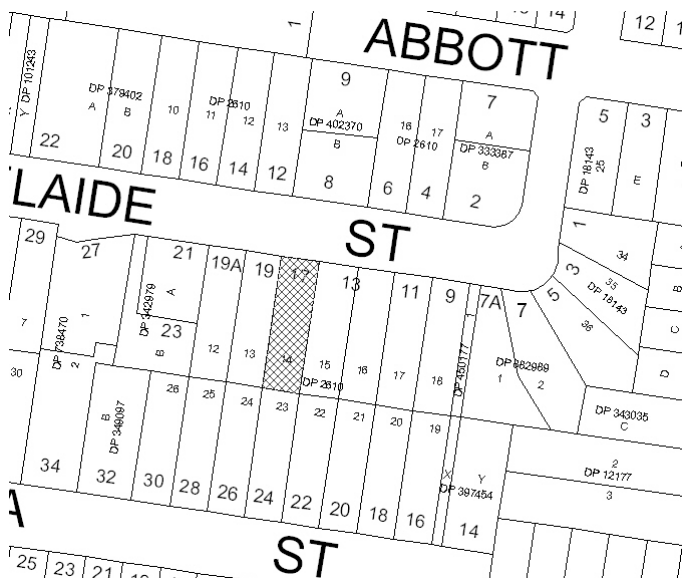
Application Lodged: 16.7.2004
Applicant/Owner: Ms Heather Alizzi
Estimated Cost: \$200000
Zoning: Manly Local Environmental Plan, 1988 - Residential & Foreshore Scenic Protection Area
Surrounding Development: Predominantly two storey dwelling houses
Heritage: Nil

SUMMARY:

1. AN APPLICATION IS MADE FOR ALTERATIONS AND ADDITIONS TO AN EXISTING DWELLING HOUSE.
2. THE APPLICATION WAS NOTIFIED IN ACCORDANCE WITH COUNCIL'S NOTIFICATION DCP AND THREE (3) SUBMISSIONS ARE RECEIVED.
3. THE APPLICATION WAS REFERRED TO THE LOCAL COMMUNITY PRECINCT FORUM AND NO COMMENT WAS RECEIVED.
4. THE APPLICATION IS ASSESSED PURSUANT TO SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 INCLUDING COUNCIL'S RELEVANT PLANS AND POLICIES.
5. THE APPLICATION IS PRESENTED TO THE LAND USE MANAGEMENT COMMITTEE AT THE REQUEST OF COUNCILLOR MACDONALD.
6. A SITE INSPECTION IS RECOMMENDED.
7. THE APPLICATION IS RECOMMENDED FOR REFUSAL.

LOCALITY PLAN

Shaded area is subject land.



Environmental Services Division Report No. 87 (Cont'd)

REPORT**Introduction**

The proposed application in detail involves the following:

- Demolition of an existing roof
- Additional third level containing an open plan 'parents retreat' and robe; bed 2 and robe and ensuite
- Alterations and additions to the existing levels one and two including new rear balconies and additional infill

Development Control Plan Numerical Assessment

The following is an assessment of the proposal's compliance with the numerical standards of the D.C.P. Where a variation is proposed to the standards an assessment is included in the Planning Comments.

	<u>Permitted/ Required</u>	<u>Proposed</u>	<u>Complies Yes/No</u>
Floor space ratio	0.4:1	0.66:1 (343sqm)	No
Floor space ratio - existing	0.47:1		No
Wall height east side	7.25m	7- 9*m	Yes/No
west side	6.5m	6- 7.3*m	Yes/No
Roof height * to proposed upper floor level	3m	1.9- 3.6*m	Yes
Setback Front	6m	12.2m	Yes
Setback Rear	8m	16m	Yes
East setback side	3m	2.7	No
West setback side	2.4m	2.5m	Yes
Open space - total	70%	65%	No
Open space - soft	364.85 sqm	340.3sqm	No
Number of Endemic Trees	50%	56%	Yes
Private Open Space	1 trees	Min 1 tree/lot	Yes
Car Parking – Residents	18sqm	>18sqm	Yes
	2 spaces/ lot	2 spaces	Yes

Applicant's Supporting Statement

The Applicant's Statement of Environmental Effects incorporates arguments for any variations to the Council's plans and policies having regard to relevant objectives and the circumstances of the case.

Further to consideration of the development at Council's Development Assessment Unit, Council's officers have raised a number of issues with the applicant, which are outlined in the report.

Submissions

The application was submitted and three (3) submissions were received raising the following issues and/or concerns:

Environmental Services Division Report No. 87 (Cont'd)

- Submission 1: Concern regards blocking of water and district views; creation of a precedent for other 'over-developed' houses in the street- some of which "would severely impact on our views and outlook." It is further suggested that "approvals for 19 and 21 Adelaide (to the west of the subject site) should not be taken into account regards heights etc as these were approved under old Council rules". Consideration of the streetscape is also sought to ensure "the development is not overbearing/imposing in relation to other houses".
- Submission 2: Query regards the proposed height of development and particularly the height of the additional storey in relation to the current height of the residence
- Submission 3: Whilst this submission states a 'non-objection', the concern raised in this submission is stated as "the impact on the streetscape and the potential views from my property, in particular if other properties on the southern side of Adelaide Street also develop to this level and above". It is further suggested that the proposed height should be considered as the maximum for this development and subsequent developments in the street.

Precinct Community Forum Comments

No comment

Engineers and Building Comments

No objections subject to conditions

Planning Comments

Variations to the development control plan identified in the development control table are discussed in terms of relevant objectives as follows:

Floorspace ratio

In relation to proposed variations to floorspace ratio the applicant submission in part is that:

- The proposed additions are designed with regard to the framework of the existing building
- Particularly in relation to the second floor addition the applicant submits that it is not designed or intended to increase the perception of bulk or scale of the building.

In relation to the new first floor additions the existing flat roof is significantly lifted and proposed new ridge lines extend 13.2m along the length of the site and 7.5m across the sites' width. The proposed ridge line is some 2m above the existing ridge.

Variations to Council's performance criteria in respect of floorspace ratio are not supported in terms of Council's objectives as follows:

a) to control the bulk of building

The proposed development is considered to add to the bulk of the building, particularly with the proposed addition of the new first floor level. The bulk is conveyed in terms of additional wall surfaces above existing eaves lines and increased lengths and heights of upper roof ridge lines. The extent of the new floor that adds to building bulk exceeds the planning criteria and is therefore considered to inadequately control the building bulk. In this regard a development with a lesser FSR is considered likely to result in a more moderate and complying bulk and scale of building in relation to the street and adjoining residents. The extent of the non-compliance exceeds the area to the proposed first floor. The bulk in excess of the maximum fsr is not considered to be appropriately controlled in this regard.

b) to ensure that the scale of development does not obscure important landscape features.

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This objective is considered to be satisfied.

c) to be consistent with the existing and desired character of the residential area.

The bulk of development is not considered to conform to the desired character of the residential area where the desired planning outcome in term of bulk is less than proposed.

d) to minimise disruption to views, loss of privacy and loss of sunlight to existing residential development as well as the proposed development.

The proposed development is adjacent to properties across the road which currently enjoy views and aspect not only over and also between the subject site and the dwellings to each side. Views are currently enjoyed given lower roof pitches. Existing roof forms are also more appropriate where the upper ridge lines are length wise and parallel to view lines rather than across the line of view. The proposed roof forms are not considered to minimise disruption to neighbours' views in this regard.

Neighbours' submissions identify issues in relation to disruption to aspect/views and the view impacts are confirmed in site inspections.

The impact neighbours' amenity is further detailed elsewhere in the report

e) to provide sun light access to private open spaces within the development and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings.

While the proposed first floor addition significantly contributes to overshadowing in the rear yard, there is a new balcony to the front along with an existing lawn area with north orientation. Accordingly adequate sunlight access is provided to proposed private open spaces

Height

The proposed height variations in terms of roof height are requested by the applicant on the basis that the existing roof is very low and there is room to expand this area; the area of variation is relatively small and to enable adequate ceiling heights. Of particular concern in respect of height is the extent of walls proposed within the allowance for roof height. These walls are considered to extend wall heights above permissible allowances. In conjunction with setbacks issues (see below), non-conforming building bulk and amenity (view) effects the proposed roof height variations are not considered to satisfy the DCP objectives.

Setbacks

Variations to Council's performance criteria in respect of the setback control are discussed in terms of Council's objectives as follows

a) to preserve and enhance the existing streetscape

The existing front setbacks are generally retained and the new works visible from the street adequately preserve and enhance the existing streetscape. The extent of the upper level dormer elements in relation to side setbacks and also having regard to the extent of the ridge lines are not considered appropriate as discussed above and variations in this regard are not supported.

b) to provide privacy

The proposed setback variation provides adequate privacy having regard to the limited room/space functions internally and to the sides of the buildings.

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c) to provide equitable access to light and sunshine

A 300mm variation to the eastern side boundary results in some shadow increase but as this does not extend beyond the neighbouring dwelling the impact is minimized

While the extent of existing shadow cast to the rear is extensive, the additional shadow cast by the first floor shadow is considered to comply.

d) to promote flexibility in the siting of buildings

See (e) below.

e) to enable a view sharing

The western side elevation contains a side gable 2.7m from the boundary. Based on a height taken to the bottom of proposed eaves on the gable front, the required setback is 3m. Having regard to the proposed setbacks in conjunction with bulk and roof form issues raised elsewhere in this report, this setback objective is not considered to be satisfied.

f) to accommodate planting of native vegetation including endemic trees

There is adequate vegetation on site.

g) to control the nature of development adjoining specific open space lands and National Parks so as to not unduly detract from the nature of those lands and to comply with SEPP19

N/A

h) to maintain adequate space between buildings to protect the views and vistas from public places

N/A

Open Space

The applicant submits that proposed variation is minor (3%). However half the proposed first floor terrace is less than 3m in width and excluding this area in accordance with the DCP results in a 7% variation (25sqm). The applicant submits that the proposed gains in open space are better quality spaces (elevated terraces) than the space lost (ground level garden). There is no significant landscaping proposed except for an indication that conditions for endemic planting in accordance with the DCP are acceptable. The quality of open space is not considered to be enhanced in conjunction with the proposed redevelopment and additions to the dwelling. Council's objectives are not satisfied in this regard.

LEP Objectives

Council's residential zone objectives under Clause 10 of Manly Local Environmental Plan 1988 are considered as follows.

(a) to set aside land to be used for purposes of housing and associated facilities;

The land is set aside to be used for purposes of housing and associated facilities.

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

Variations to development control in the supporting material are not considered to appropriately delineate the nature and intended future of this residential area within the Municipality.

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

The development is not considered to adequately 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 amenity of surrounding residents or the existing quality of the environment is not considered to be ensured in the building bulk and form of the alterations and additions.

(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 quality of the residential areas is not considered to be improved.

(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;

N/A

(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 development ensures full and efficient use of existing social and physical infrastructure and the future provisions of service and facilities to meet any increased demand

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

The development is not considered to appropriately encourage the revitalisation of residential areas by rehabilitation and suitable redevelopment.

The site is within the Foreshore Scenic Protection Area and as such Clause 17 of the Manly Local Environmental Plan 1988 requires consideration of the visual and aesthetic amenity of the area. The proposal is not considered acceptable in this regard due to its height, bulk and scale.

CONCLUSION:

The proposed development has been considered under Section 79C of the Environmental Planning and Assessment Act, the Manly Local Environmental Plan 1988 and the Manly Development Control Plan for the Residential Zone and is not considered satisfactory.

RECOMMENDATION

Environmental Services Division Report No. 87 (Cont'd)

It is recommended that Development Application 340/04 for alterations and additions to an existing dwelling house at 17 Adelaide Street, Balgowlah Heights be refused for the following reasons:

1. The proposal is considered pursuant to Section 79C of the Environmental Planning and Assessment Act 1979, and is considered to be unsatisfactory. In particular the development is not considered satisfactory under the provisions of the Manly Local Environmental Plan and Residential Development Control Plan (Section 79C(1)(a)(i)&(iii)); the likely impacts of the development (Section 79C(1)(b); the suitability of the site (Section 79C(1)(c));
2. The proposed objectives of the Manly Local Environmental Plan, 1988, are not considered to be satisfied.
3. The proposal does not satisfy Council's objectives and controls under Manly Development Control Plan for the Residential Zone 1986 (Amendment 3)
4. The proposal development does not comply with Council's **Floor Space Ratio** (FSR). The Council's Development Control Plan objectives in relation to floor space are not considered to be achieved.
5. The proposal development does not comply with Council's controls for **height**. The Council's Development Control Plan objectives in relation to height are not considered to be achieved.
6. The proposal development does not comply with Council's controls for **setback**. The Council's Development Control Plan objectives in relation to setback are not considered to be achieved.

ATTACHMENTS

There are no attachments for this report.

LUM061204ESD_2

***** End of Environmental Services Division Report No. 87 *****

TO: Land Use Management Committee - 6 December 2004
REPORT: Environmental Services Division Report No. 88
SUBJECT: 1 Harbourview Street, Clontarf
FILE NO: DA374/04

Application Lodged: 28 July 2004/revised plans 28 October 2004
Applicant: John Langford C/O Futurespace Architects
Owner: John & Edaline Langford
Estimated Cost: \$250,000
Zoning: Manly Local Environmental Plan, 1988 - Residential
 Foreshore Scenic Protection Area
Surrounding Development: 1, 2 & 3 storey detached dwellings
Heritage: Not applicable

SUMMARY:

1. DA 374/04 FOR DEMOLITION OF THE EXISTING DWELLING AND ERECTION OF A NEW TWO STOREY DWELLING WITH ATTACHED DOUBLE GARAGE WAS RECEIVED BY COUNCIL 28 JULY 2004.
2. THE APPLICATION WAS NOTIFIED IN ACCORDANCE WITH COUNCIL POLICY WITH FOUR SUBMISSIONS RECEIVED.
3. FOLLOWING DISCUSSIONS WITH THE APPLICANT REVISED PLANS WERE RECEIVED BY COUNCIL ON 28 OCTOBER 2004.
4. NOTIFICATION OF REVISED PLANS RESULTED IN TWO SUBMISSIONS RECEIVED.
5. THE MATTER IS PRESENTED TO COUNCIL AT THE REQUEST OF COUNCILLOR MACDONALD.
6. A SITE INSPECTION IS RECOMMENDED.
7. THE APPLICATION IS RECOMMENDED FOR APPROVAL.

LOCALITY PLAN

Shaded area is subject land.



Environmental Services Division Report No. 88 (Cont'd)

REPORT**Introduction**

The site is located on sloping land on the southern (low) side of Harbourview Street. The site has an irregular "L" shaped form with an general east west orientation which is contrary to the north south orientation of properties located on the opposite (high) side of the road. The western portion of the site comprises a steep vegetated escarpment which extends southward and presents only limited opportunities for development or active recreational open space. Surrounding development comprises mostly 2 storey dwellings, several of which look over the subject site to obtain views. The site is currently developed with a single storey dwelling.

Development consent is sought for demolition of the existing dwelling and construction of a 2 storey dwelling. The design has been modified from that originally submitted, in particular to overcome non-compliances to the DCP and objections to view loss. The amendments also seek to reduce privacy impacts with re-configured side facing windows and seek to reduce streetscape impacts by replacing the proposed attached garage with a carport.

The proposed dwelling is intended to provides for;

- Ground Floor Level: Rumpus room, three bedrooms, bathroom, ensuite and laundry and associated deck off the southern elevation.
- First Floor Level: Entry, living, dining , family room, kitchen, bedroom, ensuite, separate WC, associated deck off the southern elevation and attached double carport off the northern elevation.

Development Control Plan Numerical Assessment

The following is an assessment of the proposal's compliance with the numerical standards of the D.C.P. Where a variation is proposed to the standards an assessment is included in the Planning Comments.

Density Subzone 7	<u>Permitted/ Required</u>	<u>Proposed</u>	<u>Complies Yes/No</u>
Floor space ratio	0.4:1 max	0.41:1	No
Wall HeightEast side	7.0m max.	6.5m	Yes
West side	8.0m max.	7.2m	Yes
Roof height	3.0m	1.0m	Yes
Setback Front (north)	6.0m	6.0m to dwelling 1.0m to carport	Yes No
Setback Rear (south)	8.0m	2.6m	No
East side setback	2.17m min.	900mm min.	No
West side setback	5.85m min.	2.4m	Yes
Open space - total	70%	435m ² / 70.2% (79.5% inc. balconies)	Yes
Open space - soft	50%	62.7%	Yes
Number of Endemic Trees	3	9 retained	Yes
Private Open Space	18m ²	71m ²	Yes
Car Parking – Residents	2	2	Yes
Shadow -adjacent open space	<1/3 of existing available sunlight	< 1/3	Yes

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	<u>Permitted/ Required</u>	<u>Proposed</u>	<u>Complies Yes/No</u>
Density Subzone 7			
Shadow - adjoining E/W orientation	Min 2 hrs	> 2hrs retained to No.11 Russell St	Yes
adjoining NS orientation	Min 4 hrs	> 4 hrs retained to 3A Harbourview St	Yes
Excavation	3m depth max	1m	Yes

Applicant's Supporting Statement

The applicant submitted a written statement in support of the revised plans a copy of which is attached.

Submissions

The original plans resulted in four submissions being received from Blackwood Architects on behalf of J and T Platt of No. 3A Harbourview Street, Symonds Goodyer Pty Ltd on behalf of F Searson of No.6 Harbourview Street, J Gosewinckel and M Wisheart of 8 Harbourview Street, and Provincial Planning on behalf of R and A Garrett of No.11 Russell Street, raising concerns in respect of the following;

- loss of privacy
- loss of views
- loss of solar access
- streetscape impacts
- non-complying setbacks
- non complying height.

Notification of the revised plans resulted in two submissions from Blackwood Architects on behalf of J and T Platt of No. 3A Harbourview Street and Symonds Goodyer Pty Ltd on behalf of F Searson of No.6 Harbourview Street, raising concerns in respect of the following;

- would prefer to maintain more of existing view
- if Council approves the proposal request conditions be imposed to have surveyor verify datum, boundary location, building location and building height.
- revised plans still have a detrimental effect on adjoining property in terms of privacy
- southwest corner of ground floor level deck will look directly into windows of neighbouring dwelling – request deletion of the deck off bedroom 2 or provision of privacy screening to the western end.
- southwest corner of proposed first floor level will look down as well as into neighbouring dwelling – request deletion of the deck off the lounge room or provision of privacy screening to the western end.
- three windows in western wall of proposed lounge room look down as well as into the neighbouring dwelling – request angled privacy screens.

Precinct Community Forum Comments

The original application was referred to the Clontarf Precinct Community Forum with the following comments received.

“Owner John Langford is in harmony with the street and it has no impacts on neighbours. A question was asked on wall height and floor space ratio. No neighbours present and there was no known objections.”

Environmental Services Division Report No. 88 (Cont'd)**Engineers Comments**

Part of the driveway slab within the road reserve is to be suspended. Consequently the applicant is required to apply for a road reserve lease from Council. An onsite absorption / detention system is also required.

Building Comments

No objections subject to compliance with the Building Code of Australia and standard conditions.

Landscape Architects Comments

No objection subject to standard conditions.

Planning Comments

The site is located in the residential zone. The proposed dwelling is permissible in the residential zone and is considered to satisfy the relevant objectives of the zone.

The proposal departs from Floor Space Ratio and Setback requirements of Council's Development Control Plan for the Residential Zone (DCP). These departures and amenity issues of view sharing, solar access and privacy are discussed below.

Floor Space Ratio

The proposed Floor Space Ratio of 0.41:1 results in a departure of 0.01 to the FSR limit of 0.4:1. This represents a departure of 5.2m² which is considered minor and would not result in a building which would be out of character with that currently existing in the immediate area.

Setback

The setbacks proposed result in departures for the front, rear and eastern side boundaries.

With respect to the front boundary, it is noted that the dwelling has a complying setback of 6.0m, however the carport is positioned in front of this having a setback of 1.0m. The position of the carport within this front setback area is considered acceptable on the basis of the sloping topography and that it is an open structure such that it will not result in a bulky enclosed appearance as viewed from the street.

The DCP permits carports in such circumstances where they represent no more than 50% of the site width. In this case the proposed carport represents 27% of the site frontage which is not considered to dominate the street frontage. It is also noted that the position of the car accommodation in front of the dwelling concentrates development toward the east of the site which is critical to view sharing. Accordingly the location of the carport is considered acceptable.

The required side setback to the eastern boundary is 2.17m. The side setback to the eastern boundary is a minimum of 900mm at the northeast corner of the proposed dwelling, however the design offsets the dwelling from the boundary and this setback increases to 4.0m at the south-eastern corner of the proposed dwelling. Given the unusual site configuration, the need to maximise the western setback for view sharing, the separation provided to the 2 neighbouring dwellings (1A Harbourview St at 10.5m and 11 Russell St at 6m), the departure to the east side setback provision is considered acceptable.

The required rear setback is 8.0m. The proposed rear setback varies from 1.9m – 2.5m and generally maintains the footprint and setback of the existing dwelling. It is noted that due to the unusual site configuration and with a side dimension of 18.5m, compliance with both the rear and

Environmental Services Division Report No. 88 (Cont'd)

front setback provisions (6m + 8m) would leave a dwelling footprint of 4.5m width which is neither practical or reasonable.

It is noted that the close proximity to the rear boundary will result in some overlooking to No.11 Russell Street, however this can be mitigated by 1.5m high privacy screens along the eastern half of each balcony. Given that the proposal generally maintains the existing rear setback and subject to provision of privacy screens as a condition of consent, the variation to the rear setback control is considered acceptable on merit.

Streetscape & visual impacts

The locality has a mix of housing in terms of design character and size. The proposed 2 storey dwelling is not considered excessive as viewed from the street or neighbouring properties, justified by its height which complies with the provisions of the DCP. The modern design with mono-pitched roof is considered to add interest to the streetscape when considered in context of the existing dwelling and surrounding development.

View Sharing

The original plans raised neighbour concerns of view loss. It was noted that the western alignment of the original design resulted in significant loss of view to the south from No.6 Harbourview Street which includes views to Chinamans Beach and parts of Middle Harbour. Significantly, the portion lost was the view looking straight out from No.6 where there is a narrow uninterrupted view from Clontarf Point across to Chinaman's Beach.

As Chinamans Beach and the uninterrupted portion of water view was identified as a key view element, the applicant was requested to increase the western setback to retain a reasonable portion of this view. With height poles in place, an inspection revealed that the amended proposal will allow for approximately half of the view of Middle Harbour from Clontarf Beach across to Chinamans Beach to be retained. Views to the eastern end of The Spit and distant views to the city skyline will remain unaffected.

It is noted that this view impact could be further reduced by increasing the western setback. With a further increase in western setback by 900mm which can be achieved without impacting on the use of the proposed dwelling, would result in a more reasonable portion of the view to Chinamans Beach being retained. A condition of consent is included in the recommendation which increases the west setback by 900mm.

From No. 2 and 4 Harbourview Street, the proposed development will result in a minor reduction in the foreground view, with a portion of the view to Clontarf Point obscured. Given the elevated position of No.2 and 4 Harbourview Street and panoramic view of Middle Harbour which will be retained, the loss of foreground view is considered minor and acceptable.

Solar Access

An analysis of the shadow diagrams reveals that there will be some increases in shadowing of adjoining properties as a result of the proposed development, however, the extent of proposed shadowing is within that permitted under the numeric requirements of Council's Residential DCP. No.11 Russell Street to the south is affected, with the proposal overshadowing portions of the dwelling and rear balcony from approximately 11am. Notwithstanding this the proposal allows for more than 2 hours direct sunlight to the rear balcony and living room windows of No.11 Russell Street between 9am and 12pm, and therefore satisfies the provisions for solar access.

Privacy

It is acknowledged that the proposed development will have impacts in terms of privacy to the adjoining properties to the south and west. To minimise potential overlooking into the side of No's 3A Harbourview Street and into the rear balcony and garden of No.11 Russell Street, a condition of

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consent is recommended that privacy screens to 1.5m height be installed to the western edge of both balconies, and along the southern edge of the rear decks at both ground and first floor level for a distance of 6.0m from the eastern end. Whilst this will partially reduce outlook from the proposed dwelling it achieves a balance with neighbours, ensuring privacy impacts are minimised whilst the eastern side of the proposal will enjoy views to the water.

The site is also located within the Foreshore Scenic Protection Area. Pursuant to Clause 17 of the Manly Local Environmental Plan 1988, consideration is required of the visual impact of new development on the amenity of its foreshore setting. The proposal is considered acceptable in its scale, form and materials when compared with existing development in the surrounds, with other houses above being more prominent.

Subject to conditions of consent to address view sharing and privacy, the design maintains reasonable levels of amenity to neighbouring properties. In terms of environmental impacts the proposal will not result in excessive clearing or stormwater runoff, with its design considered to respond well to the sites topography and irregular boundary configuration. In response to public submissions, the design as amended is considered to satisfactorily address the issues raised.

CONCLUSION:

The application has been assessed pursuant to Section 79C of the EP&A Act., the Manly Local Environmental Plan 1988 and the Manly Development Control Plan for the Residential Zone. Subject to conditions the proposal is considered satisfactory and is therefore recommended for approval.

RECOMMENDATION

That Council Development Application 374/04 for Demolition of the Existing Dwelling and Erection of a new Two Storey Dwelling with Attached Carport at No.1 Harbourview Street, Clontarf, be approved subject to the following conditions:

1. This approval relates to plans/drawings Nos. 040227 AR DA 01-07 issue B dated 25 October 2004 and received by Council on 28 October 2004.
2. The western side setback of the proposed dwelling is to be increased by 0.9m to maintain an acceptable share of available views from No.6 Harbourview Street, plans being suitably amended **prior to issue of the Construction Certificate.**
3. Provision of vertical louvre privacy screens 1.5m in height to the western side of proposed decks at both ground and first floor levels, to maintain acceptable privacy between adjoining properties, plans being suitably amended **prior to issue of the Construction Certificate.**
4. Provision of vertical louvered privacy screens 1.5m in height to the southern edge of the proposed decks at ground floor and first floor levels for a distance of 6.0m from the eastern end of the decks, to maintain acceptable privacy between adjoining properties, plans being suitably amended **prior to issue of the Construction Certificate.**
5. Pursuant to Section 97 of the Local Government Act, 1993, Council requires, **prior to issue of the Construction Certificate, or commencement of any excavation and demolition works,** payment of a Trust Fund Deposit of \$7,500.00. The Deposit is required as security of compliance with Conditions of Consent, and as security against damage to Council property during works on the site.

Note: Should Council property adjoining the site be defective eg, cracked footpath, broken

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kerb etc., this shall be reported in writing to Council, **at least 7 days prior to the commencement of any work on site.**

6. Details of the builder's name and licence number contracted to undertake the works shall be provided to Council **prior to issue of the Construction Certificate.**
7. Insurance must be undertaken with the contracted builder in accordance with the Home Building Act, 1997. Evidence of Insurance together with the contracted builders name and licence number must be submitted to Council **prior to issue of the Construction Certificate.**
8. A detailed stormwater management plan shall be prepared to fully comply with Council's "Specification for on-site Stormwater Management 2003". The stormwater management plan shall be prepared by an experienced Chartered Civil Engineer. The Certifying Authority shall ensure that the design complies with the above specification **prior to issue of the construction certificate.**
9. On completion of the drainage works, the applicant is required to submit works as executed drawings on the on-site stormwater detention system. The works as executed drawings shall be certified by a Chartered Professional Engineer and submitted to Council **prior to issue of the Occupation Certificate.**
10. A positive covenant and restriction on the use of the land shall be imposed over the area of land affected by on-site stormwater absorption/detention system. The standard wording of the positive covenant shall be obtained from Council's "Specification for On-site Stormwater Management 2003" (appendix A). The positive covenant shall be imposed prior to the release of the trust fund deposit.
11. The construction of a vehicular footpath crossing and kerb layback is required. The design and construction shall be in accordance with Council's "Specification for Construction of Vehicular Crossings". The work shall be done with plain concrete. It is the responsibility of the owner, developer and builder that they understand the above specification and strictly comply with the specification. The work shall be inspected and approved by Council officers. All works shall be carried out prior to issue of the occupation certificate.
12. The applicant shall apply for a road reserve lease over the part of the suspended driveway over the road reserve. The proposed handrails to the driveway within the road reserve shall be restricted to the area approved by Council for the road reserve lease.
13. The existing surplus vehicular crossing and/or kerb layback shall be removed and the kerb and nature strip reinstated **prior to issue of the Occupation Certificate.**
14. Any adjustment to the public utility service is to be carried out in compliance with their standards and the cost is to be borne by the applicant.
15. A suitable sub-surface drainage system being provided adjacent to all excavated areas and such drains being connected to an approved disposal system.
16. Prior to excavation applicants should contact the various utility providers to determine the position of any underground services.
17. Prior to the sale, transfer, assignment or other disposal of or leasing or parting with provision of any part of the land subject to this approval, a copy of the approval shall be given to the purchaser, transferee, assignee, leasee, occupier or other person of that part of the land.

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18. 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.
19. Retaining walls being constructed in conjunction with excavations with such work being in accordance with structural engineer's details. Certification of compliance with the structural detail during construction shall be submitted to the Principal Certifying Authority.
20. A sign must be erected on the subject site in a prominent position stating that unauthorised entry is prohibited and giving details of the name of the builder or the person responsible for the site and 24 hour contact details. The sign is to have dimensions of approximately 500mm x 400mm.

Note: The sign is not required if the building on the site is to remain occupied during the course of the building works.

21. All construction works shall be strictly in accordance with the Reduced Levels (RLs) as shown on the approved plans with certification being submitted to the Principal Certifying Authority during construction from a registered surveyor certifying ground and finished ridge levels.
22. Consent given to build in close proximity to the allotment boundary is in no way to be construed as permission to build on or encroach over the allotment boundary. Your attention is directed to the provisions of the Dividing Fences Act which gives certain rights to adjoining owners, including use of the common boundary. In the absence of the structure standing well clear of the common boundary, it is recommended that you make yourself aware of your legal position which may involve a survey to identify the allotment boundary.
23. Four (4) certified copies of the Structural Engineer's details in respect to the structural details of the proposed building shall be submitted to the Principal Certifying Authority **prior to the issue of the Construction Certificate**.
24. Where any excavation extends below the level of the base of the footing of a building on an adjoining allotment of land, the person causing the excavation shall support the neighbouring building in accordance with the requirements of the Building Code of Australia.
25. The implementation of adequate care during demolition, excavation, building to ensure that no damage is caused to any adjoining properties.
26. 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.
27. A Registered Surveyor's certificate verifying the location of the building on the site is in accordance with the approved plans and Condition No.2 of this consent, is to be submitted to the Principal Certifying Authority immediately upon completion of the foundations and prior to work proceeding above dampcourse level.
28. Building work shall not progress beyond first floor level until such time as Registered Surveyor's details of levels are submitted to the Principal Certifying Authority. These levels shall confirm that the works are in accordance with the levels shown and approved in the development approval.
29. Four (4) Architectural/Services Specifications are to be submitted with the Construction Certificate application/**prior to the issue of the Construction Certificate**.

Environmental Services Division Report No. 88 (Cont'd)

30. All plumbing and drainage, including sewerage drainage stacks, ventilation stacks and water service pipes shall be concealed within the building. Plumbing other than stormwater downpipes shall not be attached to the external surfaces of the building.
31. All external cladding and trim of the approved building shall be of a non reflective nature. Details of such finishes shall be **submitted with the Construction Certificate Application.**
32. All demolition is to be carried out in accordance with AS2601-1991.
33. Asbestos cement sheeting must be removed in accordance with the requirements of the WorkCover Authority.
34. All building work must be carried out in accordance with the provisions of the Building Code of Australia.
35. An automatic fire detection and alarm system shall be installed in the proposed dwelling in accordance with the requirements of Part 3.7.2 of the Building Code of Australia 1996 - Housing Provisions.
36. Landscaping is to be carried out in accordance with the approved Landscape Plan submitted in conjunction with the Development Application. Evidence of an agreement for the maintenance of all plants for a period of 12 months from the date of practical completion of the building is to be provided to the Principal Certifying Authority **prior to issue of the Final Occupation Certificate.**
37. All healthy trees and shrubs identified for retention on the plan must be:
 - (i) Suitably marked before any development starts and be suitably protected from damage during the construction process; and
 - (ii) Retained unless their location or condition is likely to cause damage and their removal has been approved by Council.
38. The felling, lopping, topping, ringbarking, willful destruction or removal of any tree or trees unless in conformity with this approval or subsequent approval is prohibited.
39. No tree other than on land identified for the construction of buildings and works as shown on the building plan shall be felled, lopped, topped, ringbarked or otherwise willfully destroyed or removed without the approval of Council.
40. Landscaping being provided in accordance with the approved Landscaping Plan and maintained in accordance with that plan at all times.
41. There is to be no interference with or damage caused to the major trees situated on the property in close proximity to the dwelling, and the owner or applicant is to deposit the sum of \$5,000.00 with Council for the due performance of the requirements. The sum will be forfeited to the Council at its discretion for a breach of these requirements, and will be refunded to the applicant if the requirements have been observed on the completion of the building works. Alternatively, the applicant may enter into a bond with the Council for the sum of \$5,000.00 conditioned to be void on the due performance of these requirements. The deposit or bond is to be finalised **prior to issue of the Construction Certificate.**
42. All materials on site or being delivered to the site shall generally be contained within the site. The requirements of the Protection of the Environment Operations Act 1997 shall be complied with when placing/stockpiling loose material, disposing of concrete waste, or other

Environmental Services Division Report No. 88 (Cont'd)

activities likely to pollute drains or water courses.

43. The works require the following inspection/certification during the course of construction:-

- Silt control fences
- Footing inspection - trench and steel
- Reinforced concrete slab
- Framework inspection
- Wet area moisture barrier
- Drainage inspection
- Driveway crossing/kerb layback (3)
- Final inspection

The cost of these inspections by Council is \$603.00 (being \$70.00 per inspection and \$113.00 for Final inspection inclusive of GST). **Should you require Council to undertake the inspection/certification, then payment is required prior to the first inspection. Inspection appointments can be made by contacting the Development Assessment Unit on 9976 1573 or 9976 1587.**

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 \$80.00.

44. Issue of a Compliance Certificate from the Principal Certifying Authority prior to occupation to the effect that:
1. Required inspections have been undertaken and the work has been completed in accordance with the approved plans and specifications, the Development Consent and the Construction Certificate.
 2. Documentary evidence relative to:
 - tie down and bracing details
 - termite protection notice
 - wet areas waterproofing certificate
 - reinforcement concrete and structural members details
 - structural engineers inspection certificate
 - survey certificate
 - floor/finished ridge level certificatehas been received by the Principal Certifying Authority, this information in accordance with the terms and conditions of the Consent and Construction Certificate and to the satisfaction of the Principal Certifying Authority.
45. 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.
46. Roof and framing including provision for tie downs, bracing and fixings are to be designed by a practising Structural Engineer. The Engineer is to specify appropriate wind category relating to the site terrain, house design and height of the structure, with details being submitted to the Principal Certifying Authority **prior to the commencement of framework.**
47. Stockpiles of topsoil, sand, aggregate, spoil or other material shall be stored clear of any drainage line or easement, natural watercourse, kerb or road surface.
48. Drains, gutters, roadways and access ways shall be maintained free of sediment and to the

Environmental Services Division Report No. 88 (Cont'd)

satisfaction of Council. Where required, gutters and roadways shall be swept regularly to maintain them free from sediment.

49. 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.
50. Where any excavation extends below the level of the base of the footing of a building on an adjoining allotment of land, the person causing the excavation shall support the neighbouring building in accordance with the requirements of the Building Code of Australia.
51. Building or construction work must be confined to the hours between 7.00am to 6.00pm, Monday to Friday and 7.00am to 1.00pm, Saturday, with a total exclusion of such work on Public Holidays and Sundays. Non-offensive works where power operated plant is not used and including setting out, surveying, plumbing, electrical installation, tiling, internal timber or fibrous plaster fixing, glazing, cleaning down brickwork, painting, building or site cleaning by hand shovel and site landscaping, is permitted between the hours of 1.00pm to 4.00pm Saturdays.

Note: That the Protection of the Environment Operations Act 1997 may preclude the operation of some equipment on site during these permitted working hours.

52. Details of the method of termite protection which will provide whole of building protection, inclusive of structural and non-structural elements, shall be submitted to the Principal Certifying Authority **prior to issue of the Construction Certificate**. Attention is drawn to the provisions of Australian Standard 3660.1 "Protection of Buildings from Subterranean Termites - New Buildings" and to Council's Code for the "Protection of Buildings Against Termite Attack".
53. **Prior to issue of the Occupation Certificate**, a durable termite protection notice shall be permanently fixed to the building in a prominent location detailing the form of termite protection which has been used in accordance with Council's Code for the "Protection of Buildings Against Termite Attack".
54. This approval shall expire if the development hereby permitted is not commenced within 2 years of the date hereof or any extension of such period which Council may allow in writing on an application made before such an expiry.

ATTACHMENTS

There are no attachments for this report.

LUM061204ESD_3

***** End of Environmental Services Division Report No. 88 *****

TO: Land Use Management Committee - 6 December 2004
 REPORT: Environmental Services Division Report No. 89
 SUBJECT: 51 Whistler Street, Manly
 FILE NO: DA37/04

Application Lodged: 11 October, 2004
Applicant: Mooki Consulting
Owner: Knights of the Round Table Pty Ltd
Estimated Cost: \$80,000
Zoning: Manly Local Environmental Plan, 1988 – Residential within Tourist Area and Foreshore Scenic Protection Area.
Surrounding Development: Single and two storey dwellings and multi storey residential flat buildings
Heritage: Yes – Listed Item – Previous Masonic Hall

SUMMARY:

1. DEVELOPMENT APPLICATION NO.37/04 FOR OFFICE FIT OUT, USE OF THE EXISTING BUILDING FOR OFFICE PURPOSES AND RESTORATION OF THE STREET FAÇADE WAS RECEIVED BY COUNCIL ON 31 DECEMBER 2003.
2. THE APPLICATION WAS NOTIFIED TO NEARBY AND ADJOINING OWNERS WITH THREE SUBMISSIONS RECEIVED.
3. THE APPLICATION WAS CONSIDERED BY COUNCIL'S DEVELOPMENT ASSESSMENT UNIT ON 24 AUGUST 2004 WHERE IT WAS REFUSED.
4. COUNCIL IS NOW IN RECEIPT OF AN APPLICATION FOR REVIEW OF DETERMINATION UNDER SECTION 82A OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979.
5. THE APPLICATION FOR REVIEW WAS NOTIFIED TO NEARBY AND ADJOINING PROPERTY OWNERS WITH TWO SUBMISSIONS RECEIVED.
6. THE MATTER WAS CALLED UP TO COUNCIL BY COUNCILLOR MACDONALD.
7. A SITE INSPECTION IS RECOMMENDED.
8. APPROVAL OF THE APPLICATION FOR A PERIOD OF TWO YEARS IS RECOMMENDED.

LOCALITY PLAN

Shaded area is subject land.



Environmental Services Division Report No. 89 (Cont'd)**REPORT****Introduction**

The subject site is located on the western side of Whistler Street, two lots to the north of the intersection of Whistler Street and Carlton Street. The allotment is generally rectangular in configuration having a frontage of 12.192m and a depth of 33.909 along the northern boundary and 33.731m along the southern boundary. The land is currently developed with a two storey assembly building comprising entry, reception area, staff room, meeting rooms, hall and amenities at ground floor level and staff room and large meeting room at first floor level.

A separate consent to convert the existing building into two attached dwellings was previously issued and remains active however the owners have not sought to pursue that proposal at this time.

The subject application originally sought approval to carry out minor internal refurbishment works including 1.8m demountable glass office partitions and use both levels of the building as office area. The application was notified to nearby and adjoining owners with three submissions received. The application was reported to Council's Development Assessment Unit where the application was refused for the following reasons:

1. The proposed development is not considered to satisfy the provisions of Clause 25 of the Local Environmental Plan 1988.
2. The development does not satisfy the existing use rights provisions of the Environmental Planning and Assessment Act 1979.

The applicant has now lodged an application under Section 82A of the Environmental Planning and Assessment Act 1979 for Review of Determination. The application for review includes amended plans which show the ground floor refurbishment and office space remaining and the first floor level meeting room used for yoga classes.

Development Control Plan Numerical Assessment

The proposal does not propose any change to the external envelope or fabric of the building. The proposal is change the non conforming use to another non conforming use and therefore consideration is merit based.

Applicant's Supporting Statement

A detailed written statement was lodged in support of the application for review, a copy of which is attached.

Submissions

The application for review of determination was notified to nearby and adjoining property owners with two submissions received from S Bridge and H Ronan of 55 Whistler Street. The submissions raise the following concerns;

- Amenity – this change of use definitely does effect all of us living in Whistler Street.
- Intensification of Use – approval has never been sought or given by Manly Council for the use of this hall for a commercial yoga venture. The previous approval given for conversion of the building to 2 townhouses was totally acceptable because it did not intensify use.
- Parking – at least 50% of the people employed by this commercial concern will require parking in an already overcrowded street. Add to this the attendees from yoga centre and the strain on the parking is far greater. Yoga runs outside normal business hours and on weekends so the pressure is continuous.

Environmental Services Division Report No. 89 (Cont'd)

- Security - note there is no provision for toilet at first floor level. Two toilets are at ground floor at the rear of the building. This is only accessible from outside all users will walk down narrow alleyway between the hall and No.53 Whistler Street. I am concerned about how the area will be lit and secured as yoga hours are exceptionally long and lighting and noise will disturb the amenity of neighbours. Access to toilets should be internal or separate toilets provided on first floor level.
- Increase traffic from staff and couriers and commercial deliveries.
- Approval would give legitimacy to the yoga classes.
- Yoga classes generate extra traffic and competition for car parking.
- Conservation of the hall is not dependant on change of use to commercial, Council has previously approved conversion to two residences.
- There are no other commercial premises in this section of Whistler Street.
- Restrictions proposed by the applicant would be difficult if not impossible to enforce.
- Would not trust the applicants to keep to restrictions when they have already completed major internal renovations without waiting for approval.
- I think that having a commercial premises next door to my house would have a negative impact on the value of my property.

Precinct Community Forum Comments

No comments received to date.

Heritage Officers Comments

No Heritage objections to the proposed minor alterations for an office use. The Heritage Impact Statement is generally agreed with and the use is a sympathetic adaptation for the existing building. Conditions are recommended in relation to photographic records, repair signage and detailed finishes and colours.

Building Comments

No objections on Building Code of Australia matters, subject to conditions.

Planning Comments

The subject site is zoned Residential and the applicant seeks to rely on Clause 25 of the Manly Local Environmental Plan 1988 to permit a non conforming use of the premises. Clause 25 of the LEP states;

“25. Conservation incentive relating to heritage items

- (1) Nothing in this plan prevents the Council from granting consent to-
 - (a) the use for any purpose of a building within a conservation area or of the land on which that building is erected; or
 - (b) the use for any purpose of a building that is an item of environmental heritage or the land on which that building is erected,
 - (c) Where the Council is satisfied that-
 - (d) the use would have little or no adverse effect on the amenity of the area; and
 - (e) conservation of the building depends on the Council granting consent in pursuance to this subclause.
- (2) The Council, when considering an application for consent to erect a building on land upon which there is a building which is an item of environmental heritage, may at it's discretion

Environmental Services Division Report No. 89 (Cont'd)

exclude from it's calculation of the floor space of the buildings erected on the land the floor space of the item of environmental heritage-

- (a) for the purposes of determining the floor space ratio; and
- (b) for the purposes of determining the number of parking spaces to be provided on the site.

But only if the Council is satisfied that the conservation of the item depends upon the Council granting consent in pursuance of this clause."

The application for review of determination seeks consent to complete the office fit out at ground floor level, use the ground floor level for office purposes and use the first floor level for yoga classes.

The proposed development is considered to be a sympathetic adaptation of the existing building and it can be argued that the current proposal is the least destructive option as it enables the building to be retained in it's original form and effectively restored, therefore being consistent with Clause 25 of the Local Environmental Plan 1988.

A check of Council records has failed to show any specific consent exists for the use of the premises for yoga classes which have been held at the premises over approximately the past 12-18 months. It can be argued that this component of the proposal could be undertaken without reference to Council under Clause 10A of the Manly Local Environmental Plan 1988 (Exempt Development).

There is no record of any complaints received by Council regarding the use of the premises for yoga classes or any related interference with residential amenity. It is therefore concluded that such use is generally compatible with the surrounding residential area.

The proposed office use will result in some impacts on the existing amenity of the surrounding residential properties, particularly in terms of availability of on street car parking and potential increase in traffic movements. The applicant submits that the development will generate a peak parking requirement of 2-3 vehicles and has supported this claim with a schedule of current staff and their expected transport types and submits that the 2-3 spaces required would be substantially less than the on-site parking that would be generated by the approved residential dwellings where off street garaging was deleted as a condition of consent to protect the buildings Heritage facade. The required car parking, based on the Manly Development Control Plan for the Business Zone would be 5.3 spaces. Whilst the proposal will generate additional parking demand in the area the impact is not such that would prevent Council giving consideration to the proposal under Clause 25 of the LEP.

The applicant states *"...the commercial is proposed within the ground floor of the existing building is intended to provide an office for the relocation of a small local publishing business. The business currently employs 12 staff at the majority being local residents. This proposal, however six and increase in this number by three persons to a maximum of 15 staff. The hours of operation of the business proposes to continue working between the hours of 9 a.m. to 6 p.m. Monday to Friday only The type of work undertaken by the staff within the proposed office would involve the compilation of articles and magazines generally sold my sales staff off side. There is no associated pretty activities and separate business."* Based on this information it is considered that the proposed use will not result in any significant increase in traffic movements in Whistler Street.

The remaining amenity issue relates to concerns of the nearby property owners in respect of Security issues, particularly the provision of adequate toilet facilities for patrons of the yoga classes at first floor level. This issue can be resolved by provision of suitable facilities at first floor level and a condition is included in the recommendation in this regard.

Environmental Services Division Report No. 89 (Cont'd)**MLEP 1988 Clause 10 Objectives**

The following comments relate to the specific Zone objectives as stated in Clause 10 of the Manly Local Environment Plan 1988;

(a) to set aside land for the purposes of housing and associated facilities.

Comment. The land is zoned for residential purposes however it has been developed with an assembly building which predates the current planning controls.

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

Comment. Clause 25 of the Local Environmental Plan 1988 allows Council to consider the current proposal even though it may not conform with the specifics of the Development Control Plan for the Residential Zone.

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

Comment. Considerations in relation to character of the residential area have been detailed above.

(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;

Comment. There are no changes proposed to the exterior of the building. Considerations in relation to amenity previously identified include increased demand for on street car parking, increased traffic movements, security, and light and noise interference. As previously discussed, the parking and traffic issues are not considered fatal to the application and security, light and noise impacts can be addressed by suitable conditions of consent.

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

Comment. The proposal will have no effect on the existing open space surrounding the building. As the building extends over the majority of the site there is little opportunity for landscape planting however some planting is proposed along the northern side (west portion) and the rear.

(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;

Comment. Subject to conditions as recommended, the proposal is consistent with this sub clause.

(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;

Comment. Occupants of the building will continue to utilise existing physical infrastructure serving the site. The proposal is not expected to effect the existing social environment.

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

Comment. The proposal subject to conditions included in the recommendation is considered to be suitable rehabilitation and redevelopment for the area.

Environmental Services Division Report No. 89 (Cont'd)

(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.

Comment. Not applicable.

CONCLUSION:

Pursuant to Section 82A and 79C of the Environmental Planning and Assessment Act 1979, the Manly Local Environmental Plan 1988 and the Development Control Plan for the Residential Zone the proposal is considered satisfactory for approval subject to restricting the consent to a period of 2 years and other conditions to minimise any adverse effects on the amenity of the area.

RECOMMENDATION

That Development Application No.37/04 for Office Fit Out and Use of the Building for Office Purposes and Yoga Classes at No.51 Whistler Street, Manly be approved subject to the following conditions;

1. This approval relates to drawings/plans Nos. 123/2003/A dated July 2004 received by Council on 11 October, 2004.
2. This consent is effective for a period of two years from the date of issue.
3. If the title of the property No.51 Whistler Street Manly is changed, the property sold, transferred, assigned, otherwise traded or leased or if the management associated with the office use approved by this consent changes, the consent is to be surrendered and the use of the building reverted to the previously approved use (meeting hall and associated facilities).
4. A photographic record of the affected parts of the building shall be submitted to Council's Heritage Officer . The photographic record shall include annotated plans and elevations as well as black and white photographs. The record is to be made in consultation with a Heritage Consultant. The record is to be lodged with the Manly Local Studies Library.
5. Repair works to the façade are to be carried out by a qualified and experienced tradesperson and to be overseen by a qualified Heritage Consultant within 6 months from the date of this consent.
6. Any proposed signage is to be the subject of a separate development application to Council.
7. The colour scheme is to be submitted to Council prior to issue of the Construction Certificate. Note, the brickwork is not to be painted or rendered..
8. The numbers of staff associated with the office use is not to exceed 15 without the prior approval of Council.
9. Provision of toilet facilities within the building at first floor level, works being designed and undertaken in consultation with Council's Heritage Planner.
10. Pursuant to Section 97 of the Local Government Act, 1993, Council requires, **prior to issue of the Construction Certificate, or commencement of any excavation and demolition works**, payment of a Trust Fund Deposit of \$2,200.00. The Deposit is required as security

Environmental Services Division Report No. 89 (Cont'd)

of compliance with Conditions of Consent, and as security against damage to Council property during works on the site.

Note: Should Council property adjoining the site be defective eg, cracked footpath, broken kerb etc., this shall be reported in writing to Council, **at least 7 days prior to the commencement of any work on site.**

11. Details of the builder's name and licence number contracted to undertake the works shall be provided to Council **prior to issue of the Construction Certificate.**
12. 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.
13. Four (4) certified copies of the Structural Engineer's details in respect to the structural details of the proposed building shall be submitted to the Principal Certifying Authority **prior to the issue of the Construction Certificate.**
14. A Certificate of Adequacy signed by a practising Structural Engineer is to be submitted to the Principal Certifying Authority in respect of the load carrying capabilities of the existing structure to support the proposed **additions prior to the issue of the Construction Certificate.**
15. 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 AS3740. Certification is to be provided to the Principal Certifying Authority from a licenced applicator prior to the fixing of any wall or floor tiles.
16. The implementation of adequate care during building/construction to ensure that no damage is caused to any adjoining properties.
17. 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.
18. All plumbing and drainage, including sewerage drainage stacks, ventilation stacks and water service pipes shall be concealed within the building. Plumbing other than stormwater downpipes shall not be attached to the external surfaces of the building.
19. A Fire Safety Schedule specifying the fire safety measures (both current and proposed) that should be implemented in the building premises shall 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.

20. All building work must be carried out in accordance with the provisions of the Building Code of Australia.
21. All lights used to illuminate the exterior of the buildings or site shall be positioned and/or fitted with cut off luminaries (baffles) so as to prevent the emission of direct light onto adjoining roadways and land.

Environmental Services Division Report No. 89 (Cont'd)

22. Any ancillary light fittings fitted to the exterior of the building are to be shielded or mounted in a position to minimise glare to adjoining properties.
23. Glare from internal lighting shall not be permitted to extend beyond the limits of the building authorised by this approval.
24. The works require the following inspection/certification during the course of construction:-

Wet Area Waterproofing
Final inspection

The cost of these inspections by Council is \$183.00 (being \$70.00 per inspection and \$113.00 for Final inspection inclusive of GST). **Should you require Council to undertake the inspection/certification, then payment is required prior to the first inspection. Inspection appointments can be made by contacting the Development Assessment Unit on 9976 1573 or 9976 1587.**

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 \$80.00.

25. Payment of \$28,321.24 for the 200sqm office floor space in respect of the contribution for the provision of the public amenities and public services shall be in accordance with Section 94 of the Environmental Planning and Assessment Act, 1979. Arrangements for such payment is to be made in accordance with Council's policy, **prior to issue of the Construction Certificate.**

Note: The attached yellow form is to be returned to Council with your payment of the Contribution.

26. Building or construction work must be confined to the hours between 7.00am to 6.00pm, Monday to Friday and 7.00am to 1.00pm, Saturday, with a total exclusion of such work on Public Holidays and Sundays. Non-offensive works where power operated plant is not used and including setting out, surveying, plumbing, electrical installation, tiling, internal timber or fibrous plaster fixing, glazing, cleaning down brickwork, painting, building or site cleaning by hand shovel and site landscaping, is permitted between the hours of 1.00pm to 4.00pm Saturdays.

Note: That the Protection of the Environment Operations Act 1997 may preclude the operation of some equipment on site during these permitted working hours.

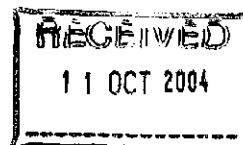
27. The operations of mechanical services are not to give rise to an offensive noise within the meaning of the Protection of the Environment Operations Act 1997.
28. The hours of operation shall not exceed 7.00am – 9.00pm Monday to Friday and 8.00am to 6.00pm Saturday and Sunday **without the prior approval of Council.**

ATTACHMENTS

AT-1 Section 82A Application - Mooki Consulting Pty Ltd 23 page(s)

LUM061204ESD_4

***** End of Environmental Services Division Report No. 89 *****



Mooki Consulting Pty Ltd
town planning - advisory - management
81 Queen Street, Woollahra, NSW 2025
A.C.N. 110 209 919

October 11, 2004

General Manager
Attention: Mr David Stray
Manly Council
PO Box 82
Manly NSW 1655

Hand delivered by: Mr Ben Haynes

Dear Sir,

RE: Section 82A – Review of Determination of Development Application No. 37/04 – Change of use, alterations & additions to the existing building at 51 Whistler Street, Manly.

Pursuant to clause 82A (1) of the Environmental Planning and Assessment Act 1979 (EPAA 1979) we submit to Manly Council a request to review its determination of the refusal of the above application issued on August 30, 2004. Under the provisions of 82A (4A) this submission requests that Council, in its review of its previous decision change the determination and grant development consent to the above proposal.

To assist Council in its review of its previous determination of the application, this submission addresses each of the specific reasons for refusal listed in the notice of determination. Additional information to be read in conjunction with this submission includes:

- Previous correspondence submitted by the owner's of the property with respect to carparking demand of the proposed use of the building (Attachment 1);
- An expert report prepared by the applicants Heritage Consultant Noel Bell, Ridley Smith & Partners (Attachment 2) that provides further support on how the conservation of the building, listed as a heritage item under the Manly LEP 1988, relies upon Council changing its determination to development consent for the proposal; and

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- A summary of the conditions of development consent (Attachment 3) recommended with in this submission that restricts the intensity of the commercial use proposed and the amenity of existing residents as well as insures heritage conservation of the building.
- Copies of the architectural plans prepared by K.R. McDonald (Attachment 4) detailing the proposed internal alterations to the building that were submitted as part of the original application for further consideration and notification.

1.0 THE PROPOSAL

Some of the concerns mentioned in relation to the application by both local residents and Council included the lack of information with respect to the specific details of the proposed commercial use of the building. The following therefore provides a detailed description of the existing business that currently operates in Manly and is proposed to be relocated to the subject site.

The application refused by Council, proposes to incorporate a small commercial office on the ground floor ONLY of the existing Masonic Hall at 51 Whistler Street, Manly. The ground floor of the existing building intended for the proposed use occupies an area of 296.2m². The existing yoga school has been relocated to the first floor area occupying 171.6m².

The commercial use proposed within the ground floor of the existing building is intended to provide an office for the relocation of a small local publishing business. The business currently employs 12 staff with the majority being local residents. This proposal however seeks an increase in this number by 3 persons to a maximum of 15 staff. The hours of operation of the business proposes to continue working between the hours of 9am to 6pm from Monday to Friday only. The type of work undertaken by staff within the proposed office would involve the compilation of articles and magazines, generally sold by sales staff off site. There is no associated printing activities ancillary to the business.

The proposed office space on the ground floor of the Masonic Hall is to be divided by way of removable partitions and some more permanent stud walls (as shown on plan 123/2003/A in Attachment 4) to create individual workstations for each employee of the business.

In addition, the proposal includes significant restoration to the currently dilapidating building. The application as originally submitted detailed on the architectural plans the provision of French doors at the rear of the building. These minor changes however, are no longer sought as part of this proposal. With the exception of needed restoration works no changes are proposed to the external façade or existing building envelope. Therefore, as there are no major building works any associated noise impacts and inconvenience with respect to trade's people using the available on street parking shall be minimal.

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2.0 RESPONSE TO REASONS FOR REFUSAL

Manly Council refused the development application No. 37/04 for the proposal above mentioned above by way of notice dated August 30, 2004, issued under the provisions of Section 81(1)(a) of the EPAA 1979. This notice provided two reasons as to why the proposed development application was refused.

It has also been acknowledged that there were six submissions received opposing the application, many of which in our opinion is a result of residents not fully understanding the details of the low intensity nature of the business.

This submission supporting our request for Council to review its determination provides arguments in response to each of the reasons for refusal, those objections raised by local residents and also provides justification as to why Council should grant consent to the proposal. The submission also recommends conditions of consent (Attachment3) that may be imposed in order to provide restrictions as to the use of the building and mitigate the concerns highlighted in this report regarding future intensification.

2.1 Reason 1. The proposed development is not considered to satisfy the provisions of clause 25 of the Local Environment Plan 1988.

2.1.1 The subject site at 51 Whistler Street, Manly, currently accommodates a Masonic Hall. Schedule 4 of the Manly LEP 1988 (MLEP) lists the Masonic Hall as an architectural item of environmental heritage. At present, a yoga school, which operates to the knowledge of Manly Council without formal development consent is occupying the two-storey building with no provision for carparking.

The subject site is Zoned No. 2 – Residential Zone and within a defined ‘Tourist Area’ under the provisions of the MLEP. Clause 4 in the Development Control Table of the MLEP, Zone No.2 – Residential Zone prohibits commercial development within this zone. Therefore, the commercial use described in the application would in most circumstances not be permissible.

Clause 25 in the MLEP however, enables Council to grant consent for any use of land or a building where it is located within a heritage conservation area or is identified and listed within the MLEP as an item of heritage significance. However, in considering an application pursuant to clause 25 of the MLEP, the Council must be satisfied that –

(c) the use would have little or no adverse effect on the amenity of the area; and

(d) conservation of the building depends on the council granting consent in pursuance of this subclause.

The application for the provision of a commercial use within the existing Masonic Hall therefore relies upon satisfying Council with respect to parts (c) and (d) of clause 25 of the above mentioned. However, as described in reason for refusal Number 1, the Council determined this had not been satisfied.

2.1.2 With regards to satisfying part (c) of clause 25, or more specifically “*that the proposal shall result in no amenity impact*”, the Council must consider the application against all relevant planning instruments applicable to the zone. In this instance, apart from section 79(c) of the EPAA 1979 and the MLEP, the Manly Development Control Plan for the Residential Zone 2001 (the DCP) provides the specific objectives and performance criteria for proposed development, including non-residential development, within the residential zone.

As the application proposes no changes to the envelope of the existing building and no additional internal floor space, issues relating to impact upon amenity are resigned to visual and aural privacy, security and carparking. When the application is considered against the relevant sections within the DCP it is clear that the proposal shall have no adverse effect upon the amenity of the area. The following provides an assessment against those relevant sections of the DCP.

2.1.3 DCP - Section 3.10 Privacy & Security

The objectives of this part include:

- a) *To screen between closely spaced buildings.*
- b) *To mitigate direct viewing into windows from others.*
- c) *Provide screening to outdoor living areas.*
- d) *To encourage increased security between neighbours.*

Existing terrace houses (heritage items) to the north and residential flat buildings to the south and west adjoin the site. The application does not propose to relocate any existing windows or doors nor provide any new openings to the existing building.

The primary access to and from the building remains adjacent to the properties Whistler Street frontage. As there is no significant changes proposed it is difficult to apply the performance criteria given they generally deal with proposed new external building works. However, it can be demonstrated that the proposed use of the building still achieves the objectives of the control.

The existing window and door arrangement of the building not varied as a result of the proposal. Therefore, the current amenity enjoyed by the adjoining development with respect to their private open space and internal living areas shall not be compromised. None of the submission made by resident objectors raised loss of visual privacy as an issue of concern regarding the proposal.

Although aural privacy is not considered under this section by the DCP, it is considered important to address this issue given the proposed introduction of a commercial use into a residential zone.

As noted in section 1.0 of this report, the application seeks consent for the use of the ground floor only for a maximum of 15 persons only. The activities undertaken as part of the office only involve writing, telephone conversations and staff meetings between the hours of 9am and 6pm on weekdays. Visitation to the building shall be minimal as the sales of the work produced by the business are sold to clients off site. Hence, the level of noise generated as a result of the use during daylight hours on weekdays only shall be negligible and no greater than that generated by normal residential uses. Furthermore, any noise generated shall be well below that of the accepted current yoga school that operates on the ground floor of the building and has visitation of approximately 100 persons per day.

Overall, the objectives of the Privacy & Security section of the DCP are more than satisfactorily achieved. However the following conditions are recommended to imposed on any consent granted to the proposal to restrict the hours of the office and the location in which the commercial activities can be undertaken within the building:

- *The commercial use of the building shall apply to the ground floor only of the existing Masonic Hall building at 51 Whistler Street, Manly. Any variation to this restriction shall be subject to a separate Development Application submitted to and approved by Manly Council.*
- *The commercial use of the existing Masonic Hall building at 51 Whistler street shall be restricted to the ground floor of this building only may only operate between the hours of 9am and 6pm, Monday to Friday. Any variations to these restrictions shall be subject to a separate Development Application submitted to and approved by Manly Council.*

2.1.3 DCP - Section 3.12 Parking & Access.

The primary issue raised in the resident submissions to Council objecting to the proposal was with respect to impacts the introduction of a commercial use would have upon the carparking demand within the immediate locality and the residential zone in general.

There are no specific objectives or relevant performance criteria relating to parking and access detailed within the DCP with respect to a proposed commercial use or an existing commercial use within a residential zone. This is partly due to the circumstances of the site currently having no ability to provide off street parking and the fact that the objectives relate to where off-street car parking can be provided. In addition, the DCP does not envisage the provision of a commercial office within the residential zone.

However to resolve the concerns of local residents with respect to loss of available carparking and amenity we submit the following merit assessment based on comparing the carparking demand for the current approved use of the building, the recent consent for conversion of the building to a residential use and the proposal.

As submitted as part of the original application, the owner's of the building and the business provided details (Attachment 1) on the current demand the operation has with respect to carparking. This submission calculated that the demand of the business employees (the majority of which live locally in Manly) of the business have with respect to carparking is 3 spaces.

The current approved use of the Masonic Hall is in fact a 'Place of Public Worship' as defined in accordance with Part II – Definitions in the MLEP. The carparking controls under section 3.12 in the residential DCP do not provide a minimum carparking requirement with respect to this use. However, the Manly DCP for the Business Zone 1989 (Amendment 3) does provide the minimum carparking requirements for this type of use, this being one space per 10 seats provided or 10m² of Gross Floor Area (GFA) of the building. Although the business DCP is not technically applicable to the subject site, it is considered that the control can be used, as a guide as to what Council thinks is the anticipated demand for this use. Hence if this rate is applied to the subject site a minimum of 47 carparking spaces is required.

If a comparison is made with respect to carparking between the proposal and the approved use of the building as a 'place of public worship' the demand for carparking is obviously dramatically reduced within the locality.

A recent development consent (18 February 2002) granted by Manly Council for the conversion of the Masonic Hall to two attached, three bedroom dwellings requires a minimum of 4 carparking spaces in accordance with the residential DCP. This residential development relies on carparking available in Whistler Street.

The proposal therefore, will demand one less on street carparking space than the residential use approved. Furthermore, the carparking demand of the proposal is only with respect to the hours of 9am to 6pm on weekdays unlike the proposed residential use that would normally have its greatest demand in the evenings and on weekends also not forgetting the likely demand derived from visitors. The impacts of this greater demand for parking in the evening as a result of the residential approval is anticipated to have a far greater impact than the proposal, as existing residents shall compete for the available spaces.

Consideration also must obviously be given to the yoga school that operates in the building. As the proposed office use shall result in the yoga school being confined to a smaller area (171.6m²) on the first floor of the building the size of the operation will also be forced to reduce. There are no specific carparking ratios within any of Councils development controls with respect to the yoga school, however, as a general rule of thumb carparking requirements are normally based on floor area. Hence, as the floor area

is being reduced with respect to the yoga school the requirements for carparking are likely to be minimised as well.

Other associated parking demand associated with the office use shall also be derived from courier vehicles. The business currently has a maximum of one to two deliveries from couriers per week. As the intensity of the business shall be capped within this building, the number of courier deliveries will not be increased. At any rate, the impact of couriers on local traffic flow and parking shall be minimal, as these vehicles normally demand only a maximum of 5 minutes of stoppage time for a delivery.

On-street carparking within Whistler Street consists of four hour parking zones on the western side and two hour zones on the eastern side. It has been observed that during normal working hours there is ample availability in excess of three spaces available within Whistler Street that can adequately cater for those daytime yoga sessions and the proposal. It should also be noted that alternatively, parking is provided in a number of nearby Council parking stations within walking distance of the site.

Given all of the above reasons it is considered that the proposal shall have minimal impact on the proposed demand for carparking within the locality. It has been demonstrated that adequate on street parking is available for the demand derived for the 12-15 employees of the proposed business. The low scale commercial office use will have no significant impact on the demand for on-street carparking, and any demand that is created shall not clash with the peak carparking demand of existing residents especially in the evenings and on weekends.

To ensure the intensity of the development is controlled the following conditions are recommended to be imposed on any consent granted to the proposal:

- *The proposed commercial use shall on ground level of the existing Masonic Hall at 51 Whistler Street, Manly shall be limited to a maximum of 15 employees only. Any variation proposed to this restriction shall be subject to a separate Development Application submitted to and approved by Manly Council.*

2.1.4 Acknowledgement of the minimal amenity impacts the proposal is likely to have upon the area was recognised in a recent planning report relating to the original application considered by the Manly Development Assessment Unit. This report states that:

'based on the current proposal there is not considered to be any evidence of likely loss of amenity particularly in terms of privacy, overshadowing and views'.

With respect to carparking, this report also acknowledges that:

'The applicant's preliminary assessment indicates an acceptable impact upon the capacity of the surrounding street system'.

Although the assessment report supports the proposal with respect to amenity and carparking, discussion in the report runs to the concern of precedent and '*potential effects of unspecified commercial use in the residential zone*'. It is considered unreasonable for Council to refuse the application based on assumption that a potential future commercial use may, unlike this proposal, have a significant impact upon the amenity of the area.

Council is required to consider the content of the application currently at hand and any future changes to the commercial use of the building would be dealt with via the assessment of separate development applications. This certainty can be provided to Council and the community by way of the conditions recommended in sections 2.1.2 and 2.1.3 of this report and summarised in attachment 3.

It is also assumed Council was concerned with the establishment of existing use rights pursuant to section 106 of the EPAA 1979 as a result of granting consent for commercial use of the building. Without the benefit of a legal opinion, one would firstly question whether existing use rights could be established if the provisions of the MLEP allow Council to grant consent to an otherwise prohibited use under the circumstances of heritage conservation. Secondly, even if existing use rights were to be created an application to change or intensify the use must have proper regard for the objectives of the zone and potential amenity impacts. Council would be the ultimate determining authority in that respect.

Furthermore, with regard to concerns relating to the potential future use of this site, it should be noted that the site is located within a 'Tourist Area' under the provisions of the MLEP. This zoning permits with development uses that would be considered to have far greater impact upon the amenity of the area than this proposal.

2.1.5 With regards to satisfying part (d) of clause 25 Council must be convinced that conservation of the heritage building depends upon granting consent to the proposal. Council in its determination of the application considered that the repair and painting proposed in conjunction with the use did not adequately demonstrate that the conservation of the building depended upon it granting consent to the application.

In the DCP, Section 3.11 – Protection of Heritage Items and Conservation Areas sets out the relevant objectives and performance criteria for proposed development to an item of heritage significance or where a building is located within an identified heritage conservation area. The key objective with respect to the proposal is:

- a) *To retain and conserve items of environmental heritage and/or conservation areas, together with properties of potential heritage significance.*

The original application provided in accordance with the performance criteria listed in the DCP a Heritage Impact Statement prepared by Noel Bell, Ridley Smith & Partners. This report concluded that the proposal '*will have little or no heritage impacts*' upon the Masonic hall or the two adjacent heritage buildings at 53 & 55 Whistler Street. Council's

Heritage Officer also acknowledged this conclusion and raised no objections to the application.

The heritage report also raised consideration of the previous consent issued for the site, which involves, as previously noted, the adaptation of the building into two residential units. Elements of this previous consent involved significant and somewhat dramatic changes to the building envelope. In fact the only part of the existing building that was to be retained was the front façade of the building.

Unlike the approved residential use, this proposal shall not alter or reconfigure the original envelope of the existing building; rather it shall be fully restored. Apart from appreciating the heritage values of the existing building and achieving those objectives pertaining to heritage conservation in the DCP, the restoration works will result in a significant improvement and contribution to the visual amenity of Whistler Street. This is has the potential to result in economic benefit to those existing properties within this street.

The heritage report submitted with the application also identified that the heritage significance of the building not only relates to the external features but also interior joinery elements. These internal features would be lost to the residential adaptation unlike the office proposal that would involve *'minimal intervention with the fabric of the item'*.

The building is now slowly falling into disrepair and the owner's have already spent a considerable amount of money undertaking maintenance. The appropriate conservation of the building therefore is reliant upon legal occupation of the premises. In this regard the fact that the owner's of the building would like to occupy the premises provides certainty to the community that further repairs required to the building will occur along with the continual maintenance that shall be necessary to preserve this important item of architectural heritage.

To further support the argument that the conservation of this heritage building depends upon Council changing its determination to consent, heritage experts Noel Bell, Ridley Smith and Partners have been asked to provide a further response (Attachment 2) with respect to satisfying Council of clause 25(d) in the Manly LEP 1988.

To ensure that the restoration works form part of the conditions for use of the building for commercial purposes, the following conditions are recommended to imposed on any consent granted to the proposal:

- *The proposed works to the building are to be documented within a restoration plan of management prepared by a qualified heritage consultant. This management plan is to be provided to Manly Council for approval by its heritage officer, prior to issue of any Construction Certificate.*

- *Any proposed changes to the existing colour scheme is to be incorporated within the restoration plan of management for the building and approved by Manly Council prior to the issue of any Construction Certificate for the proposal.*
- *Repair works detailed within the restoration plan of management are to be carried out by a qualified and experienced tradesperson and overseen by a qualified heritage consultant prior to occupation of the building.*
- *Any proposed signage associated with the proposed commercial use shall be limited in size to no bigger than an A4 page located within one of the windows of the building fronting Whistler Street and shall be subject to the submission of a separate development application.*

2.2 Reason 2. The development does not satisfy the existing use rights provision of the Environmental Planning and Assessment Act.

The planning report considered by the Manly DAU concluded that, as it could not be convinced that the application satisfied clause 25 of the LEP, the proposal relied upon the applicant demonstrating that the building had the benefit of existing use rights pursuant to section 106 of the EPAA.

It is agreed with Council that there is no evidence to suggest that the building can benefit from existing use rights. The original application and this application to Council for a review of its determination therefore rely upon the provisions of clause 25 of the Manly LEP 1988.

3.0 CONCLUSION

It is clearly demonstrated in this request for a review of the Council determination, that the proposed change of use to the ground floor of the Masonic Hall to a small office will have no adverse effect upon the amenity of the area.

There are no changes proposed to the existing building envelope and therefore will be no impact in terms of views or overshadowing. With respect to privacy, the proposal does not result in changes to the locations of windows or doors and therefore does not promote overlooking of adjoining private open space areas. The activities associated with the business are low scale and the hours of operation limited to 9am to 6pm on weekdays only, thereby limiting any nuisance noise.

The on street carparking demand is significantly below that required for the current approved use of the building as a place of public worship as well as that derived in a recent consent issued for conversion of the building to two attached dwellings. Demand for parking only occurs during daytime hours and not on weekends therefore avoiding the peak demands of existing residents.

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Council's concern relating to unspecified future commercial uses of the building is resolved by its own acknowledgement that any proposed changes to intensify use or changing the commercial activities undertaken within the building shall be subject to future development applications. In this regard certainty is offered by the applicant by way of conditions (Attachment 3) recommended in this submission to restrict staff numbers, hours of operation and confining the use to the ground floor of the building only.

With respect to the heritage conservation of the building we submit to Council that the proposal has far greater heritage conservation values than the consent allowing conversion of the building to accommodate two dwellings. We also submit that no other activity can allow the commercial returns in order to restore and maintain the building as a heritage item of significance. The residential consent if acted upon will result in retention of existing building façade only. We consider that our client's proposal offers true conservation of the architectural heritage values of the building however, this relies entirely upon Council changing its determination to consent. This is further supported by a supplementary report prepared by heritage experts Noel Bell, Ridley Smith and Partners (Attachment 2).

We therefore consider that clause 25 of the Manly LEP 1988 has been duly satisfied and hence, commend the application to Council to review its previous decision and grant development consent for the proposal.

Yours faithfully,



Ben Haynes
Urban Planner
Mooki Consulting Pty Ltd

Attachment 1.

*Carparking Demand Calculations of Existing
Business.*

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J. Codling
10 Pockley Avenue
Roseville NSW 2069

16th July 2004

The General Manager
Attention: Robert Stark/David Stray
Manly Council
PO BOX 82
Manly NSW 1655

Dear Robert and David

RE: DA 37/2004- THE MASONIC TEMPLE, 51 WHISTLER STREET, MANLY

We hereby submit amended plans for the above proposal in order to address concerns raised by the DAU with regards to the intensity of the proposed office use and its affect on the surrounding residential amenity, particularly in relation to on street parking.

The plans have been amended as follows:-

- Retention of the Yoga centre on the first floor level
- Reduction of the proposed office use to part of the ground floor level only

We confirm that the proposed ground floor offices are to be owner occupied by a small publishing company (Business Essentials Australasia Pty limited t/a Edge Partners), a low key operation involving very few visitors.

The operation generates a peak parking requirement of 2-3 vehicles as per attached employee schedule. This requirement is substantially less than the on-street parking that would be generated by the approved residential adaptation (2 large dwellings) where off-street garaging was deleted as a condition of consent to protect the temple's heritage façade.

Furthermore, should the temple be adapted to a more intense use like backpacker accommodation, hotel or apartment building, the cumulative effects on the surrounding neighbourhood without the possibility of off-street parking would be far greater than the current proposal as amended.

In addition, these uses would result in widespread intervention of the temples' heritage fabric and historical relevance.

The proposal as amended provides for the conservation and restoration of the Temple in an economically and environmentally sustainable manner with minimal effect on the immediate residential amenity particularly on weekends and holidays when the surrounding street system is stretched to the limit.

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It is therefore the applicants' submission that council use its discretion under clause 25 of the Manly LEP, 1988 in respect of the proposed office use contingent and grant consent to the proposal as amended.

Thank you for your consideration in this matter.

John Codling
Applicant.

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The Traffic Impact for 51 Whistler Street, Manly

BUSINESS	NAME	POSITION	LIVES	HOW GET TO WORK	#cars
EDGE	Craig Hodges	Managing Director	Normanhurst	Train and Ferry	0
EDGE	Fergus Stoddart	Director	Bondi	Bus and Ferry	0.33
EDGE	Kelcie White	Production Assistant	Manly	Walks	0
EDGE	Ridley Doolittle	Business Development	Manly	Walks	0
EDGE	Stella Gibney	Sales Rep	Manly	Own car - works only part time	0.25
EDGE	Stephen Grant	Telephone Sales	Manly	Walks	0
EDGE	Aleney De Winter	Sales Rep	Neutral bay	Own car - on road most of time	0.25
EDGE	Anna Allsdotter	Accounts	Manly	Walks	0
EDGE	Lynda Colbert	Accounts	Curl Curl	Drives own car	1
EDGE	Janelle	Office manager	Manly	Walks	0
EDGE	Fergus Herbert	Director-Chairman	French's Forest	own car/shares with EG	0.5
EDGE	Egbert Buchler	Director	French's Forest	own car/ shares with Fergus	0.5
TOTAL					2.83

Business Description

Business Essentials Australasia P/L t/a edge partners was incorporated on 16th November 1993.

Edge partners is a small publishing company.

People generally do not come to their offices.

the company has occupied their current premises for the last 18 months and has a proven track record

ALL STAFF WILL BE HAPPY TO PROVIDE A STATUTORY DECLARATION TO THE ABOVE

Attachment 2.

*Supplementary Heritage report prepared by
Noel Bell, Ridley Smith & Partners.*

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Tuesday, 21 September 2004

General Manager
Manly Council
1 Belgrave Street
PO BOX 82
MANLY NSW 2095

Ref: 27084 DA 37/04

**RE: Use of Heritage Incentives Clause 25, Manly LEP
Alterations and Additions to Existing Masonic Hall,
51 Whistler Street Manly**

We write to provide additional heritage analysis of the proposed alterations and to support the application of Clause 25 with respect to the proposal.

The property is the subject of a previous Development Application, which was approved a number of years ago. The previously approved DA provided for adaptive re-use with extensive modifications, to be carried out in a sympathetic form. This application was not implemented and the subsequent owners have submitted the present application to allow them to adapt the building for use as their offices while allowing the upper floor to be used as a yoga studio.

Since acquiring the property the present owners have undertaken a wide range of repairs and maintenance including:

- Extensive repairs to white ant damaged timber floors,
- Upgrading of plumbing to existing fixtures
- Securing doors
- Providing physical protection against vandals.
- Upgrading internal lighting

All such work has been carried out in an unobtrusive and sympathetic manner, supportive of the heritage values of the property. We support the timely action taken to repair and conserve the fabric of the building. These repairs and maintenance is essential to the retention of the conservation values of the building in our opinion.

This programme of works is by no means complete and the table provided from the owners trade sources indicates the extent of medium and long term work necessary to conserve the values of the building. From our experience such work reflects a long period of the past of low or little maintenance. Such situations arise when buildings fall into a pattern of non-productive use. Necessary maintenance works are inevitable deferred in situations where the condition or configuration of the building militates against viable use.



NOEL BELL, RIDLEY SMITH & PARTNERS
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Table of Repairs and Maintenance – 51 Whistler Street Manly

Area	Problem	Cost to date	Short term	Medium term
Entrance	Paint	\$2,000	\$2,000	\$2,000
Rooms - right and left	Very shabby	\$5,000	\$0	\$2,000
Main Hall	Floors eaten by termites	\$20,000	\$10,000	\$50,000
Main Hall	Walls in disrepair	\$15,000	\$5,000	\$10,000
Main Hall	Windows cracked and falling out	\$8,000	\$0	\$1,000
Stage	Floor and walls	\$10,000	\$0	\$0
Roof at back	Rotten	\$5,000	\$5,000	\$40,000
Whole building	Wiring	\$25,000	\$3,000	\$50,000
Upstairs hall	Chairs on rotten dais	\$20,000	\$0	\$0
upstairs hall	Walls in total disrepair	\$15,000	\$0	\$10,000
Back area downstairs	Whole makeover	\$15,000	\$0	\$10,000
Back area downstairs	Windows cracked and falling out	\$3,000	\$0	\$0
Front of Building	Mortar crumbling	\$0	\$45,000	\$20,000
Front of Building	Windows rotted	\$0	\$10,000	\$5,000
Front of Building	Continual rubbish left	\$1,000	\$3,000	\$1,000
Side of Building	Mortar crumbling	\$0	\$10,000	\$2,000
Doors	Rotten and lacking security	\$5,000	\$0	\$1,000
Total		\$149,000	\$83,000	\$204,000

In reviewing this application we note the following:

- That the previous approved DA involved a far greater intervention with the Heritage Fabric of the building than the present proposal.
- We continue to support the proposal on the basis of the minimal heritage impacts, noting that the ground floor fitout for offices is substantially reversible and maintains the special qualities of the building overall. The proposed use of the upstairs also maintains the special qualities of the building and is compatible with the heritage values of the hall.
- That the present level of use is unlikely to provide sufficient funds to carry out medium and long-term repairs and maintenance indicated in the table.
- That the proposed adaptation and alterations is likely to provide a level of funding necessary for the medium and long term conservation of the building fabric.

Specific application of Clause 25 Conservation incentive relating to heritage items.

In seeking application of Clause 25, the applicant points to the minimal nature of the changes which result, noting that the application has not drawn objections on any scale. This reflects the fact there is "little or no adverse effect on the amenity of the area" as required under 25 (1) (c).

We point to the repairs and maintenance works indicated by the table above as demonstration of the extent of conservation works required for the longer-term conservation of significant fabric. In our view the extent of work and the current low earning capacity of the building demonstrate that "conservation of the building depends on council granting consent".

While we understand that application of Clause 25 is discretionary, we believe that refusal on the basis that the DA "is not considered to satisfy the provisions of Clause 25" is not reasonable without further detailed consideration of the circumstances governing the past, present and proposed uses for the building and whether or not such uses contribute to or detract from the conservation of the item.

We would request that further consideration be given to the application, given the further particulars and analysis now provided. We would support the application as one, which contributes in a practical way to the conservation of heritage fabric, not simply in terms of the proposed repairs and maintenance but in identifying a viable use which is capable of generating sufficient income to support the medium and longer term conservation of the building.

Yours Faithfully
NOEL BELL RIDLEY SMITH & PARTNERS PTY LTD



COLIN ISRAEL
Senior Heritage Consultant

DIRECTORS
RIDLEY SMITH B ARCH FRAIA RIBA
MSIA JP
GRAHAM THORBURN ARAIA
ROBERT STAAS MB ENV B ARCH
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GEOFFREY DEANE B ARCH FRAIA

GENERAL MANAGER
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JOHN BAKER B ARCH
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ARCH (HONS)
ANDREW DUFFIN B ARCH ARAIA
VICKI VAN DIJK B ARCH (HONS)
RIBA

OFFICES
ADELAIDE BRISBANE TOWNSVILLE
SINGAPORE

NOEL BELL, RIDLEY SMITH &
PARTNERS PTY LIMITED
ABN 10 002 247 565

Attachment 3.

Mooki Consulting Pty Ltd

town planning - advisory – management

81 Queen Street, Woollahra, NSW 2025
A.C.N. 110 209 919

RECOMMENDED CONDITIONS OF DEVELOPMENT CONSENT N37/04, 51 WHISTLER St, MANLY.

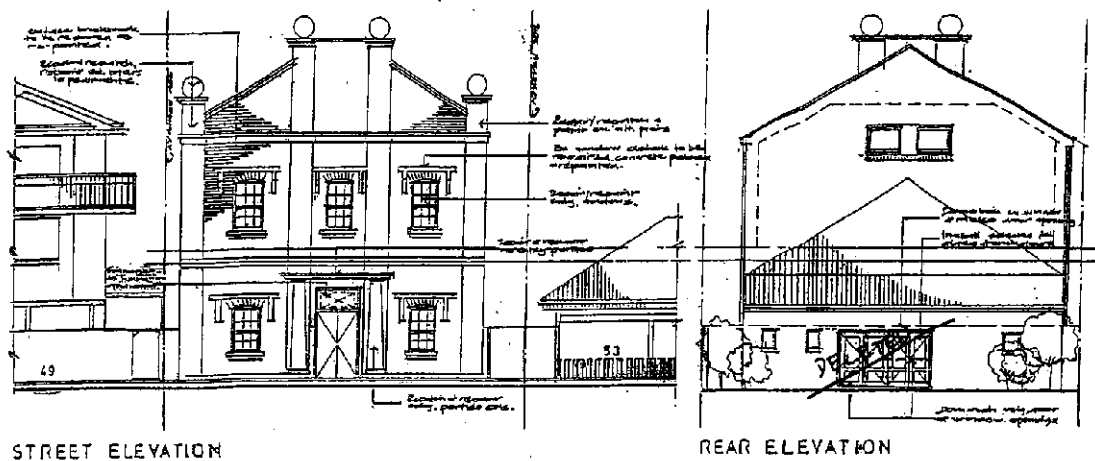
- *The commercial use of the building shall apply to the ground floor only of the existing Masonic Hall building at 51 Whistler Street, Manly. Any variation to this restriction shall be subject to a separate Development Application submitted to and approved by Manly Council.*
- *The commercial use of the existing Masonic Hall building at 51 Whistler street shall be restricted to the ground floor of this building only may only operate between the hours of 9am and 6pm, Monday to Friday. Any variations to these restrictions shall be subject to a separate Development Application submitted to and approved by Manly Council.*
- *The proposed commercial use shall on ground level of the existing Masonic Hall at 51 Whistler Street, Manly shall be limited to a maximum of 15 employees only. Any variation proposed to this restriction shall be subject to a separate Development Application submitted to and approved by Manly Council.*
- *The proposed works to the building are to be documented within a restoration plan of management prepared by a qualified heritage consultant. This management plan is to be provided to Manly Council for approval by its heritage officer, prior to issue of any Construction Certificate.*
- *Any proposed changes to the existing colour scheme is to be incorporated within the restoration plan of management for the building and approved by Manly Council prior to the issue of any Construction Certificate for the proposal.*
- *Repair works detailed within the restoration plan of management are to be carried out by a qualified and experienced tradesperson and overseen by a qualified heritage consultant prior to occupation of the building.*
- *Any proposed signage associated with the proposed commercial use shall be limited in size to no bigger than an A4 page located within one of the windows of the building fronting Whistler Street and shall be subject to the submission of a separate development application.*

Mooki Consulting Pty Ltd
town planning – advisory – management

Attachment 4.

*Architectural Plans prepared by
K.R. McDonald.*

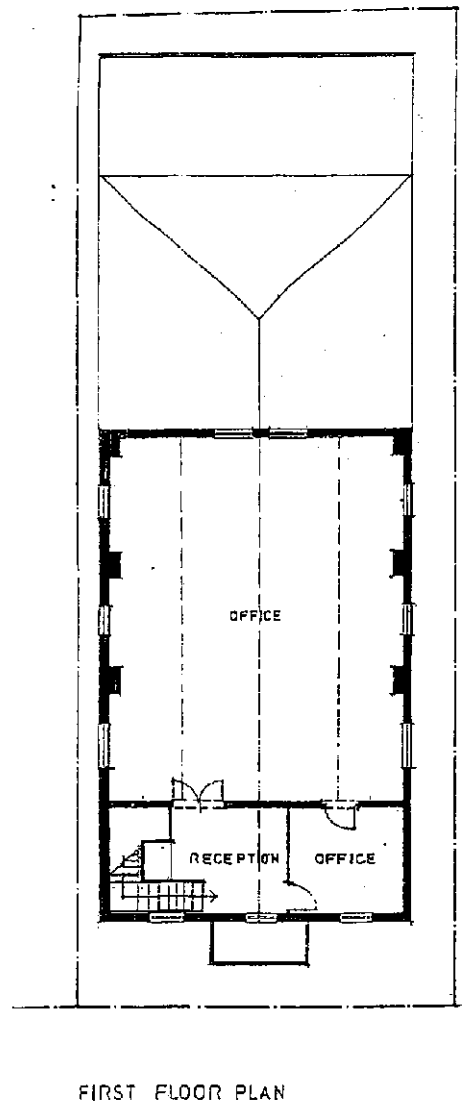
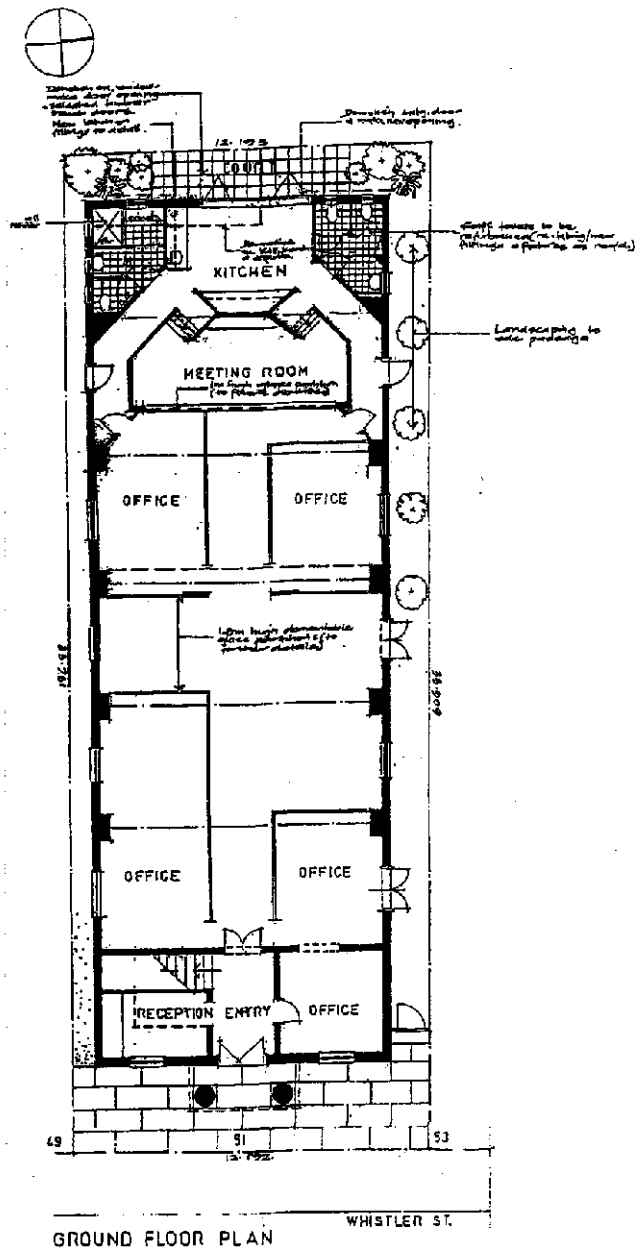
Environmental Services Division Report No. 89
51 Whistler Street, Manly
Section 82A Application - Mooki Consulting Pty Ltd



SIDE ELEVATION (NORTH)

ATTACHMENT 1

Environmental Services Division Report No. 89
51 Whistler Street, Manly
Section 82A Application - Mooki Consulting Pty Ltd



TO: Land Use Management Committee - 6 December 2004
REPORT: Environmental Services Division Report No. 90
SUBJECT: 13 & 14 James Street, Manly
FILE NO: DA303/04
PREVIOUS ITEMS: 82, Land Use Management Committee (1 November 2004)

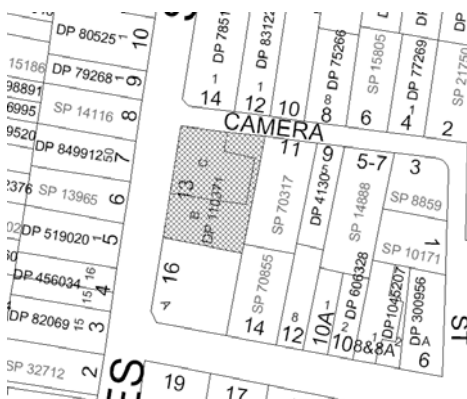
Application Lodged: 25th June 2004
Applicant: JG Jackson
Owner: M E and G J. Jackson
Estimated Cost: \$125,500
Zoning: Manly Local Environmental Plan, 1988 - Residential the property is also in the foreshore scenic protection area
Surrounding Development: Residential Flat Buildings and residential dwellings
Heritage: The property is opposite 14 Camera Street which is listed. There are also sandstone walls and kerbs in the neighbourhood that are listed.

SUMMARY:

1. DEVELOPMENT CONSENT IS SOUGHT FOR DEMOLITION OF THE EXISTING FIRST-FLOOR AND CONSTRUCTION OF A NEW LEVEL OF DEVELOPMENT, AS WELL AS ALTERATIONS TO THE GROUND FLOOR TO CREATE TWO DWELLINGS.
2. THE PROPOSAL WAS NOTIFIED TO ADJACENT NEARBY PROPERTY OWNERS AND OBJECTIONS RECEIVED.
3. THE PRECINCT WAS ADVISED OF THE APPLICATION AND COMMENTS RECEIVED.
4. COUNCIL'S HERITAGE PLANNER AND HERITAGE COMMITTEE HAVE RAISED ISSUES IN RELATION TO THE FORM OF DEVELOPMENT.
5. THE APPLICATION IS ORIGINALLY PRESENTED TO THE LAND USE MANAGEMENT COMMITTEE AT THE REQUEST OF COUNCILLOR MACDONALD.
6. THE APPLICATION WAS PRESENTED TO COUNCIL'S LAND USE MANAGEMENT MEETING OF 1 NOVEMBER, 2004, WHERE IT WAS DEFERRED FOR FURTHER DISCUSSIONS WITH COUNCIL STAFF AND SUBMISSION OF REVISED PLANS.
7. AMENDED PLANS SHOWING THE REVISED ROOF LINE WERE RECEIVED ON THE 16TH NOVEMBER 2004.
8. THE APPLICATION WAS RE-NOTIFIED FROM THE 22ND NOVEMBER 2004 TO THE 29TH NOVEMBER 2004 WITH NO SUBMISSIONS RECEIVED.
9. APPROVAL OF THE APPLICATION IS RECOMMENDED.

LOCALITY PLAN

Shaded area is subject land.



Environmental Services Division Report No. 90 (Cont'd)**REPORT****Introduction**

This proposal consists of a small amount of demolition on the ground floor as well as demolition of the existing first-floor additions and then proposes alterations and additions to the ground floor and construction of a new extended first-floor. The existing dining room and laundry associated with number 13 as well as the kitchen dining area on number 14 on the ground floor are to be extended and the floor plan is to be reconfigured with openings blocked up separating the building into two dwellings. On the first-floor two additional bedrooms will be created, as well as decks.

The dwelling on number 13 will consist of a lounge kitchen, dining bathroom and two bedrooms on the ground floor with a bedroom and bathroom and a small deck to the north on the first-floor.

The dwelling on number 14 will consist of a lounge, dining kitchen, two bedrooms and bathroom on the ground floor and on first-floor level is a bedroom study and bathroom with a small deck to the south.

Development Control Plan Numerical Assessment

The following is an assessment of the proposal's compliance with the numerical standards of the D.C.P. Where a variation is proposed to the standards an assessment is included in the Planning Comments.

	<u>Permitted/ Required</u>	<u>Proposed</u>	<u>Complies Yes/No</u>
Density - Sub Zone 2	1/150m ²	1/413m ²	Yes
Floor space ratio	0.75	0.43	Yes
Floor space ratio - existing	0.75	0.39	Yes
Wall height North side	9.0	5.8m	Yes
South side	9.0	6.2m	Yes
Roof height	3.0 metres	2.1m	Yes
Setback Front	6.0m	6.2m	Yes
Setback Rear	8.0m	0.0m and 1.4m	No
North setback side	1.9m	12m	Yes
South setback side	2.06m	5.3m	Yes
Wall on boundary height	3.0m	6.8m	No
Wall on boundary length		15.2m	No
Open space - total	50%	61%	Yes
Open space - total	412.5	506.8	Yes
Open space - soft	30%	80%	Yes
Open space - above ground	<25%	0%	Yes
Number of Endemic Trees	3	1	No
Private Open Space	18	>18	Yes
Car Parking – Residents	3	3	Yes

Submissions

The amended plans were notified from the 22/11/04 to the 29/11/04 with no submissions received.

Environmental Services Division Report No. 90 (Cont'd)**Planning Comments**

As can be seen from the assessment at the beginning of this report the application complies with the majority of the controls contained in the Development Control Plan for the Residential Zone 2001. In this respect it can be seen that the development is relatively modest however, the initial criticism of the first development proposal was raised by Council's heritage planner, and the Heritage committee raise serious concerns as to the form of development and the impact in terms of heritage both on the building itself land, the impact on the nearby heritage listed building at 14 Camera St.

The amended plans show that the roof form as requested by Council changed to a pitched roof form instead of the skillion roof as originally proposed. It is considered that this form of roof is more sympathetic and appropriate, having regard to the heritage architecture in the vicinity of the site.

In relation to the Clause 10 - Objectives of the Residential Zone of the Manly local Environmental Plan 1988 following comments are made:

(a) *to set aside land to be used for the purposes of housing and associated facilities.*

The proposal is to convert existing dwelling into two attached dwellings and meets this objective.

(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 proposal complies with the majority the controls in the development control plan and meets this objective.

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

The proposal will provide a variety of housing types however it is considered that the existing character of the area will not be adversely affected by this proposal.

(d) *to ensure that building form, including alterations and additions, does not degrade the amenity of surrounding residents of the existing quality of the environment;*

It is considered that the amenity of surrounding neighbours in relation to the development can be adequately protected by this proposal.

(e) *to improve the quality of the residential areas by encouraging landscaping and permitting greater flexibility of design both new development and renovation.*

The proposal has little effect on the amount of landscaping on site and meets this objective.

(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.*

This objective does not apply

(g) *to ensure full and efficient use of existing social and physical infrastructure and the future provisions of services and facilities to meet any increased demand;*

The proposal is to change a single dwelling into two flats and a section 94 contribution will be necessary in order to meet this objective.

Environmental Services Division Report No. 90 (Cont'd)

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

It is considered that this development is suitable redevelopment and therefore complies with this objective.

- (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 the Manly local environment plan 1988 (Amendment No. 57) applies.*

This objective does not apply

The property is in the foreshore scenic protection area and under the provisions of the Manly Local Environmental Plan 1988, Council must consider the appearance of the development as seen from the water. In this regard it is not considered that the proposal will have any adverse effect on the visual amenity of the Foreshore Scenic Protection Area.

The property is opposite the heritage listed item No.14 Camera Street and Clause 19 of Manly LEP has been addressed by Council's Heritage Planner earlier in the previous report.

CONCLUSION:

The application is been considered in terms of the Environmental Planning and Assessment Act 1979 The Manly Local Environment Plan 1988 and Section 79C and the Manly Council Development Control Plan for the Residential Zone 2001 Amendment 1, and it is considered that the proposal is appropriate and sympathetic to the heritage nature of the neighbourhood and should be approved.

RECOMMENDATION

That Development Application No. 303/04 for alterations and additions to the existing dwelling to create two separate flats at Nos 13 and 14 James Street, Manly be approved subject to the following conditions.

1. This approval relates to drawings/plans Nos. 04.004.001 sheets 1to 4 undated and cross section 1/1 dated 15 November 2004 received by Council on 16 November 2004.
2. Pursuant to Section 97 of the Local Government Act, 1993, Council requires, **prior to issue of the Construction Certificate, or commencement of any excavation and demolition works**, payment of a Trust Fund Deposit of \$5,000.00. The Deposit is required as security of compliance with Conditions of Consent, and as security against damage to Council property during works on the site.

Note: Should Council property adjoining the site be defective eg, cracked footpath, broken kerb etc., this shall be reported in writing to Council, **at least 7 days prior to the commencement of any work on site.**

3. Details of the builder's name and licence number contracted to undertake the works shall be provided to Council **prior to issue of the Construction Certificate.**
4. Insurance must be undertaken with the contracted builder in accordance with the Home Building Act, 1997. Evidence of Insurance together with the contracted builders name and licence number must be submitted to Council **prior to issue of the Construction Certificate.**

Environmental Services Division Report No. 90 (Cont'd)

5. 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.
6. Retaining walls being constructed in conjunction with excavations with such work being in accordance with structural engineer's details. Certification of compliance with the structural detail during construction shall be submitted to the Principal Certifying Authority.
7. A sign must be erected on the subject site in a prominent position stating that unauthorised entry is prohibited and giving details of the name of the builder or the person responsible for the site and 24 hour contact details. The sign is to have dimensions of approximately 500mm x 400mm.

Note: The sign is not required if the building on the site is to remain occupied during the course of the building works.

8. Consent given to build in close proximity to the allotment boundary is in no way to be construed as permission to build on or encroach over the allotment boundary. Your attention is directed to the provisions of the Dividing Fences Act which gives certain rights to adjoining owners, including use of the common boundary. In the absence of the structure standing well clear of the common boundary, it is recommended that you make yourself aware of your legal position which may involve a survey to identify the allotment boundary.
9. Four (4) certified copies of the Structural Engineer's details in respect to the structural details of the proposed building shall be submitted to the Principal Certifying Authority **prior to the issue of the Construction Certificate**.
10. A Certificate of Adequacy signed by a practising Structural Engineer is to be submitted to the Principal Certifying Authority in respect of the load carrying capabilities of the existing structure to support the proposed **additions prior to the issue of the Construction Certificate**.
11. Where any excavation extends below the level of the base of the footing of a building on an adjoining allotment of land, the person causing the excavation shall support the neighbouring building in accordance with the requirements of the Building Code of Australia.
12. 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 AS3740. Certification is to be provided to the Principal Certifying Authority from a licenced applicator prior to the fixing of any wall or floor tiles.
13. The implementation of adequate care during demolition, excavation and construction to ensure that no damage is caused to any adjoining properties.
14. 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.
15. Four (4) Architectural/Services Specifications are to be submitted with the Construction Certificate application/**prior to the issue of the Construction Certificate**.
16. All external cladding and trim of the approved building shall be of a non reflective nature. Details of such finishes shall be **submitted with the Construction Certificate Application**.

Environmental Services Division Report No. 90 (Cont'd)

17. All plumbing and drainage, including sewerage drainage stacks, ventilation stacks and water service pipes shall be concealed within the building. Plumbing other than stormwater downpipes shall not be attached to the external surfaces of the building.
18. Roofwaters and surface stormwaters from paved areas is to be conveyed by pipeline to Council's street gutter.
19. All demolition is to be carried out in accordance with AS2601-1991.
20. Asbestos cement sheeting must be removed in accordance with the requirements of the WorkCover Authority.
21. All building work must be carried out in accordance with the provisions of the Building Code of Australia.
22. An automatic fire detection and alarm system shall be installed in the proposed dwelling in accordance with the requirements of Part 3.7.2 of the Building Code of Australia 1996 - Housing Provisions.
23. All lights used to illuminate the exterior of the buildings or site shall be positioned and/or fitted with cut off luminaries (baffles) so as to prevent the emission of direct light onto adjoining roadways and land.
24. Any ancillary light fittings fitted to the exterior of the building are to be shielded or mounted in a position to minimise glare to adjoining properties.
25. All materials on site or being delivered to the site shall generally be contained within the site. The requirements of the Protection of the Environment Operations Act 1997 shall be complied with when placing/stockpiling loose material, disposing of concrete waste, or other activities likely to pollute drains or water courses.
26. The works require the following inspection/certification during the course of construction:-
 - Footing inspection - trench and steel
 - Reinforced concrete slab
 - Framework inspection
 - Wet area moisture barrier
 - Final inspection

The cost of these inspections by Council is \$393.00 (being \$70.00 per inspection and \$113.00 for Final inspection inclusive of GST). **Should you require Council to undertake the inspection/certification, then payment is required prior to the first inspection. Inspection appointments can be made by contacting the Development Assessment Unit on 9976 1573 or 9976 1587.**

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 \$80.00.

27. Issue of a Compliance Certificate from the Principal Certifying Authority prior to occupation to the effect that:
 1. Required inspections have been undertaken and the work has been completed in accordance with the approved plans and specifications, the Development Consent and the Construction Certificate.

Environmental Services Division Report No. 90 (Cont'd)

2. Documentary evidence relative to:

- wet areas waterproofing certificate
- reinforcement concrete and structural members details
- structural engineers inspection certificate

has been received by the Principal Certifying Authority, this information in accordance with the terms and conditions of the Consent and Construction Certificate and to the satisfaction of the Principal Certifying Authority.

28. Stockpiles of topsoil, sand, aggregate, spoil or other material shall be stored clear of any drainage line or easement, natural watercourse, kerb or road surface.
29. Drains, gutters, roadways and access ways shall be maintained free of sediment and to the satisfaction of Council. Where required, gutters and roadways shall be swept regularly to maintain them free from sediment.
30. 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.
31. Building or construction work must be confined to the hours between 7.00am to 6.00pm, Monday to Friday and 7.00am to 1.00pm, Saturday, with a total exclusion of such work on Public Holidays and Sundays. Non-offensive works where power operated plant is not used and including setting out, surveying, plumbing, electrical installation, tiling, internal timber or fibrous plaster fixing, glazing, cleaning down brickwork, painting, building or site cleaning by hand shovel and site landscaping, is permitted between the hours of 1.00pm to 4.00pm Saturdays.

Note: That the Protection of the Environment Operations Act 1997 may preclude the operation of some equipment on site during these permitted working hours.

32. Details of the method of termite protection which will provide whole of building protection, inclusive of structural and non-structural elements, shall be submitted to the Principal Certifying Authority **prior to issue of the Construction Certificate**. Attention is drawn to the provisions of Australian Standard 3660.1 "Protection of Buildings from Subterranean Termites - New Buildings" and to Council's Code for the "Protection of Buildings Against Termite Attack".
33. **Prior to issue of the Occupation Certificate**, a durable termite protection notice shall be permanently fixed to the building in a prominent location detailing the form of termite protection which has been used in accordance with Council's Code for the "Protection of Buildings Against Termite Attack".
34. Payment of \$8,037.46 for the 1 additional dwelling in respect of the contribution for the provision of the public amenities and public services shall be in accordance with Section 94 of the Environmental Planning and Assessment Act, 1979. Arrangements for such payment is to be made in accordance with Council's policy, **prior to issue of the Construction Certificate**.

Note: The attached yellow form is to be returned to Council with your payment of the Contribution.

35. This approval shall expire if the development hereby permitted is not commenced within 2 years of the date hereof or any extension of such period which Council may allow in writing

Environmental Services Division Report No. 90 (Cont'd)

on an application made before such an expiry.

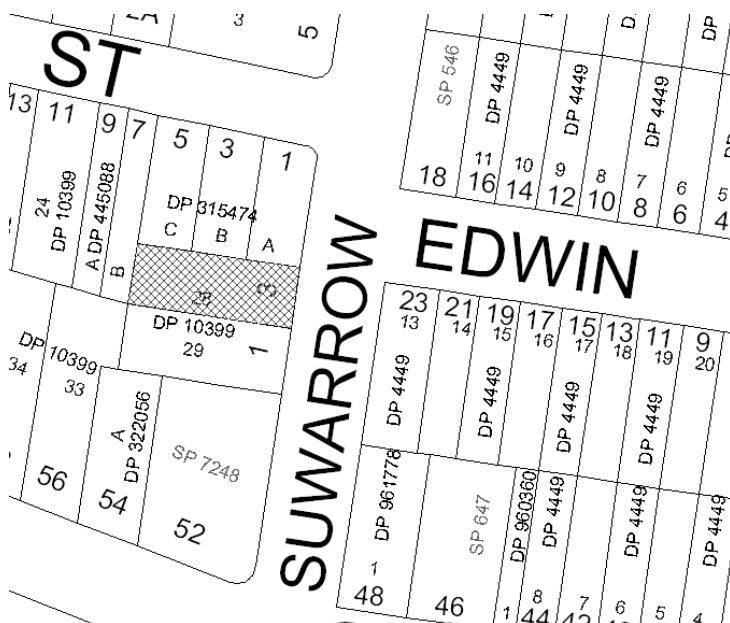
ATTACHMENTS

There are no attachments for this report.

LUM061204ESD_5

***** End of Environmental Services Division Report No. 90 *****

<u>Application Lodged:</u>	25 February 2004
<u>Applicant:</u>	E & C Ward
<u>Owner:</u>	E Ward
<u>Estimated Cost:</u>	\$250,000
<u>Zoning:</u>	Manly Local Environmental Plan, 1988 - Residential
<u>Surrounding Development:</u>	Single storey dwellings
<u>Heritage:</u>	Property is not a listed item



Environmental Services Division Report No. 91 (Cont'd)

REPORT

Introduction

The subject site is positioned on the western side of Suwarrow Street. The allotment is rectangular in configuration having a frontage of 13.7m and depth of 36.52m. The site has a slight cross fall from south to north and is currently developed with a single storey brick dwelling with tile roof and attached single carport.

Council received the original development application on 11 April, 2003, proposing alterations and additions to the existing dwelling including a new first floor level. The proposal provided for alterations and additions to the ground floor to provide for entry, living room, sunroom, dining room, laundry, store, two bedrooms, kitchen, family room and craft area. The proposed first floor level includes a master bedroom, bathroom, study, sitting room, rumpus and a continuous terrace to the rear, north side and front of the dwelling.

Notification of the application resulted in three (3) submissions received from adjoining property owners.

Following assessment of the application of Council's Development Assessment Unit refused the application for the following reasons:

- "1. The proposal will have an adverse impact on the privacy of surrounding residents having regard to Section 79C(1)(b), (c) and (d) of the Environmental Planning and Assessment Act 1979.
2. The proposal will have an adverse impact on the sunlight gained by the adjacent property having regard to Section 79C(1)(b) of the Environmental Planning Assessment Act 1979.
3. The proposal does not comply with the total open space requirements as outlined in the DCP for the residential Zone 2001 (Amendment 1) having regard to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979.
4. The proposal is not in the public interest. Having regard to Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979.
5. The proposal has not had regard to objections received having regard to Section 79C(1)(d) of the Environmental Planning and Assessment Act 1979."

On the 25th of February, 2004, Council received an application for review of determination under Section 82A of the Environmental Planning and Assessment Act 1979. The application was accompanied with revised plans which delete the proposed deck along the north side of the dwelling at first floor level, increase the width of the first floor addition from 6.4m to 7.5m, reduce the length of the proposed first floor addition from 15.3m to 13.3m and increased the width of the rear deck from 2m to 4m.

The application for review was considered by Council at Council's Land Use Management Meeting of 2 August, 2004, where Council resolved;

"That Development Application DA162/03 for 3 Suwarrow Street, Fairlight for review under Section 82A of the Environmental Planning and Assessment Act 1979 be **deferred** to allow the applicant to

Environmental Services Division Report No. 91 (Cont'd)

confer with Council staff to bring the application into compliance in relation to such issues as overshadowing, privacy, streetscape and architectural character.”

Council received revised plans on 29 October, 2004. The current plans show reductions in the extent of proposed decks at the front and rear of the proposed new first floor level.

Development Control Plan Numerical Assessment

The following is an assessment of the current proposal's compliance with the numerical standards of the D.C.P. Where a variation is proposed to the standards an assessment is included in the Planning Comments.

	<u>Permitted/ Required</u>	<u>Proposed</u>	<u>Complies Yes/No</u>
Floor space ratio	0.6:1	0.54:1	Yes
Floor space ratio - existing	0.31:1		Yes
Wall height Nth side	6.7m	6.3m	Yes
South side	6.5m	6.0m	Yes
Roof height	3.0m	1.5m	Yes
Setback Front	6.0m	6.2m	Yes
Setback Rear	8.0m	9.6m	Yes
North setback side	2.1m	2.35	Yes
South setback side	2.0m	3.9m	Yes
Open space - total	55%	55%	Yes
Open space - total	275sqm	275sqm	Yes
Open space - soft	35%	72%	Yes
Open space - above ground	25% max	11%	Yes
Car Parking – Residents	2	2	Yes
Shadow -adjacent open space	Less than 1/3 rd	> 1/3 rd	No
adjoining EW orientation	Min 2hrs	< 2hrs	No
exist north facing roofs	Min 10sqm	> 10sqm	Yes

Applicant's Supporting Statement

No additional written information was submitted with the current plans.

Submissions

The current plans were notified to previous objectors with three submissions received from C Neil and R Townsend of No.5 Jamieson Ave, K and J Kilbride of No.1 Suwarrow Street and PSB Pty Ltd on behalf of A Bruce of No.5 Suwarrow Street. The submissions raise the following concerns;

- Contravention of the objective of the Manly Local Environmental Plan 1988 – “ to ensure that building form, including alterations and additions, does not degrade the amenity of surrounding residences or the existing quality of the environment”
- Building bulk - wall height to the upper east would be approximately 6.7 metres. With respect to the ground level on the Jamieson Ave property. This height difference would increase to approximately 9.8 metres to the ridge and 7.7 metres to the upper eaves. Although the upper level of the building would be setback from the existing lower wall by 2.3 metres it would remain visible from the living areas and private open space of the Jamieson Ave site and would completely dominate the view in that direction.
- The proposal contravenes the performance criteria of the residential DCP. In respect of wall height, which permits a maximum external wall height on flat sites in subzone 1 to be 6.5 metres.

Environmental Services Division Report No. 91 (Cont'd)

- Impacts on Jamieson Ave streetscape - the second storey addition, would be visible behind the existing dwellings in Jamieson Ave, and due to the rising ground plane, would appear in many instances as are substantially dominant built element in the streetscape. Given that two storey development is not a prominent component of the local streetscape it is considered that this impact is unacceptable.
- Potential for dual occupancy development - configuration of the upper floor plan and access lends itself to future dual occupancy and this use would need to be the subject of a new application. We suggest that if Council should approve the development application it should be conditioned that its approved use is as a single dwelling.
- proposal contravenes the objectives and performance criteria of the Manly Development Control Plan for the Residential Zone with particular regard to open space and landscape design and setbacks and potentially with regard to building height.
- only difference in the new plans is a reduction in the front deck – no other change from the last plans.
- Overshadowing – we will still be in 60% shadow from 9.00am in winter – for the rest of the day.
- Privacy – 4.0m deck at rear of No.3 we and other neighbours will be hugely overlooked. Our outdoor area is small but includes a pool.
- We don't know what the council view on the renewed streetscape and architectural character is, and find it hard to envisage it from the plans we have. Altogether a very disappointing result after a lot of time and effort on all our behalves.
- Size of the additions in particular the open deck at the rear will severely impact upon our privacy in outdoor areas as well as to the rear indoor areas of our house.

Precinct Community Forum Comments

In view of the minor nature of the changes, the current plans were not referred to the Precinct Community Forum.

Planning Comments

The proposal generally complies with the numerical requirements of Council's Development Control Plan for the Residential Zone. Outstanding concerns relate to the impact of the proposal on the streetscape and the amenity of private land adjoining both to the north and south.

The subdivision pattern results in the north side of the subject land adjoining the rear boundaries of numbers 1,3 and 5 Jamieson Ave. The topography of the area is such that the Jamieson Ave properties are at a lower level than the subject site. These Jamieson Ave properties have been developed with single storey dwellings on limited rear setbacks. Accordingly, there are issues in relation to visual bulk when viewed from adjoining properties to the north (Nos. 1, 3 and 5 Jamieson Avenue) and to a lesser extent from Jamieson Ave itself.

The revised plans propose an eave level of 2.4m above the proposed new first floor level which adds unnecessarily to the height and visual bulk of the building. The addition could be constructed with an eaves level 2.1m above the new first floor level without restricting the normal use of the new rooms within the addition. This would also reduce the overall height of the building and apparent visual bulk. Further, in order to reduce the visual impact at the rear of the building a reduction in the rearward extent of the north side of the first floor addition to align with the rear wall of the original single storey dwelling is considered appropriate. This will allow for the proposed stair to remain as originally planned and add visual interest to the building. Appropriate conditions in the regard are included in the Recommendation.

Privacy concerns associated with the use of the first floor level terrace areas are still valid and whilst the revised plans reduce the length of the rear terrace and privacy screens have been

Environmental Services Division Report No. 91 (Cont'd)

proposed to the north side of the front and rear terrace areas, these are not considered sufficient to provide effective visual and aural privacy for decks of the area proposed. In this regard a reduction in the area of both decks is recommended.

The adjoining owner to the south has raised concerns in relation to overshadowing issues and from the shadow diagrams submitted, it is apparent that at the winter solstice the amount of sunlight available to windows in the north elevation of No.1 Suwarrow Street will be reduced. This does not comply with clause 3.7.2 (a) of Council's Development Control Plan for the Residential Zone which requires the level of solar access presently enjoyed to be maintained to windows or glazed doors living rooms for a period of at least two hours from 9 a.m. to 3 p.m. on the 21st of June. Whilst the revised plans do not alter this aspect of the proposal it is considered that with the 0.3m reduction in proposed height of the addition as recommended above the impact of overshadowing to the adjoining property to the south would not be such that could warrant refusal or further redesign of the proposal.

This section of Suwarrow Street and Jamieson Ave (No.1,3 and 5 Suwarrow Street and No.5 Jamieson Ave) is characterised by single storey brick dwellings built around the same era. The proposal to provide a new first floor level over the existing single storey dwelling at No.3 Suwarrow Street will result in loss of this character and possible loss of streetscape amenity. The revised plans show retention of a 2.0m portion of the existing roof over the front of the dwelling. Whilst this will assist in giving some relief from the two storey façade, the stepping needs to be more substantial in particular it is recommended that the existing roof comprising the lower hip over the sunroom and portion of the living room be retained back to the eastern wall of the proposed first floor level and the deck width reduced to 1.5m in order to meet the provisions of Clause 3.9.1 (a) of Council's Development Control Plan for the Residential Zone in respect of streetscape which is:

(a) to ensure that all development contributes positively to the street and localities, identified in the localities analysis. A condition in this regard is included in the Recommendation.

The revised plans comply with the open space requirements of Council's development Control Plan for the Residential Zone and as such item 3 of the previous refusal. The revised proposal, subject to conditions included in the Recommendation are considered to satisfactorily address items 1,2,4 & 5 of the previous refusal.

Manly Local Environmental Plan 1988 - Clause 10 Objectives

The application has been assessed against the objectives under Clause 10 of the Manly Local Environmental Plan 1988 as follows:

(a) to set aside land to be used for purposes of housing and associated facilities;

The proposal is for alterations and additions to the existing dwelling house and therefore meets this objective.

(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 proposal complies with the majority of the controls in the DCP and with further revisions as included in the recommendation will be acceptable.

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

The proposed design with revisions as recommended will maintain the overall existing character of the Residential area.

Environmental Services Division Report No. 91 (Cont'd)

(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 proposal will result in some impacts on amenity of adjoining residential property however, with further revisions as included in the recommendation, the impacts will be acceptable.

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 proposal is consistent with this objective.

(f) to allow development for purposes other than housing within the zone only if it is compatible with the existing character and amenity of the locality;

Not 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 proposal will make greater use of the existing social and physical infrastructure and therefore meets this objective.

CONCLUSION:

The application has been assessed having regard to Section 79C and 82A of the Environmental Planning and Assessment Act 1979, the Manly Local Environmental Plan 1988 and the Development Control Plan for the Residential Zone and is considered acceptable subject to conditions and is therefore recommended for approval.

RECOMMENDATION

That Development Application No.162/03 for alterations and additions to the existing dwelling at No. 3 Suwarrow Street Fairlight, be approved subject to the following conditions:

1. This approval relates to drawings/plans Nos. 1 to 6 issue B dated 21 October, 2004 and received by Council 29 October, 2004.
2. The proposed first floor addition eave level is to be reduced in height a minimum 0.3m and the overall height of the proposed first floor addition reduced accordingly, to minimise visual height and bulk of the building and minimise overshadowing of adjoining properties, plans being suitably amended prior to issue of the Construction Certificate.
3. The northernmost 3.5m of the western (rear) wall of the proposed first floor addition is to be repositioned 1.0m to the east to align with the rear wall of the original dwelling and the roof amended accordingly, to reduce visual impact, bulk and scale of the building, plans being suitably amended prior to issue of the Construction Certificate.
4. The proposed rear deck at first floor level is to be reduced in width to align with the ground floor western wall, to reduce privacy impacts on adjoining properties, plans being suitably amended prior to issue of the Construction Certificate.
5. The existing hip roof over the sunroom and portion of the living room is to be retained to the line of the proposed east wall of the first floor addition with the proposed eastern deck reduced to align with the existing lower ridge and reduced in width to align with the hip/ lower ridge junction, to reduce impacts on streetscape and maintain existing streetscape character,

Environmental Services Division Report No. 91 (Cont'd)

plans being suitably amended prior to issue of the Construction Certificate.

6. Pursuant to Section 97 of the Local Government Act, 1993, Council requires, **prior to issue of the Construction Certificate, or commencement of any excavation and demolition works**, payment of a Trust Fund Deposit of \$5,000.00. The Deposit is required as security of compliance with Conditions of Consent, and as security against damage to Council property during works on the site.

Note: Should Council property adjoining the site be defective eg, cracked footpath, broken kerb etc., this shall be reported in writing to Council, **at least 7 days prior to the commencement of any work on site.**

7. No obstruction shall be caused to pedestrian use of Council's footpath or vehicular use of any public roadway during construction.
8. Details of the builder's name and licence number contracted to undertake the works shall be provided to Council **prior to issue of the Construction Certificate.**
9. Insurance must be undertaken with the contracted builder in accordance with the Home Building Act, 1997. Evidence of Insurance together with the contracted builders name and licence number must be submitted to Council **prior to issue of the Construction Certificate.**
10. 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.
11. A sign must be erected on the subject site in a prominent position stating that unauthorised entry is prohibited and giving details of the name of the builder or the person responsible for the site and 24 hour contact details. The sign is to have dimensions of approximately 500mm x 400mm.

Note: The sign is not required if the building on the site is to remain occupied during the course of the building works.

12. Consent given to build in close proximity to the allotment boundary is in no way to be construed as permission to build on or encroach over the allotment boundary. Your attention is directed to the provisions of the Dividing Fences Act which gives certain rights to adjoining owners, including use of the common boundary. In the absence of the structure standing well clear of the common boundary, it is recommended that you make yourself aware of your legal position which may involve a survey to identify the allotment boundary.
13. Four (4) certified copies of the Structural Engineer's details in respect to the structural details of the proposed building shall be submitted to the Principal Certifying Authority **prior to the issue of the Construction Certificate.**
14. A Certificate of Adequacy signed by a practising Structural Engineer is to be submitted to the Principal Certifying Authority in respect of the load carrying capabilities of the existing structure to support the proposed **additions prior to the issue of the Construction Certificate.**
15. 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 AS3740. Certification is to be provided to the Principal Certifying Authority from a licenced applicator prior to the fixing of any wall or floor tiles.

Environmental Services Division Report No. 91 (Cont'd)

16. The implementation of adequate care during demolition, construction and building to ensure that no damage is caused to any adjoining properties.
17. 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.
18. On completion of the building structure a Registered Surveyor's report is to be submitted to the Principal Certifying Authority confirming that the building has been completed in accordance with the levels as shown on the approved plan.
19. Four (4) Architectural/Services Specifications are to be submitted with the Construction Certificate application/**prior to the issue of the Construction Certificate.**
20. All external cladding and trim of the approved building shall be of a non reflective nature. Details of such finishes shall be **submitted with the Construction Certificate Application.**
21. All plumbing and drainage, including sewerage drainage stacks, ventilation stacks and water service pipes shall be concealed within the building. Plumbing other than stormwater downpipes shall not be attached to the external surfaces of the building.
22. All demolition is to be carried out in accordance with AS2601-1991.
23. Asbestos cement sheeting must be removed in accordance with the requirements of the WorkCover Authority.
24. All building work must be carried out in accordance with the provisions of the Building Code of Australia.
25. An automatic fire detection and alarm system shall be installed in the proposed dwelling in accordance with the requirements of Part 3.7.2 of the Building Code of Australia 1996 - Housing Provisions.
26. All lights used to illuminate the exterior of the buildings or site shall be positioned and/or fitted with cut off luminaries (baffles) so as to prevent the emission of direct light onto adjoining roadways and land.
27. Any ancillary light fittings fitted to the exterior of the building are to be shielded or mounted in a position to minimise glare to adjoining properties.
28. All materials on site or being delivered to the site shall generally be contained within the site. The requirements of the Protection of the Environment Operations Act 1997 shall be complied with when placing/stockpiling loose material, disposing of concrete waste, or other activities likely to pollute drains or water courses.
29. The works require the following inspection/certification during the course of construction:-
 - Slab reinforcing steel
 - Framework inspection (2)
 - Wet area moisture barrier
 - Final inspection

The cost of these inspections by Council is \$323.00 (being \$70.00 per inspection and \$113.00 for Final inspection inclusive of GST). **Should you require Council to undertake the inspection/certification, then payment is required prior to the first inspection. Inspection appointments can be made by contacting the Development Assessment**

Environmental Services Division Report No. 91 (Cont'd)**Unit on 9976 1573 or 9976 1587.**

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 \$80.00.

30. Issue of a Compliance Certificate from the Principal Certifying Authority prior to occupation to the effect that:

1. Required inspections have been undertaken and the work has been completed in accordance with the approved plans and specifications, the Development Consent and the Construction Certificate.

2. Documentary evidence relative to:

- tie down and bracing details
- wet areas waterproofing certificate
- reinforcement concrete and structural members details
- structural engineers inspection certificate
- floor/finished ridge level certificate

has been received by the Principal Certifying Authority, this information in accordance with the terms and conditions of the Consent and Construction Certificate and to the satisfaction of the Principal Certifying Authority.

31. Stockpiles of topsoil, sand, aggregate, spoil or other material shall be stored clear of any drainage line or easement, natural watercourse, kerb or road surface.
32. 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.
33. Building or construction work must be confined to the hours between 7.00am to 6.00pm, Monday to Friday and 7.00am to 1.00pm, Saturday, with a total exclusion of such work on Public Holidays and Sundays. Non-offensive works where power operated plant is not used and including setting out, surveying, plumbing, electrical installation, tiling, internal timber or fibrous plaster fixing, glazing, cleaning down brickwork, magnesite flooring, painting, building or site cleaning by hand shovel and site landscaping, is permitted between the hours of 1.00pm to 4.00pm Saturdays.

Note: That the Protection of the Environment Operations Act 1997 may preclude the operation of some equipment on site during these permitted working hours.

34. Details of the method of termite protection which will provide whole of building protection, inclusive of structural and non-structural elements, shall be submitted to the Principal Certifying Authority **prior to issue of the Construction Certificate**. Attention is drawn to the provisions of Australian Standard 3660.1 "Protection of Buildings from Subterranean Termites - New Buildings" and to Council's Code for the "Protection of Buildings Against Termite Attack".
35. **Prior to issue of the Occupation Certificate**, a durable termite protection notice shall be permanently fixed to the building in a prominent location detailing the form of termite protection which has been used in accordance with Council's Code for the "Protection of Buildings Against Termite Attack".
36. This approval shall expire if the development hereby permitted is not commenced within 2

Environmental Services Division Report No. 91 (Cont'd)

years of the date hereof or any extension of such period which Council may allow in writing on an application made before such an expiry.

ATTACHMENTS

There are no attachments for this report.

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***** End of Environmental Services Division Report No. 91 *****

TO: Land Use Management Committee - 6 December 2004
REPORT: Environmental Services Division Report No. 92
SUBJECT: Manly West Public School - Griffiths Street, Balgowlah
FILE NO: DA411/04

<u>Application Lodged:</u>	1st September 2004
<u>Applicant:</u>	Ms D. Neill
<u>Owner:</u>	R Daley Principal, on behalf of the Department of Education
<u>Estimated Cost:</u>	\$0
<u>Zoning:</u>	Manly Local Environmental Plan, 1988 - Special Uses School
<u>Surrounding Development:</u>	Residential Flat Buildings and single dwellings
<u>Heritage:</u>	Trees on the site are listed as items, and the site is opposite the Heritage listed cemetery

SUMMARY:

1. DEVELOPMENT CONSENT IS SOUGHT FOR THE USE OF THE SCHOOL GROUNDS FOR A WEEKLY SATURDAY MARKET.
2. THE APPLICATION WAS NOTIFIED TO ALL ADJOINING PROPERTY OWNERS AND RESIDENTS AND TWO (2) LETTERS OBJECTING TO THE DEVELOPMENT RECEIVED.
3. THE APPLICATION WAS REFERRED TO THE BALGOWLAH PRECINCT COMMITTEE FORUM FOR COMMENTS.
4. THE APPLICATION IS PRESENTED TO COUNCIL AT THE REQUEST OF COUNCILLOR MACDONALD.
5. THE APPLICATION IS RECOMMENDED FOR REFUSAL.

LOCALITY PLAN

Shaded area is subject land.



Environmental Services Division Report No. 92 (Cont'd)**REPORT****Introduction**

This application consists of running a weekly Saturday Organic Market known as Vibrant Markets within the grounds of the Manly West Public School. The proposed market will operate on Saturdays between 6.00 a.m. and 4.00 p.m. with the market opening at 9.00 am.

The application indicates a minimum of 20 stores with the potential for 61 stalls within the grounds. The application states, there are 60 parking spaces for store operators within the grounds however, customer parking will be in the adjacent streets with the applicant indicating approximately 100 parking spaces in Hill Street with overflow in Griffith, Boyle, and surrounding streets.

Development Control Plan Numerical Assessment

Council has no development control plan applying to special uses land.

Applicant's Supporting Statement

In support of the application the applicant submitted a Statement of Environmental Effects and this is on file.

Submissions

In response to the notification, two (2) submissions objecting to the development have been received both from S Choularton of Organic Food Markets 10 Chiltern Road Ingleside 2101. Concerns raised include the following:

- The public advertising of this application has been quite misleading. The sign on the fence leaves the reader thinking that only 20 stalls will be provided. The plan clearly indicates that up to 61 stalls may be present - this is misleading advertising.
- No details are included with respect to parking. You are required pursuant to Part III Clause 5.2 (b) to take into consideration provision of adequate car parking off the public road. Your LEP gives no guidance on this matter. Warringah specifies 2.5 Parks per stall plus stallholder parking on site. The plan allows up to 61 stalls, which would imply a requirement for 213 parking spaces. The two areas indicated on site as car parking can only hold up to 20 cars, which is quite inadequate and is a grounds for refusal of this application.
- It is quite inappropriate for Council to regularise an illegal use after the event. We took the trouble to advise Council before the market was opened this operation was unlawful.
- We are an interested party and having already notified ICAC of Council, allowing the continuing illegal use of the site. It would be quite inappropriate for the DA to be determined by delegated authority. It should come to the full Council. Given the conflicts of interest within Council it really should be put out for an independent report.
- We wish to place on record the RTA recommendation for parking requirements for markets. They recommend 2.5 parks per stall plus stall parking.

Precinct Community Forum Comments

No objections were made. .

Engineers Comments

No objections to the proposed development.

Environmental Services Division Report No. 92 (Cont'd)

The impact of traffic and parking shall be assessed. It appears that there is no traffic reports submitted for assessment. I recommend that the DA be referred to Councils traffic engineer for assessment.

Traffic Engineers Comments

The matter was referred to the Traffic Committee at its meeting of the 20th September 2004 to assess any potential traffic and parking impacts. The Traffic Committee's recommendation was subsequently endorsed by the Council at the Corporate Planning and Strategy Committee meeting held on the 11th October 2004.

The recommendation is as follows:

1. That the development application for the Vibrant Markets at Manly West Public School as outlined in DA 411/04 be restricted to 20 stalls to minimise traffic and parking impacts for residents of the area.
2. That should Council received an additional or modified application for Markets with more than 20 stalls, that a traffic and parking study be submitted to Councils Traffic Committee for assessment.

Planning Comments

The plan submitted with the application indicates spaces for stalls, numbered one through to 24 and 62 and 63 in solid outline with the note various stalls made up of tables and chairs for market stalls. There are then spaces number 25 through to 61 with dotted outlines and the notation "proposed stalls, if needed"

The proposal's compliance with Clause 10 objectives of the Manly Local Environmental Plan 1988 are stated as follows:

The objective of this zone is to identify and set aside land required for essential services to the public or the community which-

- (a) in the case of land shown unhatched on the map, is now owned or used for public or community purposes; or
- (b) in the case of land shown hatched on the map, will be acquired by public authority for the particular public or community purposes shown on the map.

The land is shown unhatched and has been used for the Manly West Public School.

In this zone the only uses permissible are those "only with development consent" and are "The particular purpose indicated by red lettering on the map; child-care centres and other childcare facilities; drainage; educational establishments; landscaping; roads; telecommunications facilities; utility installations other than generating works or gas holders". All of the uses are prohibited. It is therefore concluded that the uses are not permissible as it is not an ancillary use to the purpose of a school.

Clause 26 of the Manly LEP 1988 deals with "Community use of school facilities and sites" and states.

- (1) Where land to which this plan applies is used for the purposes of an educational establishment, the site and facilities of the establishment may, with the consent of the Council, be used for the purposes of meeting rooms, public halls, public libraries, entertainment, sport or recreation or for any other community purpose, whether or not any such use is a commercial use of the land.
- (2) Nothing in this clause requires consent for the carrying out of development on any land on which development could but for this Clause, be carried out on land without consent.

Environmental Services Division Report No. 92 (Cont'd)

In this regard it is not considered that the organic market is for entertainment, sport or recreation, or for a community purpose, and therefore not covered by this clause. In this regard, the applicant in their statement has referred to community benefits of the stall as being:

- certified organic, giving customers and stallholders the guarantee that any item labeled organic as certified organic.
- all food is fresh .
- local market within walking distance of most residents .
- healthy food available to eat
- healthy advice: local practitioners are encouraged to promote their business and provide treatments to customers
- local meeting place for friends and family
- grass oval for the kids to play on .
- playground for kids to play on .
- plenty of parking .
- disabled access .
- plenty of seating .
- option for local schools clubs etc, to have a stall as fundraising events .
- opportunity for local charities to have a stall for free is a fundraising opportunity. Vibrant markets donates a stall to one charity each week.

As can be seen from the above statements the only community purpose derived from the markets will be of running one stall out of the total of 63 which appears as a minimal benefit in the total picture.

As is referred to by objectors it is appropriate to look at the roads and traffic authority figures for traffic generation and car parking associated with this land use as Council does not have any development control plans applying to such land. The proposal is a commercial activity to take place on the school site and as seen from correspondence on the file is separate from the school itself. As such, the provisions of part III clause 5.2 (b) of the model provisions come into force, and Council must consider the provision of adequate car parking on site associated with the land use. The site is incapable of accommodating these large numbers of vehicles, assuming the total number of stalls 63 in operation there would be 158 cars parked in the street. Even with the minimum number of stalls of 20 it is noted that there would still be in the order of 50 cars on surrounding roads associated with the proposal given the applicants statements that "the parking spaces on-site are for stall holders and that they are required to have their stalls set up and have their cars parked by the time the market opens at 9 a.m. and are not permitted to move their cars until closing time. No cars, are parked within the market trading area, unless the car is required for their stall.. There is no risk to children/pedestrians at the markets in regard to stallholder is car movement as there is no car movement or customers are on-site between the market opening times."

One further problem is raised in relation to car parking, and that is questioned whether the site can accommodate the 60 vehicles stated in the applicants statement of environmental effects.

Environmental Planning & Assessment Act 1979 – Section 79(C) - Matters for Consideration:

(a) the provisions of:-

- (i) any environmental planning instrument*
- (ii) any draft environmental planning instrument*
- (iii) any development control plan*
- (iv) the regulations*

Environmental Services Division Report No. 92 (Cont'd)

As noted above, the use is not permissible in this special uses zone as the use is a separate business activity that is not ancillary to the use of the site as a school. It is not considered that they particular use comes within the clause 26 of the Manly LEP, allowing community use of school facilities and sites as the proportion of the use allocated to community purposes is extremely small in relation to the total operation.

(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.

This proposal amounts to an over development of the site in terms of the imposition of car parking onto the surrounding road system.

(c) the suitability of the site for the development.

This site is suitable for only a small market activity, ancillary to the use of the site as a school or as a community use having regard to the zoning and the limitation on car parking on site. While the traffic committee have recommended a maximum of 20 stalls in relation to traffic and parking it is considered that a refusal is necessary in terms of the zoning.

(d) any submissions made in accordance with this Act or the regulations.

The submissions received by Council in relation to this proposal pointed out that the advertising was misleading in relation to the proposal, and only described 20 stalls. It is agreed that this is a problem in relation to the processing of the application.

The question of car parking and the need for the Council to consider adequate car parking on site was also raised and it is considered that this is a, basic problem with the application that car parking on site is inadequate for the total number of stalls proposed. The objection about Council considering allowing an illegal use to take place, because it has already started is one that has been addressed in the planning comment above with the conclusion that the use is not permissible and can not be approved. Finally, the information concerning the RTA recommendation of car parking associated with markets has been taken on board, and it is agreed that the site is inadequate for the scale of markets proposed however the primary reason for refusal goes the fundamental issue of not being permissible in the zoning.

(e) the public interest.

It is considered that it would not be in the public interest to allow this use of the site that is not ancillary to the use as a school but is a separate business activity and is therefore not permissible in the zoning. It is not considered that the proposal can be looked at as they community purpose so that clause 26 of the Manly LEP does not apply.

It is further considered that it is not in the public interest to allow development of this site with the potential to cause car parking and congestion in the surrounding streets system, which would have an adverse effect on the amenity of the residential area.

CONCLUSION:

The proposal has been considered pursuant to Section 79C of the Environmental Planning and Assessment Act 1979, the Manly Local Environmental Plan, 1988. The proposal is considered to be inappropriate and is therefore recommended for refusal.

Environmental Services Division Report No. 92 (Cont'd)**RECOMMENDATION**

That development application 411/04 for use of The Manly West Public School for an Organic Market on Saturday be refused the following reasons:

1. The proposed use of the site for markets is not ancillary to the use of the site as a school and is therefore not permissible in the zoning, and does not amount to a community purpose referred to in clause 26 of the Manly LEP having regard to section 79 C(1)(a)(i) of the Environmental Planning and Assessment Act 1979
- 2.. The proposal is an over development of the site in that it will introduce car parking into the surrounding road system that will have an adverse effect on the amenity of the nearby residential properties having regard to Section 79 C.(1)(b) of the Environmental Planning and Assessment Act 1979.
3. The proposal has not had regard to submissions received, having regard to Section 79 C (1)(d) of the Environmental Planning and Assessment Act 1979.
4. The proposal to introduce the additional use of this special uses zoned land is not in the public interest in that it is contrary to the zoning and would introduce additional vehicle movements and car parking generation, which would have an impact on the surrounding residential area, having regard to section 79 C (1)(e) of the Environmental Planning and Assessment Act 1979.

ATTACHMENTS

There are no attachments for this report.

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***** End of Environmental Services Division Report No. 92 *****

<u>Application Lodged:</u>	25 June 2004
<u>Applicant:</u>	Artcourt Pty Ltd
<u>Owner:</u>	T and K A Jarman
<u>Estimated Cost:</u>	\$90,000
<u>Zoning:</u>	Manly Local Environmental Plan, 1988 - Residential
<u>Surrounding Development:</u>	Single and two storey dwellings and semi detached dwellings.
<u>Heritage:</u>	n/a

1. DEVELOPMENT APPLICATION NO.262/03 FOR ALTERATIONS AND ADDITIONS TO THE EXISTING SEMI DETACHED DWELLING WAS RECEIVED BY COUNCIL 2 JUNE 2002.
2. THE APPLICATION WAS NOTIFIED TO NEARBY AND ADJOINING PROPERTY OWNERS WITH OBJECTIONS RECEIVED.
3. THE APPLICATION WAS CONSIDERED BY COUNCIL AT IT'S DEVELOPMENT ASSESSMENT UNIT MEETING OF THE 19TH OCTOBER, 2004 WHERE THE APPLICATION WAS REFUSED.
4. COUNCIL RECEIVED AN APPLICATION FOR REVIEW OF DETERMINATION UNDER SECTION 82A OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 ON 25 JUNE 2004.
5. THE APPLICATION WAS NOTIFIED TO NEARBY AND ADJOINING PROPERTY OWNERS WITH OBJECTIONS RECEIVED.
6. THE APPLICATION WAS CALLED TO COUNCIL BY COUNCILLOR MACDONALD.
7. A SITE INSPECTION IS RECOMMENDED.
8. THE APPLICATION IS RECOMMENDED FOR APPROVAL SUBJECT TO CONDITIONS.

[illegible]

Environmental Services Division Report No. 93 (Cont'd)**REPORT****Introduction**

The subject site is positioned on the southern (high) side of Sydney Road three lots to the east of the intersection of Sydney Road and Hill Street. The land is generally rectangular in configuration having a width of 6.095 metres and a depth of 35.275 metres. The land is currently developed with a single storey semi detached dwelling.

On the 2 June, 2003, Council received Development Application No.262/03 for alterations and additions to the existing dwelling including provision of a new first floor level containing two bedrooms, a bathroom and retreat. The application was made in conjunction with an application by the owner of the adjoining semi detached dwelling for similar addition. The original application was notified with two (2) submissions received from one nearby and one adjoining property owner objecting to the proposal. The application was considered by Council at its Development Assessment Unit meeting of the 12 August 2003 and was refused for following reasons:

1. The proposed development is not satisfactory under Section 79(C) Environmental Planning & Assessment Act 1979 and Council's Residential Development Control Plan (DCP), the likely impacts of that development including environmental impacts on both the natural and build environments, and social and economic impacts in the locality (Section 79C(b)) and the suitability of the site for the development, (Section 79C(c)).
2. The proposed floor space ratio exceeds Council's bulk control under the Residential DCP. The departure is considered significant and not considered to satisfy objectives. In particular the bulk of development is not considered to be adequately controlled having regard to the proposed streetscape and amenity effects. Section 79C(i)(a)(iii) of the Environmental Planning & Assessment Act 1979 refers.
3. The scale of the development is inconsistent with the existing and desired streetscape of Sydney Road. In this regard site and locality inspections reveal the streetscape character to be predominantly single storey dwellings. And the proposed prominence of the new first floor level from the street is not considered to satisfy this objective. Section 79C(i)(a)(iii) + (b) of the Environmental Planning & Assessment Act 1979 refers.
4. The proposed bulk of development does not adequately minimise the loss of sunlight to existing development in accordance with Council's DCP objectives. The development overshadows neighbour to the eastern and western sides and the extent of this shadow is not considered to satisfy the DCP criteria. Section 79C(i)(a)(iii) (b) + (e) of the Environmental Planning & Assessment Act 1979 refers.
5. The proposed side boundary setbacks are less than the minimum required under Council's Residential Development Control Plan and will result in adverse impacts on adjoining properties and the streetscape, Section 79C(i)(a)(iii), (b) + (e) of the Environmental Planning & Assessment Act 1979 refers.
6. The proposed increase in building bulk is considered to dominate the open space areas of the site, which are considerably undersized. The proposal does not seek to enhance the amenity of the streetscape or surrounding area in its landscape design. Further the extent of paved areas do not seek to maximise water infiltration on site and reduce water infiltration. Section 79C(i)(a)(iii), (b) + (e) of the Environmental Planning & Assessment Act 1979 refers.

Environmental Services Division Report No. 93 (Cont'd)

Council is now in receipt of an application for review of determination under section 82A of the Environmental Planning and Assessment Act 1979. The application included revised plans reducing the proposed floor space, bulk and scale of the building.

Development Control Plan Numerical Assessment

The following is an assessment of the proposal's compliance with the numerical standards of the D.C.P. Where a variation is proposed to the standards an assessment is included in the Planning Comments.

	<u>Permitted/ Required</u>	<u>Proposed</u>	<u>Complies Yes/No</u>
Density - Sub Zone 3			
Floor space ratio	0.6:1	0.74:1	No
Floor space ratio - existing	0.59:1		Yes
Wall height east side	6.9m	6.6m	Yes
west side	6.9m	6.6m	Yes
Roof height	3.0m	1.0m	Yes
Setback Front	6.0m	5.4m (existing GF) 10.5m (proposed FF)	No Yes
Setback Rear	8.0m	5.4m (existing GF) 11.0m (proposed FF)	No Yes
East setback side	2.3m	1.2m	No
west setback side	2.3m	nil	No (semi detached dwelling)
Open space - total	55%	37%	No (existing 32%)
Open space - total	117m ²	78m ²	No
Open space - soft	35%	30%	No (existing)
Open space - above ground	<25%	<25%	Yes
Private Open Space	18m ²	33m ²	Yes
Car Parking – Residents	2	nil	No (existing)
Shadow -adjacent open space adjoining NS orientation exist north facing roofs	<1/3 rd adjoining Min 2hrs 10sqm	<1/3 rd <2hrs >10sqm	Yes No Yes
Energy Efficient Rating ★★★★★	3.5 stars	4 stars	Yes

Applicant's Supporting Statement

The applicant submitted a written statement in support of the application for review of determination a copy of which is attached.

Submissions

The original application was notified to nearby and adjoining property owners with two (2) submissions received from M and K Love of No.271 Sydney Road Fairlight and J Liddle and L Tonkin of No.269 Sydney Road Fairlight. The submissions raised concerns in respect of;

- Unacceptable overshadowing of rear courtyard in afternoon.

Environmental Services Division Report No. 93 (Cont'd)

- Loss of privacy with second storey overlooking our home.
- Excessive floor space
- Unacceptable overshadowing of living rooms and outdoor areas.
- Insufficient open space.
- Side setbacks barely meet 1/3rd wall height requirement.

The plans included with the application for review were notified to nearby and adjoining owners with two submissions received from M and K Love of 271 Sydney Road Fairlight and P and C Gardner of 46 Rosedale Avenue. The submissions raise the following concerns;

- Size of the rear facing windows – unimpeded view onto our private deck and into family room and hallway.
- Request south facing windows be redesigned to be highlight windows.
- Recent development at No275 Sydney Road demonstrated major intrusion onto rear private open space of adjoining properties. How it was approved with an entertaining deck overlooking small private open space areas is beyond comprehension.
- Unacceptable overshadowing – adjoining dwelling semidetached and rooms rely on side windows for light.
- Dampness resulting from overshadowing.
- Same building to land ratio as that previously proposed.
- Balcony to the front of the addition represents 1/3rd of the total area of the proposed development.
- Privacy and noise impacts.
- Addition at No.275 Sydney Road overlooks our property. We were not notified of that application. If No273 goes ahead we will have overlooking of both front and rear yards.
- Aesthetically unattractive. Not uniform with the adjoining semi.
- We all enjoy good relations with the applicant however we also feel the need to protect our own properties amenity for the sake of our family.

Precinct Community Forum Comments

Review of roof extension.

No one spoke for or against the proposal.

Moved: Mr R Montgomery: the precinct debated the community issue of density because of excessive floor space ratio. The precinct considered the situation beside Sydney Road was sufficient for there to be no objection.

Seconded: Jill Westlake

Vote: Unanimously.

Engineers Comments

No objection subject to conditions.

Building Comments

No objection subject to conditions.

Environmental Services Division Report No. 93 (Cont'd)**Planning Comments**

The revised proposal provides for a new first floor level over an existing semi detached dwelling. The proposal provides for a bedroom and ensuite over the rear portion of the existing dwelling with a balcony placed approximately in the centre of the existing roof. The addition has been positioned to sit over the rear of the existing dwelling and lowered such that it will not be generally visible from Sydney Road. The springing height of the roof is relatively low and the roof pitch is minimal to match that at the rear of the adjoining semi detached dwelling at No.275 Sydney Road. The roof design has been revised to reduce the visual bulk from that originally submitted.

The floor space ratio of the current proposal is now 0.74:1 as opposed to the 0.89:1 originally proposed. However this still exceeds the 0.6:1 permitted under Council's Development Control Plan for the Residential Zone (DCP). It is noted that the site is by definition a small site and the DCP allows consideration of a variation of Floor Space Ratio under such circumstances. The proposal is similar to that approved for the adjoining semi detached dwelling at No.275 Sydney Road and generally the two developments will be acceptable in terms of visual bulk and scale. It is noted that the subject application proposes a differing floor plan to No.275 Sydney Road in that the proposal does not include a deck/balcony to the rear but proposes use of the rear portion as floor space for part of the new bedroom. This results in an additional 7.4m² floor space over that approved at No 275 Sydney Road.

The proposed variation to the floor space ratio control should be assessed in conjunction with the extent and location of the proposed deck area 3.8m by 4.9m located centrally over the existing building. The proposed deck raises concerns in respect of aural and visual privacy to the adjoining dwelling to the east. The proposed removal of a portion of the existing roof to allow for the deck also detracts from the architectural quality of the building and is not considered appropriate in this closely developed residential context. The location of a small deck (7.4m²) to the rear, as approved at No.275 Sydney Road is seen as a better design outcome however from the neighbour submissions this appears to create privacy impacts over the rear yard areas. The applicant submitted further revised plans which reduce the size of the proposed deck to 3.2m by 4.3m. Whilst this revision attempts to address the privacy issue, the proposal is still considered unacceptable in terms of privacy and architectural integrity of the existing building.

The proposal varies from Council's DCP requirements in terms of setback east side where 2.3m is required compared to the 1.2m proposed. The variation is a result of the narrow nature of the site, being 6.095 metres and the necessity to locate the addition above or close to existing external walls. The proposal will result in some overshadowing of adjoining properties and whilst the habitable portion of the addition is seen as reasonable in this regard, the proposed deck with privacy screening would add unnecessarily to shadow impacts. With deletion of the deck, the proposal would not present, excessive visual impact. Further, there are no windows overlooking the adjoining property to the east. The proposed wall setback is considered acceptable with deletion of the deck, a condition in this regard is included in the recommendation.

Concerns raised by the nearby property owner to the south regarding privacy impacts are noted, however, the separation of the two properties and distance between the two dwellings is adequate to achieve an acceptable level of privacy in the residential context.

Existing landscaped open space area of the site is less than that permitted under the DCP. In this regard it is noted that the proposal does not change the amount of open space or soft open space at ground level and allows for a slight increase in total landscaped open space with the inclusion of a deck at first floor level.

There is no provision of car parking on site. This is an existing situation and having regard to the minimal site area and site width, on site car parking is not considered practical.

Environmental Services Division Report No. 93 (Cont'd)**Clause 10 Objectives**

The objectives as set out in Clause 10 of the Manly Local Environmental Plan 1988 are commented on as follows.

(a) to set aside land to be used for purposes of housing and associated facilities;

Comment: The proposal is for continued residential use of the premises and therefore complies with this objective.

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

Comment: The application has been assessed having regard to the relevant control plan and is considered acceptable.

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

Comment: The proposal will allow variety in housing type whilst maintaining the overall residential character of the 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;

Comment: The proposal subject to conditions contained in the recommendation will not degrade the amenity of surrounding residents nor 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;

Comment: The proposal will not impact on the existing landscaping of the site and therefore complies with this objective.

(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;

n/a

(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;

Comment: The occupants of the dwelling will continue to utilise existing social and physical infrastructure.

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

Comment: The proposal is considered to be suitable redevelopment for the area.

(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

Environmental Services Division Report No. 93 (Cont'd)**CONCLUSION:**

With the revision of the plans and condition to delete the proposed deck at first floor level, the proposal sufficiently addresses issues raised in Council's previous refusal and can now be considered satisfactory.

The proposal has been assessed pursuant to Section 79C and 82A of the Environmental Planning and Assessment Act 1979, the Manly Local Environmental Plan 1988 and the Manly Development Control Plan for the Residential Zone and is considered satisfactory subject to conditions and is therefore recommended for approval.

RECOMMENDATION

That Development Application No. 262/03 for Alterations and Additions to the Existing Dwelling at No.273 Sydney Road, Fairlight be approved subject to the following conditions:

1. This approval relates to drawings/plans Nos. DA-J1 amendment B dated June 2004 and received by Council 27 October 2004.
2. The proposed deck at first floor level is to be deleted to minimise privacy impacts on the adjoining property and maintain architectural integrity of the existing building, plans being suitably amended prior to issue of the Construction Certificate.
3. Pursuant to Section 97 of the Local Government Act, 1993, Council requires, **prior to issue of the Construction Certificate, or commencement of any excavation and demolition works**, payment of a Trust Fund Deposit of \$2,200.00. The Deposit is required as security of compliance with Conditions of Consent, and as security against damage to Council property during works on the site.

Note: Should Council property adjoining the site be defective eg, cracked footpath, broken kerb etc., this shall be reported in writing to Council, **at least 7 days prior to the commencement of any work on site.**

4. Details of the builder's name and licence number contracted to undertake the works shall be provided to Council **prior to issue of the Construction Certificate.**
5. Insurance must be undertaken with the contracted builder in accordance with the Home Building Act, 1997. Evidence of Insurance together with the contracted builders name and licence number must be submitted to Council **prior to issue of the Construction Certificate.**
6. 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.
7. A sign must be erected on the subject site in a prominent position stating that unauthorised entry is prohibited and giving details of the name of the builder or the person responsible for the site and 24 hour contact details. The sign is to have dimensions of approximately 500mm x 400mm.

Note: The sign is not required if the building on the site is to remain occupied during the course of the building works.

8. Consent given to build in close proximity to the allotment boundary is in no way to be

Environmental Services Division Report No. 93 (Cont'd)

construed as permission to build on or encroach over the allotment boundary. Your attention is directed to the provisions of the Dividing Fences Act which gives certain rights to adjoining owners, including use of the common boundary. In the absence of the structure standing well clear of the common boundary, it is recommended that you make yourself aware of your legal position which may involve a survey to identify the allotment boundary.

9. Four (4) certified copies of the Structural Engineer's details in respect to the structural details of the proposed building shall be submitted to the Principal Certifying Authority **prior to the issue of the Construction Certificate.**
10. A Certificate of Adequacy signed by a practising Structural Engineer is to be submitted to the Principal Certifying Authority in respect of the load carrying capabilities of the existing structure to support the proposed **additions prior to the issue of the Construction Certificate.**
11. 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 AS3740. Certification is to be provided to the Principal Certifying Authority from a licenced applicator prior to the fixing of any wall or floor tiles.
12. The implementation of adequate care during demolition and construction to ensure that no damage is caused to any adjoining properties.
13. 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.
14. Four (4) Architectural/Services Specifications are to be submitted with the Construction Certificate application/**prior to the issue of the Construction Certificate.**
15. All external cladding and trim of the approved building shall be of a non reflective nature. Details of such finishes shall be **submitted with the Construction Certificate Application.**
16. All plumbing and drainage, including sewerage drainage stacks, ventilation stacks and water service pipes shall be concealed within the building. Plumbing other than stormwater downpipes shall not be attached to the external surfaces of the building.
17. Roofwaters and surface stormwaters from paved areas is to be conveyed by pipeline to Council's street gutter.
18. All demolition is to be carried out in accordance with AS2601-1991.
19. Asbestos cement sheeting must be removed in accordance with the requirements of the WorkCover Authority.
20. All building work must be carried out in accordance with the provisions of the Building Code of Australia.
21. An automatic fire detection and alarm system shall be installed in the proposed dwelling in accordance with the requirements of Part 3.7.2 of the Building Code of Australia 1996 - Housing Provisions.
22. All lights used to illuminate the exterior of the buildings or site shall be positioned and/or fitted with cut off luminaries (baffles) so as to prevent the emission of direct light onto adjoining roadways and land.

Environmental Services Division Report No. 93 (Cont'd)

23. Any ancillary light fittings fitted to the exterior of the building are to be shielded or mounted in a position to minimise glare to adjoining properties.
24. All materials on site or being delivered to the site shall generally be contained within the site. The requirements of the Protection of the Environment Operations Act 1997 shall be complied with when placing/stockpiling loose material, disposing of concrete waste, or other activities likely to pollute drains or water courses.
25. The works require the following inspection/certification during the course of construction:-
 - Framework inspection (2)
 - Wet area moisture barrier
 - Final inspection

The cost of these inspections by Council is \$253.00 (being \$70.00 per inspection and \$113.00 for Final inspection inclusive of GST). **Should you require Council to undertake the inspection/certification, then payment is required prior to the first inspection. Inspection appointments can be made by contacting the Development Assessment Unit on 9976 1573 or 9976 1587.**

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 \$80.00.

26. Issue of a Compliance Certificate from the Principal Certifying Authority prior to occupation to the effect that:
 1. Required inspections have been undertaken and the work has been completed in accordance with the approved plans and specifications, the Development Consent and the Construction Certificate.
 2. Documentary evidence relative to:
 - tie down and bracing details
 - wet areas waterproofing certificate
 - structural engineers inspection certificate

has been received by the Principal Certifying Authority, this information in accordance with the terms and conditions of the Consent and Construction Certificate and to the satisfaction of the Principal Certifying Authority.
27. Stockpiles of topsoil, sand, aggregate, spoil or other material shall be stored clear of any drainage line or easement, natural watercourse, kerb or road surface.
28. Drains, gutters, roadways and access ways shall be maintained free of sediment and to the satisfaction of Council. Where required, gutters and roadways shall be swept regularly to maintain them free from sediment.
29. 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.
30. Building or construction work must be confined to the hours between 7.00am to 6.00pm, Monday to Friday and 7.00am to 1.00pm, Saturday, with a total exclusion of such work on Public Holidays and Sundays. Non-offensive works where power operated plant is not used and including setting out, surveying, plumbing, electrical installation, tiling, internal timber or

Environmental Services Division Report No. 93 (Cont'd)

fibrous plaster fixing, glazing, cleaning down brickwork, painting, building or site cleaning by hand shovel and site landscaping, is permitted between the hours of 1.00pm to 4.00pm Saturdays.

Note: That the Protection of the Environment Operations Act 1997 may preclude the operation of some equipment on site during these permitted working hours.

31. This approval shall expire if the development hereby permitted is not commenced within 2 years of the date hereof or any extension of such period which Council may allow in writing on an application made before such an expiry.

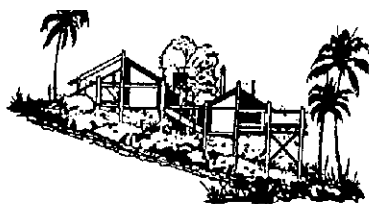
ATTACHMENTS

AT-1 Section 82A Application - Artcourt Pty Ltd 2 page(s)

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***** End of Environmental Services Division Report No. 93 *****

Environmental Services Division Report No. 93
273 Sydney Road, Fairlight
Section 82A Application - Artcourt Pty Ltd



A R T C O U R T P T Y L T D
A R C H I T E C T U R A L & S T R U C T U R A L D E S I G N

Suite 3, No.4 The Corso, Manly NSW 2095
Telephone (02)9976 5303 Facsimile (02)9976 5321
Mobile 0409 037 815

24th June, 2004

General Manager
Manly Council
Belgrave Street,
MANLY NSW 2095

Dear Sir,

**Re: Section 82A Review of Development Application No. DA262/03-
Proposed Development: First Floor Additions and Alterations to
Dwelling Land to be Developed: 273 Sydney Road, Fairlight**

Council determined the application on 7th August, 2003 and refused the application for reasons as stated in Council letter of 18th August, 2003.

The existing residence at 273 is one part of a semi-detached dwelling, the other being 275. The previous proposal was for a first floor addition to be erected in conjunction with the adjoining neighbour at 275. The reasons for this was to endeavour to achieve a uniform design. After Council's letter the applicant at 275 lodged a Section 82A Review and was successful with a reduced size development. Work has now started and wall frames are up at 275.

The applicant at 273, Mr. Trevor Jarman, seeks to emulate next door and is lodging a section 82A Review which is based on a scaled back development. Council's reasons for refusal and manner in which these issues have been addressed are as follows.

1. "Proposed floor space exceeds Council's bulk control under the residential Development Control Plan."

The previous submission was for two bedrooms, a bathroom and a small retreat. The Floor Space Ratio (FSR) for the area is 0.6:1 and this proposal took the floor space ratio to 0.89:1.

The design has been amended to now have a single bedroom with ensuite and a deck to the front of the extension. The total area has been reduced from 63.9m² to 40.3m². This represents a 36% reduction in the size of the development. The floor space ratio is reduced from 0.89:1 to 0.79:1. The existing minimum site area for subzone 3 is 250m², the site is 208.9m², this site is substantially less than the minimum (16.5%). Council may consider a variation to the FSR on sites which are substantially less and quote a figure of 20%.

A variation to the the FSR is sought on the basis that this block size substantially less than the minimum site area for this density sub-zone.

2. "The scale of the development is inconsistent with the existing and desired streetscape of Sydney Road".

The existing streetscape is an eclectic mix of single and two storey and unit buildings in this area. The proposed design is now being reduced in size, bulk and scale by 36% and has been located approximately four metres behind the existing ridge line, towards the rear of the house.

3. "The proposed bulk of the development does not adequately minimize the loss of sunlight to the existing development".
The adjoining property to the East has most impact between 1pm & 3pm. Shadows as shown are for the proposed building and shadows cast by the adjoining buildings themselves have not been taken into account. The property to the West is unaffected in the mornings at which time existing shadows prevail. The bulk of shadow is cast over roofed areas of the adjoining buildings. Shadows comply with the Development Control Plan.

4. "The proposed side boundary setbacks are less than the minimum required"

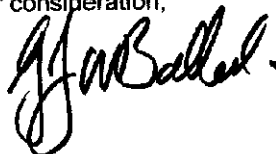
The existing side setback of the ground floor is 0.9 metres. The total block width is only 6 metres. The previous proposed development was to be built off the existing external walls. The new proposal has increased the setback from 0.9 metres to 1.2 metres. This setback maintains the existing ground floor eave, with the addition sitting into the roof. This setback allows for a practical design outcome whilst still being under the DCP requirement. Council is requested to take into account the trend in design at the time when this semi was built and to recognize the physical constraints as imposed by such a narrow block. Could Council also consider the numerous similar first floor additions over semi-detached dwellings within the zone.

5. "The proposal increase in bulk is considered to dominate open space areas of the site".

As discussed the bulk has been reduced by 36%. The location of the addition is setback from Sydney Road. The proposal is also setback from the rear and is separated from the existing open space area at the rear by the roof over the existing kitchen and dining room. There is no change to the existing open space of the site. Privacy from the proposed deck will not be a problem for the neighbour to the East due to the elevation of the deck in relation to any adjoining windows, the deck will be looking at the adjoining roof. The party wall will continue along the edge of the deck on the West side to maintain privacy from this aspect. The current design will not dominate existing open space at the rear and will have no impact at all on the front/Sydney Road open space.

It is considered that all aspects of the refusal have been addressed in this current design. There are physical constraints as listed and Council is requested to give consideration to those.

Submitted for your consideration,
Gary Ballard
Artcourt Pty Ltd



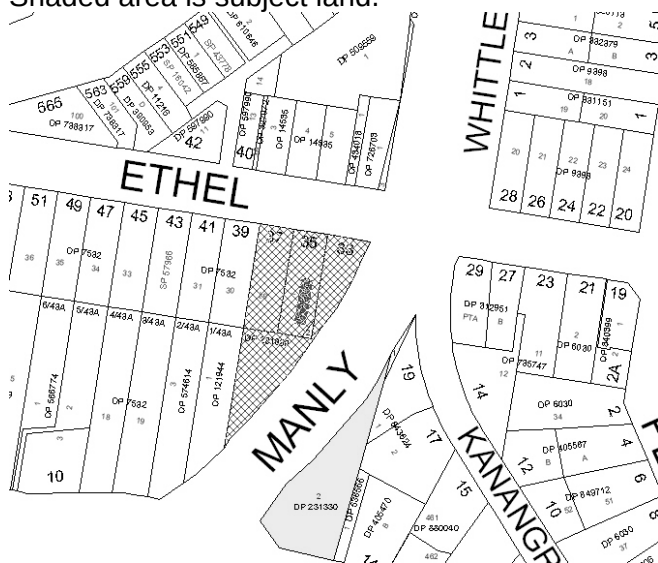
TO: Land Use Management Committee - 6 December 2004
 REPORT: Environmental Services Division Report No. 94
 SUBJECT: 33-37 Ethel Street, Seaforth
 FILE NO: DA213/04

Application Lodged: 16 April 2004
Applicant: Maincorp FMP/L
Owner: K & M Diskoros
Estimated Cost: \$5 million
Zoning: Manly Local Environmental Plan, 1988 - Residential and Foreshore Scenic Protection Area
Surrounding Development: Residential Flat Buildings, commercial with Manly Road along the eastern boundary.
Heritage: Not Applicable
SUMMARY:

1. DEVELOPMENT CONSENT WAS GRANTED TO DA 667/01 BY THE LAND AND ENVIRONMENT COURT IN DECEMBER 2002, FOR THE DEMOLITION OF THE TWO HOUSES AND THE ERECTION OF A RESIDENTIAL FLAT BUILDING CONTAINING 16 UNITS OVER BASEMENT PARKING, SWIMMING POOL AND STRATA SUBDIVISION.
2. THE SUBJECT SITE IS NOW VACANT, DUE TO RECENT DEMOLITION OF THE TWO DWELLINGS.
3. DEVELOPMENT CONSENT IS NOW SOUGHT FOR A NEW DESIGN FOR A FOUR STOREY RESIDENTIAL FLAT BUILDING CONTAINING 16 UNITS WITH BASEMENT PARKING FOR 31 VEHICLES AND A SWIMMING POOL.
4. THE APPLICATION WAS NOTIFIED TO ALL ADJOINING PROPERTY OWNERS AND OCCUPIERS AND ADVERTISED IN THE MANLY DAILY WITH 3 SUBMISSIONS RECEIVED.
5. THE APPLICATION WAS REFERRED TO THE SEAFORTH AND CLONTARF PRECINCT COMMITTEE FORUM FOR COMMENTS.
6. THE APPLICATION WAS CALLED TO COUNCIL BY COUNCILLOR MACDONALD.
7. A SITE INSPECTION IS RECOMMENDED.
8. A "DEFERRED COMMENCEMENT" CONSENT IS RECOMMENDED.

LOCALITY PLAN

Shaded area is subject land.



Environmental Services Division Report No. 94 (Cont'd)**REPORT****Introduction**

Consent is sought for the erection of a four storey residential flat building containing 16 units (9 two bedroom and 7 three bedroom units), pool and basement carparking.

The application does not include a strata subdivision.

The basement carpark contains 31 spaces and is accessed from Ethel Street down a two way ramp. Four visitor car parking spaces are situated near the carpark entrance. Three lifts with a lobby each will provide access to the units above. There are some storage rooms, plant rooms, five sets of fire stairs in the basement area.

The ground floor contains two entry halls with access from Ethel Street. The ramp to the carpark is located on the north western corner of the site. Four 2 bedroom units and a three bedroom units occupy the ground floor. Each unit has a combined kitchen/living and dining area with access to a large garden terrace on the eastern side that also has a common open space area with a 16 metre long pool and a spa running parallel to its eastern boundary which fronts on to Manly Road.

The first floor contains 3 two bedroom and 2 three bedroom units. Each unit has a combined kitchen/living and dining area with access to a terrace on the south-eastern side. Units 6, 7, and 8 which is along the front (Ethel Street) also has a terrace along its northern elevation looking into Ethel Street.

The second floor contains 2 two bedroom and 2 three bedroom units. Each unit has a combined kitchen/living and dining area with access to a terrace on the south eastern side. The terrace for Unit 14 at the rear of the building is exceptionally large. Units 11, 12, and 13 which is along the front (Ethel Street) also has a terrace along its northern elevation looking into Ethel Street.

The top level contains two large three bedroom units. Each unit has a large wrap around balcony/terrace, and access to its own lift foyer area.

Development Control Plan Numerical Assessment

The following is an assessment of the proposal's compliance with the numerical standards of the D.C.P. Where a variation is proposed to the standards an assessment is included in the Planning Comments.

	<u>Permitted/ Required</u>	<u>Proposed</u>	<u>Complies Yes/No</u>
Density - Sub Zone 2	1/150m ²	1/148.25	No
Floor space ratio	0.75:1	1.06:1	No
Wall height east side	9 m	12 m	No
West side	9 m	9-12 m	No
Roof height	3 m	1.5 m	Yes
Front fence height	1.5 m	1.4 m	Yes
Setback Front	6 m	5 m-11 m	Yes
Setback Rear	8 m	28 m	Yes
West setback side	3 m	2.8m-8 m	Yes(average)
East setback side	9 m- Clause 17 of Model Provisions	2 m –13 m	No (SEPP No.1)

Environmental Services Division Report No. 94 (Cont'd)

	<u>Permitted/ Required</u>	<u>Proposed</u>	<u>Complies Yes/No</u>
Pool - Side and Rear	1500mm	2500mm	Yes
Pool deck - above ground	1 m	600mm	Yes
Wall on boundary height	13 m	Nil	Yes
Open space - total	50%	60%	Yes
Open space - soft	30%	50%	Yes
Private Open Space	12m ² / per unit	More than 12m ² per unit	Yes
Car Parking – Residents	20 spaces	26 spaces	Yes(but additional spaces counted as floor space)
- Visitors	4 spaces	4 spaces	Yes
Shadow – adjacent open space	>1/3	>1/3	Yes
Adjoining NS orientation	>2hrs	>2hrs	Yes
	>10m ²	>10m ²	Yes
Excavation Setback	900mm	962mm	Yes
Energy Efficient Rating ★★★★★	3.5	5	Yes

Applicant's Supporting Statement

In support of the application, the applicant has submitted a Statement of Environmental Effects (SOEE). This is on file. The SOEE includes a NatHERS Certificate & Energy Rating Report, Environmental Site Management Plan, Erosion and Sediment Control Plan. The applicant has relied on the Geotechnical Report that was submitted for the previous application

Submissions

The original application was notified on 7 May 2004 for fourteen days. The application was also advertised in the Manly Daily on 7 May 2004. In response to the notification, Council received four (4) letters of support. Three (3) objections were received from:

Callan Boyd of 3/39 Ethel Street
 Carey Mercer from 39 Ethel Street, and
 Office of Ashcroft Pty Ltd of 39 Ethel Street (Company Title of 39 Ethel Street)

Concerns raised include the following:

- Loss of privacy,
- Noise
- Over three storey height limit
- 20% over floor space of previous approval
- Loss of sunlight
- Overdevelopment of site

Previous objectors were advised of the amended proposal on 2 November and allowed to submit any further objections within seven days. In response to the notification, one submission was received from Callum Boyd of 3/39 Ethel Street.

Concerns raised included the following:

- Loss of privacy
- Lack of natural sunlight
- Infrastructure issues
- Suppression of outlook

Environmental Services Division Report No. 94 (Cont'd)**Precinct Community Forum Comments**

The June meeting of the Seaforth Precinct Committee Forum resolved as follows:

"That this precinct rejects this DA for the following reasons: that it is over the FSR, there are overshadowing issues, over height, issues of privacy and overdevelopment."

The amended plans lodged in October were not referred back to the Seaforth Precinct Committee Forum.

Building Comments

No objections to the original proposal from a building point of view, being a Class 2 and 7 building requiring a Type A Construction in accordance with the BCA and subject to appropriate conditions of consent.

Engineers Comments

Check file for KK comments

Landscape Architects Comments

No objections to proposal subject to appropriate conditions of consent.

Planning Comments

The subject site is known as 33-37 Ethel Street, Seaforth and is located on the southern side of Ethel Street, immediately east of Manly Road. The site comprises of four allotments being Lot 1 DP 231330, Lots 1 and 2 DP 529409 and Lot 29 DP 7532. The site has an area of 2372m² and is an irregular shaped allotment having frontages to both Ethel Street and Manly Road. Access to the site cannot be achieved from Manly Road because of the topography. The frontage along Manly Road and Ethel Street is 88.03 metres and 45.19 metres respectively. The western boundary is 92.45 metres deep.

The site is currently vacant and some earthworks and excavation have commenced on the site following the demolition of the two dwelling houses on the site as a result of the previous development consent. All works has ceased temporarily awaiting the determination of this new development application. A two storey brick residential flat building (No 39 Ethel Street) adjoins to the western side of the site side of this walkway. This building occupies the northern half of the western boundary, with another part one and part two storey dwelling house (No 1/43 Ethel Street) occupying the southern half of the western boundary of the site. Developments to the east and west of Ethel Street consist of a mixture of two and three storey houses and residential flat building. The Balgowlah RSL Club with its associated carpark is to the immediate north across Ethel Street.

The proposal is to erect a four storey residential flat building containing sixteen units over a basement carpark. A swimming pool forms part of this application.

The subject site is located in Zone No. 2-Residential under Manly Local Environmental Plan 1988. The proposed use is permissible with consent.

Density

The site is located in Density sub-zone 2 of the Manly Development Control Plan for Residential Zone 2001, Amendment 1. The permissible density is 1 dwelling/150m². The proposal is for 1 dwelling/149.25 m² which is marginally more than the permitted density.

Environmental Services Division Report No. 94 (Cont'd)***Floor Space Ratio***

The maximum permissible floor space ratio for the subject site is 0.75 :1. The proposed FSR is 1.02:1 without including the 7 extra car parking spaces provided in the basement. Any car parking provided above the DCP requirements should be included as part of the floor space. The FSR inclusive of the additional spaces is 1.06:1.

The applicant has stated that the approved DA had a similar number of carparking spaces, and the additional spaces were not counted as floor space, a view of the previous DA file confirms this approach. As this was not an issue in Court in the assessment of the previous application because these spaces are totally below ground level, the FSR consideration will exclude the additional seven spaces.

The three lift lobbies and access stairs take up a large part of the floor space. The amount of floor space over the permitted FSR of 0.75:1 is 637m².

The following comments are made in respect of the DCP objectives regarding floorspace ratio:

a) to control the bulk of building

The applicant's response to the concerns of the owners of the two buildings to the west is commendable. This proposal will have less impact on the dwelling at the rear western side of the subject site at 1/39 Ethel Street. The modifications to the proposal in this application have also tried to address the objections from the owners within the residential flat building at 39 Ethel Street.

The bulk of the building from the northern (Ethel Street) and western elevation is quite acceptable because of the curved roof form along these elevations. However, the two units on the top level presents as four storey on the eastern and southern elevations because of the vertical walls that are highly visible. Further the lift towers and the roof treatment over the top two units adds another vertical element to the proposal and can be viewed as another level. The bulk of the proposed development must be reduced.

b) to ensure that the scale of development does not obscure important landscape features

There are no important landscape features on the site. There is articulation in the layout of the proposal and sufficient setbacks from the side boundaries to provide landscaping.

c) to be consistent with the existing and future character of the residential area

The developments on the southern side of Ethel Street in the vicinity of the site are no more than three storeys. The RSL across the road is a larger development than the surrounding residences. The proposal must be amended to delete the four/five storey element.

d) to minimise disruption to views, loss of privacy and loss of sunlight to existing residential development as well as proposed development

There will be no significant impact on the views, privacy and sunlight to the adjoining developments.

e) to provide sunlight access to private open space within the development and maintain adequate sunlight access to private open spaces and habitable rooms of adjacent dwellings

The shape and orientation of the subject site, and the desire to maximise view potential towards Spit Bridge/Mosman and the Harbour has resulted in most of the units facing south. However the proposal has been cleverly designed to optimise the northern and western aspect, and there are

Environmental Services Division Report No. 94 (Cont'd)

large useable terraces for all the units. Adequate sunlight access will be maintained for the adjoining western properties.

Height

The proposed development generally complies with the wall height on the street elevation, and on the western elevation. It is on the south eastern elevation where the site faces Manly Road that the wall height is close to 12 metres. This presents as a four storey building and this elevation will also be visible from 1/39 Ethel Street. "Windows" above the top storey visually add another storey to the proposal although they cover only a small proportion of the roof. The lift tower adds another vertical element above the roof.

The proposal fully complies with the roof height. It is considered that the proposal satisfies the following objectives of the height controls in the DCP except for (b) below.

- a) *to control the height of buildings by specifying maximum wall and roof/ridge heights*
- b) *to provide for building heights that are consistent with the locality*
- c) *to minimise disruption to views, loss of privacy and loss of sunlight to existing residential development*
- d) *to provide sunlight access to private open spaces within the development site and maintain adequate sunlight access to private open spaces windows of living spaces of adjacent dwellings*

Setbacks

Council's performance criteria in respect to setbacks are considered to be satisfied.

- a) *to preserve and enhance the existing streetscape*

The proposed front setback complies with the minimum 6 metres and is in accordance with the adjoining properties with adequate side and rear setbacks

- b) *to provide privacy*

The main outdoor living spaces are on the northern side and there is sufficient setbacks and screening provided by planter boxes.

- c) *to provide equitable access to light and sunshine*

There is no significant impact on the sunlight to the adjoining properties.

- d) *to promote flexibility in the siting of building*

This criteria has been satisfied. There is adequate modulation in the design.

- e) *to enable view sharing*

Not applicable.

- f) *to accommodate planting of native vegetation including endemic trees*

The proposal is capable of accommodating the planting of endemic trees.

- g) *to control the nature of development adjoining specific open space lands and national parks so as to not unduly detract from the nature of those lands and to comply with SEPP19.*

Not applicable.

- h) *to maintain adequate space between buildings to protect the views and vistas from public space*

The proposed development meets this criteria as there are sufficient side setbacks and the skewed orientation of the proposed building allows more setbacks than required in some locations.

Environmental Services Division Report No. 94 (Cont'd)**Excavation/ cut and fill**

The proposal complies with the 900mm setback requirement. The proposal is satisfactory in terms of Council's objectives below.

- a) *To limit excavation, cut and fill activities, particularly on sites that have a slope of 1:5 or greater*

The excavation is limited to the basement carpark.

- b) *To ensure that development respects topography and the natural fall or slope of the land.*
The proposal respects the natural fall of the land.

- c) *To discourage the alteration or redirection of natural flows of groundwater to existing vegetation.*

Not applicable.

- d) *To ensure that development not result in sedimentation or blockage of stormwater pipes, waterways and drainage lines.*

The Council's Development Engineer, subject to compliance with appropriate conditions supports Stormwater designs submitted.

- e) *To ensure that development does not mar the landscape or landforms degrade or destroy neighbouring bushland*

There are no landscape or landforms or neighbouring bushland that will be affected by the proposal.

- f) *To limit the height of retaining walls and encourage softening of these areas through planting preferably using native species.*

Satisfied.

Overshadowing

There will be no significant impact on the sunlight to the adjoining properties. The only property affected is No 39 Ethel Street, which is to the west of the subject site. There is some overshadowing at 9am in mid winter, however, there is no effect from noon onwards. The following objectives of the DCP are considered to be satisfied.

- a) *To preserve the environmental quality and property value for existing and new residents.*
- b) *To minimise loss of sunlight to adjacent buildings.*
- c) *To maximise mid-winter sunlight to windows of neighbouring living rooms and to the principal outdoor areas of adjacent properties*
- d) *To maximise passive solar design and the use of solar power, and be energy efficient*
- e) *To encourage rooms in the roof to reduce overshadowing*
- f) *To encourage breaking up of plan sizes and building bulk to admit more sunlight.*

Streetscape, fences and walls

A 1500mm high masonry wall is proposed along the southern (Ethel Street) boundary.

The proposed wall along the southern boundary is considered to be satisfactory because of the nature of the streetscape, the proximity to Manly Road, and RSL on the opposite side of the road. The proposal is considered to satisfy the following criteria:

- a) *to ensure that all development contributes positively to the street and locality, identified in the locality analysis*
- b) *to minimise the impact of walls and fences on the street frontage*

Environmental Services Division Report No. 94 (Cont'd)

- c) to ensure all fences and walls contribute positively to the identified streetscape*
- d) in some circumstances, front fences and walls may not be appropriate and soft landscape alternatives should be considered.*

Privacy

It is considered that the proposal satisfies the performance criteria of the DCP below. The development has been designed away from the buildings to the west and is orientated to Manly Road. Planter beds along the western side of the terraces and privacy screens also provide privacy to 1/29A Ethel Street.

- a) to screen between closely spaced buildings*
- b) to mitigate direct viewing into windows from others*
- c) to provide screening to outdoor areas*
- d) to encourage increased security between neighbours*

The relation to Clause 10 - of the Residential 2 zone of the Manly Local Environmental Plan 1988 the following comments are made::

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

The proposed residential flat building is an appropriate form of development for the subject site. The whole south side of Ethel Street consists of a mixture of dwelling houses and residential flat building.

- (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 height, bulk and scale of the development need to be addressed. The fourth storey element in the design must be removed and the wall height reduced.

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

There is sufficient modulation in the design to allow landscaping to be adequately provided.

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

The location of the site so close to Manly Road and in the busier part of Ethel Street makes the site suitable for redevelopment.

The site is located within the foreshore Scenic Protection Area and under the provisions of Clause 17 of the Manly Local Environmental Plan 1988, Council must be satisfied that the development will not have a detrimental effect on the amenity of the area. The proposal will be visible from the Harbour and foreshore and with the recommended deferred commencement conditions the proposal is considered satisfactory in terms of visual amenity.

CONCLUSION:

It is considered that this proposal is a better articulated building and will have less impact on the adjoining residential properties than that previously approved for the site. The only concern with this proposal is the high FSR and wall height, which is, reflected in the height, bulk and scale of

Environmental Services Division Report No. 94 (Cont'd)

this proposal. The applicant must be required to reduce the wall height closer to 9 metres and this will require substantial amendment to the two units on the top floor including reductions in floor space. It is acceptable to have a 'room in the roof' above the third floor level, but the scale and height of the fourth level must be reduced. The two lift towers are acceptable as they occupy only a small portion of the roof. Accordingly, it is recommended that a Deferred Commencement approval be granted subject to the applicant satisfying the wall height control and DCP height objectives.

The proposal has been assessed pursuant to Section 79c of the Environmental Planning and Assessment Act, 1979, the Manly Local Environmental plan 1988 and the Manly Development control Plan for the Residential Zone and is considered acceptable subject to recommended deferred commencement conditions.

RECOMMENDATION

- A. That a Deferred Commencement Consent pursuant to Section 80(3) of the Environmental Planning and Assessment Act 1979 be granted to Development Application D213/04 for the erection of a residential flat building containing 16 units, pool and basement carparking at 33-37 Ethel Street, Seaforth, with the consent not operating until the applicant has submitted amended plans showing:
 - A1. The proposed wall height in the east and southern elevations reduced to comply with the numeric requirements and objectives of Council's Residential Development Control Plan, such that accommodation above the third level constitute as "rooms in the roof" only.
- B. That upon compliance with condition A1 within a period of 3 months of the date of this resolution Development Consent be issued subject to the following conditions:
 - 1. This approval relates to drawings/plans Nos. DA 02, 03, 04, 05, 06, 07, 10, 11, 12, and 13 (Revision C) dated 24/10/2004.
 - 2. Pursuant to Section 97 of the Local Government Act, 1993, Council requires, **prior to issue of the Construction Certificate, or commencement of any excavation and demolition works**, payment of a Trust Fund Deposit of \$20,000. The Deposit is required as security of compliance with Conditions of Consent, and as security against damage to Council property during works on the site.

Note: Should Council property adjoining the site be defective eg, cracked footpath, broken kerb etc., this shall be reported in writing to Council, **at least 7 days prior to the commencement of any work on site.**
 - 3. The construction of a kerb layback is required. The design and construction shall be in accordance with Council's "Specification for Construction of Vehicular Crossings". The work shall be done with plain concrete. It is the responsibility of the owner, developer and builder that they understand the above specification and strictly comply with the specification. The work shall be inspected and approved by Council officers. All works shall be carried out prior to the issue of the Occupation Certificate.
 - 4. The existing surplus vehicular crossing and/or kerb layback shall be removed and the kerb and nature strip reinstated **prior to issue of the Occupation Certificate.**
 - 5. The design of the driveway shall comply with the Australian Standard for off-street parking AS2890.1-1993 or later editions.
 - 6. A long section of the driveway shall be submitted with the Construction Certificate

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Application. The long section is to be drawn at a scale of 1:20 and shall include Relative Levels (RL) of the road centreline, kerb, road reserve, pavement within property and garage floor. The RLs shall include the existing levels and the designed levels.

7. No portion of the proposed building or works, including gates and doors during opening and closing operations, are to encroach upon any road reserve or other public land.
8. A single entrance is permitted to service the site for demolition and construction. The footway and nature strip at the service entrance shall be planked out.
9. No obstruction shall be caused to pedestrian use of Council's footpath or vehicular use of any public roadway during construction.
10. The applicant is to notify Council at least 48 hours before commencement of works on any Council road so as to enable Council to supervise the carrying out of the works.
11. Any adjustment to the public utility service is to be carried out in compliance with their standards and the cost is to be borne by the applicant.
12. 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.
13. Retaining walls being constructed in conjunction with excavations with such work being in accordance with structural engineer's details. Certification of compliance with the structural detail during construction shall be submitted to the Principal Certifying Authority.
14. A sign must be erected on the subject site in a prominent position stating that unauthorised entry is prohibited and giving details of the name of the builder or the person responsible for the site and 24 hour contact details. The sign is to have dimensions of approximately 500mm x 400mm.

Note: The sign is not required if the building on the site is to remain occupied during the course of the building works.

15. Consent given to build in close proximity to the allotment boundary is in no way to be construed as permission to build on or encroach over the allotment boundary. Your attention is directed to the provisions of the Dividing Fences Act which gives certain rights to adjoining owners, including use of the common boundary. In the absence of the structure standing well clear of the common boundary, it is recommended that you make yourself aware of your legal position which may involve a survey to identify the allotment boundary.
16. Four (4) certified copies of the Structural Engineer's details in respect to the structural details of the proposed building shall be submitted to the Principal Certifying Authority **prior to the issue of the Construction Certificate**.
17. Where any excavation extends below the level of the base of the footing of a building on an adjoining allotment of land, the person causing the excavation shall support the neighbouring building in accordance with the requirements of the Building Code of Australia.
18. 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 AS3740. Certification is to be provided to the Principal Certifying Authority from a licenced applicator prior to the fixing of any wall or floor tiles.

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19. The implementation of adequate care during demolition/ excavation/ building/ construction to ensure that no damage is caused to any adjoining properties.
20. A suitable sub-surface drainage system being provided adjacent to all excavated areas and such drains being connected to an approved disposal system.
21. Certificate(s) from a professional Engineer or other appropriately qualified person is to be submitted which certifies that material, design and/or form of construction complies with the requirements of Clause A2.2 of the Building Code of Australia.
22. In a Class 2 building containing more than 10 sole occupancy units, a closet pan and wash basin in a compartment or room at or near ground level for the use of employees must be provided in accordance with F2.1 of the Building Code of Australia. Details shall be submitted to the Principal Certifying Authority **prior to issue of the Construction Certificate.**
23. 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.
24. A Registered Surveyor's certificate identifying the location of the building on the site is to be submitted to the Principal Certifying Authority immediately upon completion of the foundations and prior to work proceeding above dampcourse level.
25. Each level of the building, at completion of construction of the external walls, is to be certified by a Registered Surveyor as complying with floor area calculations with certificate from the Registered Surveyor being submitted to the Principal Certifying Authority.
26. A dilapidation report in regard to adjoining properties and Council land is to be submitted to Council with the Trust Fund **Deposit prior to the issue of the Construction Certificate.**
27. Four (4) Architectural/Services Specifications are to be submitted with the Construction Certificate application **prior to the issue of the Construction Certificate.**
28. All external cladding and trim of the approved building shall be of a non reflective nature. Details of such finishes shall be **submitted with the Construction Certificate Application.**
29. All plumbing and drainage, including sewerage drainage stacks, ventilation stacks and water service pipes shall be concealed within the building. Plumbing other than stormwater downpipes shall not be attached to the external surfaces of the building.
30. The visitor car spaces shall be accessible at all times and a sign post shall be erected at the vehicular entry point(s) of the development indicating the location of the spaces.
31. Any discharge to the atmosphere from the subject development shall comply with the requirements of the Protection of the Environment Operations Act 1997.
32. A detailed stormwater management plan shall be prepared to fully comply with Council's "Specification for on-site Stormwater Management 2003" and shall be submitted with the Construction Certificate application. The stormwater management plan shall be prepared by an experienced Chartered Civil Engineer. The principal Certifying Authority shall ensure that the design complies with the above said specification prior to the issue of a Construction Certificate.
33. A system of onsite stormwater detention shall be provided within the property in accordance

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with Council's "Specification for on-site stormwater management 2003". The design and details shall be submitted with the Construction Certificate Application and be approved by the Principal Certifying Authority **prior to the issue of the Construction Certificate**.

The specification can be downloaded from Council's web site www.manly.nsw.gov.au free of charge or a hardcopy can be purchased from Council.

34. All balconies (above 2 storeys) shall be graded and drained to an internally concealed drainage system.
35. A positive covenant in respect of the installation and maintenance of onsite detention works is required to be imposed over the area of the site affected by onsite detention and/or pump system prior to the issue of the Occupation Certificate for the building and **prior to the release of the trust fund deposit**.
36. A positive covenant is an encumbrance to be registered on the title of your land. It imposes an obligation upon you and subsequent owners to comply with the obligations imposed by the covenant. Where onsite detention works and/or pump system are to be installed pursuant to a development or building condition, Council will require a specifically worded covenant to be registered on the relevant title. The standard wording of the positive covenant can be obtained in sections A8 and A9 of the "Specification for on-site stormwater management 2003".

The document can be downloaded from Council's web site www.manly.nsw.gov.au free of charge or a hardcopy can be purchased from Council.

37. The basement carparking level is to be adequately protected from flooding. Details are to be submitted to the Principal Certifying Authority **prior to the issue of the Construction Certificate**.
38. A Fire Safety Schedule specifying the fire safety measures (both current and proposed) that should be implemented in the building premises shall 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.

39. The building being erected in Type A construction for a Class 2 & 7 building in accordance with the Fire Resistance Provisions of the Building Code of Australia.
40. All building work must be carried out in accordance with the provisions of the Building Code of Australia.
41. Excavation adjacent to the road boundary shall be adequately shored to support the roadway and all improvements and services within the road reserve. Protective fencing shall be provided to ensure the safety of the public.
42. Landscaping is to be carried out in accordance with the approved Landscape Plan submitted in conjunction with the Development Application. Evidence of an agreement for the maintenance of all plants for a period of 12 months from the date of practical completion of the building is to be provided to the Principal Certifying Authority **prior to issue of the Final Occupation Certificate**.
43. All lights used to illuminate the exterior of the buildings or site shall be positioned and/or fitted with cut off luminaires (baffles) so as to prevent the emission of direct light onto adjoining roadways and land.

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44. Any ancillary light fittings fitted to the exterior of the building are to be shielded or mounted in a position to minimise glare to adjoining properties.
45. Full details of the cooling towers, exhaust fan structures and other structures on the roof are to be provided to the Principal Certifying Authority **prior to issue of the Construction Certificate**.
46. **Prior to the commencement of any works** on the land including demolition and site preparation, provision of silt control fences shall be provided. A Sediment/Erosion Control detail shall be submitted to the Certifying Authority **prior to the issue of the Construction Certificate**.
47. **Prior to the issue of the Construction Certificate**, the applicant shall submit details of protective hoardings, fences, and lighting which are to be provided during demolition, excavation and building works in accordance with the requirements of the Department of Industrial Relations, Construction Safety Act and the WorkCover Authority.

Note: On corner properties, particular attention is to be given to the provision of adequate sight distances.

48. Prior to the sale, transfer, assignment or other disposal of or leasing or parting with provision of any part of the land subject to this approval, a copy of the approval shall be given to the purchaser, transferee, assignee, leasee, occupier or other person of that part of the land.
49. All materials on site or being delivered to the site shall generally be contained within the site. The requirements of the Protection of the Environment Operations Act 1997 shall be complied with when placing/stockpiling loose material, disposing of concrete waste, or other activities likely to pollute drains or water courses.
50. The applicant shall consult with Energy Australia to determine the need and location of any electrical enclosure for the development. Should an electrical enclosure be required, the location and dimensions of this structure are to be detailed prior to the issue of a Construction Certificate. In the event of Energy Australia requiring a sub-station, the applicant shall consult with Council or its delegate with a view to dedication of the land for the sub-station as public roadway.
51. The works require the following inspection/certification during the course of construction:-

- Silt control fences
- Footing inspection - trench and steel
- Reinforced concrete slab (6)
- Framework inspection
- Wet area moisture barrier (6)
- Drainage inspection (3)
- Driveway crossing/kerb layback (3)
- Landscaping inspection
- Swimming pool reinforcing steel inspection
- Swimming pool safety fence inspection
- Final inspection

The cost of these inspections by Council is \$1793.00 (being \$70.00 per inspection and \$113.00 for Final inspection inclusive of GST). **Should you require Council to undertake the inspection/certification, then payment is required prior to the first inspection. Inspection appointments can be made by contacting the Development Assessment**

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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 \$80.00.

52. An Occupation Certificate is to be issued by the Principal Certifying Authority **prior to occupation of the development.**
53. Issue of a Compliance Certificate from the Principal Certifying Authority prior to occupation to the effect that:
 1. Required inspections have been undertaken and the work has been completed in accordance with the approved plans and specifications, the Development Consent and the Construction Certificate.
 2. Documentary evidence relative to:
 - Any tie down and bracing details
 - wet areas waterproofing certificate
 - reinforcement concrete and structural members details
 - structural engineers inspection certificate
 - survey certificate
 - floor/finished ridge level certificate
 - hydraulic consultants certificate
 - mechanical ventilation engineer's certificate

has been received by the principal certifying authority, this information in accordance with the terms and conditions of the Consent and Construction Certificate and the satisfaction of the Principal Certifying Authority.

54. Payment of \$62,145.16 for the 14 additional dwellings in respect of the contribution for the provision of the public amenities and public services shall be in accordance with Section 94 of the Environmental Planning and Assessment Act, 1979. Arrangements for such payment is to be made in accordance with Council's policy, **prior to issue of the Construction Certificate.**

Note: The attached yellow form is to be returned to Council with your payment of the Contribution.

55. The capacity and effectiveness of erosion and sediment control devices must be maintained to Council's satisfaction at all times.
56. Stockpiles of topsoil, sand, aggregate, spoil or other material shall be stored clear of any drainage line or easement, natural watercourse, kerb or road surface.
57. Drains, gutters, roadways and access ways shall be maintained free of sediment and to the satisfaction of Council. Where required, gutters and roadways shall be swept regularly to maintain them free from sediment.
58. 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.
59. The applicant and/or builder must prior to the commencement of work, install at the

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periphery of the site, measures to control sedimentation and the possible erosion of the land.

The measures must include:-

- (i) siltation fencing;
- (ii) protection of the public stormwater system; and
- (iii) site entry construction to prevent vehicles that enter and leave the site from tracking loose material onto the adjoining public place.

60. Building or construction work must be confined to the hours between 7.00am to 6.00pm, Monday to Friday and 7.00am to 1.00pm, Saturday, with a total exclusion of such work on Public Holidays and Sundays. Non-offensive works where power operated plant is not used and including setting out, surveying, plumbing, electrical installation, tiling, internal timber or fibrous plaster fixing, glazing, cleaning down brickwork, painting, building or site cleaning by hand shovel and site landscaping, is permitted between the hours of 1.00pm to 4.00pm Saturdays.

Note: That the Protection of the Environment Operations Act 1997 may preclude the operation of some equipment on site during these permitted working hours.

61. The operations of mechanical services are not to give rise to an offensive noise within the meaning of the Protection of the Environment Operations Act 1997.
62. All waste waters and overflow waters from any swimming pool shall be disposed of to the sewer in accordance with the requirements of Sydney Water.
63. The filter pump and motor shall be suitably housed and located as to reduce the possibility of noise nuisance to adjoining or nearby residents.
64. An approved Resuscitation Notice is to be erected in a prominent position in the immediate vicinity of the swimming pool and kept current at all times.
65. The swimming pool is to be surrounded by a child-resistant barrier in accordance with the swimming Pools Act and Regulations 1992 which:
- (a) separates the swimming pool from any residential building situated on the property and from any place adjoining the property; and
 - (b) is designed, constructed, installed and maintained in accordance with the standards prescribed by the Regulations and appropriate Australian Standard.
66. This approval shall expire if the development hereby permitted is not commenced within 2 years of the date hereof or any extension of such period which Council may allow in writing on an application made before such an expiry.
67. The applicant shall comply with all requirements of either the Local or Regional Traffic Advisory Committees.
68. The public footways and roadways adjacent to the site shall be maintained at all times during the course of the work in a safe condition.
69. Applications for a construction zone on a state road require 28 days notice to Council and State Network Services indicating the location and length. All construction zones require the approval of the Manly Traffic Committee.
70. Applications for a construction zone on a local road require 28 days notice to Council

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indicating location and length. All construction zones require the approval of the Manly Traffic Committee.

71. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained. Application must be made through an authorised Water Servicing Coordinator, for details see the Sydney Water web site www.sydneywater.com.au/customer/urban/index or telephone 13 20 92.

Following application a "Notice of Requirements" will be forwarded detailing water and sewer extensions to be built and charges to be paid. Please make early contact **with the Coordinator**, since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.

The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to release of the linen plan/occupation of the development.

72. 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.
73. All disturbed areas shall be stabilised against erosion to Council's satisfaction within 14 days of completion, and prior to removal of sediment controls.
74. In accordance with the Roads Act 1993, written consent from Council shall be obtained and shall be in hand prior to any track-equipped plant being taken in or onto any roadway, kerb & gutter, footway, nature strip, or other property under Council's control.
75. A detailed stormwater management plan shall be prepared to fully comply with Council's "Specification for on-site Stormwater Management 2003 and shall be submitted with the Construction Certificate application. The stormwater management plan shall be prepared by an experienced Chartered Civil Engineer. The Principal Certifying Authority shall ensure that the design compiles with the above said specification prior to the issue of the Construction Certificate.
76. On completion of the drainage works the applicant is required to submit work as executed drawings of the on site stormwater detention system. The work as executed drawings shall be certified by a Chartered Professional Engineer and submitted to Council prior to the Occupation Certificate is issued.
77. A positive covenant and the restriction on the use of land shall be imposed over the area of land affected by on site stormwater absorption/detention system; The standard wording of the positive covenant shall be obtained from Council's "Specification for on-site Stormwater Management 2003' (Appendix A8). The positive covenant shall be imposed prior to the release of the Trust Fund Deposit.
78. Since the property is located at a level higher than the Council's nearest stormwater system on the Southern side of the property, a detail of the connection of the stormwater pipe from the property to Council's Stormwater system shall be submitted to Council and approved prior to the issue of the Construction Certificate.
79. The construction of a vehicular footpath crossing and kerb layback is required. The design and construction shall be in accordance with Council's "Specification for Construction of Vehicular Crossings". The work shall be done with plain concrete. It is the responsibility of the owner, developer and builder that they understand the above specification and strictly comply with the specification. The work shall be Inspected and approved by Council officers. All works shall be carried out prior to issue of the Occupation Certificate

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80. The pedestrian footpath for the full frontage of the property shall be reconstructed as per Manly Council's "Paving Design Guidelines" dated February 2002. The Cost of construction shall be borne by the applicant. The details to be notified on the drawings and shall be submitted with the Construction Certificate application.
81. This approval shall expire if the development hereby permitted is not commenced within 2 years of the date of this consent or any extension of such period which Council may allow in writing on an application made before such an expiry.

ATTACHMENTS

There are no attachments for this report.

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***** End of Environmental Services Division Report No. 94 *****

TO: Land Use Management Committee - 6 December 2004
 REPORT: Environmental Services Division Report No. 95
 SUBJECT: 243-259 Pittwater Road, Manly
 FILE NO: DA325/04

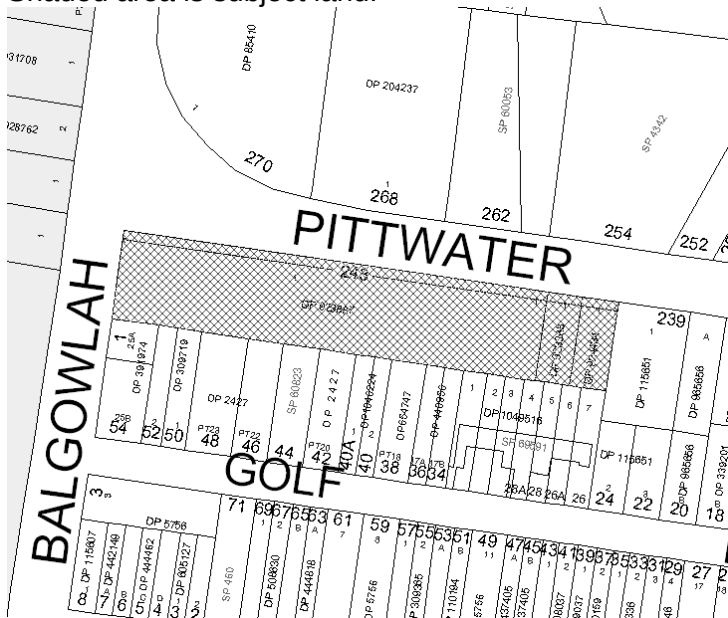
Application Lodged: 1st of July 2004
Applicant: T Sofia
Owner: Dynamic Press Investments Propriety Ltd
Estimated Cost: \$100,000
Zoning: Manly Local Environmental Plan, 1988 - Residential
Surrounding Development: Residential, commercial, recreation and sporting uses.
Heritage: The site contains the former tram depot

SUMMARY:

1. DEVELOPMENT CONSENT IS SOUGHT FOR CONSTRUCTION OF A NEW BUILDING ON PART OF THE SITE INCLUDING A CHANGE OF USE TO A RETAIL FRUIT MARKET.
2. THE PROPOSAL WAS NOTIFIED AND SUBMISSIONS RECEIVED.
3. THE PRECINCT WAS ADVISED AND COMMENTS RECEIVED.
4. FOLLOWING RECEIPT OF SUBMISSIONS THE PLANS WERE REVISED.
5. THE REVISED PLANS WERE NOTIFIED AND OBJECTIONS RECEIVED.
6. THE ROADS AND TRAFFIC AUTHORITY WAS ADVISED AND RAISED NO OBJECTION.
7. THE APPLICATION IS PRESENTED TO THE LAND USE MANAGEMENT COMMITTEE AT THE REQUEST OF COUNCILLOR NOREK.
8. APPROVAL OF THE APPLICATION IS RECOMMENDED SUBJECT TO DETAILED CONDITIONS.

LOCALITY PLAN

Shaded area is subject land.



REPORT

Introduction

This is a proposal for a change of use from mechanical workshop and office associated with car sales to a fruit/vegetable grocery market. The building will contain a retail area cool room storage

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and service area, an unpacking area, two small cool rooms with storage / plant above a washing area and toilet facilities. Towards the front of the building is a trolley storage area and entry ramp. The portion of the site allocated to this use will also have parking for fifteen (15) vehicles, including one (1) for disabled customers and a further six (6) for staff. A loading bay facility is also proposed which will allow delivery trucks to enter and exit the site and a forward direction.

The proposal includes retention of a small section of the existing building adjacent to the rear of the site with dimensions of 4.57 metres by 13.05 metres being 3.2 metres maximum height from ground level to the top of the roof. The proposed new building is 17.58 metres by 25.2 metres and has a wall height of 5.6 metres and is to have steel roofing and the walls will be new block work with a reinforced concrete slab sealed to the standards required for food premises.

The proposed hours of operation are 8.00am to 6.00 p.m., seven days a week.

Development Control Plan Numerical Assessment

The a proposal is to carry out development under the existing use right provisions of the Environmental Planning and Assessment Act 1999 and Regulations 2000 and as such the Development Control Plan for the Residential Zone does not apply. Council must consider the application based on its merit and in terms of section 79 C of the Environmental Planning and Assessment Act 1979

Applicant's Supporting Statement

In support of the proposal, the applicant has submitted a detailed statement of environmental effects. The applicant also submitted an environmental investigation in relation to State Environmental Planning Policy (SEPP) No 55 as a previous use of the site was a service station. As a result of the submissions received the applicant's consultant submitted a report responding to the submissions made and amended plans were also submitted to Council.

Submissions

Council is in receipt of a petition in favour of the application signed by 1832 people. The prayer of a petition being :

"We the undersigned, being residents and shoppers of the Manly Municipality wish to express our approval of the Totem Fruit Market relocation from the Totem Shopping Centre to 243 Pittwater Rd Manly. We are of the opinion that the fruit market will continue to provide a much-needed service to our community as they have done for the past 34 years".

As well as this Council received a letter in support signed by T. Miles, Food Services Coordinator of Manly Meals on Wheels.

Council received a petition signed by 29 residents against the application. The prayer of the petition being-

"As a local resident of the area I would like to state my opposition to the proposed Development Application at 243 Pittwater Rd,(application number 325/2004). There is traffic and safety concerns for a business of this size and location and will set a bad precedent for further business and building developments on this strip."

Council also received letters from 18 residents objecting to the application from-

Mr M and Mrs G de Groen of 28A Golf Parade
Mrs L van der Velde of 34 Golf Parade.
Mr R van der Velde of 34 Golf Parade
Mrs C. Goodwin of 9/71 Pittwater Rd
Mr C and Mrs S Matheson of 30 Golf Parade.

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Director. Brookvale Sand Company and Brookvale Mini-Crete. PO Box 1084 Brookvale NSW
Mrs J. Brown on behalf of Miss D Covey 42 Golf Parade
Mr T. O'Hara-Close of 52 Golf Parade
Mr W. and Mrs E Taylor of 46 Golf Parade
Mr P. Shipley of 31 Golf Parade.
Mrs W. Camelotti and Mr H. Smith coaches of the Keirle Park tennis Centre 277 Pittwater Rd
Ms K Gamble of 242 Pittwater Rd
Mr R McDonald of 2/42 Fairlight Street.
Mrs V Thurlow of 28 Golf Parade
Mr and Mrs L and M Banbury of 26 A Golf Parade.
Mr R Lewis of 10/262 Pittwater Rd
Ms M Jensen of 2/235 Pittwater Rd
Mr T Slattler of Landerer and Company solicitors and attorneys on behalf owners of 183 to 195 Pittwater Rd, and owners of properties in Golf Parade

In general the grounds for objection raised the following issues:

- The site is zoned residential so that any future development should be subject to residential guidelines regarding height shadow and building distances from boundaries.
- We are concerned about the health hazard and risk of rats flies etc.
- We are concerned with noise from the increased traffic
- the height of the proposed wall on the boundary is to double in size from three metres to six metres
- The cool room is positioned directly at our back fence. The refrigeration system will run 24 hours a day and be noisy. We have recently renovated our house the main bedroom is eight metres from this. The noise will interfere with our private and social use of our backyard.
- Trees on the property will have to be removed, because of the position of the cool room. These help reduce traffic noise from Pittwater Rd and give privacy.
- The plans include shopping trolleys there are enough of these already littering our streets.
- The cool room of this height will require the use of a forklift.
- The hours of operation are 8.00 to 5:30 p.m., but machinery and staff require use and activity before and after opening hours. Traffic entering the site will add to the traffic flow there is a roundabout on one side and the RTA to the other.
- Overflowing parking will result in congestion on Pittwater Rd, Golf Parade and Balgowlah Road.
- The Manly area is already serviced by fruit shops and markets.
- Such a use will result in a drop of our property value.
- The wall height on the southern boundary is 4.1 metres, which does not comply with the Manly DCP. The wall would be approximately 1.5 metres higher than the existing boundary wall. The existing mental fascia is not extended along the length of this boundary and setback 4570 millimetres. The increased wall height will increase overshadowing of the north facing back gardens of 32 and 34 Golf Parade. Approval of this building mass could lead to other development along the boundary, leading to further overshadowing of my own property .
- although there are fixed opening hours we are concerned, the loading of produce may still occur outside these hours, creating unwanted noise particularly prior to 8 a.m. Parking appears insufficient we are concerned with the potential for increased traffic and on-street parking in and around the narrow residential street of Golf Parade.
- Traffic hazard for users of Pittwater Rd. Pittwater Rd is a major thoroughfare which for much the day is single carriageway. Locating the fruit market off a well used road, and not far from the busy roundabout, will cause traffic problems and congestion. Hardboard Growers Fruit Market is an example users of this market, regularly block the main road, trying to enter the car park.

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- Health risk with the north- west aspect the site receives a lot of sun and as there is no indication where bins will be stored it is a major concern. Rotting fruit and vegetables produce an odour and pose a significant health risk.
- Existing trees on site currently there are mature conifers on part of the southern boundary which provide a natural screen for noise and aesthetics.
- Existing use rights currently allow for hours of operation from 8 a.m. to 6 p.m., seven days this does not acknowledge deliveries of stock outside these hours, which is inevitable for the market this is a major concern. The noise generated by the increased traffic and the number of people using the premises as a result of the change will increase significantly.
- The site is zoned residential yet the applicant is proposing to extend the two metre high wall to six metres high on the boundary which does not comply with the DCP for the Residential Zone and will shadow residents yards.
- The diagrams are inaccurate with regards the height of the existing wall on the southern boundary.
- The roundabout is particularly busy and tight from the point of view of the truck handling the additional traffic will create serious traffic safety issues.
- When will stocking take place outside of trading hours? Will there be late night trading on Thursdays or holidays.
- The noise from cars parking noise from people getting in and out of cars shopping trolleys trucks loading and unloading and commercial customers out of hours. There will also be 24 hour noise from air-conditioning and plant for the cool room, which is facing our bedrooms.
- We have safety concerns the cars entering and exiting the business this is a busy business and the traffic record on this road is already very poor.
- A precedent will be set for further retail shops along this residential strip.
- The business of this type and size belongs in an industrial area or Warringah Mall.
- We oppose the proposed building the development has not attempted to be sympathetic to the residential properties and exceeds Council guidelines. A three metre high by 13 metres long existing wall is replaced by a 6 metre high 24 metre long wall on the boundary. The third of the wall height setback guideline has been ignored. The nature strip of trees is cut down for the car park. The cool room is directly backing on to residential properties. The plant room with open slat door is facing residential properties. Trees are cut down so from our second-storey we will look at the iron roof. Shadow diagrams are clearly a misrepresentation. If this business fails, we are left with a big building.
- We are concerned with safety for pedestrians
- The Manly area is already adequately serviced with 4 specialist fruit markets.
- There is already too much traffic in Golf Parade without adding more. Patrons of the Fishermen's club frequently park in Golf Parade and surrounding streets.
- Customers coming to the fruit market would use Golf Parade, as an easy way to exit, turning left at the roundabout and up Golf Parade to Manly
- If this is approved we could expect other applications on the remainder of the site.
- The site is next door to RTA and adjacent to a retirement home resulting in increased traffic risk to learner and elderly drivers.
- The site is within the immediate vicinity of a bus stop.
- It is outside the current retail zoning.
- The area is already highly congested on weekends with multiple sporting events
- We already struggle to get in and out of Keirle Park with the amount of traffic. There are already too many accidents around the entrances to the car parks. We are concerned people turning into the new development, particularly turning right across the traffic will bank up the traffic through the roundabout and make it a nightmare for users of Keirle park.
- The application to use the site as a fruit market may set a precedent for the entire site to be redeveloped into a retail strip. We already have a retail strip, operating south of Collingwood Street
- The proposed building is of such a large commercial enterprise amongst what is essentially a residential area.

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- The area is zoned residential, and I believe you are obliged to return it to residential as soon as possible.
- Neither I nor any of my neighbours, has been consultant at all by the developers
- Existing use rights may apply to the existing structure, but they cannot be applied to the development of an entirely new structure on the site
- Shadow will be far worse than the Shadow diagrams show the existing structures are lower and the proposal will have greater effect to that indicates of the diagrams
- No effort has been made to address the noise problem in the proposal
- No consideration has been given to the effect on residential neighbours.

The applicant's examined the submissions received and revised their plans. These plans were once again notified to previous objectors and objections received from the following people

Mrs S and Mr D. Bell of 232 Pittwater Rd
Mr L and Mrs M Banbury of 26A Golf Parade
Mr S. and Mrs V. Thurlow of 28 Golf Parade
Mr C. J. and Mrs C. M. Fleming of 36 Golf Parade
Mrs L. van der Velde of 34 Golf Parade
Mr R van der Velde of 34 Golf Parade
Mr G. Richardson of 40 A Golf Parade
Mr C. Sattler of Sattler and Associates, D. X. 9201 Manly
Mr M. and Mrs G. de Groen of 28 A Golf Parade.
Mr D.J.Sassoon-Gubbay of 3/262 Pittwater Road.
Mr T Galwey of 2/6 Eurobin Avenue
Mrs J Carr of 28 Eurobin Avenue.

As well as this council received a petition signed by 16 owners of business premises in the "North Steyne neighbourhood shopping village" states:

"This proposal to will cause relocation of the retail precinct, leading the existing retail shops, to be bypassed. We need to keep and upgrade our shops, and maintain the life styles of this unique village atmosphere.

Shops are already struggling to have this use 500 metres down the road would be detrimental to our business.

The zoning existing usage is for car yard only, not a retail shop

This is close to the roundabout and has only one lane traffic either way safety is a concern.

Parking for residents is already stretched

It is a unique heritage tram shed that could be transformed with low rise residential housing to something that makes our neighbourhood the Manly's entry fantastic and make is proud to live in this area".

Council received a further petition signed by 98 people however this had no prayer apart from being an objection.

More recently Council received another petition signed by 147 nearby residents. The reasons for objection being:

1. It does not comply with councils DCP for existing use.
2. The increase in traffic would impact negatively on all nearby residents. It poses a danger and a nuisance.
3. The noise generated by running of this fruit market would cause a disturbance to residents seven days a week.
4. We consider it unfair that local residents should suffer from these negative impacts and therefore ask Manly Council is to reject this proposed development.

The individual submissions make the following comments:

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- This section of Pittwater Rd is zoned residential and any development should be subject to residential guidelines.
- We will be affected by the extra noise and traffic and also feel that there would be a health risk from rats flies etc feasting on rotten fruit.
- There is no need for an additional fruit market.
- We object about the impacts on adjoining residential properties in Golf Parade.
- Traffic volume, inadequate provision for parking, motor vehicle and pedestrian safety concerns.
- Economic impact on existing retail centres of Manly CBD, Harbord Village and shops in the local retail precinct in the northern end of Pittwater Rd.
- The proposal is for a nonconforming land-use. The EPA regulation does not say that an additional nonconforming land-use can be added to an existing use site.
- The development has dimensions, 25.4 by 22.4 metres and is proposed to be 5.8 metres high, and construction of cement block walls metal fascia and metal roof. The structure is to be placed on the common boundary shared with neighbouring residential properties in Golf Parade and is partly stepped back from that boundary.
- The latest shadow diagrams misrepresent the shadow and solar access impacts on the adjoining Golf Parade properties. The plan shows an altitude of 20°, it is commonly accepted that the vertical angle to the sun on the winter solstice in Sydney is 18.5°. This would extend the shadow a further 2 metres into the Golf Parade properties. plans DA 04 and 05 exaggerate the height of the existing structure which is probably less than 3.5 metres whereas it scales at 4.85 metres
- Residents adjoining the site will be subject to excessive amounts of noise created by trucks delivering produce and taking away waste from the site which will take place in the early hours of most mornings. Large metal waste bins will be rolled out the back and into the structure ,pallets will be stacked and unstacked and shoppers vehicles parked
- The proposal is located on Pittwater Rd, which is the main traffic artery into and out of Manly and has 1 traffic lane north and 1 south. It already has high-intensity of use and there is little opportunity for road widening. The written material, estimated the proposal generated 57.5 vehicle trips per day and 11.5 trips per evening. It is proposed to provide only 14 parking spaces and one disabled parking space.
- The petition in support of the fruit market has 2300 names of those who have signed the petition. If it is assumed they shop only once a week this would be an additional 330 vehicle trips to the proposal per day over 7 days or 385 trips per day for a six-day week. Of course, most shoppers would converge on the site at similar convenient times and that most of the daily vehicle traffic would occur in the same time periods in each day. It is clear the proposal does not offer sufficient car parking and would create a chaotic intensification of motor vehicle traffic. This section of road already has a history of motor vehicle accidents
- The previous submission is still relevant to the current application.
- The amended plans have not addressed any of the major issues.
- The current business is a quiet car yard and storage facility, residents have renovated homes and bought property backing onto residential land with a limited lease as a car yard. It is difficult to get rid of business and a building should not be allowed to be built in the first place.
- Mr Sofia plans to trade between the hours of 8 a.m. and 6 p.m., seven days a week, not one day of rest. Pre-opening and after closing activity should also be taken into account. Noisy early morning and evening and on weekends, beside backyards and bedrooms from cars people trolleys and machinery.
- Extended trading hours creating noise early in the morning and evening and on weekends from delivery of produce and supplies garbage handling and other external services. The new business will have a plant room to run the cool room and air-conditioning units that run 24 hours a day, seven days a week. In Golf Parade we had a freezer works for many years

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and will not accept refrigeration and traffic noise in a residential area. Manly Freezers created enormous power surges as well, this will no doubt happen again.

- The proposal will add a large amount of traffic to Pittwater Road no traffic study has been submitted.
- the applicant has not made any effort to fit into the residential area.
- The applicant has already shown disrespect of local residents when he has illegally started an ultra tune business on the car yard site which constantly creates noise
- This is not a suitable gateway to Manly
- The parking situation for residents along this stretch of Pittwater Rd is a nightmare.
- Obviously none of the 2000 signatories of the petition live in the adjoining residences. People who signed his petition, will not drive from the Totem to the proposed site, but would be more likely to shop at Coles Manly Vale.
- A local retailer did not stir up resentment.
- The concern for parking in Golf Parade relates to staff, not customers.
- How can he be opened at 8 a.m. and close at 6 p.m. without pre-and post opening activity.
- He states the cool room is virtually soundproof however, it must be ventilated He states most of the refrigerators will be self-contained. The two or three motors located outside the building will be new motors, which are required to comply with noise pollution regulations. Placing them on the western side of the building does not make them quieter.
- Residents agree that the site is in need of a facelift I don't consider fruit market an appropriate facelift.
- Mr Sofia is still operating at Totem
- To allow a retail operation on the site of the used car sales would at the very least require an underground car park.
- No mention is made in the proposal about waste management.

Precinct Community Forum Comments

DA 243-259 Pittwater Rd (fruit market) (23 opposed to debt, 1 in support (being the applicant), 3 abstain (A/Chairman Peter Armstrong, Cr Norek + 1 other).

The precinct opposed the development, due to:

1. the new structure
2. no rear setback
3. overshadowing
4. hours of operation
5. noise from forklifts, cool room equipment etc
6. parking and traffic
7. trolley pollution
8. health reasons, rats and odours
9. intensification of use
10. loss of trees
11. zoning (residential). Any change of use must be a lesser use or comply with zoning.

Engineers Comments

No objections to the development subject to the imposition of a number of conditions.

Building Comments

No objections to the proposed alterations and additions to an existing building and its use as a proposed Class 6-fruit market, requiring construction in accordance with the BCA and subject to inclusion of a number of conditions in any consent.

Environmental Services Division Report No. 95 (Cont'd)**Traffic Engineers Comments**

No adverse comments

Roads and Traffic Authority Comment

The development is on Pittwater Road, a Main road and was referred to the Roads and Traffic Authority for comment. Council received the following comment.

"The RTA has assessed the development application and raises no objections as the proposed development will have minimal impact on the classified road network in the vicinity"

Heritage advises Comments

Proposal

The proposal involves erection of a new single storey building which will be used to sell fruit and groceries. The proposed development will provide car parking for the customers and also have loading bay facilities. The subject site is currently used to sell second hand cars, but has been used as a service station in the recent past. The plans also show demolition of an existing building on the site.

Heritage item

The subject site is in the vicinity of heritage items under schedule 4 of the Manly LEP 1988, including the former tram depot building, which is part of the subject site and leased to a car dealership, and is in the vicinity of the Pittwater Road, Conservation Area and the listed Pumping Station to the north of the site (252 Pittwater Road)

Clause 19 of the Manly LEP is relevant to this application.

Comments

It is noted that the site was once occupied by the former tram depot and associated infrastructure, including office buildings and open areas for the trams. The site may still contained evidence of the tram tracks and this should be investigated. In addition, the current open space adjacent to the former tram depot remains and represents semi industrial and transport use of the site. The setting of the tram depot will be adversely affected by the loss of the openness around the site by any additional buildings or structures.

There is no statement of heritage impacts submitted and the SEE does not discuss the archaeological potential of the site to reveal evidence of the former historic use of the site as a tram terminus. If any excavation is involved, (including any potential remediation works) then this may adversely affect such relics and require a permit to be obtained from New South Wales Heritage office.

The SEE does not discuss the listed former tram depot,(except on DA 01 as the old tram shed) located on the site and the impact of the proposal on the setting and interpretation of the historic use of the site. The application should be refused for its adverse impact on the sites potential archaeological significance, and adverse impact on the setting of the heritage listed former tram depot building and its historic/cultural significance.

Alternatively, the new use should be confined to the existing buildings on site to retain the significance of the item and the application amended.

If approval is recommended the following conditions are required;

1. No covering of the area between the proposed fruit shop and the tram depot building.

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2. An archival quality photographic record is to be made of the affected parts of the building (exterior and interior) and submitted to Council prior to issue of the construction certificate. The archival material is to include a copy of the development application plans which includes the existing floor plan and elevations (A4 size). The photographs are to be in black-and-white and colour and referenced to the plans of the existing. The photographic record and the black-and-white negatives are to be submitted in an A4 format and when received will be lodged with the Manly Local Studies Library.
3. If during the course of excavation relics are found, works are to stop and an excavation permit must be obtained from New South Wales Heritage Council in accordance with the relics provisions of the Heritage act 1977. A copy of this permit and archaeologists report is to be submitted to Council.
4. A separate development application is to be submitted for any signage and is to be sympathetic to the heritage significance of the site. No signage is permitted above the proposed veranda, except for the name of the business.

Planning Comments

This application is to use part of the site that was previously used as a service station, and as such the requirements of State Environmental Planning Policy (SEPP) No 55 come into operation. In response the applicant submitted a detailed report from A.D.Envirotech Australia, Propriety Ltd. This report came to the conclusions that:

- There is no evidence to indicate subsurface contamination on the subject site with regard to petroleum hydrocarbons, benzene, toluene, ethyl-benzene, xylene, lead, polyaromatic hydrocarbons and phenols,
- The subject site is suitable for commercial/residential development.

In the light of this report the application raises no concerns.

Council has received a significant number of submissions concerning traffic aspects of the development and the potential danger as a result of the proposed development. In this regard Council's traffic engineer has accepted the comment obtained from the Roads and Traffic Authority, which raised no objection to the proposed development.

The site has existing use rights and in this regard the applicant consultant has made reference to various consents from the past when this section of the site was used as a service station. As well as this a larger portion of the site has been used as car sales yards with detailing of motor vehicles and more recently consent was granted to use a major section of the old tram shed for a storage business. In relation to existing uses, Council can grant consent to a new use taking place on site as well as increased intensification of use, it can grant consent to a new building, and it can also consent to changing the proportions of various uses taking place on site. In the consideration of any application Council must consider the merits of the proposal and cannot use the Objectives of the Residential Zone or the Development Control Plan for the Residential Zone as a way of limiting consideration of such an application. The existing use rights provisions in the Environmental Planning and Assessment Act 1979 and Regulations 2000 are incorporated provisions in the Manly LEP and a Development Control Plan cannot be used to prevent the consideration of existing use rights. In this regard the proposition put forward by the objector's solicitor that Council cannot consider an additional non-conforming land-use is contrary to the interpretation that has been placed on the legislation by the Land and Environment Court of New South Wales. The applicant's solicitors Hones Lawyers, Solicitors and Barristers have responded to the applicant's proposition and this letter is available on file. In general the solicitors arrive at the conclusion that Council has the ability to consider the application in its current form.

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Objections have been made about the extent of the development and the degree of overshadowing. It should be noted that the existing building is retained adjacent to this boundary. It is agreed that the angle of sunlight in midwinter, is 18.5° at 3 o'clock, and not the 20° nominated in the drawing submitted, however, the affect of this additional strip of shadow is not sufficient to warrant refusal of the application.

Council received a number of submissions in relation to the potential noise disturbance caused by the business and in this regard standard conditions are included in the recommendation in order to control the emission of noise. It should be noted that the plans locate the plant away from the common boundary with the residential properties, so that it can be effectively screened in order to avoid noise disturbance.

The concern has been raised that the hours of operation stated are between 8.00am and 6.00 p.m., seven days a week however, that there will be extended operations, both before and after these timeslots. In this regard conditions of consent will be placed on the application in order to ensure that this does not happen and that the applicant carries out their operation in accordance with the application.

In reference to Section 79 C of the Environmental Planning and Assessment Act the proposal is permissible under the existing use provisions contained in the Environment Planning and Assessment Act 1979 and the Environment Planning and Assessment Regulations 2000. In relation to the likely impacts of the development it is considered that with adequate conditions on the control of noise and the hours of operation, the proposal is appropriate for this large site. The traffic generation of the proposed development calculated in accordance with the Traffic Authority Policy and Guidelines shows that the amount of car parking on site is adequate for the use. The Roads and Traffic Authority have agreed that the proposal will not have an adverse effect on the Main Road system. It is considered that the degree of increased shadow caused by the new building does not warrant refusal of the application and that the site is suitable for the proposal.

Council's Heritage adviser has put forward recommendations in relation to potential archaeological finds on site however, it should be noted that the proposal is to place a slab over the existing concrete on site, so that there will be no excavation and removal of archaeological objects. The proposition that the new building should not cover more than the existing cannot be associated with the previous service station is not accepted, given the scale of the site. Other recommendations in relation to obtaining photographic records of the site as well as requiring separate application for signage are included as conditions within the recommendation.

CONCLUSION:

The application has been considered in terms of the Manly LEP 1988 and the Environmental Planning and Assessment Act 1979 and Regulations 2000. It is considered that with suitable conditions the proposal can be supported and recommended favourably.

RECOMMENDATION

That the Development Application No. 325/04 for alterations and additions to the existing building and change of use to a fruit market at 243 to 259 Pittwater Rd. Manly be approved subject to the following conditions:

1. This approval relates to drawings/plans No. DA01 dated 2 Sept 2004, DA02 & 04 dated 28 Sept 2004, DA03 & 05 dated 27 Sept 2004 and received by Council 30 September, 2004.
2. A single entrance is permitted to service the site for demolition and construction. The footway and nature strip at the service entrance shall be planked out.
3. Pursuant to Section 97 of the Local Government Act, 1993, Council requires, **prior to issue**

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of the Construction Certificate, or commencement of any excavation and demolition works, payment of a Trust Fund Deposit of \$5000. The Deposit is required as security of compliance with Conditions of Consent, and as security against damage to Council property during works on the site.

Note: Should Council property adjoining the site be defective eg, cracked footpath, broken kerb etc., this shall be reported in writing to Council, **at least 7 days prior to the commencement of any work on site.**

4. Any adjustment to the public utility service is to be carried out in compliance with their standards and the cost is to be borne by the applicant.
5. Details of the builder's name and licence number contracted to undertake the works shall be provided to Council **prior to issue of the Construction Certificate.**
6. 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.
7. A sign must be erected on the subject site in a prominent position stating that unauthorised entry is prohibited and giving details of the name of the builder or the person responsible for the site and 24 hour contact details. The sign is to have dimensions of approximately 500mm x 400mm.

Note: The sign is not required if the building on the site is to remain occupied during the course of the building works.

8. All construction works shall be strictly in accordance with the Reduced Levels (RLs) as shown on the approved plans with certification being submitted to the Principal Certifying Authority during construction from a registered surveyor certifying ground and finished ridge levels.
9. Consent given to build in close proximity to the allotment boundary is in no way to be construed as permission to build on or encroach over the allotment boundary. Your attention is directed to the provisions of the Dividing Fences Act which gives certain rights to adjoining owners, including use of the common boundary. In the absence of the structure standing well clear of the common boundary, it is recommended that you make yourself aware of your legal position which may involve a survey to identify the allotment boundary.
10. Four (4) certified copies of the Structural Engineer's details in respect of all reinforced concrete, structural steel support construction and any proposed retaining walls shall be submitted to the Principal Certifying Authority **prior to the issue of the Construction Certificate.**
11. Where any excavation extends below the level of the base of the footing of a building on an adjoining allotment of land, the person causing the excavation shall support the neighbouring building in accordance with the requirements of the Building Code of Australia.
12. The implementation of adequate care during demolition/ excavation/ building/ construction to ensure that no damage is caused to any adjoining properties.
13. 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.

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14. Four (4) Architectural drawings and Services Specifications are to be submitted with the application for a Construction Certificate.
15. All external cladding and trim of the approved building shall be of a non reflective nature. Details of such finishes shall be **submitted with the Construction Certificate Application**.
16. All plumbing and drainage, including sewerage drainage stacks, ventilation stacks and water service pipes shall be concealed within the building. Plumbing other than stormwater downpipes shall not be attached to the external surfaces of the building.
17. Adequate provision shall at all times be made on the land for the parking of motor vehicles associated with the use of the land.
18. Loading and unloading of vehicles and delivery of goods to the land shall at all times be carried out within the site. The area set aside for carparking as shown on the approved plan shall be used for the parking of vehicles and for no other purpose. Any loading or unloading of materials of potential environmental damage must be appropriately bunded with adequate spill response equipment in place to ensure nil runoff from the site.
19. The use at all times shall be conducted so that no odours or other air impurities are detectable beyond the boundaries of the premises.
20. Any discharge to the atmosphere from the subject development shall comply with the requirements of the Protection of the Environment Operations Act 1997.
21. All work involving lead paint removal must not cause lead contamination of the air or ground.
22. Roofwaters and surface stormwaters from paved areas is to be conveyed by pipeline to Council's street gutter.
23. A system of onsite stormwater detention shall be provided within the property in accordance with Council's "Specification for on-site stormwater management 2003". The design and details shall be submitted with the Construction Certificate Application and be approved by the Principal Certifying Authority **prior to the issue of the Construction Certificate**.

The specification can be downloaded from Council's web site www.manly.nsw.gov.au free of charge or a hardcopy can be purchased from Council.

24. All demolition is to be carried out in accordance with AS2601-1991.
25. Asbestos cement sheeting must be removed in accordance with the requirements of the WorkCover Authority.
26. All building work must be carried out in accordance with the provisions of the Building Code of Australia.
27. All sound producing plant and equipment being installed and operated in such a manner so as not to create a noise nuisance.
28. **A clear and unobstructed path of travel** is to be provided to all required exit doors in the building, each being at least 1000mm wide (subject to an increase required by any other condition herein in relation to aggregate exit width) and 2000mm in height.

NOTE: The owner of a building who AT ANY TIME fails to keep a path of travel leading to a

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required exit, or a stairway, passageway or ramp serving as or forming part of a required exit clear of anything which may impede the free passage of persons is guilty of an offence and liable to a penalty of \$1,000.00.

29. Portable fire extinguishers of a suitable type shall be provided for the protection of electrical switchboards, food preparation areas, etc in accordance with Clause E1.6 of the Building Code of Australia.
30. The construction, fitout and finishing of the premises shall comply with the Food Safety Standards Australian Standard 4674-2004 Food Act 2003 and Food Regulation 2004. Certification as to compliance shall be submitted to the Principal Certifying Authority **prior to issue of the Construction Certificate.**
31. All service pipes including beer pipes, electrical conduits, and refrigeration condensate pipes shall be chased into walls, floor or plinths.
32. Where it is not possible or permitted to conceal service pipes, they are to be fixed on brackets so as to provide at least 25mm clearance between the pipe and adjacent vertical surface and 100mm between the pipe and adjacent DA198 The door(s) of the coolroom(s) shall be openable at all times from the inside without the use of a key.
33. The door(s) of the coolroom(s) shall be openable at all times from the inside without the use of a key.
34. An approved audible alarm device(s) shall be located outside the coolroom(s) but controllable only from within the coolroom(s).
35. All proposed shelving in the coolroom shall be free-standing, constructed of approved material and treated to prevent corrosion with the lowest 150mm clear of the floor.
36. The coolroom(s) shall operate so that all food capable of supporting rapid bacterial growth is kept cold at a temperature of not more than 5 degrees Celsius with the coolroom being provided with a numerically scaled thermometer or recording thermometer accurate to the nearest degree Celsius and able to be easily read from the room outside.
37. A hand basin with a common spout is to be provided within the food preparation area, in an approved and conveniently located position with a supply of hot and cold water under pressure.
38. A cleaner's sink shall be provided in a room or space away from any food preparation area.
39. Adequate facilities shall be made available for the storage of cleaning equipment and material.
40. A garbage room or garbage receptacle storage area shall be provided within the site in an approved position constructed in accordance with the requirements of Council.
41. All lights used to illuminate the exterior of the buildings or site shall be positioned and/or fitted with cut off luminaires (baffles) so as to prevent the emission of direct light onto adjoining roadways and land.
42. **Prior to the commencement of any works** on the land including demolition and site preparation, provision of silt control fences shall be provided. A Sediment/Erosion Control detail shall be submitted to the Certifying Authority **prior to the issue of the Construction Certificate.**

Environmental Services Division Report No. 95 (Cont'd)

43. Prior to the sale, transfer, assignment or other disposal of or leasing or parting with provision of any part of the land subject to this approval, a copy of the approval shall be given to the purchaser, transferee, assignee, leasee, occupier or other person of that part of the land.
44. All materials on site or being delivered to the site shall generally be contained within the site. The requirements of the Protection of the Environment Operations Act 1997 shall be complied with when placing/stockpiling loose material, disposing of concrete waste, or other activities likely to pollute drains or water courses.
45. Any future structures to be erected on the site shall be the subject of a Development Application and Construction Certificate Application.
46. The applicant shall consult with Energy Australia to determine the need and location of any electrical enclosure for the development. Should an electrical enclosure be required, the location and dimensions of this structure are to be detailed prior to the issue of a Construction Certificate. In the event of Energy Australia requiring a sub-station, the applicant shall consult with Council or its delegate with a view to dedication of the land for the sub-station as public roadway.
47. A Construction Certificate Application is required to be submitted to and issued by the Principal Certifying Authority **prior to any building works being carried out on site.**
48. The works require the following inspection/certification during the course of construction:-
 - Silt control fences
 - Footing inspection - trench and steel
 - Reinforced concrete slab
 - Framework inspection
 - Drainage inspection
 - Health inspection
 - Final inspection

The cost of these inspections by Council is \$533 (being \$70.00 per inspection and \$113.00 for Final inspection inclusive of GST). **Should you require Council to undertake the inspection/certification, then payment is required prior to the first inspection. Inspection appointments can be made by contacting the Development Assessment Unit on 9976 1573 or 9976 1587.**

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 \$80.00.

49. An Occupation Certificate is to be issued by the Principal Certifying Authority **prior to occupation of the development.**
50. A Section 73 compliance Certificate under the Sydney Water Act 1994 must be obtained. Application must be made through an authorised Water Servicing Coordinator, for details see the Sydney Water web site www.sydneywater.com.au/customer/urban/index or telephone 13 20 92.

Following application a "Notice of Requirements" will be forwarded detailing water and sewer extensions to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.

Environmental Services Division Report No. 95 (Cont'd)

The Section 73 Certificate must be submitted to the principal Certifying Authority prior to release of the linen plan/occupation of the development.

51. The capacity and effectiveness of erosion and sediment control devices must be maintained to Council's satisfaction at all times.
52. Drains, gutters, roadways and access ways shall be maintained free of sediment and to the satisfaction of Council. Where required, gutters and roadways shall be swept regularly to maintain them free from sediment.
53. 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.
54. Stormwater from roof areas shall be linked via a temporary downpipe to a Council approved stormwater disposal system immediately after completion of the roof area. Inspection of the building frame will not be made until this is completed to Council's satisfaction.
55. The applicant and/or builder must prior to the commencement of work, install at the periphery of the site, measures to control sedimentation and the possible erosion of the land.

The measures must include:-

- (i) siltation fencing;
- (ii) protection of the public stormwater system; and
- (iii) site entry construction to prevent vehicles that enter and leave the site from tracking loose material onto the adjoining public place.

56. No external sound amplification equipment or loud speakers shall be used for the announcement, broadcast, playing of music or similar purposes.
57. Building or construction work must be confined to the hours between 7.00am to 6.00pm, Monday to Friday and 7.00am to 1.00pm, Saturday, with a total exclusion of such work on Public Holidays and Sundays. Non-offensive works where power operated plant is not used and including setting out, surveying, plumbing, electrical installation, tiling, internal timber or fibrous plaster fixing, glazing, cleaning down brickwork, painting, building or site cleaning by hand shovel and site landscaping, is permitted between the hours of 1.00pm to 4.00pm Saturdays.

Note: That the Protection of the Environment Operations Act 1997 may preclude the operation of some equipment on site during these permitted working hours.

58. The operations of mechanical services are not to give rise to an offensive noise within the meaning of the Protection of the Environment Operations Act 1997.
59. The hours of operation of the premises shall not exceed 8am – 6pm 7 days a week **without the prior approval of Council**.
60. Development consent of Council shall be obtained for any new advertising structure prior to erection.
61. No sandwich boards or the like are to be placed on Council's footpath.
62. In accordance with the Roads Act 1993, written consent from Council shall be obtained and shall be in hand prior to any track-equipped plant being taken in or onto any roadway, kerb & gutter, footway, nature strip, or other property under Council's control.

Environmental Services Division Report No. 95 (Cont'd)

63. The public footways and roadways adjacent to the site shall be maintained at all times during the course of the work in a safe condition.
64. On completion of the drainage works the applicant is required to submit work as executed drawings of the on site stormwater detention system. The work as executed drawings shall be certified by a Chartered professional Engineer and submitted to Council prior to the occupation Certificate is issued.
65. A positive covenant and the restriction on the use of land shall be imposed over the area of land affected by on site stormwater absorption/detention system. The standard wording of the positive covenant shall be obtained from Council's "Specification for on-site Stormwater Management 2003" (Appendix A). The positive covenant shall be imposed prior to the release of the Trust Fund Deposit.
66. This approval shall expire if the development hereby permitted is not commenced within 2 years of the date of the issue of the consent letter or any extension of such period which Council may allow in writing on an application made before such an expiry.

ATTACHMENTS

There are no attachments for this report.

LUM061204ESD_10

***** End of Environmental Services Division Report No. 95 *****

TO: Land Use Management Committee - 6 December 2004
REPORT: Environmental Services Division Report No. 96
SUBJECT: Development Applications Being Processed During December, 2004
FILE NO:

SUMMARY

Development Applications Currently Being Processed During December, 2004.

REPORT

DA#	Date Rec by Council	Site Address	Proposal	Target Date	DEL DAU LUM
DA319/03	16-Jul-03	14 Kempbridge Avenue	Alterations and Additions	Awaiting Information	
DA480/03	3-Oct-03	101 Bower Street Manly	Demolish existing & construct new flats	Awaiting Information	
DA525/03	20-Oct-03	22 Wentworth Street	Change of Use	Awaiting Information	
DA62/04	5-Feb-04	151 Darley Road Manly - St Pat's	Precinct 3 & 12 RFB	Awaiting Information	
DA146/04	18-Feb-04	9-13 South Steyne	Strata Subdivision	L&E COURT	
DA35/04	29-Mar-04	8 The Corso	RFB & Mixed Commercial	Awaiting Information	
DA167/04	15-Apr-04	83 West Street	Demolish & 5 Town Houses	Awaiting Information	
DA540/03	20-Apr-04	9 Barrabooka Street	Section 82A Review	06-Dec-04	DAU
DA209/04	29-Apr-04	36-38 South Steyne	Alts & Adds to Dwelling	07-Dec-04	DAU
DA115/02	2-Jun-04	93-95 North Steyne	Section 96 Modification	08-Dec-04	DAU
DA277/04	9-Jun-04	St Pats Estate 151 Darley Road Lot 1	New Dwelling & Subdivision	17-Dec-04	DAU
DA278/04	9-Jun-04	St Pats Estate 151 Darley Road Lot 2	New Dwelling & Subdivision	17-Dec-04	DAU
DA279/04	9-Jun-04	St Pats Estate 151 Darley Road Lot 3	New Dwelling & Subdivision	17-Dec-04	DAU
DA280/04	9-Jun-04	St Pats Estate 151 Darley Road Lot 4	New Dwelling & Subdivision	17-Dec-04	DAU
DA281/04	9-Jun-04	St Pats Estate 151 Darley Road Lot 5	New Dwelling & Subdivision	17-Dec-04	DAU
DA282/04	9-Jun-04	St Pats Estate 151 Darley Road Lot 6	New Dwelling & Subdivision	17-Dec-04	DAU
DA283/04	9-Jun-04	St Pats Estate 151 Darley Road Lot 7	New Dwelling & Subdivision	17-Dec-04	DAU
DA284/04	9-Jun-04	St Pats Estate 151 Darley Road Lot 8	New Dwelling & Subdivision	17-Dec-04	DAU
DA296/04	18-Jun-04	1 Marine Parade	Alterations & Wheelchair Access	Awaiting Information	
DA88/04	3-Jul-04	22 Arthur Street	Section 82A Review	06-Dec-04	DAU
DA339/04	6-Jul-04	2 Addison Road	Convert Hospital to 5 Unit RFB	08-Jan-05	DAU
DA324/04	13-Jul-04	71 Addison Road	Strata Subdivision	07-Dec-04	DAU
DA347/04	13-Jul-04	149 Pittwater Road	Gallery / Studio	09-Dec-04	DAU
DA341/02	26-Jul-04	20 Ogilvy Road	Section 82A Review	21-Dec-04	DAU

Environmental Services Division Report No. 96 (Cont'd)

DA44/04	27-Jul-04	5 Bruce Street	Section 82A Review	23-Dec-04	DAU
DA378/04	5-Aug-04	26A Darley Road	Shop Fitout	Awaiting Information	
DA382/04	5-Aug-04	33 Beatty Street	Alts & 1st Floor Adds and Pool	Awaiting Information	
DA375/04	6-Aug-04	38 Ocean Street	Alts & 2nd Storey Adds and Terrace	16-Dec-04	DAU
DA386/04	10-Aug-04	85 Lauderdale Avenue	Demolish & New 4 Unit RFB & Carparking	16-Dec-04	DAU
DA555/00	12-Aug-04	28 Castle Circuit	Section 96 Modification	14-Dec-04	DAU
DA392/04	18-Aug-04	7&13A Gordon Street	Alts & Adds and Pool	04-Jan-05	DEL
DA401/04	18-Aug-04	95 Balgowlah road	16 Unit RFB & Carparking	09-Dec-04	DAU
DA244/04	25-Aug-04	22 Seaforth Crescent	Section 82A Review	08-Dec-04	DAU
DA402/04	26-Aug-04	78 Curban Street	Demolish Dwelling & Subdivide Lot	09-Dec-04	DAU
DA416/04	27-Aug-04	73-81 Addison Road	9 Unit RFB & 4 Commercial Units	16-Dec-04	DAU
DA406/04	30-Aug-04	15 Jenner Street	New Dwelling and Pool	09-Dec-04	DAU
DA426/04	30-Aug-04	3&65 Rignold Place	Boatshed & Inclinator	15-Dec-04	DAU
DA172/02	1-Sep-04	47 Pacific Parade	Subdivision	06-Dec-04	DAU
DA96/04	1-Sep-04	111A Seaforth Crescent	Section 82A Review	08-Dec-04	DAU
DA405/04	1-Sep-04	99-100 Frenchs Forest Road	Two Lots into Three	14-Dec-04	DAU
DA43/003	3-Sep-04	9 Kangaroo Street	Alterations and Additions	Awaiting Information	
DA339/02	6-Sep-04	59 Lauderdale Avenue	Section 96 Modification	14-Dec-04	DAU
DA443/04	6-Sep-04	Clavering Road	Subdivision	21-Dec-04	DAU
DA421/04	6-Sep-04	14 Bolingbroke Parade	Alterations and Additions	09-Dec-04	DAU
DA430/04	9-Sep-04	1 Dalwood Avenue	Demolish, New Dwelling, Pool & Garage	16-Dec-04	DAU
DA465/04	14-Sep-04	21 Grandview Grove	Shade Structure	21-Dec-04	DAU
DA130-/04	21-Sep-04	241-243 Sydney Road	Section 82A Review	16-Dec-04	DAU
DA448/04	21-Sep-04	76 Curban Street	Demolish & Subdivide	Awaiting Information	
DA193/04	22-Sep-04	68 Edgecliffe Esplanade	Section 82A Review	16-Dec-04	DAU
DA467/04	22-Sep-04	3 Beaconview Street	Alts & 1st Floor Addition	14-Dec-04	DAU
DA437/02	23-Sep-04	2 Barrabooka Street	Section 96 Modification	07-Dec-04	DAU
DA449/04	24-Sep-04	10 Lombard Street	Alterations & Additions & Carport	02-Dec-04	DAU
DA450/04	27-Sep-04	69 Woodland Street	Alts & Adds, Deck & Pergola	09-Dec-04	DAU
DA451/04	27-Sep-04	17 Rosedale Avenue	Alts & Adds including Room in Roof	09-Dec-04	DAU
DA455/04	29-Sep-04	24 Dobroyd Road	Alts & Adds to Dwelling	04-Jan-05	DEL
DA460/04	1-Oct-04	17 Alan Avenue	Alts & 1st Floor Adds	03-Jan-05	DAU
DA476/04	6-Oct-04	72 Frenchs Forest Road	Fence & Entry Gates	16-Dec-04	DAU

Environmental Services Division Report No. 96 (Cont'd)

DA464/04	6-Oct-04	9 Mullgowire Crescent	New Dwelling and Pool	03-Dec-05	DAU
DA176/04	7-Oct-04	2 Moore Street	Section 82A Review	14-Dec-04	DAU
DA466/04	8-Oct-04	2 Ainslee Place	New 2 Storey Dwelling	04-Jan-05	DEL
DA484/04	11-Oct-04	22 Curban Street	Awning & Satellite Dish	Awaiting Information	
DA3852/90	11-Oct-04	3 King Avenue	Section 96 Modification	Awaiting Information	
DA239/02	15-Oct-04	42 Grandview Grove	Section 96 Modification	21-Dec-04	DAU
DA480/04	19-Oct-04	4 Nolan Place	Alts & Adds to Dwelling	16-Dec-04	DAU
DA494/04	21-Oct-04	43 Jamieson Avenue	Alts & 1st Floor Addition	10-Jan-05	DEL
DA487/04	21-Oct-04	49 Golf Parade	Demolish, Two (2) New Semi Detached Two Storey Dwellings and Subdivision	Awaiting Information	
DA380/04	25-Oct-04	10 Smith Street	Section 82A Review	21-Dec-04	DAU
DA537/03	25-Oct-04	80 Beatrice Street	Section 96 Modification	13-Dec-04	DAU
DA312/02	26-Oct-04	63 Collingwood	Section 96 Modification	18-Jan-04	DAU
DA496/04	26-Oct-04	34 Upper Beach Street	Alts & Adds, Pool and Deck	10-Jan-05	DEL
DA491/04	26-Oct-04	17 Maretimo Street	Alterations & Additions	Awaiting Information	
DA489/04	27-Oct-04	32 Cutler Road	Alts & Adds to Dwelling	16-Dec-04	DAU
DA497/04	27-Oct-04	41 Gordon Street	Alts & Adds to Dwelling	25-Jan-04	DAU
DA499/04	29-Oct-04	121 Seaforth Crescent	Replace Deck, New Spa, Awning & Fence	Awaiting Information	
DA498/04	1-Nov-04	40 Upper Beach Street	Alts & Adds to Dwelling	16-Dec-04	DAU
DA398/04	1-Nov-04	26 Jackson Street	Section 96 Modification	Awaiting Information	
DA444/03	3-Nov-04	7 Brighton Street	Section 96 Modification	23-Dec-04	DEL
DA501/04	3-Nov-04	52 Fromelles Avenue	1st Floor Adds, Garage & Laundry	Awaiting Information	
DA528/03	8-Nov-04	75 Fairlight Street	Section 96 Modification	13-Dec-04	DEL
DA492/01	9-Nov-04	165 Condamine Street	Section 96 Modification	Awaiting Information	
DA272/03	9-Nov-04	41 Whistler Street	Section 96 Modification	25-Jan-04	DAU
DA326/04	10-Nov-04	4/114 Bower Street	Section 82A Review	23-Dec-04	DAU
DA510/04	10-Nov-04	18 Hill Street	Alterations & Additions	Awaiting Information	
DA505/04	10-Nov-04	158 Woodland Street	New Kitchen, Extend Family Room & Deck	Awaiting Information	
DA504/04	10-Nov-04	2 Smith Street	Alterations and Additions	Awaiting Information	
DA616/99	11-Nov-04	1 Jenner Street	Section 96 Modification	Awaiting Information	
DA511/04	15-Nov-04	32 The Corso	Replace Signage	13-Dec-04	DEL
DA287/99	15-Nov-04	81 Wood Street	Section 96 Modification	Awaiting Information	
DA238/02	23-Nov-04	Manly Wharf Hotel	Section 96 Modification	23-Dec-04	DEL
DA316/04	24-Nov-04	13 Dalwood Avenue	Section 96 Modification	Awaiting Information	

Environmental Services Division Report No. 96 (Cont'd)

RECOMMENDATION

That the information be noted.

ATTACHMENTS

There are no attachments for this report.

LUM061204ESD_11

***** End of Environmental Services Division Report No. 96 *****

TO: Land Use Management Committee - 6 December 2004
REPORT: Environmental Services Division Report No. 97
SUBJECT: List of Appeals for December, 2004
FILE NO:

SUMMARY

List of Appeals for December, 2004.

REPORT

Application	Site Address	Appeal Lodged	Solicitor	Status
DA46/04	36-38 South Steyne	20.04.04	Pike Pike & Fenwick	Hearing 8&9 March 2005
DA249/04	12 Tutus Street	12.05.04	Pike Pike & Fenwick	Upheld
DA184/04	104-106 Whistler Street	02.07.04	Pike Pike & Fenwick	Upheld
DA08/04	18 Reddall Street	09.08.04	Abbott Tout	Hearing 3.12.04
DA314/03	30 Boyle Street	12.08.04	Pike Pike & Fenwick	Awaiting New Callover Date
221.53-59	53-39 Osborne Road	27.08.04	Pike Pike & Fenwick	Awaiting Information
DA620/02	10-10A Addison Road	24.08.04	Abbott Tout	Hearing 3&4.2.04
DA494/03	110-112 The Corso	27.08.04	Pike Pike & Fenwick	Consent Order Issued
DA278/03	27-29 Victoria Parade	1.09.04	Abbott Tout	Mediation 3.12.04
DA342/04	90 Lauderdale Avenue	28.09.04	Pike Pike & Fenwick	Hearing 14.12.04
DA387/03	71 The Corso	28.09.04	Abbott Tout	Callover 02.12.04
DA255/04	102 The Corso	28.09.04	Abbott Tout	Callover 12.02.04
DA267/04	61 Golf Parade	20.10.04	Pike Pike & Fenwick	Awaiting Information
DA214/04	75 Macmillan Street	26.10.04	Pike Pike & Fenwick	Court Mediation 14.01.04-
DA140/04	92 Bower Street	26.10.04	Abbott Tout	Callover 30.11.04

Approximate year to date legal costs (*from 1 July, 2004*) - \$424K

Recovered costs (*from 1 July, 2004*) - \$150K.

Net Legal Costs (*from 1 July, 2004*) - \$274.

RECOMMENDATION

That the information be noted.

ATTACHMENTS

There are no attachments for this report.

LUM061204ESD_12

Environmental Services Division Report No. 97 (Cont'd)

***** End of Environmental Services Division Report No. 97 *****