

Agenda

Manly Independent Assessment Panel

Notice is hereby given that a Manly Independent Assessment Panel of Council will be held at Council Chambers, 1 Belgrave Street, Manly, on:

Thursday 17 June 2010

Commencing at 10:00:00 AM for the purpose of considering items included on the Agenda.

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DECLARATIONS OF INTEREST

SITE INSPECTIONS

The Manly Independent Assessment Panel will leave Town Hall at 8:00am on Thursday, 17 June 2010 for a site inspection on each agenda item.

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***** END *****

TO: Manly Independent Assessment Panel - 17 June 2010
REPORT: MIAP Report No. 31
SUBJECT: 11 Edwin Street, Fairlight - DA5/10
FILE NO: DA5/10

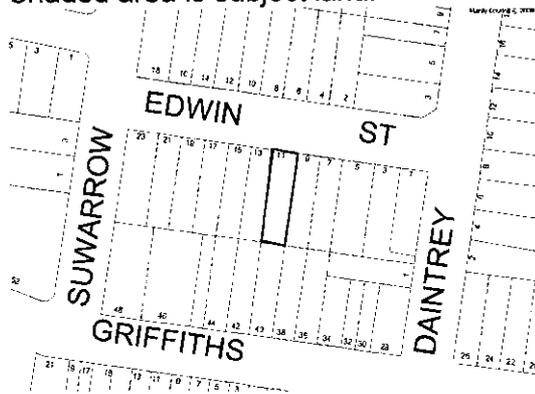
Application Lodged: 11 January 2010
Applicant: Beecroft Pty Ltd
Owner: Mike & Kerryn Baird
Estimated Cost: \$500,000
Zoning: Manly Local Environmental Plan, 1988 - Residential
Surrounding Development: One and two storey residential dwellings
Heritage: Edwin Street is listed for its street tree planting

SUMMARY:

1. DEVELOPMENT CONSENT IS SOUGHT FOR PARTIAL DEMOLITION, ALTERATIONS AND FIRST FLOOR ADDITIONS AT THE REAR, EXTENSIONS AND RETAINING WALL CHANGES.
2. THE APPLICATION WAS NOTIFIED TO ALL ADJOINING AND NEARBY PROPERTY OWNERS AND THREE (3) SUBMISSION RECEIVED.
3. THE APPLICATION WAS REFERRED TO THE IVANHOE PARK PRECINCT COMMUNITY FORUM FOR COMMENTS.
4. THE PROPOSAL WAS REFERRED TO COUNCIL'S DEVELOPMENT ASSESSMENT UNIT MEETING ON THE 25 MAY 2010 AND THE DAU APPROVED THE APPLICATION.
5. A SITE INSPECTION IS RECOMMENDED.
6. THE APPLICATION IS RECOMMENDED FOR **CONDITIONAL APPROVAL**.

LOCALITY PLAN

Shaded area is subject land.



Report

Introduction

The proposal is for demolition of the skillion roof additions to the original cottage. It is then proposed to construct a new two-storey addition to the rear of the original cottage. On the ground floor there is an open plan kitchen, dining, and living room, and separate laundry room and bathroom. The area between the rear of the ground floor addition and the existing retaining wall towards the rear a new paved terrace will be made. The first floor addition will extend over this new terrace and create a covered area. The first floor will accommodate a master bedroom, an ensuite and walk-in robe adjoining study, two additional bedrooms and a separate bathroom. At the rear of the master bedroom is a balcony facing south.

MIAP Report No. 31 (Cont'd)**Applicant's Supporting Statement**

In support of the proposal the applicant submitted a statement of environmental effects.

Precinct Community Forum Comments

No comment has been received.

Engineers Comments

No objections apply standard conditions.

Building Comments

No objections to the proposed additions and alterations to a Class 1(a) dwelling, subject to the inclusion of conditions in any consent.

Waste Comments

No objections apply standard conditions.

Landscape Officer Comments

Retain and protect during construction 1 Eucalyptus species located in the rear of the property and 1 palm species located adjacent to the driveway at the front of the property.

Also apply standard conditions.

Heritage Comments

There are no objections to the proposed alterations and additions as there will be minimal impact on Edwin Street listed as an item in the Manly Local Environmental plan 1988

Planning Comments**Environmental Planning & Assessment Act 1979 – Section 79 C (1)**

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

Section 79 C (1) (a) - *the provisions of:*

- (i) *any environmental planning instrument,***

Manly Local Environmental Plan 1988:

The site is in zone No 2 – The Residential Zone which permits dwelling houses with the consent of Council. This is a proposal for partial demolition, alterations and first floor additions at the rear, extensions and changes to a retaining wall and is permissible with consent.

Manly Local Environmental Plan 1988 Clause 10 Objectives

The following comments are made in regard to the objectives for the Residential Zone as stated in Clause 10 of the Manly Local Environmental Plan 1988;

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

The site is to be used for housing and associated facilities 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 is consistent with the intended future of the area 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;*

This development will provide a variety of housing types and maintain the existing character of the area and thus meets this objective.

(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;*

It is considered that with the suggested conditions that the proposal will not unduly degrade the amenity of surrounding residents.

(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 amount of open space on site is 53.8% compared with the 55% requirement in the DCP. The proposal includes the demolition of rear of the building which increases the amount of hard open space on site and this is an improvement in comparison with the existing provision. As well as this the amount of soft open space is greater than that required by the DCP so that the proposal can be accepted 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 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.

79 C (1) (a) (ii) - any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and

There is no draft environmental planning instrument that has an impact on this development application.

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

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

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

Site Area: 334.4m ²	<u>Permitted/ Required</u>	<u>Proposed</u>	<u>Complies Yes/No</u>
Density - Sub Zone 3	1/250	1/334.4	Yes
Floor space ratio	0.6:1	0.6:1	Yes
Floor space ratio - existing	0.6:1 201m ²	0.32:1 108m ²	Yes
Wall height East side	7.0m	6.1m, 5.6m	Yes
West side	7.0m	5.3m, 5.9m, 5.5m	Yes
Roof height	3.0 m	3.0m	Yes
Setback Front	6.0m or streetscape	5.0m	Existing
Setback Rear	8.0m	8.6m	Yes
East setback side	2.03m, 1.87m	2.095, 1.675m	Yes No
West setback side	1.77m, 1.97m, 1.83m	0.9m, 2.0m, 1.9m	No, Yes, Yes
Open space	55%	53.8%	No
Open space - total	183.2m ²	179.9m ²	No
Open space - soft	64.4m ²	93m ²	Yes
Open space - above ground	45.8m ²	0m ²	Yes
Number of Endemic Trees	1	1	Yes
Private Open Space	18m ²	40m ²	Yes
Car Parking – Residents	2 spaces	1 Space	Existing
Shadow - adjacent open space	Not > 1/3 existing	over 1/3 existing	No
- adjoining NS orientation	4 hours to living dining windows	4 hours to living dining windows	Yes
- exist north facing roofs	10 m ²	10 m ²	Yes

Comment:

The side setbacks to the east on the first floor level has one portion of the wall with a stated setback of 1.675m where 1.87m would be the 1/3 wall height requirement. It is considered that while the floor plan could be changed to fully comply, the step in the wall length breaks up the apparent length of the wall and is appropriate. It is also noted that the roof form is continuous so that this reduction of setback does not increase the shadowing over the neighbour.

The side setbacks to the west on the first floor level has one portion of the wall associated with the stair well with a stated setback of 0.900m however this section of wall is only 2.2m wide and can be considered favourably given the functioning of the floor plan.

The amount of open space on site is 53.8% compared with the 55% requirement in the DCP. The demolition of rear of the building increases the amount of hard open space on site and this is an improvement in comparison with the existing provision. As well as this the amount of soft open space is greater than is required by the DCP so that the proposal can be accepted.

The proposal takes away 36% of the existing sunlight in the private open space of the adjacent dwelling at number 13 Edwin Street at 9:00am in midwinter. This is greater than the one third criteria contained in Councils Development Control Plan. It is therefore suggested that as the top storey has a floor-to-ceiling height of 2.550m proposed this can be reduced by 150 mm so that the overall Ridge and Eave heights are reduced by 150mm. Also it is recommended that the proposed roof over the balcony off the bedroom at the rear be changed to a flat roof as this will have the effect of increasing the amount of sunlight reaching the adjacent neighbour's yard early in the morning in mid winter. Conditions to this effect are included in the recommendation.

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Section 79 C (1) (a) (iia) - any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F,

There is no planning agreement under Section 93F in relation to this site.

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

The application is assessed in terms of the regulations.

Section 79 C (1) (b) - the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

The proposed first floor balcony off the master bedroom has been subject to criticism by the objectors as there is a clear line of sight into the neighbour's yards from this elevated position. The applicant has advised that their client would prefer the screens to the sides as drawn however are prepared to provide a 1.6m high privacy screen all around to facilitate approval. The semi enclosure of the balcony would take the floor space ratio to 0.62:1 which is 5m² above the recommended figure. It is noted that the balcony is 8.8m from the rear boundary which is almost the 9.0m referred to in the AMCORD standards as an adequate separation for privacy. It is therefore considered that a solid balustrade would prevent the clear line of sight view while still allowing for the amenity of a balcony.

It is also noted that the proposed development and roof form eliminates greater than one third of the amount of sunlight currently obtained by the adjacent neighbour. In this regard it is recommended that the roof be lowered and the roof form be amended with the balcony provided with a flat roof in order improve the amount of sunlight gained by the adjacent neighbour. A condition to this effect is included in the recommendation.

The plans indicate an air conditioning plant between the eastern wall and the adjacent boundary which could result in disturbance to the adjacent neighbour. A condition is therefore suggested relocating this air conditioner to the southern elevation of the dwelling where any maintenance and noise issues would be apparent to the owners. A condition to this effect is included in the recommendation.

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

The site is suitable for residential accommodation.

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

The application was notified to nearby and adjoining property owners in accordance with Council's Notification Policy with three (3) submissions received from Gary and Christine Malcolm of 36 Griffiths Street Fairlight; Susan and Gerard Heffernan of 13 Edwin Street Fairlight and Robert and Julie Speer of 38 Griffiths Street Fairlight raising the following concerns;

- *We object to the "timber framed balcony" and "large bi-fold doors" leading onto the balcony as this will severely invade our privacy.*

The elevated nature of the balcony and the ability to see into the rear yards of all surrounding properties was discussed with the applicant who submitted a letter to Council suggesting they could if required construct a 1.6m high screen around all sides of the proposed balcony rather than the 1.7m screen to the east and west sides as illustrated on the plans. It is considered that such a screen would add to the bulk of the building and that it would amount to additional floor space and is not supported.

As an alternative a condition is suggested requiring a solid balustrade to provide adequate privacy having regard to the distance between the balcony and the rear boundary.

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- *Our property backs onto 11 Edwin Street. The rear of our house at 36 Griffiths Street is the main living area with a deck from the back of our house leading into the backyard. The proposed balcony will be higher than the level of the living area of our house and well over the height of the adjoining back fences allowing the occupants to see clearly with an unobstructed view directly into the living area of our house, down upon our deck, and down into the whole of our backyard. It will also allow residents to look down into the rear yard of 38 Griffiths Street which will severely impact on our privacy. We will from our living area be able to look directly into the bedroom of the proposed plan. The proposed balcony and doors are well above the height of the adjoining back fences severely impacting on everyone concerned. Please consider this aspect of the proposal so that all neighbouring properties are able to maintain a certain amount of privacy.*

It is agreed that the level of the balcony will give a clear line of sight into the neighbouring properties and as such a condition of consent is included in the recommendation providing a solid balustrade.

- *Our property is next door to number 11 on the Western side. Our concern is that according to the site plan the proposed two storey addition at the rear will significantly reduce the amount of morning sun especially in winter available in our back garden. We do not object to the second storey addition per se, but feel that it is to be set so far back as to impact on the market value of our house and garden. We would like to see the second-storey set further forward in a way that is more in line with the footprint of our second-storey.*

As noted above the proposal takes away 36% of the sunlight to the open space currently enjoyed by the adjacent neighbours. While the objector has suggested that the location of the second storey should be more in line with the footprint of their second storey in order to reduce the impact on their property Council must consider the application as submitted. A condition is therefore recommended lowering the height of the roof by 150mm and deleting the pitched roof over the proposed balcony and replacing it with a flat roof in order to reduce the degree of overshadowing.

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

It is not considered that the proposed development is contrary to the public interest.

CONCLUSION:

The application has been assessed having regard to Section 79C of the Environmental Planning and Assessment Act 1979, the Manly Local Environmental Plan 1988 and the Development Control Plan for the Residential Zone 2007 Amendment 1 and it is considered that with detailed conditions will be acceptable.

RECOMMENDATION

That Development Application No 5/10 for partial demolition, alterations and first floor additions at rear, extensions and retaining wall changes at 11 Edwin Street Fairlight be **Approved** subject to the following conditions:-

DA1

This approval relates to drawings/plans Nos. DA 1 to 6 dated September 2009 and received by Council on the 11 January 2010, and DA 10, and 11 dated September 2009, and DA 1A, 6A, dated 5 February 2010 all received by Council on the 8 February 2010

- *The Statement of Environmental Effects received 11 January 2010:*
- *The Heritage Impact Statement by Leona Goldstein dated November 2009*
- *BASIX Certificate 294776S dated 4 February 2010*

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ANS01

Retain and protect during construction one (1) Eucalyptus species located in the rear of the property and one (1) palm species located adjacent to the driveway at the front of the property. In this regard the plans are to be notated accordingly prior to the release of the Construction Certificate

Reason: To ensure the trees nominated for retention are not damaged during the construction process.

ANS02

The proposed balcony off the bedroom at first floor level is to be provided with a solid balustrade in order to ensure privacy to surrounding residents and the roof form over this balcony is to be changed to a flat roof to reduce early morning overshadowing of the adjoining property to the west in mid winter. In this regard the plans are to be amended accordingly prior to the release of the Construction Certificate.

Reason: To provide privacy to neighbouring residents and to reduce the extent of shadows cast over the yard of the adjacent neighbour.

ANS03

The air conditioning plant is to be relocated on the southern wall of the ground floor. In this regard the plans are to be amended accordingly prior to the release of the Construction Certificate.

Reason: In order to avoid noise disturbance to the adjacent neighbour.

ANS04

The roof form is to be lowered by 150mm resulting in an RL of the ridge of RL40.65 and the plans are to be amended accordingly prior to the release of the Construction Certificate.

Reason: To reduce the extent of overshadowing over the adjacent property.

GENERAL CONDITIONS RELATING TO APPROVAL

1 (1AP04)

Alteration and demolition of the existing building is limited to that documented on the approved plans (by way of notation). No approval is given or implied for removal and/or rebuilding of any portion of the existing building which is not shown to be altered or demolished.

Reason: To ensure compliance with the approved development.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

2 (2AP01)

Four (4) copies of architectural drawings consistent with the development consent and associated conditions are to be submitted to the Council/Accredited Certifier prior to the issue of the Construction Certificate.

Reason: To comply with the Environmental Planning and Assessment Act 1979.

3 (2AP03)

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 1991 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 you make yourself aware of your legal position which may involve a survey to identify the allotment boundary.

Reason: To advise developers of their responsibilities and to protect the interests of adjoining owners.

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4 (2CD01)

Pursuant to Section 97 of the Local Government Act, 1993, Council requires prior to the issue of Construction Certificate, or commencement of any excavation and demolition works, payment of a Trust Fund Deposit of \$10,000. The Deposit is required as security against damage to Council property during works on the site. The applicant must bear the cost of all restoration works to Council's property damaged during the course of this development. All building work must be carried out in accordance with the provisions of the Building Code of Australia.

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

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

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

5 (2CD02)

A Dilapidation Report is required for this development. A photographic survey of adjoining properties Nos. 9 and 11 Edwin Street detailing the physical condition of those properties, both internally and externally, including walls, ceilings, roof, structural members and other such items, is to be submitted to Council and the Accredited Certifier (where Council does not issue the Construction Certificate) prior to the issue of the Construction Certificate. This survey is to be prepared by an appropriately qualified person agreed to by both the applicant and the owner of the adjoining properties.

All costs incurred in achieving compliance with this condition must be borne by the person entitled to act on this Consent.

If access for undertaking the dilapidation survey is denied by an adjoining owner, the applicant must demonstrate, in writing, to Council's satisfaction attempts have been made to obtain access and/or advise the affected property owner of the reason for the survey and these attempts have been unsuccessful. Written concurrence must be obtained from Council in such circumstances.

Note: This documentation is for record keeping purposes only, and may be used by an applicant or affected property owner to assist in any action required to resolve any dispute over damage to adjoining properties arising from the works. It is in the applicant's and adjoining owner's interest for it to be as full and detailed as possible.

Reason: To maintain proper records in relation to the proposed development.

6 (2CD06)

Four (4) certified copies of the structural engineer's details for the proposed development; including but not limited to all reinforced concrete, structural steel support construction and any proposed retaining walls; must be submitted to the Council/Accredited Certifier prior to the issue of the Construction Certificate.

Reason: To ensure construction of the new development is in accordance with the structural engineers design.

7 (2CD13)

All plumbing and drainage, including sewerage drainage stacks, ventilation stacks and water service pipes are to be concealed within the building. Plumbing other than stormwater downpipes must not be attached to the external surfaces of the building.

Reason: To ensure the visual quality of the development.

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8 (2DS01)

A detailed stormwater management plan is to be prepared to fully comply with Council's Specification for On-site Stormwater Management 2003 and Specification for Stormwater Drainage 2003 and must be submitted to Council for approval prior to issue of the Construction Certificate. The stormwater management plan and designs are to be prepared by a suitably qualified engineer.

Reason: To ensure appropriate provision is made for the disposal and management of stormwater generated by the development, and to ensure that infrastructure reverting to Council's care and control is of an acceptable standard.

9 (2FP03)

No portion of the proposed building or works, as approved within the subject site, are to encroach upon any road reserve or other public land except as may be permitted by the Local Government Act 1993. This includes the opening and closing of gates and doors which must open and close within the subject site.

Reason: To ensure structures are contained within the site.

10 (2LD01)

Details must be submitted to the Council/Accredited Certifier prior to issue of the Construction Certificate indicating the proposed method of water proofing and drainage of the concrete slabs over which landscaping is being provided.

Reason: To ensure the appropriate type of water proofing is carried out and descriptive information about drainage is provided.

11 (2MS01)

Where construction or excavation activity requires the disturbance of the soil surface and existing vegetation, details including drawings and specifications must be submitted to Council accompanying the Construction Certificate, which provide adequate measures for erosion and sediment control. As a minimum, control techniques are to be in accordance with Manly Council Guidelines on Erosion and Sediment Control, or a suitable and effective alternative method. The Sediment Control Plan must incorporate and disclose:

- 1) all details of drainage to protect and drain the site during the construction processes,
- 2) all sediment control devices, barriers and the like,
- 3) sedimentation tanks, ponds or the like,
- 4) covering materials and methods, and
- 5) a schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained.

Details from an appropriately qualified person showing these design requirements have been met must be submitted with the Construction Certificate and approved by the Council/Accredited Certifier prior to issuing of the Construction Certificate.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

Internal Note: This condition is be imposed in conjunction with 4MS04.

12 (2PT01)

The driveway/access ramp grades, access and car parking facilities must comply with the Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking.

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

13 (2TC01)

Details of the method of termite protection which will provide whole of building protection, inclusive of structural and non-structural elements must be submitted to the Council / Accredited Certifier prior to issue of the Construction Certificate. Attention is drawn to the provisions of Australian Standard AS 3660.1 - 2000 Termite management – New building work, and to the Manly Code for

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the Protection of Buildings Against Termite Attack 1996.

Reason: To protect the building from possible termite damage.

14 (2WM02)

A Waste Management Plan is to be submitted with the application prior to a Construction Certificate being issued in accordance with the Manly Development Control Plan for Waste Minimisation and Management 2000.

The plan should detail the type and estimate the amount of demolition and construction waste and nominate how these materials will be sorted and dealt with. All demolition and excess construction materials are to be recycled where ever practicable. It should include consideration of the facilities required for the ongoing operation of the premises' recycling and waste management services after occupation. A template is available from the Manly Council website.

Reason: To plan for waste minimisation, recycling of building waste and on-going waste management.

Internal Note: The requirement for a Waste Management Plan is included in the Department of Environment and Climate change (DECC) Waste Service Performance Improvement Payment Criteria (WSPIP).

CONDITIONS TO BE SATISFIED PRIOR TO ANY COMMENCEMENT

15 (3BM01)

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

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

16 (3CD01)

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

Reason: To ensure compliance with statutory provisions.

17 (3CD03)

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

Reason: To protect the public interest and safety.

18 (3CD05)

Detailed drawings of roof trusses indicating type and position of trusses, design wind classification, manufacturer's name, stress grade of timber used, and method of bracing and fixing trusses are to be submitted to the Principal Certifying Authority prior to the commencement of roof framework.

Reason: To ensure structural adequacy.

19 (3LD01)

All healthy trees and shrubs identified for retention on the submitted landscape drawing are to be suitably marked for protection before any construction works start.

Reason: To ensure the trees conditioned to stay on the site are suitably protected during any construction works.

Internal Note: This condition is to be imposed with 4LD02.

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CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

20 (4AP02)

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

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

21 (4CD01)

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

- 1) All demolition is to be carried out in accordance with Australian Standard AS 2601-2001.
- 2) Demolition must be carried out by a registered demolition contractor.
- 3) A single entrance is permitted to service the site for demolition and construction. The footway and nature strip at the service entrance must be planked out.
- 4) No blasting is to be carried out at any time during construction of the building.
- 5) Care must be taken during demolition/ excavation/ building/ construction to prevent any damage to adjoining buildings.
- 6) Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.
- 7) Any demolition and excess construction materials are to be recycled wherever practicable.
- 8) The disposal of construction and demolition waste must be in accordance with the requirements of the Protection of the Environment Operations Act 1997.
- 9) All waste on the site is to be stored, handled and disposed of in such a manner as to not create air pollution (including odour), offensive noise or pollution of land and/or water as defined by the Protection of the Environment Operations Act 1997. All excavated material should be removed from the site in an approved manner and be disposed of lawfully to a tip or other authorised disposal area.
- 10) Section 143 of the Protection of the Environment Operations Act 1997 requires waste to be transported to a place which can lawfully accept it. All non-recyclable demolition materials are to be disposed of at an approved waste disposal depot in accordance with legislation.
- 11) All materials on site or being delivered to the site are to generally be contained within the site. The requirements of the Protection of the Environment Operations Act 1997 must be complied with when placing/stockpiling loose material, disposing of concrete waste, or other activities likely to pollute drains or water courses.
- 12) Details as to the method and location of disposal of demolition materials (weight dockets, receipts, etc.) should be kept on site as evidence of approved methods of disposal or recycling.
- 13) Any materials stored on site must be stored out of view or in such a manner so as not to cause unsightliness when viewed from nearby lands or roadways.
- 14) Public footways and roadways adjacent to the site must be maintained and cleared of obstructions during construction. No building materials, waste containers or skips may be stored on the road reserve or footpath without prior separate approval from Council, including payment of relevant fees.
- 15) Building operations such as brickcutting, washing tools or paint brushes, and mixing mortar not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
- 16) All site waters during excavation and construction must be contained on site in an approved manner to avoid pollutants entering into waterways or Council's stormwater drainage system.
- 17) Any work must not prohibit or divert any natural overland flow of water.

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

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22 (4CD02)

In order to maintain the amenity of adjoining properties, audible site works must be restricted to between 7.00am and 6.00pm, Monday to Friday and 8.00am to 1.00pm Saturday. No site works can be undertaken on Sundays or public holidays.

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

Reason: To prevent disturbance to the surrounding community.

23 (4CD03)

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

Reason: To maintain sanitary conditions on building sites.

24 (4CD06)

All construction works must be strictly in accordance with the Reduced Levels (RLs) as shown on the approved drawings. Certification is to be submitted to the Principal Certifying Authority during construction by a registered surveyor certifying complying and finished ridge levels.

Reason: To ensure compliance with the consent.

25 (4CD07)

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

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

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

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

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

26 (4DS01)

A suitable sub-surface drainage system is to be provided adjacent to all excavated areas and such drains being connected to an approved disposal system.

Reason: To prevent uncontrolled seepage entering excavated areas.

27 (4DS03)

Rainwater tanks must be installed on residential properties by a suitably qualified and licensed plumber and in accordance with the following:

MIAP Report No. 31 (Cont'd)

- Australian/New Zealand Standard AS/NZS 3500:2003,
- NSW Code of Practice Plumbing and Drainage, 2006 produced by Committee on Uniformity of Plumbing and Drainage Regulations in NSW (CUPDR).

Reason: To protect public health and amenity.

28 (4LD02)

All healthy trees and shrubs identified for retention on the drawing are to be:

- (a) suitably protected from damage during the construction process, and
- (b) retained unless their removal has been approved by Council.

Reason: This is to ensure that the trees on the site which do not have approval to be removed on the site are suitably protected during any construction works.

Internal Note: This condition is to be imposed with 3LD01.

29 (4LD03)

The felling, lopping, topping, ringbarking, wilful destruction or removal of any tree/s unless in conformity with this approval or subsequent approval is prohibited.

Reason: To prohibit the unnecessary damage or removal of trees without permission from Council during any construction.

30 (4LD04)

The following precautions must be taken when working near trees to be retained:

- harmful or bulk materials or spoil must not be stored under or near trees,
- prevent damage to bark and root system,
- mechanical methods must not be used to excavate within root zones,
- topsoil from under the drip line must not be added and or removed,
- ground under the drip line must not be compacted, and
- trees must be watered in dry conditions.

Reason: This is to ensure no damage is caused to trees from various methods of possible damage.

31 (4MS01)

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

- Silt control fences,
- Footing inspection - trench and steel,
- Reinforced concrete slab,
- Framework inspection,
- Wet area moisture barrier,
- Drainage pits and tanks inspection,
- Final inspection.

The cost of these inspections by Council is {MISSING TAG VALUE} (being \$260 per inspection inclusive of GST). Payment of the above amount is required prior to the first inspection. Inspection appointments can be made by contacting the Environmental Services Division on 9976 1414.

At least 24 hours notice should be given for a request for an inspection and submission of the relevant inspection card. Any additional inspection required as a result of incomplete works will incur a fee of \$120.

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

32 (4MS02)

In order to ensure compliance with approved drawings, a Survey Certificate, to Australian Height Datum, must be prepared by a registered surveyor as follows:

- 1) at the completion of the first structural floor level indicating the level of that floor and the relationship of the building to the boundaries, and

MIAP Report No. 31 (Cont'd)

- 2) at the completed height of the building, prior to the placement of concrete in form work, or the laying of roofing materials, and
- 3) at completion, the relationship of the building, and any projections thereto, to the boundaries.

Progress certifications in response to points (a) through (c) must be provided to the Principal Certifying Authority at the time of carrying out relevant progress inspections. Under no circumstances will work be allowed to proceed should such survey information be unavailable or reveal discrepancies between the approved drawings and the proposed works.

Reason: To ensure compliance with the development consent.

33 (4MS04)

The Sediment Control Plan is to be implemented from the commencement of works and maintained until completion of the development.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

Internal Note: This condition is to be imposed with 2MS02.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE**34 (5DS01)**

Stormwater drainage from the proposed addition/extension must be disposed of to the existing drainage system. All work is to be carried out in accordance with Council standards and specifications for stormwater drainage. Work is to be completed prior to the issue of the Occupation Certificate.

Reason: To ensure appropriate provision is made for the disposal and management of stormwater generated by the development, and to ensure infrastructure reverting to Council's care and control is of an acceptable standard.

35 (5FR01)

An automatic fire detection and alarm system must be installed in the proposed dwelling in accordance with the requirements of the Building Code of Australia.

Reason: To comply with the Environmental Planning and Assessment Act 1979.

36 (5TC01)

Prior to issue of the Occupation Certificate, a durable termite protection notice must be permanently fixed to the building in a prominent location detailing the form of termite protection which has been used in accordance with the Manly Code for the protection of Buildings against Termite Attack.

Reason: To inform owners and future owners of the type of termite protection installed and of the need for regular inspections.

37 (5US01)

Any adjustment to a public utility service is to be carried out in compliance with its standards; where consent is required, with its concurrence; and with the full cost being borne by the applicant.

Reason: To ensure compliance with the terms of this consent.

ONGOING CONDITIONS RELATING TO THE OPERATION OF THE PREMISES OR DEVELOPMENT**38 (6DS01)**

The ongoing use and operation of the rainwater tank(s) must be maintained in accordance with:

- Sydney Water Guidelines for Rainwater Tanks on Residential Properties, 2003.
- Australian Government EnHealth Council publication Guidance on the use of Rainwater Tanks, 2004.

Reason: To protect public health and amenity.

MIAP Report No. 31 (Cont'd)

39 (6LP02)

No tree other than on land identified for the construction of buildings and works as shown on the building drawing can be felled, lopped, topped, ringbarked or otherwise wilfully destroyed or removed without the approval of Council.

Reason: To prevent the destruction of trees on other properties adjoining the development site.

40 (6MS02)

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

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

41 (6NL02)

All lights used to illuminate the exterior of the buildings or site must be positioned and/or fitted with cut off luminaries (baffles) so as to prevent the emission of direct light onto adjoining roadways, adjoining land and waterways.

Reason: To protect the amenity of neighbours and limit the obtrusive effects of outdoor lighting in public places.

ATTACHMENTS

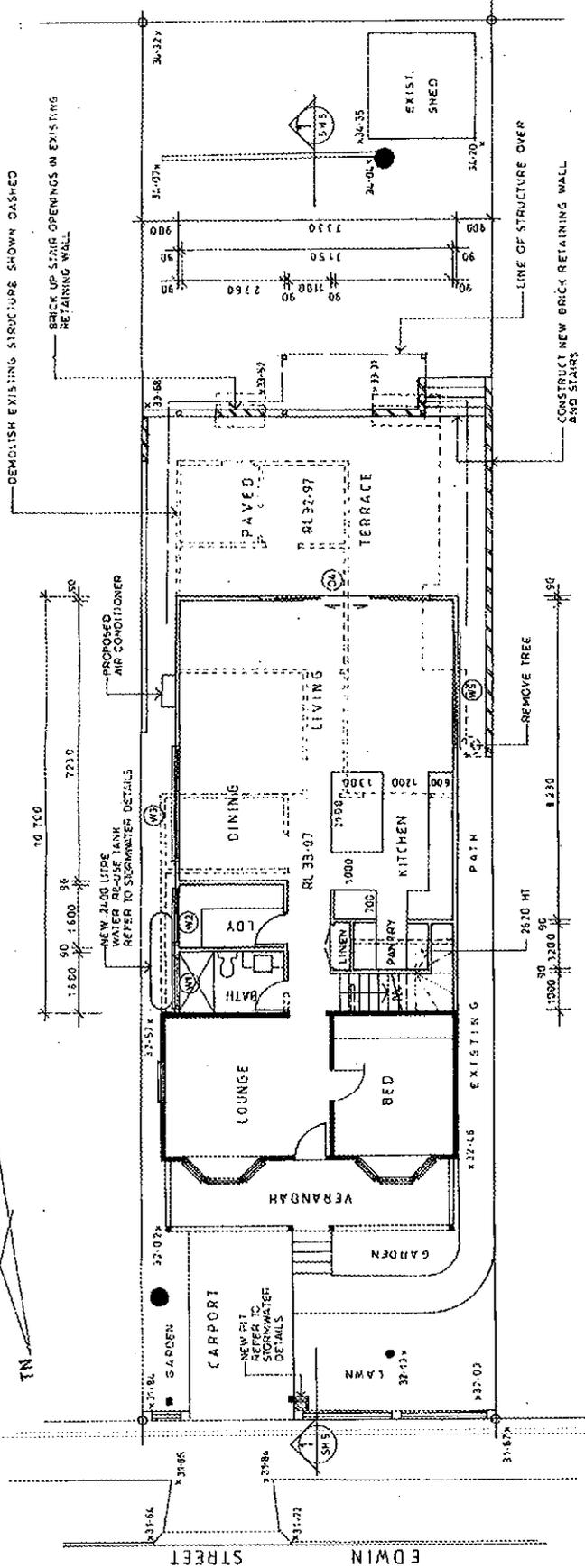
AT- 1 DA plans 10 Pages

MIAP170610MI_1

***** End of MIAP Report No. 31 *****

ATTACHMENT 1

MIAP Report No. 31 - 11 Edwin Street, Fairlight - DA/10
DA plans



GROUND FLOOR PLAN

Window & Door Schedule

Legend	Height x Width	Description
WT	500 x 1400	Aluminium sliding windows
W2	1100 x 1400	Aluminium sliding windows
W3	800 x 3000	Aluminium sliding windows
D4	2250 x 4500	Aluminium sliding glass doors
W5	800 x 3000	Aluminium sliding glass windows

Glazing Note
All windows and doors to be glazed with single clear glass to achieve a total system U-value: 6.44, SHGC: 0.75.

Beecraft
BUILDERS, CONTRACTORS,
DESIGNERS & CONSULTANTS
6/4 Leveid Road
Taree NSW
Phone: 082 3100 650
Fax: 082 31443
A.C.N. 100 381 350
NSW 2304

ALTERATIONS & ADDITIONS
11 EDWIN STREET
FAIRLIGHT
LOT 19 DP24449

CLIENT: MIKE AND KERRY BAIRD

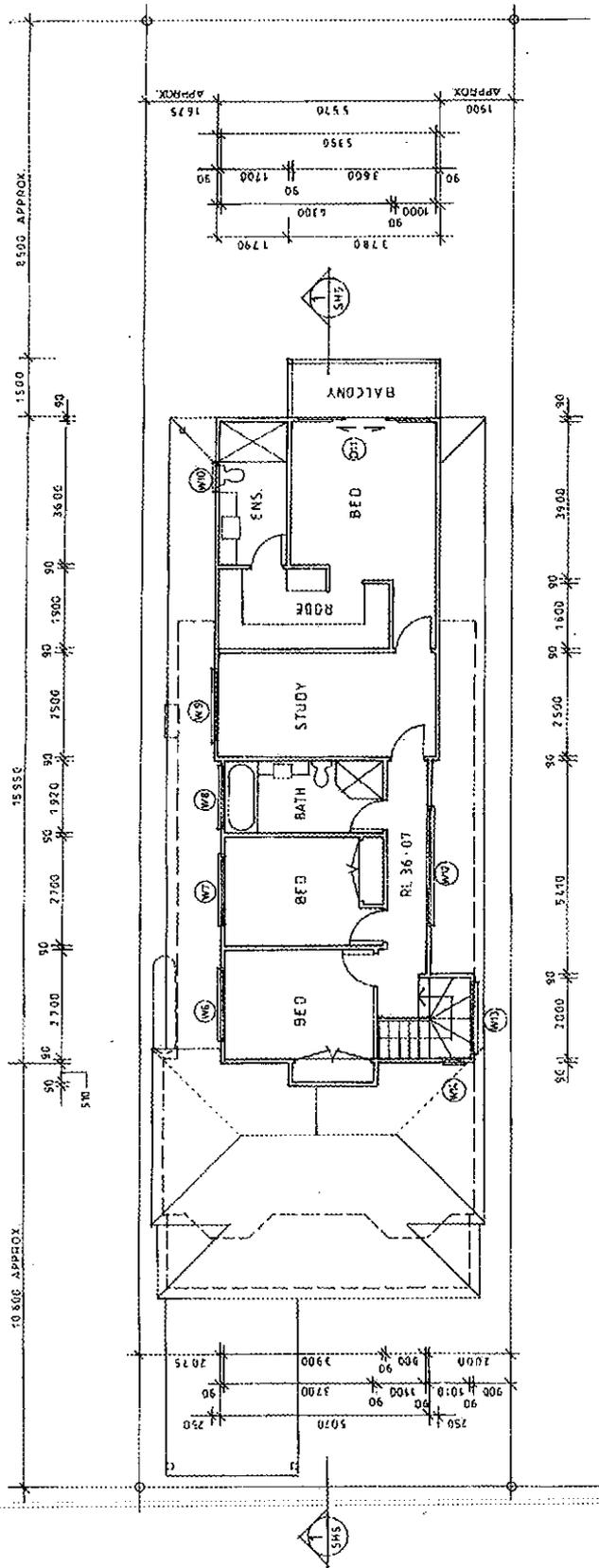
DRAWING: GROUND FLOOR PLAN

DATE: 09-09-09
DRAWN BY: J. WRIGHT
SEPT. 2009

SCALE: 1:150
SHEET NO.: 1

ATTACHMENT 1

MIAP Report No. 31 - 11 Edwin Street, Fairlight - DA5/10
DA plans



FIRST FLOOR PLAN

Window & Door Schedule

Legend	Height x Width	Designation
W6	1200 x 1800	Aluminium sliding window
W7	1200 x 1800	Aluminium sliding window
W8	1100 x 1700	Aluminium sliding window
W9	1200 x 1800	Aluminium sliding window
W10	1100 x 750	Aluminium casement window
D11	2100 x 3400	Aluminium sliding glass doors
W12	800 x 3000	Aluminium sliding windows
W13	1100 x 1800	Aluminium sliding windows
W14	1100 x 550	Aluminium casement window

Glazing Note

D11, W13, W14 to be glazed with single clear glass to achieve a U-value of 0.44, SHGC: 0.75.
W6, W7, W8 & W9 to be glazed with single pyrolytic low-e glass to achieve a total system U-value of 0.48, SHGC: 0.46.

Becraft
BUILDING CONTRACTORS
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Phone: 02 9450 1530
6A Larned Road
Terry Hill
NSW 2048
A.C.N. 007 281 568

ALTERATIONS & ADDITIONS
11 EDWIN STREET
FAIRLIGHT
LGT 19 DP 449

CLIENT: MIKE AND KERRY BAIRD

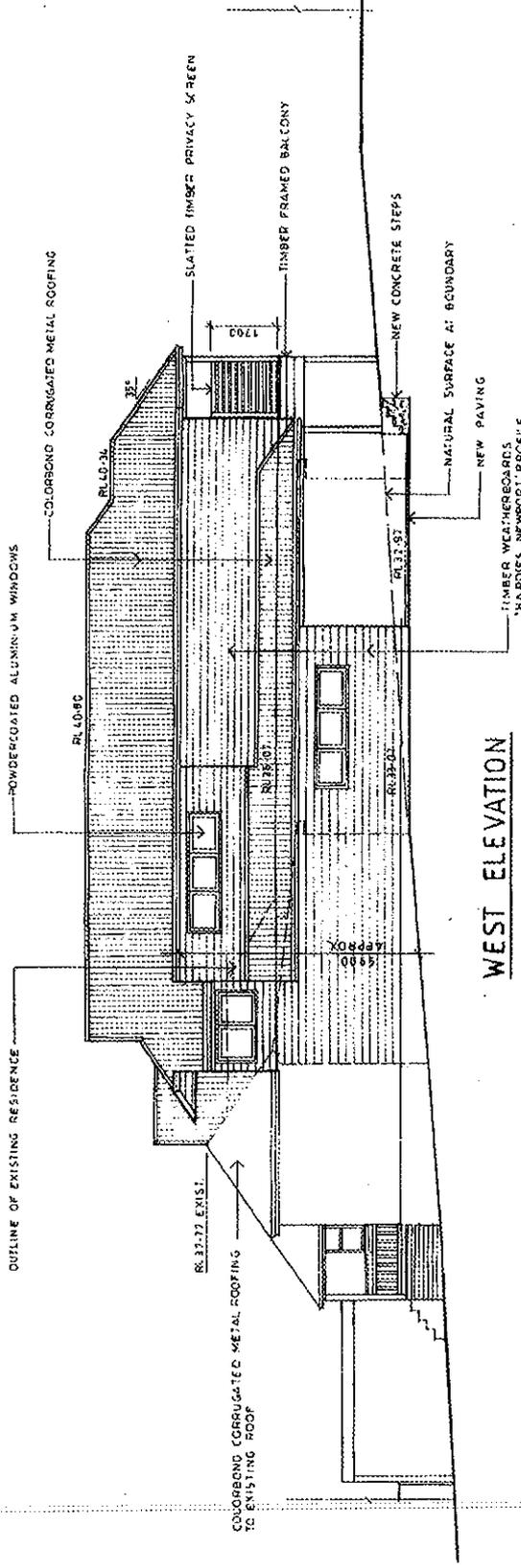
DRAWING: FIRST FLOOR PLAN

DATE: 09/09/2009
DRAWN BY: J. WRIGHT
SCALE: 1:100
ISSUE: D.A.

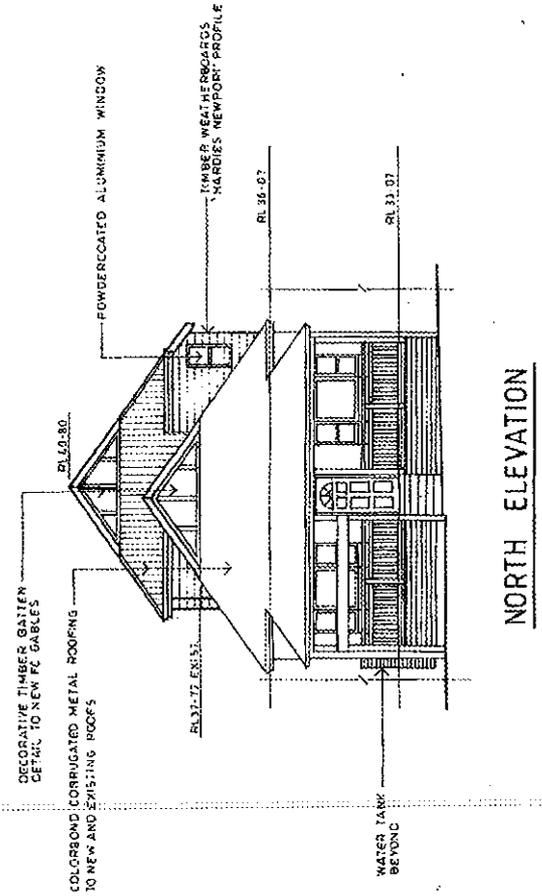
DOC NO: 09-09-ED
SHEET NO: 2

ATTACHMENT 1

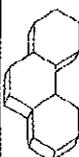
MIAP Report No. 31 - 11 Edwin Street, Fairlight - DA5/10
DA plans



WEST ELEVATION

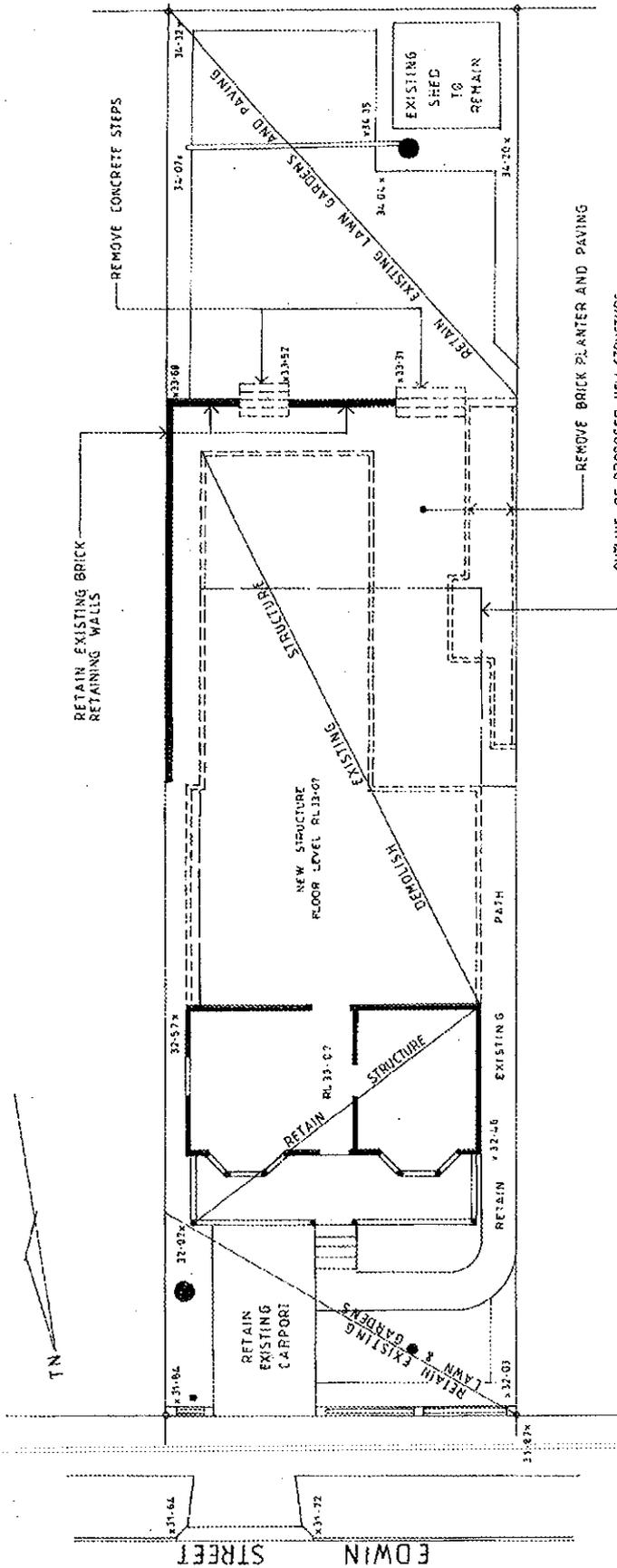


NORTH ELEVATION

 <p>Beecraft BUILDING CONTRACTORS, DESIGNERS & CONSULTANTS 5A Laird Road Fairlight, Vic 3103 Phone: 031 950 1330 Licence No. 21485 www.beecraft.com.au</p>	<p>ALTERATIONS & ADDITIONS 11 EDWIN STREET FAIRLIGHT LOT 15 DP1449</p>
	<p>CLIENT MIKE AND KERRYN BAIRD DRAWING WEST AND NORTH ELEVATION</p>
<p>DATE SEPT. 2009</p>	<p>DRAWN J. WRIGHT</p>
<p>SCALE 1:100</p>	<p>ISSUE D.A.</p>
<p>DOC NO 09-09-ED</p>	<p>SHEET NO. 3</p>

ATTACHMENT 1

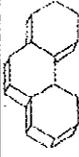
MIAP Report No. 31 - 11 Edwin Street, Fairlight - DA5/10
DA plans



DEMOLITION PLAN

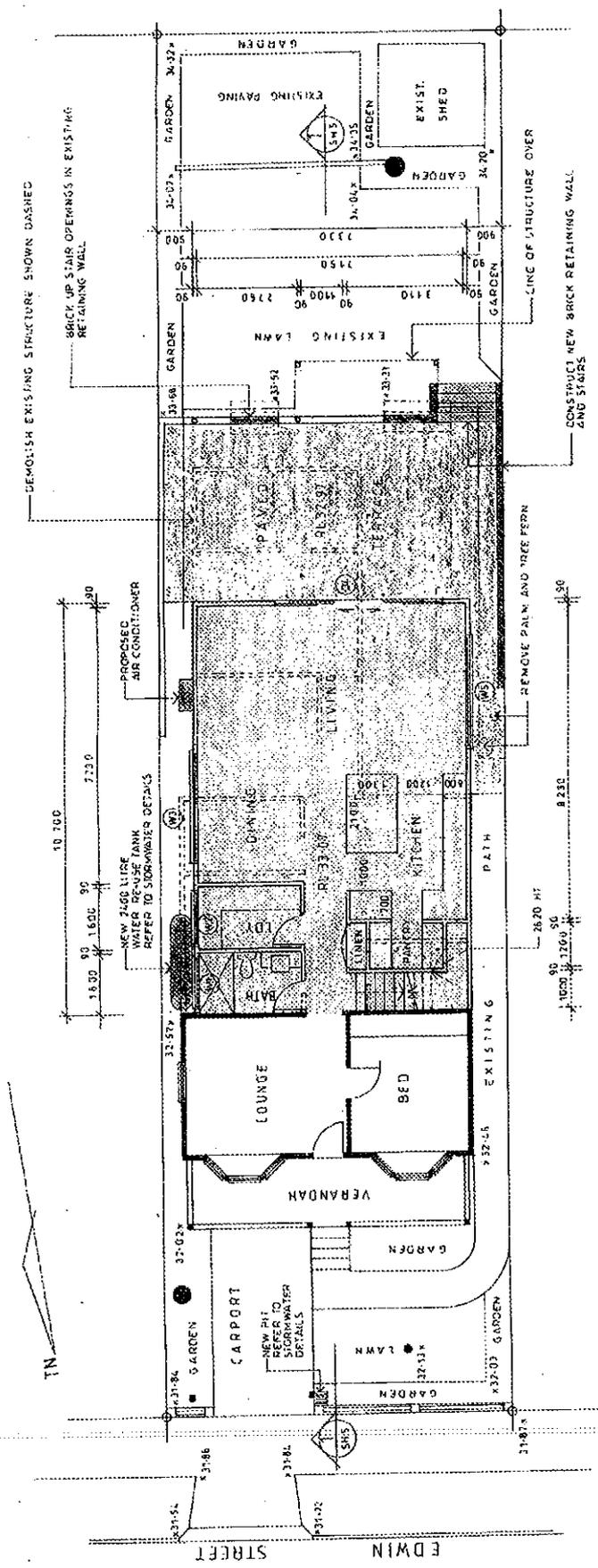
Demolition Notes

- All necessary precautions to be taken to ensure the safety of the public and/or workers on site. All work to be carried out in accordance with O.H & S. policies and Work Cover requirements. Do not allow materials and debris to accumulate on site. Remove daily and dispose of in a legal manner. Provide adequate support, insulation and waterproofing to structure noted as remaining.

 Beecraft BUILDING CONTRACTORS, DESIGNERS & CONSULTANTS Phone: 021 469 1200 Fax: 021 469 1201 A.C.N. 102 261 263	ALTERATIONS & ADDITIONS 11 EDWIN STREET FAIRLIGHT LOT 19 DP 4469
	CLIENT: MIKE AND KERRYN BAIRD DRAWING DEMOLITION PLAN DATE: 2009 DRAWN BY: J. WRIGHT SCALE: 1:50 SHEET NO.: 10 SHEET TOTAL: 10

ATTACHMENT 1

MIAP Report No. 31 - 11 Edwin Street, Fairlight - DA5/10
DA plans



GROUND FLOOR PLAN

Window & Door Schedule

Location	Height x Width	Description
W1	300 x 1400	Aluminium sliding windows
W2	1100 x 1400	Aluminium sliding window
W3	800 x 3000	Aluminium sliding windows
D4	2250 x 4500	Aluminium sliding glass doors
V2	800 x 3000	Aluminium sliding glass windows

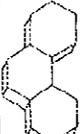
Glazing Note
All windows and doors to be glazed with single clear glass to achieve a total system U-value: 6.44, SHGC: 0.75.

ALTERATIONS & ADDITIONS
11 EDWIN STREET
FAIRLIGHT
LOT 19 DP4429

CLIENT: MIKE AND KERRYN BAIRD
DRAWING: GROUND FLOOR PLAN

DATE: SEPT. 2019
SCALE: 1:100

ISSUE: D A
SHEET NO. 1 A

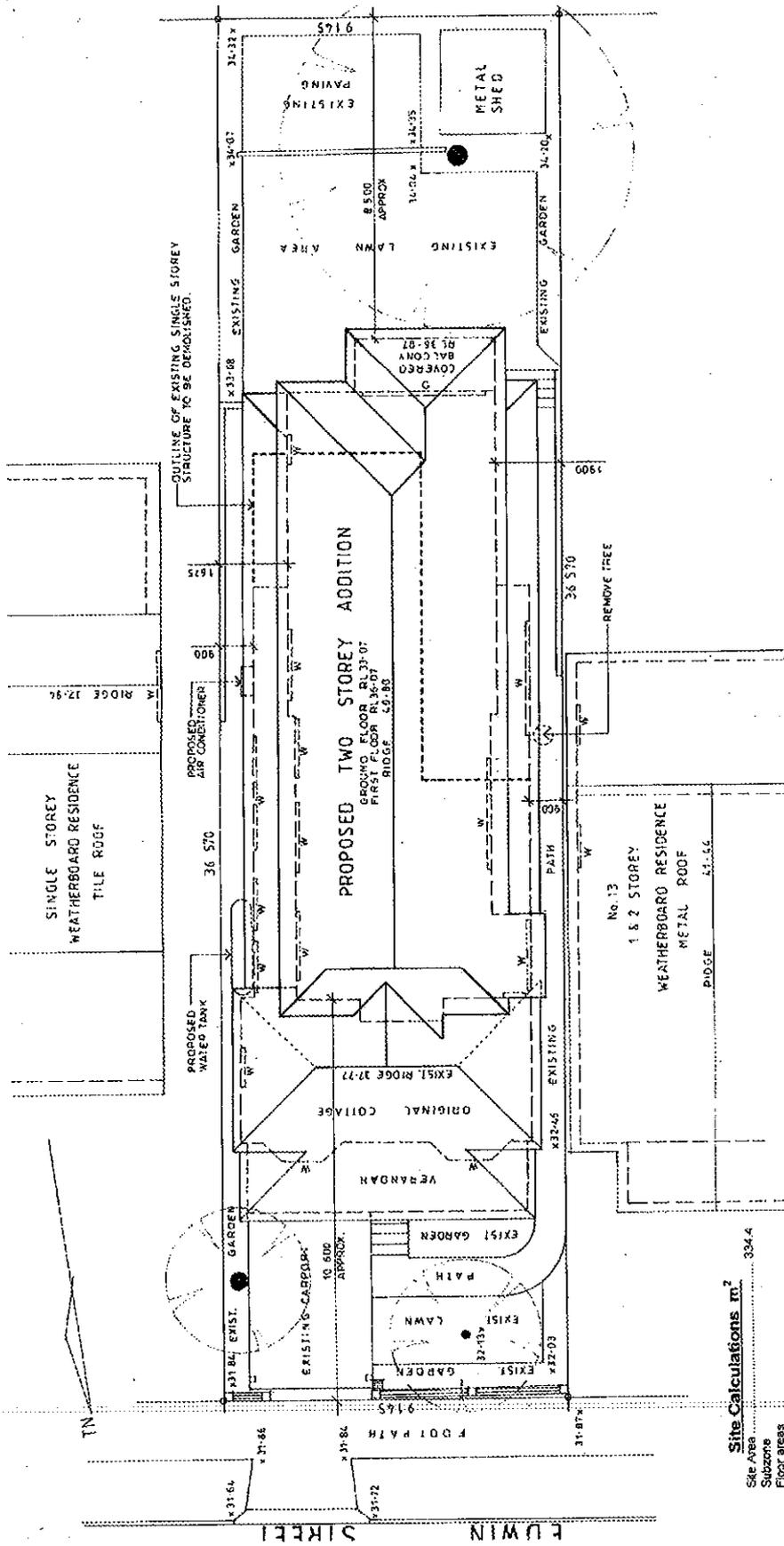


Beecraft
BUILDING CONTRACTORS,
DESIGNERS & CONSULTANTS
100/102 WILSON ROAD
LONEY BAY
NEW ZEALAND
A.C.N. 201 281 283

DATE: 05-12-19
AMENDMENT: EXISTING LANDSCAPING AND RETAINING WALLS ADDED TO PLAN

ATTACHMENT 1

MIAP Report No. 31 - 11 Edwin Street, Fairlight - DA5/10
DA plans



SITE PLAN

Site Calculations m²

Site Area	334.4
Subzone	
Floor areas	128.9
Existing Ground Floor	
Carport	15.7
Proposed Ground Floor	105.3
Proposed First Floor	28.7
F.S.R.	0.558:1
Open Space > 3m	
Existing Open Space (49.8%)	162.5
Proposed Open Space (46.5%)	
Soft Open Space	97.4
Existing	85.0
Proposed	
Earth Upon Area	207.2
Existing	
Proposed	226.4

DATE	AMENDMENTS	<p>Beecraft BUILDING CONTRACTORS, DESIGNERS & CONSULTANTS 6A Trench Road Phone: (02) 9425 1356 Fairlight, VIC 3200 A.C.N. 902 281 180</p>	<p>ALTERATIONS & ADDITIONS 11 EDWIN STREET FAIRLIGHT</p> <p>CLIENT: MIKE AND KERRYN BAIRD</p> <p>DRAWING SITE PLAN AND CALCULATIONS</p> <p>DATE DRAWN SEPT. 2009 J.WHRIGHT</p> <p>DRAWN BY 09-09-ED</p> <p>SCALE 1:100</p> <p>ISSUE D.A.</p> <p>SHEET NO. 6A</p>
A	1-7-10 EVALUATE LANDSCAPING FORMAT TO BE RETAINED ADDED TO PLAN		

TO: Manly Independent Assessment Panel - 17 June 2010
 REPORT: MIAP Report No. 32
 SUBJECT: 323 Sydney Road, Balgowlah - DA270/09
 FILE NO: 270/09

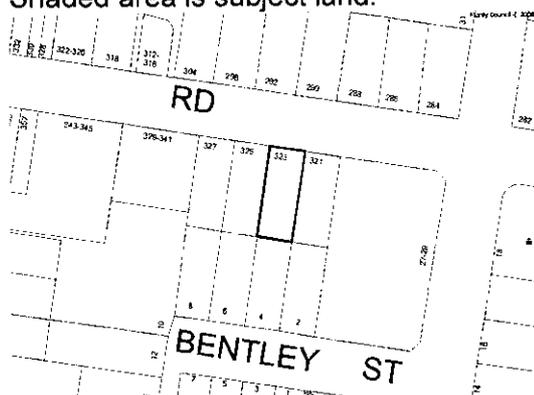
Application Lodged: 08 September 2009
Applicant: Dr Mahmoud Kalil
Owner: Mahmoud Kalil
Estimated Cost: \$485,000
Zoning: Manly Local Environmental Plan, 1988 – Residential and within the Foreshore Scenic Protection Area.
Surrounding Development: Single and two storey dwellings and residential flat buildings and commercial shopfronts with units above directly opposite.
Heritage: N/A

SUMMARY:

1. DEVELOPMENT CONSENT IS SOUGHT FOR ALTERATIONS AND ADDITIONS TO EXISTING DWELLING TO CONVERT INTO A RESIDENTIAL FLAT BUILDING CONTAINING TWO (2) UNITS, INCLUDING FIRST FLOOR, SECOND FLOOR ADDITIONS, DOUBLE GARAGE AND STRATA SUBDIVISION.
2. THE APPLICATION WAS NOTIFIED TO ALL ADJOINING AND NEARBY PROPERTY OWNERS AND EIGHT (8) SUBMISSIONS RECEIVED.
3. THE APPLICATION WAS REFERRED TO THE NORTH HARBOUR PRECINCT COMMUNITY FORUM FOR COMMENTS.
4. THE APPLICATION WAS PRESENTED TO THE DEVELOPMENT ASSESSMENT UNIT 8 JUNE 2010 WHERE IT WAS RECOMMENDED FOR APPROVAL.
5. SITE INSPECTION IS RECOMMENDED.
6. THE APPLICATION IS RECOMMENDED FOR **APPROVAL** SUBJECT TO CONDITIONS.

LOCALITY PLAN

Shaded area is subject land.



Report

Introduction

Subject property and surrounding development

The subject property is known as 323 Sydney Road, Balgowlah and legally known as Lot 5 in DP9335 with a total site area of 442.6m². The lot is an even rectangle in shape with front and rear boundaries (north and south) of 13.235m and side (east and west) boundaries of 35.33m. Currently a single storey dwelling occupies the property and is being used for a Home Occupation (Veterinary Surgery) known as Balgowlah Veterinary Clinic. The site is accessed by vehicle directly from Sydney road via a driveway leading to a single car space to the front of the existing

MIAP Report No. 32 (Cont'd)

building. There is also a driveway section and located to the rear of the building that is used for car parking. This area could accommodate two (2) cars.

Relevant Site Development History

In March 2009 an allegation of unauthorised use was investigated by Council's Compliance Team and subsequently a Notice and an Order issued requiring the cessation of the use of the premises as a veterinary surgery. However, the claim that the use was indeed a Home Occupation was ultimately established and Council have taken no further action. This was confirmed to the assessing officer by the Compliance Team.

Therefore, the current development application before Council can be considered and processed under the relevant legislation.

Proposed development

The proposed alterations and additions to the existing single storey dwelling to convert it to a residential flat building retaining the existing ground floor level and adding a first floor level and a second floor level within the roof structure includes the following works:

Ground floor

This floor includes the provision of two bedrooms, one with an ensuite bathroom. It also includes a kitchen / dining area and living room. A bathroom and toilet are also to be provided to this level. A new garage is also proposed to this level located adjoining the existing building and directly to the rear of the building. The garage is proposed to be accessed via the existing driveway and provide space for two cars. Another car space is proposed to the end of the driveway abutting the rear boundary.

Level 1 floor

This floor includes the lower level of the new unit development above the existing building and includes a large living area, family/dining area, kitchen, laundry and bathroom. This level also includes a rear deck accessed by the family area.

This level is accessed via a new stairway leading from the main entrance below to the western side of the building.

Level 2 floor

This floor is the upper floor of the new unit development and is located within the proposed roof structure of the building. The rooms to be included to this level include a TV room, and Bedroom 1 including an ensuite bathroom, bedroom 2 and a separate bathroom and toilet. This level also includes deck to the front (off bedroom 1) and the rear (off the TV room).

Site burdens and constraints

There are no burdens such as an easement or environmental constraints that would preclude the development as proposed subject to recommended conditions of consent.

Applicant's Supporting Statement

The applicant submitted a Statement of Environmental Effects (Streetscape Character Analysis) dated 20 May 2009 prepared by All Walls Pty Ltd.

Precinct Community Forum Comments

No comments had been received from the North Harbour Precinct Community Forum at the time of the writing of this report.

MIAP Report No. 32 (Cont'd)**Engineers Comments**

No objections subject to the imposition of recommended conditions of consent.

Building Comments

No objections subject to the imposition of recommended conditions of consent.

Landscape Officer Comments

No objections subject to the imposition of recommended conditions of consent.

Waste Comments

No objections subject to the imposition of recommended conditions of consent.

Heritage Comments

The following comments were received from the Heritage Team:-

'There will be little adverse impacts on the Foreshore Scenic Area further consideration should be given to the architectural design of the proposal so that it responds to the streetscape in terms of: character; form; and scale.'

Planning Comments**Environmental Planning & Assessment Act 1979 – Section 79(C)(1)**

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) **the provisions of:**
(i) **any environmental planning instrument, and**

Manly Local Environmental Plan 1988:

The site is in zone No 2 – The Residential Zone which permits dwelling houses with the consent of Council.

Manly Local Environmental Plan 1988 Clause 10 Objectives

The following comments are made in regard to the objectives for the Residential Zone as stated in Clause 10 of the Manly Local Environmental Plan 1988;

- (a) *to set aside land to be used for purposes of housing and associated facilities;*
The land is residential and no change is proposed to this use.

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

The proposed works are located within the Residential Zone and considered under the Development Control Plan for the Residential Zone in this report which concludes that the objectives of that document are met.

MIAP Report No. 32 (Cont'd)

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

The proposed alterations and additions are considered to be consistent with the surrounding character of the area which includes a mixture of dwelling houses and residential flat buildings and commercial premises and as such are supportable.

- (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 alterations and additions have been designed to achieve a high level of compliance with the primary planning controls for the zone. While there are impacts associated with the development, they are the result of a development that is, subject to the overall reduction in height as recommended, permissible; given the zoning and meet the key controls as required. Conditions have been recommended to reduce the impacts of the works as proposed and these greatly reduce the impacts i.e. overshadowing and visual impact.

In this case, while the resulting built form will be higher than the properties directly adjoining it, the heights proposed and number of storeys is permissible under the controls. Therefore, given the zoning, neighbouring properties can also develop their properties under the same controls.

It is also noted that while shadowing is increased, due to the orientation of the property i.e. north to south, any shadowing caused by the works as proposed will move throughout the day from one side of the property to the other as the sun moves across the horizon and therefore the shadowing moves accordingly.

The following controls from the Manly Development Control Plan for the Residential Zone 2007 have been considered in this assessment:-

'4.1.2 The following controls apply to sunlight access and overshadowing:

- 'a) *Where an existing adjacent building has an east-west orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors to living rooms for a period of at least 2 hours from 9am–3pm on 21 June;*

This is not applicable to the development proposed due to the orientation of the lots which are north-south.

- b) *Where solar access to windows or glazed doors of a living room of an adjacent building is currently less than 2 hours, no reduction in solar access to this window will be permitted;*

The shadow diagrams submitted and survey information included in the application indicates compliance with this control.

- c) *Where an existing adjacent building has a north-south orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors of living rooms for a period of at least 4 hours from 9am to 3pm on 21 June;*

The lots adjoining the site have a north-south orientation and according to the shadow diagrams submitted to Council and survey information provided, the proposal will result in neighbouring windows having access to sunlight for at least four (4) hours between 9:00am to 3:00pm on 21 June.

- d) *Where solar access to windows or glazed doors of a living room of an adjacent building is currently less than 4 hours, no reduction in solar access to this window or door will be permitted;*

This control is met by the plans submitted to Council and is considered to be met given the north-south orientation of the site.

MIAP Report No. 32 (Cont'd)

- e) *New development must not eliminate more than 1/3 of the existing sunlight accessing the private open space of adjacent properties, measured at 9am, 12 noon, and 3pm at the winter solstice (21 June);*

In this case, the additional shadowing does not comply with the control stated above. Therefore a condition of consent has been recommended to reduce the length of the upper floors of the building from the rear building line. This will effectively reduce the shadowing of the private open space to a compliant level in regard to the control above and also greatly reduce the visual impact of the building for neighbours. The resulting upper floor building line will be in alignment with surrounding properties and result in a compliant level of sunlight access for neighbouring properties.

- f) *Where there is no winter sunlight available to open space of adjacent properties the calculations for the purposes of sunlight will relate to the equinox;*

The above is not applicable in relation to this development assessment.

- g) *The proposed development must maintain solar access to the north facing roofs of existing dwellings (45° west to 45° east variation is applicable) to a fixed minimum area of 10m² capable of accommodating solar water heater panels; and*

Due to the orientation of the lots (north-south) to this section of Sydney Road; adequate solar access will be available to surrounding roofs further to the development as proposed.

- h) *Shadow diagrams (including elevations) at the winter solstice are required to show the impact of the proposal on the sunlight to living room windows of adjoining residences and their open space. The shadow diagrams are to be based on levels shown on a survey plan prepared by a registered surveyor.*

Adequate information has been received from the applicant to allow for the assessment of the impact of any shadowing on surrounding properties. A survey was provided to Council with the application documentation.

In conclusion, due to the identified non-compliance with one of the controls above, and concerns raised by neighbouring properties in regard to the shadows that will be cast by the development, a condition of consent has been recommended as follows:

The rear building line for the two upper levels above the proposed garage, is to be reduced by 2.5m in length (towards the north and the rear setback increased). Amended plans submitted to Council including any internal reconfiguration required prior to the issue of any Construction Certificate.

Reason: Consistency with surrounding pattern of development and reduction in overshadowing of Private Open Space to neighbouring properties and compliance with the DCP.

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

The proposed alterations and additions are located in Zone 2 which permits consideration of the development as proposed. The flexibility of this zone is due to its proximity to the adjoining Business Zone. The dwellings in this zone can include more than two storeys; however, the dwellings directly to the rear can include two storeys under their zoning, which is different to that of the subject property. The proposal includes a landscape plan with measures to mitigate the environmental impacts of the redevelopment. In this regard, the proposal is considered to be reasonable and the renovation acceptable.

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

The above objective is not applicable to this assessment.

MIAP Report No. 32 (Cont'd)

(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 have minimal impact upon surrounding social and physical infrastructure and will not increase demand for such services and facilities.

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

The proposed redevelopment complies with the primary controls for sub-zone 2 and is located in a section of Sydney Road that includes a mixture of development types i.e. both dwelling houses and residential flat buildings. Therefore, the proposal, subject to the imposition of recommended conditions of consent is considered to be a suitable redevelopment and is supported.

(i) *to encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination, and particularly in relation to the land to which Manly Local Environmental Plan 1988 (Amendment No 57) applies.*

The above objective is not relevant to this assessment as the subject site is not within the Tourist Area.

Clause 17 – Visual and aesthetic protection of certain land

The subject site is located within the Foreshore Scenic Protection Area as indicated in the Manly Local Environmental Plan 1988 – Map 1. Clause 17 states as follows:

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

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

Clause 33 – Development on land identified on Acid Sulphate Soils Planning Map

The subject site is located on Class 5 land as identified on the Acid Sulphate Soils Planning Map within the Manly Local Environmental Plan 1988. The subject site is not located within 500m from Class 1, 2, 3 or 4 lands which is likely to lower the watertable below 1 metre in Class 1, 2, 3 or 4 lands. Accordingly, the proposed works are not likely to impact upon Acid Sulphate Soils as thus considered satisfactory.

79C(1)(a)(ii) - any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and

There is no draft instrument that requires consideration.

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

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

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

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Site Area: 442m ²	<u>Permitted/ Required</u>	<u>Proposed</u>	<u>Complies Yes/No</u>
Density - Sub Zone 2	150sqm:1	422sqm:2	Yes
Floor space ratio	0.75:1 (331.5m ²)	0.72:1 (319m ²)	Yes
Wall height East side	9m	7.8m-9m	Yes
West side	9m	7.8m-9m	Yes
Number of storeys	>2 allowable	3	Yes
Roof height	3m	3.4m	No
Setback Front	6.0m or streetscape	Same as adjoining	Yes
Setback Rear	8.0m	7.7m to garage	No
East setback side	1.13m at ground floor level 2.6m-3m	900mm existing at ground floor level 2.3m to upper floors	No-Minor variation No-Minor variation
West setback side	2.6m-3m	3.6m	Yes
Open space	50% (221m ²)	35% (149.26m ²)	No
Open space - soft	30% of total (66.3m ²)	67% of total (148m ² -223% of requirement)	Yes
Number of Endemic Trees	1	1	Yes
Private Open Space	18m ²	>18m ²	Yes
Car Parking - Residents	2 spaces	2 spaces	Yes
- Visitors	1 space	1 space	Yes
Shadow - adjacent open space - adjoining NS orientation - exist north facing roofs	>1/3 impact >4hrs access >10m ² roof access	Yes Yes Yes	Yes-By condition

Comment:

Roof Height

The proposed roof height breaches the current control and a condition of consent requires that the roof is lowered to comply with the control. This measure has been discussed with the applicant who has given his verbal agreement.

Rear Setback

The proposal includes a variation to the rear setback control, however, the level of landscaped open space provided to the property is considered to be sufficient and the works will result in adequate building separation subject to the imposition of recommended conditions of consent. In terms of the amenity for residents; adequate areas for recreational activities, the drying of clothes and leisure activities are provided in the landscaped rear garden area.

Side Setback

The proposal includes a variation to the eastern side setback. This is due to the use of the existing building and setbacks as the footprint for the development as proposed. The upper level includes a setback and accordingly the proposal has given consideration to its proximity to neighbouring properties. In this regard, the works are considered to be acceptable and the variation supported.

Open Space

The proposal includes insufficient total landscaped open space; however, the level of soft landscaped open space complies with the required level for this property under the current controls. It is noted that more than sufficient private open space is provided to the property and residents. Therefore, despite the overall shortfall, the proposal is considered to be acceptable.

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Shadows

The original proposal would have a detrimental environmental impact in terms of the level of overshadowing that would be caused. Therefore a recommended condition of consent reduces the overall length of the upper floors to the main building and relocates the garage to remain directly adjoining the existing building as proposed. This final built form will comply with all relevant controls in regard to overshadowing and ensure that neighbour concerns have been addressed.

Issues	Applicable	Not Applicable
Views		✓
Privacy	✓	
Heritage – Actual Property		✓
Heritage – In Vicinity		✓
Threatened Species		✓
Foreshore Scenic Protection Area		✓
Excavation		✓
Landslip and Subsidence		✓
BASIX	✓	

Comment:

79C(1)(a)(iia)- any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and
 No such agreement has been submitted as part of this application.

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

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

Clause 92 of the Environmental Planning and Assessment Regulation 2000 requires Consent Authority to consider AS 2601 - 1991: *The Demolition of Structures*. Accordingly, appropriate conditions of consent are recommended for imposition should this application be considered worthy of approval.

79C(1) (b)- the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

The proposal, subject to the imposition of the recommended conditions of consent will be reasonable in the context of surrounding development. The recommended conditions have reduced the width of balconies to the rear of the proposed development and reduce its overall height and length. Therefore the visual impact will be reduced for neighbouring properties as will the impact of any shadows cast by the proposed development.

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

There are no burdens or constraints that would preclude the development as proposed.

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

The application was notified to nearby and adjoining property owners in accordance with Council's Notification Policy with eight (8) submissions received from the following objectors raising the following concerns;

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1. Robert Ritchie, 2 Bentley Street Balgowlah

- Negative impact on streetscape;
- Building form will detract from scenic amenity of street;
- Occupancy concern i.e. current useage;
- Tree removal;
- Safe removal of asbestos;
- Impact on sewer line;
- Sunlight access;
- Impact on privacy;
- Subdivision inconsistent with objectives of Zone;
- Double garage to have major impact on landscape quality of the property;
- Impact upon stormwater management for property;
- Excessive tree removal.

Comment on submissions:

- While the proposal will be inconsistent with directly adjoining properties, it meets the primary controls for the zone and is not inconsistent with development directly opposite or within the vicinity which include residential flat developments and commercial properties. Therefore, the proposal is considered to be reasonable.
- The proposed building form includes features such as a pitched roof and retention of the existing ground floor level as the basis for the redevelopment which are not considered to be inconsistent with development in this zone. This zone allows for the increased height of buildings and development in excess of two storeys. In this regard the proposal is considered to meet the future character of this section of the streetscape.
- Council's Compliance Manager has confirmed Council's satisfaction that there is no unauthorised use underway and evidence to this effect is on file;
- Council's Landscape Officer has considered the application and requires the retention of trees which have been considered to be worthy of retention;
- The removal of asbestos must meet the current legislative requirements in terms of its careful handling and disposal;
- Sydney Water must approve the proposed works in relation to the sewer line further to a recommended condition of consent;
- It is recognised that the scale of the building proposed would reduce sunlight access for surrounding properties and as such a recommended condition of consent reduces the length of the upper floors of the building by 2.5m bringing it into line with neighbouring buildings, reducing further the gross floor area;
- The assessing officer has recommended measures to manage the issue of neighbouring privacy including the reduction in size of rear balconies and imposition of privacy screening;
- The proposed subdivision is not considered to be inconsistent with the objectives for the zone which encourages the 'availability and variety of dwellings to enable population growth';
- The proposed redevelopment includes a landscape plan which includes measures to mitigate the impact of the redevelopment. Recommended conditions of consent include the relocation of the garage away from the side boundary and additional landscaping works along its length adjoining the side boundary to further soften the impact of the proposal. This relocation coupled with the recommendation to reduce the overall length of the upper floors to the main building by 2.5m will greatly reduce the impact of the redevelopment.
- The recommendation includes standard conditions of consent relating to stormwater management and the applicant submitted a concept stormwater plan for consideration;
- Council's Landscape Officer has considered the application and requires the retention of trees which have been considered to be worthy of retention.

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Contact with assessing officer:

The assessing officer contacted Mr Ritchie to discuss the recommendation and issues raised in submission.

2. Jason Reid, Unit 13/27 Boyle Street, Balgowlah.

- Impact on streetscape;
- Overshadowing;
- Impact on Open Space;

Comment on submissions:

- The proposal includes heights and elements such as three storeys which are permissible in Zone 2. This Zone adjoins another Zone within which two storeys only are permissible under the DCP. The proposed redevelopment is inconsistent with existing adjoining dwellings on either side which have not yet been redeveloped and remain single storey. Effectively, the proposal reflects the built form controls of the current Zoning which are inconsistent with single storey development. The impacts on the streetscape have been reduced through the use of landscaping and elements such as the pitched roof type which is consistent with surrounding development.
- The proposal will have a negative and unacceptable impact upon sunlight access for neighbours. That is recognised within this assessment. Therefore a recommended condition of consent reduces the length of the upper floors of the main building by 2.5m to bring the proposal into compliance and reduce negative impacts of the works as proposed. This matter has been discussed and agreed with the applicant along with other measures recommended to mitigate the impacts of the works.
- As previously stated, further to the amendment of plans as required, adequate landscaped open space will be provided to the property and is considered to be sufficient for such a redevelopment.

Contact with assessing officer:

The assessing officer contacted Mr Reid to discuss his submission and advise of the recommendation and reasoning therefore.

3. Merle Kermond, Unit 16/27-29 Boyle Street, Balgowlah.

- Sunlight access.

Comment on submissions:

- Further to discussions with neighbours and an assessment of the works as originally proposed, the assessing officer recommends the imposition of a condition of consent which reduces the length of the upper floors of the building by 2.5m. This greatly reduces the impact of shadows falling to the rear and sides of the development and reduces the impact upon neighbouring private open space. This measure has been discussed and agreed with the applicant.

Contact with assessing officer:

The assessing officer contacted Ms Kermond and discussed her submission and measures being considered to mitigate the impact of the redevelopment.

4. Mr & Mrs Vernon, 8 Bentley Street, Balgowlah.

- Number of storeys;
- Sunlight access;
- Noise due to proximity of garage.

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Comment on submissions:

- The proposed number of storeys is permissible under the controls for this Zone. The proposal represents the future character of this zone;
- The assessing officer has recommended a condition of consent that reduces the length of the upper floors of the building by 2.5m. This will greatly reduce the overshadowing for neighbouring properties and has been agreed with the applicant. This measure will reduce overshadowing and is considered to result in a reasonable level of sunlight access for neighbours;
- The noise levels generated by residential development are reasonable and the proposed garage has been relocated away from the side boundary via a recommended condition of consent. In this regard the works are considered to be acceptable in terms of noise and unlikely to result in 'offensive noise'.

Contact with assessing officer:

The assessing officer contacted Mr & Mrs Vernon to discuss their submission and issues raised therein.

5. Jane Upperton, 6 Bentley Street, Balgowlah.

- Sunlight access;
- Privacy;
- Inconsistent with streetscape.

Comment on submissions:

- The assessing officer has recommended a condition of consent that reduces the length of the upper floors of the main building by 2.5m. This will greatly reduce the overshadowing for neighbouring properties and has been agreed orally with the applicant. This measure will reduce overshadowing and is considered to result in a reasonable level of sunlight access for neighbours;
- The assessing officer has recommended measures to manage the issue of neighbouring privacy including the reduction in size of rear balconies and imposition of privacy screening;
- The proposed redevelopment includes key elements that meet the current controls for Zone 2. The surrounding streetscape includes a variety of building forms that reach a variety of heights. The two adjoining single storey dwellings are not entirely consistent with this section of the street which transitions between the business zone and this section of the residential zone.

6. Mr & Mrs Ford, 321 Sydney Road, Balgowlah.

- Access to sunlight and light;
- Privacy;
- Streetscape;
- Query regarding continuing use as veterinary surgery;
- Garage to boundary;
- Impact on sewer line;
- Endemic trees;
- Loss of gardens to front and rear.

Comment on submissions:

- The assessing officer has recommended a condition of consent that reduces the length of the main building by 2.5m. This will greatly reduce the overshadowing for neighbouring properties and has been agreed with the applicant. This measure will reduce overshadowing and is considered to result in a reasonable level of sunlight access for neighbours;

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- The assessing officer has recommended measures to manage the issue of neighbouring privacy including the reduction in size of rear balconies and imposition of privacy screening;
- The proposed redevelopment includes key elements that meet the current controls for Zone 2. The surrounding streetscape includes a variety of building forms that reach a variety of heights. The two adjoining single storey dwellings are not entirely consistent with this section of the street which transitions between the business zone and this section of the residential zone
- The application is for a residential use only and makes no reference to the continued use as a veterinary surgery;
- The proposed redevelopment included a landscape plan which includes measures to mitigate the impact of the redevelopment. Recommended conditions of consent include the relocation of the garage away from the side boundary and additional landscaping works along its length adjoining the side boundary to further soften the impact of the proposal. In this regard, and coupled with the recommendation to reduce the overall length of the main building by 2.5m from the rear facade will greatly reduce the impact of the redevelopment;
- Sydney Water must approve the proposed works in relation to the sewer line further to a recommended condition of consent;
- Council's Landscape Officer has considered the application and requires the retention of trees which have been considered to be worthy of retention.
- The proposal includes a landscape plan which includes suitable plantings and front and rear garden areas. This is considered to be acceptable and reasonable in the context of the variety of development types in the surrounding area.

Contact with assessing officer:

The assessing officer contacted Ms Upperton to discuss her submission and issues raised therein.

7. Mr & Mrs Masters, 4 Bentley Street, Balgowlah.

- Overshadowing;
- Privacy;
- Streetscape;
- Compliance with DCP controls.

Comment on submissions:

- The assessing officer has recommended a condition of consent that reduces the length of the upper floors to the main building by 2.5m from the rear. This will greatly reduce the overshadowing for neighbouring properties and has been agreed with the applicant. This measure will reduce overshadowing and is considered to result in a reasonable level of sunlight access for neighbours;
- The assessing officer has recommended measures to manage the issue of neighbouring privacy including the reduction in size of rear balconies and imposition of privacy screening;
- The proposed redevelopment is considered to be consistent with the mixed character of this section of streetscape yet varied in relation to the adjoining dwellings which have not been redeveloped under the current controls.
- The proposed redevelopment represents, in terms of most of the relevant DCP controls, the future character for this Zone i.e. Zone 2 and as such is considered to be acceptable subject to the imposition of recommended conditions of consent.

Contact with assessing officer:

The assessing officer contacted Mr & Mrs Masters to discuss their submission and issues raised therein.

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8. Ron Hyde, 325 Sydney Road, Balgowlah.

- Inconsistent with adjoining dwellings due to additional height proposed;
- Privacy to rear garden to be lost due to tree removal;
- Proximity of rear decks and overlooking and reduction of privacy and amenity;
- Plantings to side of driveway will reduce light access to his bedrooms and lounge.

Comment on submissions:

- The proposed height and number of storeys complies with the control for this zone despite inconsistency with existing directly adjoining dwellings. The dwellings and buildings within the vicinity of the subject property include a variety of styles and types and heights. In this regard, the proposal is not considered to warrant refusal due to the inconsistency with some of the buildings in its vicinity;
- The assessing officer has recommended measures to manage the issue of neighbouring privacy including the reduction in size of rear balconies and imposition of privacy screening;
- The proposed plantings have been included to soften the impact of the works as proposed and as such are supported. It is noted that the 'native grass' proposed to be used for this section of the landscaping includes a height of 900mm. It is doubted that the height will reduce or remove light to the windows being considered.

Contact with assessing officer:

The assessing officer contacted Mr Hyde to discuss his submission and issues raised therein.

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

The public interest is served through the detailed assessment of this development application and consideration of submissions received in relation to the development application.

CONCLUSION:

The application has been assessed having regard to Section 79C of the Environmental Planning and Assessment Act 1979, the Manly Local Environmental Plan 1988 and the Development Control Plan for the Residential Zone 2007 Amendment 1 and is considered favourable.

RECOMMENDATION

That Development Application No 270/09 for alterations and additions to existing dwelling to convert into a residential flat building containing two (2) units, including first floor, second floor additions, double garage and strata subdivision be **Approved** subject to the following conditions:-

ANS01

The modified driveway is to be designed and constructed to AS2890.1-2004 and the RTA's requirements (i.e. 4 metres at the property boundary and 5 metres at the kerblines). Details of these requirements should be obtained from RTA's Project Services Manager, Traffic Projects Section, Parramatta, Ph: 8849 2144.

A certified copy of the design plans shall be submitted to the RTA for consideration and approval prior to the release of a construction certificate by Council and commencement of road works.

Reason: To comply with the requirements of the RTA and relevant legislation.

The RTA fees for administration, plan checking, civil works inspections and project management shall be paid by the developer prior to the commencement of the works.

ANS02

All vehicles must enter and exit the site in a forward direction.

Reason: To comply with the requirements of the RTA and relevant legislation.

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ANS03

All vehicles are to be clear from the edge of carriageway before being required to stop.

Reason: To comply with the requirements of the RTA and relevant legislation.

ANS04

The layout of the proposed car parking areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements and parking bay dimensions) should be in accordance with AS 2890.1- 2004.

Reason: To comply with the requirements of the RTA and relevant legislation.

ANS05

Council should ensure that post development storm water discharge from the subject site into the RTA drainage system does not exceed the pre-development discharge.

Should there be changes to the Sydney Road drainage system then detailed design plans and hydraulic calculations of the stormwater drainage system are to be submitted to the RTA for approval, prior to the commencement of any works.

Details should be forwarded to:

The Sydney Asset Management
Roads and Traffic Authority
PO Box 973 Parramatta CBD 2124.

A plan checking fee will be payable and a performance bond may be required before the RTA's approval is issued. With regard to the Civil Works requirement please contact the RTA's Project Engineer, External Works Ph: 8849 2114 or Fax: 8849 2766.

Reason: To comply with the requirements of the RTA and relevant legislation.

ANS06

Any proposed landscaping and / or fencing must not restrict sight distance to pedestrians and cyclists travelling along the footpath of Sydney Road.

Reason: To comply with the requirements of the RTA and relevant legislation.

ANS07

All demolition and construction vehicles are to be contained wholly within the site.

Reason: to comply with the requirements of the RTA and relevant legislation.

ANS08

The proposed development should be designed such that road traffic noise from Sydney Road is mitigated by durable materials in order to satisfy the requirements for habitable rooms under Clause 102 subdivision 3 of State Environmental Planning Policy (Infrastructure) 2007.

Reason: To comply with the requirements of the RTA and relevant legislation.

ANS09

All works / regulatory signage associated with the proposed development are to be at no cost to the RTA.

Reason: To comply with the requirements of the RTA and relevant legislation.

ANS10

The proposed maximum ridge height is to be reduced from R.L. 56.2 to R.L.55.8. Plans are to be amended accordingly prior to the issue of the Construction Certificate.

Reason: To achieve compliance with the control for roof height as required by the Development Control Plan for the Residential Zone 2007.

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ANS11

The balconies to the upper levels of the proposed residential flat development are to be amended as follows:

- The balcony located to the rear facade of Level 2 is to be reduced in length (i.e. south to north) from 3m to 1.5m. This balcony is also to include privacy screening to a height of 1.8m to its eastern and western ends.
- The balcony located to the rear facade of Level 1 is to be reduced in length (i.e. south to north) from 2m to 1.5m. This balcony is also to include privacy balustrade to a height of 1.8m to the eastern and western ends.

Plans are to be amended accordingly prior to the issue of the Construction Certificate.

Reason: To protect privacy for neighbouring properties.

ANS12

The rear building line for the two (2) upper levels above the proposed garage is to be reduced by 2.5m in length (towards the north) and the rear setback for those two (2) floors increased. Amended plans are to be submitted to Council, including any internal reconfiguration required, prior to the issue of any Construction Certificate.

Reason: Consistency with surrounding pattern of development and reduction in overshadowing of Private Open Space to neighbouring properties and compliance with the DCP.

ANS13

The proposed double garage is to be relocated to a distance of no less than 900mm from the eastern side boundary. The resulting garage will be in alignment with the existing side setback of the main residential dwelling currently located on the subject property. Plans are to be amended accordingly prior to the issue of the Construction Certificate.

Reason: To protect neighbouring properties during construction and provide for a landscaped side setback to reduce the impact of the works on the neighbouring property.

ANS14

The eastern side setback is to be landscaped (in addition to that included in the landscape plan submitted) along the eastern side of the proposed garage with plantings reaching a mature height of no more than 3m. The landscape plan is to be amended accordingly prior to the issue of the Construction Certificate.

Reason: To reduce the impact of the proposed garage upon the neighbouring property.

ANS15

The Landscape Plan is to be amended and submitted to Council / Accredited Certifier prior to the issue of the Construction Certificate. The Landscape Plan is to include plants from Council's Endemic Plants list.

Reason: To meet requirements of this consent in regard to landscaping and the location of the building.

ANS16

The applicant is required to retain and protect the following trees and indicated on the amended landscape plan prior to the issue of the construction certificate:-

- One (1) x Jacaranda located in the rear southern corner of the property;
- One (1) x Casuarina located to the western boundary.

Reason: To provide screening for neighbours and maintain a reasonable level of privacy.

ANS17

The approval is for two (2) dwellings only and is not to be altered without the prior consent of Council.

Reason: To comply with Council's DCP for the Residential Zone 2007, Amendment 1.

MIAP Report No. 32 (Cont'd)

ANS18

The garage is to be fully enclosed on all sides. In this regard, the opening indicated on the plans and elevations is to be bricked up. Plans are to be amended accordingly prior to the issue of the Construction Certificate.

Reason: To protect the landscaped area to the rear and the amenity of adjoining properties.

GENERAL CONDITIONS RELATING TO APPROVAL**Documents relating to consent.**

The development, except where modified by the conditions of this consent, is to be carried out in accordance with the following plans and documentation.

Plans affixed with Council's stamp relating to Development Consent No. DA270/09

Document Title	Date	Issue Date
09030-1 Ground, Level 1, Level 2 plans and North, West and South Elevations.	Dated May 2009	8 September 2009
09030-2 East elevation, Section A-A, Site Plan.	Dated May 2009	8 September 2009
09030-3 Plan of Subdivision	August 2009	8 September 2009
090739-D01 – Stormwater Management Plan	September 2009	8 September 2009

Documentation affixed with Council's stamp relating to Development Consent No. DA270/09

- *Statement of Environmental Effects prepared by All Walls Pty Limited with no date;*
- *Driveway Layout and Turning Manoeuvres for Dual Occupancy Development at 323 Sydney Road, Balgowlah;*
- *Proposed Landscape plan prepared by atc landscape architects & swimming pool designers dated August 2008.*

In the event of any inconsistency between the approved plans and supplementary documentation, the plans will prevail.

Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

1 (2AP01)

Four (4) copies of architectural drawings consistent with the development consent and associated conditions are to be submitted to the Council/Accredited Certifier prior to the issue of the Construction Certificate.

Reason: To comply with the Environmental Planning and Assessment Act 1979.

2 (2AP03)

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 1991 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 you make yourself aware of your legal position which may involve a survey to identify the allotment boundary.

Reason: To advise developers of their responsibilities and to protect the interests of adjoining owners.

MIAP Report No. 32 (Cont'd)

3 (2CD01)

Pursuant to Section 97 of the Local Government Act, 1993, Council requires prior to the issue of Construction Certificate, or commencement of any excavation and demolition works, payment of a Trust Fund Deposit of \$7,500. The Deposit is required as security against damage to Council property during works on the site. The applicant must bear the cost of all restoration works to Council's property damaged during the course of this development. All building work must be carried out in accordance with the provisions of the Building Code of Australia.

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

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

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

4 (2CD04)

Where any shoring for excavation is to be located on or is supporting Council's property, or any adjoining private property, engineering drawings and specifications certifying the shoring will be adequate for their intended purpose and must be submitted to the Council/Accredited Certifier for approval with the Construction Certificate. The documentation prepared and certified by an appropriately qualified and practising structural engineer is to show all details, including the extent of encroachment and the method of removal and de-stressing of shoring elements. A copy of this documentation must be provided to the Council for record purposes at the time of Construction Certificate application.

Reason: To ensure the protection of existing public infrastructure and adjoining properties.

5 (2CD06)

Four (4) certified copies of the structural engineer's details for the proposed development; including but not limited to all reinforced concrete, structural steel support construction and any proposed retaining walls; must be submitted to the Council/Accredited Certifier prior to the issue of the Construction Certificate.

Reason: To ensure construction of the new development is in accordance with the structural engineers design.

6 (2CD07)

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

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

7 (2CD10)

The proposed structure/s are to be located clear of the existing Council easement. Information regarding the location of any services within the easement should be sought from Council's engineers before structural elements and their locations are finalised. A certificate from a registered surveyor is to be submitted to Council verifying the location of the structure/s after footings have been poured and before the construction of any walls.

Reason: To allow maintenance of services within the easement without affecting the building and to ensure there is no damage to public assets.

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8 (2CD13)

All plumbing and drainage, including sewerage drainage stacks, ventilation stacks and water service pipes are to be concealed within the building. Plumbing other than stormwater downpipes must not be attached to the external surfaces of the building.

Reason: To ensure the visual quality of the development.

9 (2DS01)

A detailed stormwater management plan is to be prepared to fully comply with Council's Specification for On-site Stormwater Management 2003 and Specification for Stormwater Drainage 2003 and must be submitted to Council for approval prior to issue of the Construction Certificate. The stormwater management plan and designs are to be prepared by a suitably qualified engineer.

Reason: To ensure appropriate provision is made for the disposal and management of stormwater generated by the development, and to ensure that infrastructure reverting to Council's care and control is of an acceptable standard.

10 (2FP03)

No portion of the proposed building or works, as approved within the subject site, are to encroach upon any road reserve or other public land except as may be permitted by the Local Government Act 1993. This includes the opening and closing of gates and doors which must open and close within the subject site.

Reason: To ensure structures are contained within the site.

11 (2FR01)

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

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

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

12 (2FR03)

A building in respect of which there is a change of building use must comply with the Category 1 Fire Safety Provisions applicable to the proposed use.

Note: The obligation to comply with the Category 1 fire safety provisions may require building work to be carried out even though none is proposed or required in relation to this development consent. It is recommended you discuss the requirements for achieving compliance with this condition with an Accredited Certifier (Building), who will be able to advise of any action or works which may be required.

Reason: Statutory requirement.

13 (2MS01)

Where construction or excavation activity requires the disturbance of the soil surface and existing vegetation, details including drawings and specifications must be submitted to Council accompanying the Construction Certificate, which provide adequate measures for erosion and sediment control. As a minimum, control techniques are to be in accordance with Manly Council Guidelines on Erosion and Sediment Control, or a suitable and effective alternative method. The Sediment Control Plan must incorporate and disclose:

- 1) all details of drainage to protect and drain the site during the construction processes,
- 2) all sediment control devices, barriers and the like,
- 3) sedimentation tanks, ponds or the like,
- 4) covering materials and methods, and
- 5) a schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained.

Details from an appropriately qualified person showing these design requirements have been met

MIAP Report No. 32 (Cont'd)

must be submitted with the Construction Certificate and approved by the Council/Accredited Certifier prior to issuing of the Construction Certificate.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

Internal Note: This condition is to be imposed in conjunction with 4MS04.

14 (2TC01)

Details of the method of termite protection which will provide whole of building protection, inclusive of structural and non-structural elements must be submitted to the Council / Accredited Certifier prior to issue of the Construction Certificate. Attention is drawn to the provisions of Australian Standard AS 3660.1 - 2000 Termite management – New building work, and to the Manly Code for the Protection of Buildings Against Termite Attack 1996.

Reason: To protect the building from possible termite damage.

15 (2US01)

A Section 94 contribution is to be paid for the provision of or increase the demand for public amenities and public services as a consequence of the development in the area. The total contribution for this development being alterations and additions to existing dwelling to convert into a residential flat building containing two (2) units, including first floor, second floor additions, double garage and strata subdivision is \$20,000, being \$20,000.00 per additional dwelling. This contribution shall be paid to Council prior to the release of the Construction Certificate.

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

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

16 (2WM02)

A Waste Management Plan is to be submitted with the application prior to a Construction Certificate being issued in accordance with the Manly Development Control Plan for Waste Minimisation and Management 2000.

The plan should detail the type and estimate the amount of demolition and construction waste and nominate how these materials will be sorted and dealt with. All demolition and excess construction materials are to be recycled where ever practicable. It should include consideration of the facilities required for the ongoing operation of the premises' recycling and waste management services after occupation. A template is available from the Manly Council website.

Reason: To plan for waste minimisation, recycling of building waste and on-going waste management.

Internal Note: The requirement for a Waste Management Plan is included in the Department of Environment and Climate change (DECC) Waste Service Performance Improvement Payment Criteria (WSPIP).

17 (2WM05)

All Multi Unit Dwellings (MUDs) must locate the waste storage and recycling area with convenient access to Council's usual collection point.

To assist the servicing of a Council provided bins. Council allocates a 240L general waste bin, a 240L paper recycling bin and a 240L co-mingled recycling bin to be shared by every 4 residential dwellings. Provision for an additional 240L vegetation bin should be included.

The storage area for MUDs of 17 or more dwellings must be accessible to Council Garbage Collectors unless bins requiring collection are normally be presented at kerbside. For residential MUDs with 16 or fewer dwellings, kerbside collection is usually required. Refer to Manly Council's Development Control Plan for Waste Minimisation and Management.

Reason: To ensure Multi Unit Dwelling developments allow sufficient space for waste bins.

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18 (2WM06)

All Multi Unit Dwellings must provide a location for dry recycling systems (i.e. recycling of paper and recyclable containers) and services. Manly Council provides recycling services to all residential dwellings.

Reason: To provide of dry recycling systems as required by the Department of Environment and Climate Change (DECC).

Internal Note: This refers to a stipulation in the DECC Waste Service Performance Improvement Payment Criteria and is to be included in all DA consents issued after 30 June 2009 for the building of multi-unit dwellings.

19 (2WM07)

All Multi Unit Dwellings are to designate a non paved area (min. 80cmx80cm) on site as space for communal or individual composting or worm farming units.

Reason: For composting and worm farming in Multi Unit Dwellings to reduce waste to landfill.

CONDITIONS TO BE SATISFIED PRIOR TO ANY COMMENCEMENT

20 (3BM01)

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

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

21 (3CD01)

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

Reason: To ensure compliance with statutory provisions.

22 (3CD03)

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

Reason: To protect the public interest and safety.

23 (3CD06)

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.

Reason: To ensure structural adequacy.

24 (3LD01)

All healthy trees and shrubs identified for retention on the submitted landscape drawing are to be suitably marked for protection before any construction works start.

Reason: To ensure the trees conditioned to stay on the site are suitably protected during any construction works.

25 (3LD03)

Where trees greater than 5 metres in height which are not within the proposed footprint (i.e. not directly affected by the development) and are proposed for removal, a tree permit is required subject to the Tree Preservation Order 2001 criteria.

Reason: Retain the number of existing trees on site which are protected by the Tree Preservation Order and not directly in the way of development.

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CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

26 (4AP02)

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

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

27 (4CD01)

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

- 1) All demolition is to be carried out in accordance with Australian Standard AS 2601-2001.
- 2) Demolition must be carried out by a registered demolition contractor.
- 3) A single entrance is permitted to service the site for demolition and construction. The footway and nature strip at the service entrance must be planked out.
- 4) No blasting is to be carried out at any time during construction of the building.
- 5) Care must be taken during demolition/ excavation/ building/ construction to prevent any damage to adjoining buildings.
- 6) Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.
- 7) Any demolition and excess construction materials are to be recycled wherever practicable.
- 8) The disposal of construction and demolition waste must be in accordance with the requirements of the Protection of the Environment Operations Act 1997.
- 9) All waste on the site is to be stored, handled and disposed of in such a manner as to not create air pollution (including odour), offensive noise or pollution of land and/or water as defined by the Protection of the Environment Operations Act 1997. All excavated material should be removed from the site in an approved manner and be disposed of lawfully to a tip or other authorised disposal area.
- 10) Section 143 of the Protection of the Environment Operations Act 1997 requires waste to be transported to a place which can lawfully accept it. All non-recyclable demolition materials are to be disposed of at an approved waste disposal depot in accordance with legislation.
- 11) All materials on site or being delivered to the site are to generally be contained within the site. The requirements of the Protection of the Environment Operations Act 1997 must be complied with when placing/stockpiling loose material, disposing of concrete waste, or other activities likely to pollute drains or water courses.
- 12) Details as to the method and location of disposal of demolition materials (weight docket, receipts, etc.) should be kept on site as evidence of approved methods of disposal or recycling.
- 13) Any materials stored on site must be stored out of view or in such a manner so as not to cause unsightliness when viewed from nearby lands or roadways.
- 14) Public footways and roadways adjacent to the site must be maintained and cleared of obstructions during construction. No building materials, waste containers or skips may be stored on the road reserve or footpath without prior separate approval from Council, including payment of relevant fees.
- 15) Building operations such as brickcutting, washing tools or paint brushes, and mixing mortar not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
- 16) All site waters during excavation and construction must be contained on site in an approved manner to avoid pollutants entering into waterways or Council's stormwater drainage system.
- 17) Any work must not prohibit or divert any natural overland flow of water.

Reason: To ensure that demolition, building and any other site works are undertaken in accordance

MIAP Report No. 32 (Cont'd)

with relevant legislation and policy and in a manner which will be non-disruptive to the local area.

28 (4CD02)

In order to maintain the amenity of adjoining properties, audible site works must be restricted to between 7.00am and 6.00pm, Monday to Friday and 8.00am to 1.00pm Saturday. No site works can be undertaken on Sundays or public holidays.

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

Reason: To prevent disturbance to the surrounding community.

29 (4CD03)

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

Reason: To maintain sanitary conditions on building sites.

30 (4CD05)

Retaining walls being constructed in conjunction with excavations must be in accordance with structural engineer's details. Certification by a structural engineer that the constructed works comply with the structural detail must be submitted to the Principal Certifying Authority.

Reason: To ensure the structural adequacy of the retaining walls.

31 (4CD06)

All construction works must be strictly in accordance with the Reduced Levels (RLs) as shown on the approved drawings. Certification is to be submitted to the Principal Certifying Authority during construction by a registered surveyor certifying complying and finished ridge levels.

Reason: To ensure compliance with the consent.

32 (4CD07)

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

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

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

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

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

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33 (4DS01)

A suitable sub-surface drainage system is to be provided adjacent to all excavated areas and such drains being connected to an approved disposal system.

Reason: To prevent uncontrolled seepage entering excavated areas.

34 (4FR01)

The building is to be erected in Type A construction for a Class 2 building in accordance with the Fire Resistance Provisions of the Building Code of Australia.

Reason: To specify the standard of construction and the level of fire safety required by the Building Code of Australia.

35 (4LD02)

All healthy trees and shrubs identified for retention on the drawing are to be:

- (a) suitably protected from damage during the construction process, and
- (b) retained unless their removal has been approved by Council.

Reason: This is to ensure that the trees on the site which do not have approval to be removed on the site are suitably protected during any construction works.

36 (4LD03)

The felling, lopping, topping, ringbarking, wilful destruction or removal of any tree/s unless in conformity with this approval or subsequent approval is prohibited.

Reason: To prohibit the unnecessary damage or removal of trees without permission from Council during any construction.

37 (4LD04)

The following precautions must be taken when working near trees to be retained:

- harmful or bulk materials or spoil must not be stored under or near trees,
- prevent damage to bark and root system,
- mechanical methods must not be used to excavate within root zones,
- topsoil from under the drip line must not be added and or removed,
- ground under the drip line must not be compacted, and
- trees must be watered in dry conditions.

Reason: This is to ensure no damage is caused to trees from various methods of possible damage.

38 (4MS01)

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

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

The cost of these inspections by Council is \$2080 (being \$260 per inspection inclusive of GST). Payment of the above amount is required prior to the first inspection. Inspection appointments can be made by contacting the Environmental Services Division on 9976 1414.

At least 24 hours notice should be given for a request for an inspection and submission of the relevant inspection card. Any additional inspection required as a result of incomplete works will incur a fee of \$120.

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

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39 (4MS02)

In order to ensure compliance with approved drawings, a Survey Certificate, to Australian Height Datum, must be prepared by a registered surveyor as follows:

- 1) at the completion of the first structural floor level indicating the level of that floor and the relationship of the building to the boundaries, and
- 2) at the completed height of the building, prior to the placement of concrete form work, or the laying of roofing materials, and
- 3) at completion, the relationship of the building, and any projections thereto, to the boundaries.

Progress certifications in response to points (a) through (c) must be provided to the Principal Certifying Authority at the time of carrying out relevant progress inspections. Under no circumstances will work be allowed to proceed should such survey information be unavailable or reveal discrepancies between the approved drawings and the proposed works.

Reason: To ensure compliance with the development consent.

40 (4MS04)

The Sediment Control Plan is to be implemented from the commencement of works and maintained until completion of the development.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE

41 (5DS01)

Stormwater drainage from the proposed addition/extension must be disposed of to the existing drainage system. All work is to be carried out in accordance with Council standards and specifications for stormwater drainage. Work is to be completed prior to the issue of the Occupation Certificate.

Reason: To ensure appropriate provision is made for the disposal and management of stormwater generated by the development, and to ensure infrastructure reverting to Council's care and control is of an acceptable standard.

42 (5FR01)

An automatic fire detection and alarm system must be installed in the proposed dwelling in accordance with the requirements of the Building Code of Australia.

Reason: To comply with the Environmental Planning and Assessment Act 1979.

43 (5TC01)

Prior to issue of the Occupation Certificate, a durable termite protection notice must be permanently fixed to the building in a prominent location detailing the form of termite protection which has been used in accordance with the Manly Code for the protection of Buildings against Termite Attack.

Reason: To inform owners and future owners of the type of termite protection installed and of the need for regular inspections.

44 (5US01)

Any adjustment to a public utility service is to be carried out in compliance with its standards; where consent is required, with its concurrence; and with the full cost being borne by the applicant.

Reason: To ensure compliance with the terms of this consent.

ONGOING CONDITIONS RELATING TO THE OPERATION OF THE PREMISES OR DEVELOPMENT

45 (6LP04)

Leighton Green Cypress Cupressocyparis leylandii or any of its cultivars, must not be planted on the site for the life of the development. In the event of any inconsistency between this condition and

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the development application documents, this condition will prevail to the extent of the inconsistency.

Reason: To reduce the potential for adverse amenity effects such as overshadowing, loss of views, and loss of plant diversity.

46 (6MS02)

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

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

47 (6NL03)

The ongoing use of the premises/property must not give rise to 'offensive noise' as defined under the provisions of the Protection of the Environment Operations Act 1997.

Reason: To ensure compliance with legislation and to protect public health and amenity.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF ANY SUBDIVISION CERTIFICATE

48 (7US01)

All engineering works including the provision of services, drainage, driveways and earthworks, are to be completed prior to the issue of the Subdivision Certificate.

Reason: To ensure adequate access and services have been provided for the new lots.

49 (7US02)

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 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.

Reason: To ensure compliance with the statutory requirements of Sydney Water.

ATTACHMENTS

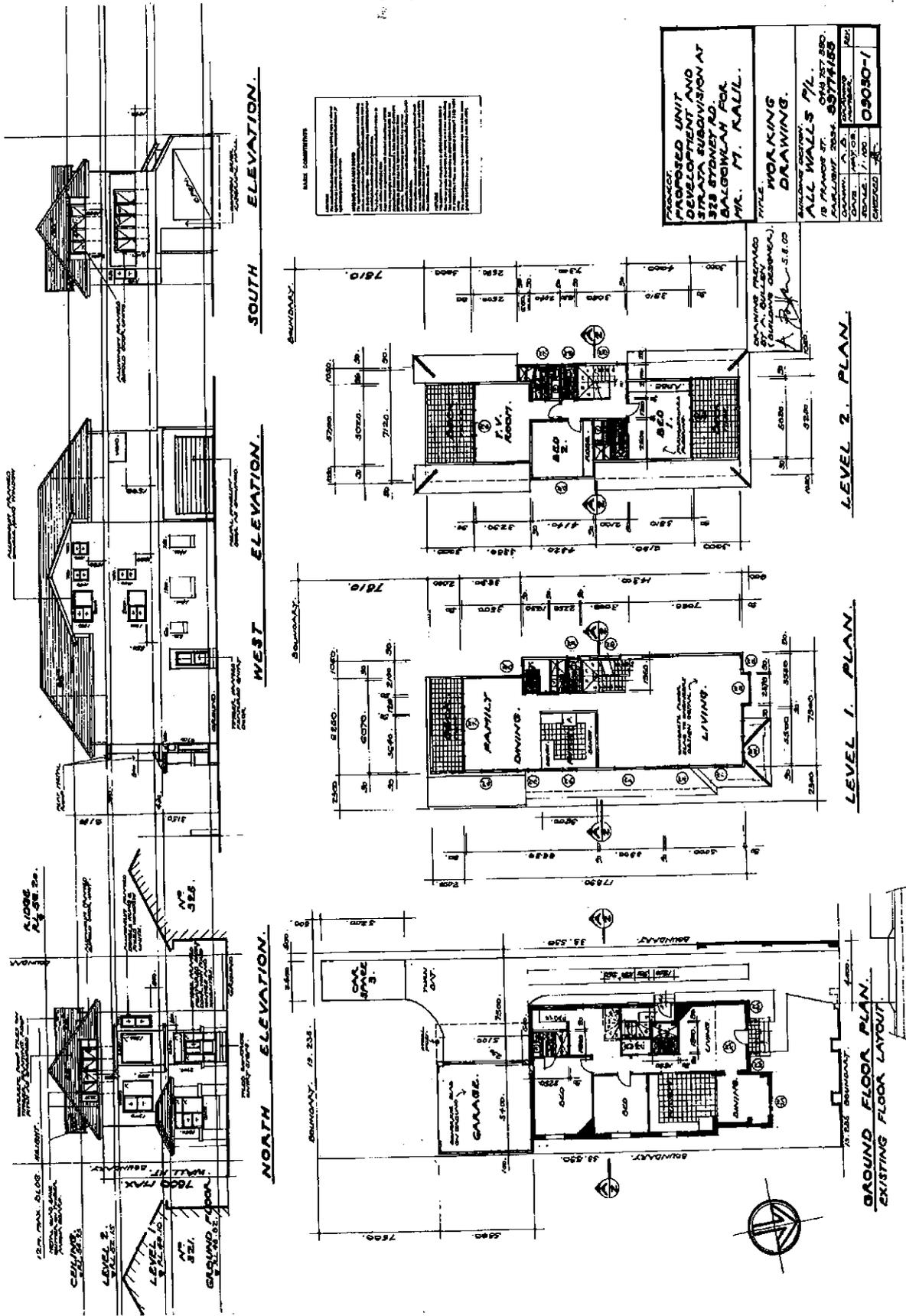
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***** End of MIAP Report No. 32 *****

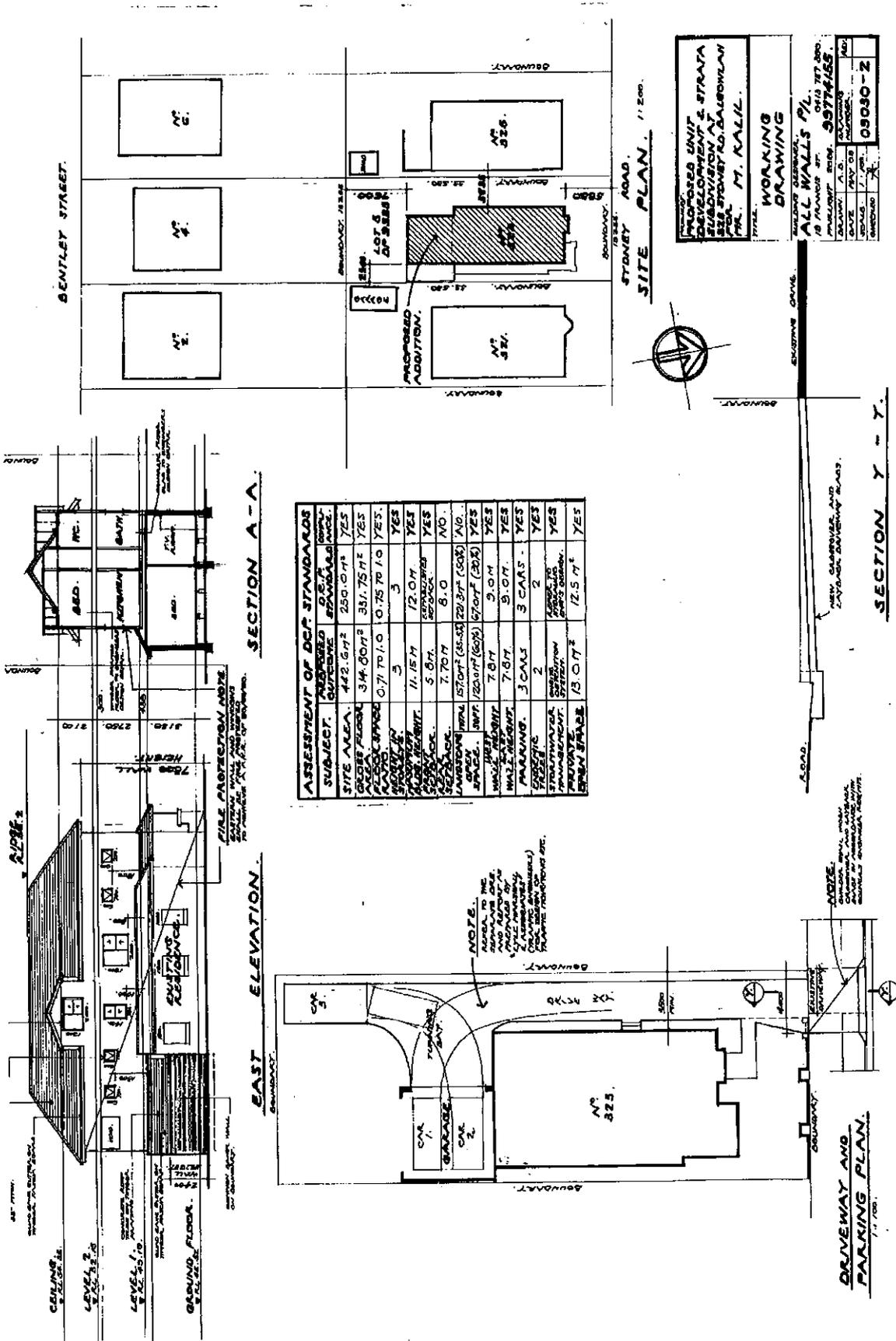
ATTACHMENT 1

MIAP Report No. 32 - 323 Sydney Road, Balgowlah - DA270/09
 DA Plans



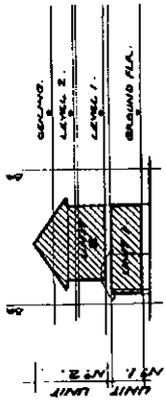
ATTACHMENT 1

MIAP Report No. 32 - 323 Sydney Road, Balgowlah - DA270/09
DA Plans

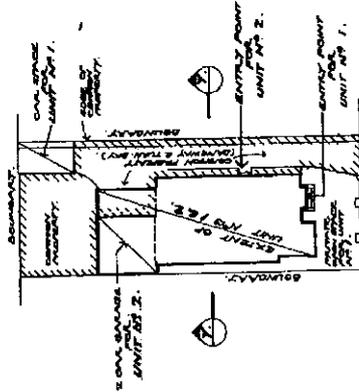


ATTACHMENT 1

MIAP Report No. 32 - 323 Sydney Road, Balgowlah - DA270/09
 DA Plans

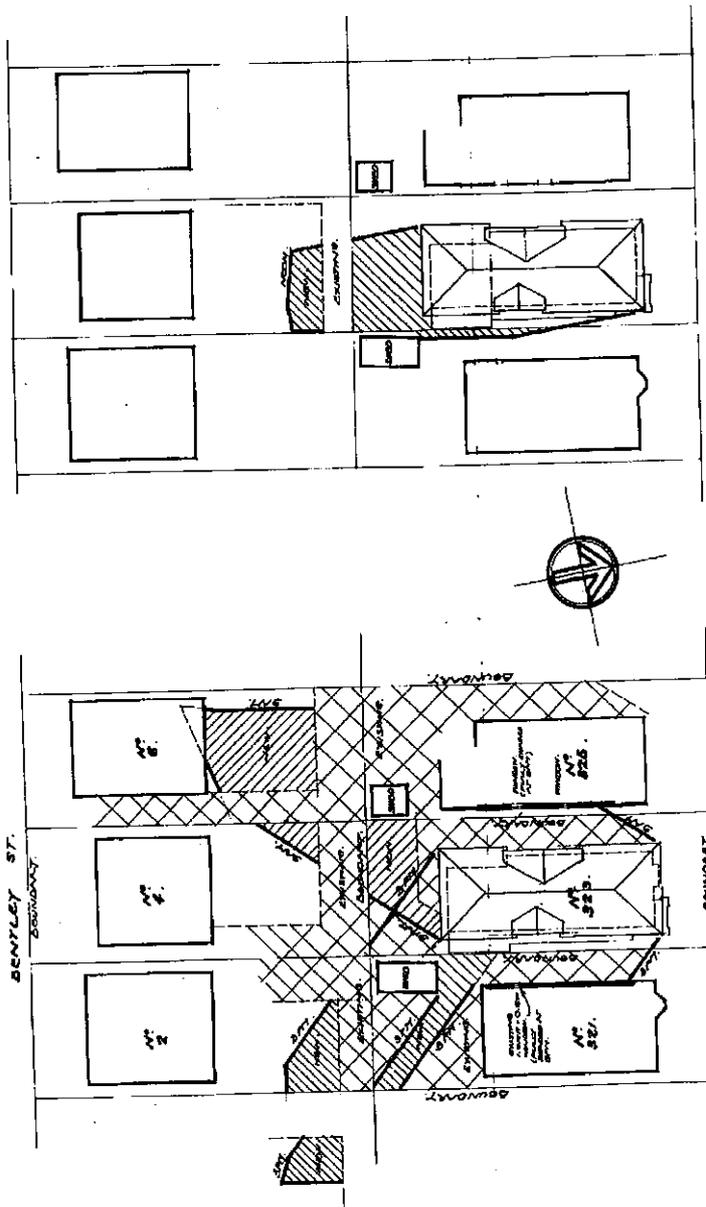


SECTION Y-Y.



SYDNEY ROAD.
 PLAN OF SUBDIVISION.

RESUBDIVISION UNIT DEVELOPMENT AND STRATA SUBDIVISION AT 323 SYDNEY RD. BALGOWLAH FOR MR. M. KALLI.	
TITLE	
SHADOW DIAGRAMS.	
EXISTING DEVELOPMENT ALL WALLS P/L. AS SHOWN ST. 0415 MET. SQ. PLANNING CODE: STRATA.	
DATE	09/03/09
SCALE	1:100
PROJECT NO.	09030-3



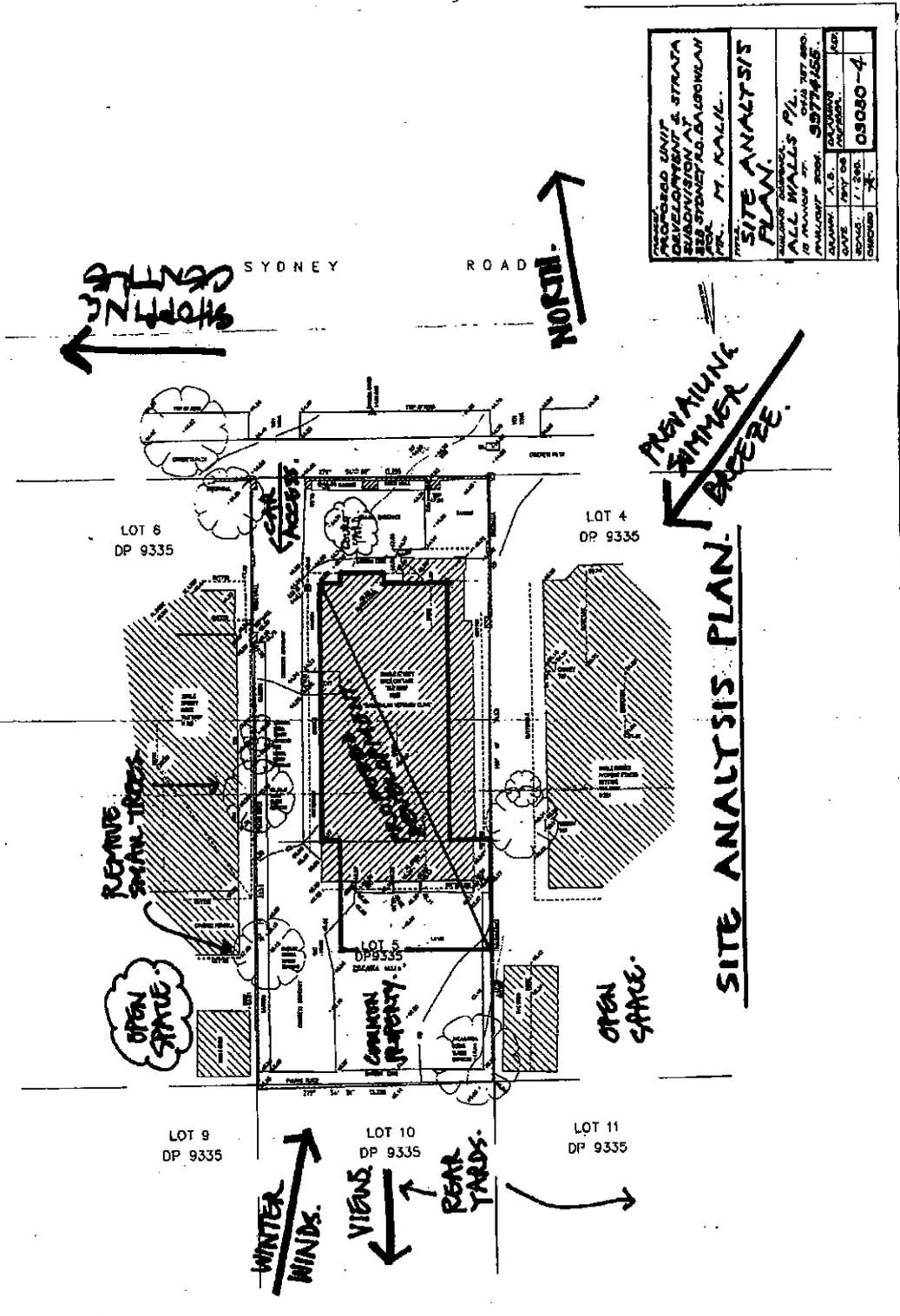
NOON - JUNE 21.
 9 AM & 3 PM - JUNE 21.
 SHADOW DIAGRAMS.



LEGEND.

ATTACHMENT 1

MIAP Report No. 32 - 323 Sydney Road, Balgowlah - DA270/09
 DA Plans



TO: Manly Independent Assessment Panel - 17 June 2010
 REPORT: MIAP Report No. 33
 SUBJECT: 38 Stuart Street, Manly - DA261/08
 Section 96 Modification
 FILE NO: DA261/08

Application Lodged: 11 February 2010 (Section 96)
Applicant: Legge Architects
Owner: Tom and Emma Lane
Estimated Cost: \$1.2M
Zoning: Manly Local Environmental Plan, 1988 – Zone 6 Open Space
 Foreshore Scenic Protection Area
Surrounding Development: The surrounding sites are occupied by dwelling houses and
 residential flat buildings of varying size, age and condition
Heritage: Items of the environmental heritage are located in the
 immediate vicinity of the site

SUMMARY:

1. DEVELOPMENT APPLICATION LODGED ON 06 AUGUST 2008 FOR THE DEMOLITION OF EXISTING RESIDENTIAL FLAT BUILDING AND ERECTION OF A THREE STOREY RESIDENTIAL FLAT BUILDING COMPRISING OF TWO (2) UNITS INCLUDING DOUBLE GARAGE, SWIMMING POOL AND ASSOCIATED SITE LANDSCAPING.
2. THE APPLICATION WAS ADVERTISED, AND NOTIFIED TO ALL ADJOINING AND NEARBY PROPERTY OWNERS AND FORTY NINE (49) SUBMISSIONS WERE RECEIVED.
3. THE APPLICATION WAS REFERRED TO THE LITTLE MANLY PRECINCT COMMUNITY FORUM FOR COMMENTS; OBJECTIONS WERE RAISED.
4. THE MATTER WAS CONSIDERED AT THE COUNCIL'S DEVELOPMENT ASSESSMENT UNIT (DAU) MEETING ON THE 7 MAY 2009 AND THE DAU RECOMMENDED THAT THE APPLICATION BE REFUSED.
5. APPLICANT LODGED AN APPEAL TO THE LAND AND ENVIRONMENT COURT ON 02 OCTOBER 2008.
6. ON 7 OCTOBER 2009, THE LAND AND ENVIRONMENT COURT UPHELD THE APPEAL.
7. SECTION 96 APPLICATION TO MODIFY CONSENT LODGED ON 11 FEBRUARY 2010.
8. THE APPLICATION WAS NOTIFIED TO ALL ADJOINING AND NEARBY PROPERTY OWNERS AND NOTIFIED. SIX (6) SUBMISSIONS WERE RECEIVED.
9. THE APPLICATION WAS PRESENTED TO THE DEVELOPMENT ASSESSMENT UNIT ON 8 JUNE 2010 WHERE IT WAS RECOMMENDED FOR CONDITIONAL APPROVAL.
10. A SITE INSPECTION IS RECOMMENDED.
11. THIS APPLICATION IS RECOMMENDED FOR **APPROVAL** SUBJECT TO ADDITIONAL CONDITIONS.

LOCALITY PLAN

Shaded area is subject land.



MIAP Report No. 33 (Cont'd)**Report****Introduction****1. Approved development**

Consent has been granted for the demolition of the existing 2-storey four unit residential flat building, removal of trees and construction of a 3-storey building comprising one x four bedroom unit and one x two bedroom unit with a double garage and elevated access way/driveway bridge.

The proposed ground floor is set one storey below the street level at RL 3.3m and is comprised of the living areas of the larger of the two units. The ground floor includes living area and dining area, kitchen, staircase, lift, study, plant room, laundry and bathroom.

The proposed second floor includes four bedrooms, bathrooms, foyer area, lift and staircase. Separate stairs provide access to the two bedroom unit on the third storey. Adjoining the living area of the top floor unit there is a deck of 5.3m by 1.5m facing the beach and harbour and there is also a deck adjoining the bedroom.

2. Current Section 96 application –

Proposal is to modify the consent by adding approximately 100m² of an underground basement area under part of the approved building footprint. This basement area is to be used for storage of water tanks, lift motor room and storage area.

Applicant's Supporting Statement

Plans and supporting statement by Legge Architects are in the file.

Little Manly Precinct Community Forum Comments

Advised that the Committee is unqualified to comment on the proposed changes.

Waste Comments

No objections subject to original conditions of consent.

Engineers Comments

No objections subject to original conditions of consent.

Landscaping Comments

No objections subject to original conditions of consent.

Building Comments

No objections subject to original conditions of consent.

Environmental Planner Comments

No objections subject to original conditions of consent.

MIAP Report No. 33 (Cont'd)**Heritage Comments**

No objections subject to the Metropolitan Local Aboriginal Land Council (MLALC) to be informed immediately of the approved demolition and excavation work on the site and a representative of MLALC be engaged to monitor, as directed by the representative, all works conducted on-site.

Planning Comments

The subject site is located on the southwestern side of Stuart Street, approximately 30.0m south east of the street's intersection with Craig Avenue. The site is irregular in shape and has a 12.19m frontage to Stuart Street. The depth of the site is 59.11m and 52.25m along its northwestern and southeastern boundaries respectively. The width of the rear boundary is 10.515m and the area of the site is 591.6m².

The existing improvements have been demolished and the site is now vacant

The drops down approximately a 2.0m from the road reserve at the front and is then relatively flat. Scattered vegetation occupies the rear of the site. A small flight of wooden stairs (immediately adjacent the rear boundary) provides direct access from the site directly to Little Manly Beach.

Occupying the adjoining site to the southeast at No 40 Stuart Street is a two storey rendered and timber dwelling house. Occupying the site to the northwest at No 36 Stuart Street is a single storey dwelling house. Immediately to the southeast of No 40 Stuart Street is the Little Manly Reserve which contains a kiosk, toilets and a storage shed. The Little Manly Reserve is well maintained and provides for a positive contribution to the visual amenity of the immediate locality. Landscaped improvement works have also recently been carried out at the end of Craig Avenue.

The surrounding properties are occupied by dwelling houses and residential flat buildings of varying size, age and condition.

Environmental Planning & Assessment Act 1979 – Section 79C(1)

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) *the provisions of:*
(i) *any environmental planning instrument, and*

Manly Local Environmental Plan 1988:

The site is zoned '6 Open Space' under the Manly Local Environmental Plan 1988. The proposed residential flat building is prohibited in the Open Space Zone. This development application relies upon existing use rights regulated under Sections 107 and 108 of the Environmental Planning and Assessment Act 1979 and Clauses 40 to 44 of the Environmental Planning and Assessment Regulation 2000.

Of particular relevance is regulation 41(1) of the Environmental Planning and Assessment Regulations 2000 which states that:

An existing use may, subject to this Division:

- a) be enlarged, expanded or intensified; or*
- b) be altered or extended;*
- c) be rebuilt;*

d) be changed to another use, including a use that would otherwise be prohibited under the Act.

MIAP Report No. 33 (Cont'd)

Council records identify building approval (referenced as B.A No. 11.08.24) being issued for the erection of 'residential flats' on the subject site with the flat building being constructed shortly thereafter. It would appear that the existing building was lawfully constructed hence the use considered to have been lawfully commenced. The proposed amendments are permissible with consent.

The subject site is located within the Foreshore Scenic Protection Area. Prior to issuing consent, Council must be satisfied that the development will not have a detrimental effect on the amenity of the Foreshore Scenic Protection Area (FSPA). It is considered that the addition of the basement area will have no significant impact on the Foreshore Scenic Protection Area.

Section 96 (1A) of the Environmental Planning and Assessment Act 1979, states that "a consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) *it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all) under this section, and*
- (c) *it has notified the application in accordance with:*
 - (i) *the regulations, if the regulations so require, or*
 - (ii) *a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and*
- (d) *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be."*

With regards to the above it is considered that the proposed modifications are substantially the same development as the original development that has been consented to. The application to modify the original consent was notified and five objections have been received. It is considered that the proposed changes will not have an adverse impact on the adjoining property owners. All matters relating to the proposed modification in terms of impact on neighbouring properties and locality has been considered.

79C(1)(a)(ii) - any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and
Not applicable.

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

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

Storage areas in basements are not considered to be part of the gross floor area of a building. The new basement area will house the proposed water tanks, a wine cellar, lift motor room and storage/utilities area.

The DCP includes habitable rooms in a basement as part of gross floor area.

The applicant has been requested to agree to a condition to reduce the floor to ceiling height of the basement. Applicant has replied as follows:

MIAP Report No. 33 (Cont'd)

I have a very major problem if you limit the head height as the lift motor room needs 2.7m clear. In addition we are looking at putting a wine cellar and other storage etc. in the basement.

In supporting his proposal, the applicant advised that the location of the water tanks in the basement is a better alternative than to have them in the rear and will help to ensure that there are fewer disturbances the roots of the existing trees at the rear of the site. It is considered that a 100m² basement area for rainwater tanks is big. It is not unreasonable to condition that apart from the lift area, the floor to ceiling height of the basement be reduced to 2.0m. This will reduce the volume of the basement area, reduce the depth of excavation, and still allow enough head height in the basement. This will also ensure that there is no increase in the floor area of the building in accordance with the DCP.

There will be no change to the height, bulk and scale and the façade of the proposed building. The proposal will not have any impact on the shadowing, views or privacy on any of the adjoining properties.

Council's Heritage Advisor has recommended that there is no objections to the proposal, subject to the Metropolitan Local Aboriginal Land Council (MLALC) to be informed immediately of the approved demolition and excavation work on the site and a representative of MLALC be engaged to monitor, as directed by the representative, all works conducted on-site.

79C(1)(a)(iiia)- any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and
Not applicable.

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

Australian Standard AS 2601—1991: *The Demolition of Structures* is the only matter of relevance prescribed by the regulations for the purposes of this section. A standard condition has been recommended to ensure compliance with the standard.

79C(1) (b)- the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality
The likely impacts of the development have been considered throughout the report.

79C(1) (c)- the suitability of the site for the development,
The site is considered suitable for the proposed development.

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

The application was notified to nearby and adjoining property owners in accordance with Council's Notification Policy. Five (5) submissions were received from Wayne & Claire Seabrook of 5 Marshall Street Manly; Jack Morrison of 2/3 Bruce Avenue Manly; Nicholas Ewald of 3 Marshall Street Manly; Roy & Dianne Deane of 1 / 43 Stuart Street Manly and S & A Poliakov of 2/39 Stuart Street Manly.

The submissions are summarised below:

- Possible exposure of acid sulphate soil
- Proposed excavation below AHD 0.00
- Concern over potential impacts of proposed below grade extensions.
- Possible exposure of acid sulphate soil
- Proposed excavation below AHD 0.00
- Concern over potential impacts of proposed below grade extensions.
- Possible exposure of acid sulfate soil
- Proposed excavation below AHD 0.00

MIAP Report No. 33 (Cont'd)

- Damage to surrounding areas because of surface water being continuously drained into basement
- Possible contamination of water
- Impact on climate change
- If site is to be affected by climate change, Council at risk of future legal action if excavation allowed

The applicant's response to the above objections are quoted in full below:

Acid Sulfate Soils

Both these letters have the same objections and use reference to old photographs to support their claims that 38 Stuart Street Manly (the site) will contain Acid-sulfate soils (ASS).

As part of our site investigations the builder has had Peter Grozier of Grozier Geotechnical Services carry out test bore holes on the site. Mr Grozier, an Engineering Geologist, has confirmed that he has bored a number of test bores and has not encountered any acid-sulfate soils or material including any marine muds or any other Lagoon environment materials to suggest that there is any likely hood of uncovering acid sulfate soils. Mr Grozier has stated that the area is consistent with a beach type environment, or sand based environment.

Thus it is very unlikely that there are acid -sulphate soils on the site, however if acid sulphate soils were to be uncovered a management plan would be set in place using the CSRIO Acid Sulfate Soil Technical Manual and acceptable Management practices.

The fact remains the approved development included excavation for the detention tanks in the garden closer to the beach. The approved development also included the requirement for piercing to rock, excavation for footings and the lift pit. This development always included excavation.

Drainage

The basement is proposed as a tanked/sealed container with no requirement for a pump out system when the basement is complete. There may be some requirement for dewatering during construction. However the design of the basement is proposed as contiguous piers to rock or grout injected piers to rock. This construction methodology results in minimum dewatering as the concrete walls go to rock and are sealed water tight. The basement is excavated after the water tight walls are in place and only water trapped by the basement walls will require removal. If more substantial de-watering is required, water is pumped from the excavation and injected into the soil on the outside of the wall. This injection of the water back into the soil on the other side of the wall limits the disturbance to the water table beyond the excavation.

In the unlikely event that acid sulfate soils are encountered the excavated area can be limed to neutralise the acid and the Acid-sulfate soil will be removed to an approved disposal site. Water can be tanked away and treated by an approved/accredited processor. The engineer will adjust the strength of the concrete, curing times and cover depth to the reinforcement. As there will be no dewatering, no further work will be required as the soils will be covered and sealed.

Sea level Rise.

Climate change and sea level rise were considered by the court before the development was approved (Lane v Manly Council (2009) NSWLEC 1329,7 October 2009, Judgement 10997 Of 2008).

Paragraph 72

A number of objectors raised concern about the need to have regard to sea level rise and storm surges in the area. I note that the floor level of the dwelling is to be constructed at an RL of 3.3metres. I am satisfied that on the evidence before the court in these proceedings that this matter would not warrant refusal of the application.

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We further note that the Cardno report done for Manly Council in 2008 refers to the current spring tides AEH 1% level as 1.46 mAHd and AEH 1% in high level sea rise as 2.39 mADH. This projected level is below the proposed ground floor level (3.3mAHd) and the level of the existing sea wall (3.29mAHd). Thus in the worst case scenario – high sea level rise, spring tides and 1 in 100 flood/storm event- the proposed ground floor level is all most 1 metre above the projected levels.

The basement excavation has no effect on the possible flooding or other wise of the ground floor. As stated above the basement is proposed to be sealed water tight. The piles are to be socketed into the existing rock and seal the structure. There are no unsealed inlets into the basement below ground level. The proposed building is to be founded on rock and sealed water tight below ground level.

Whist the letters of objections may be well meaning, the objectors are incorrect in their assertions as they do not understand the construction methodology, are not privy to the site testing analysis and have missread the council reports. However the fact still remains that this DA approved development always included excavation; excavation for footings, piles, lift pits and water tanks. The extent and location of the excavation is the subject of this section 96, the Ecologist and Arborist have submitted letters supporting the proposed basement as a good out come for the trees and Long nose Bandicoots, thus this section 96 for the proposed basement should be approved as a positive adjustment to the existing DA approval.

Comment- The finished floor level of the basement will be at RL0.30. This is much lower than the approved finished ground level and any sulphate soil test carried out probably did not envisage the proposed new finished level in the basement. Further test must be carried out by an Engineering Geologist to confirm that there is no evidence of acid sulphate soil to a depth of 3.0m below existing ground level.

It is recommended that should this application be approved, the following conditions should be added to address the concerns raised:

- The Metropolitan Local Aboriginal Land Council (MLALC) to be informed immediately of the approved demolition and excavation work on the site and a representative of MLALC be engaged to monitor, as directed by the representative, all works conducted on-site.
- Before any further excavation works is commenced, further test must be carried out by an Engineering Geologist to confirm that there is no evidence of acid sulphate soil to a depth of 3.0m below existing ground level. If acid sulphate soils are uncovered, a management plan (that will be set in place using the CSRIO Acid Sulfate Soil Technical Manual and acceptable Management practices) must be prepared and certified by an appropriate qualified consultant before any further work progresses,
- The basement area must be a tanked/sealed container with no requirement for a pump out system when the basement is complete.

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

The proposal is not considered to be contrary to the public interest.

CONCLUSION:

The application has been assessed having regard to Section 79C and 96 of the Environmental Planning and Assessment Act 1979, the Manly Local Environmental Plan 1988 and the Development Control Plan for the Residential Zone 2007 Amendment 1.

It is considered that the proposed changes are substantially the same as the approved development and that there will be minimal impact on the amenity of the area. It is recommended

MIAP Report No. 33 (Cont'd)

that this application be **Approved** subject to the raising of the finished floor level, and to the three (3) additional conditions above.

RECOMMENDATION

That pursuant to Section 96(1A) of the Environmental Planning and Assessment Act 1979, the proposed modification to Development Consent No. 261/08 for demolition of existing residential flat building and erection of a three storey residential flat building comprising of two (2) units including double garage, swimming pool and associated site landscaping at 38 Stuart Street Manly be **Approved** subject to the original conditions of consent with Condition No. DA1 modified and addition of Condition Nos. ANS27, ANS28, ANS29 and ANS30 added as follows:-

DA1

The Development must be carried out in accordance with the following plans and supplementary documentation except where amended by the Conditions of this Consent:

Plan Reference	Prepared by	Number	Rev	Dated
Site Plan, Site Analysis Plan, Notes and 3D Views	C3D Interactive Pty Ltd	DA01	B	16/12/08
Ground and Level 1 Floor Plans	C3D Interactive Pty Ltd	DA02	B	16/12/08
Level 2 Floor Plan and Roof Plan	C3D Interactive Pty Ltd	DA03	B	16/12/08
Elevations and Sections	C3D Interactive Pty Ltd	DA04	B	16/12/08
Landscape Plan	Ryan McBride	LC01	C	09/03/09

Document Title	Prepared by	Dated
Statement of Environmental Effects	Planning Strategies	July 2008
Traffic and parking Impact Review of Proposed Residential Apartment Building – 38 Stuart Street, Manly	Chris Hallam and Associates Pty Ltd	25/06/08

The landscape plan above is to be amended prior to the issuing of the Construction Certificate in accordance with the red markings and notations as shown in Exhibit F in the proceedings and this includes:-

- (a) deletion of both existing and proposed stairs from subject property to the beach;
- (b) the side boundary fence with No. 36 to be a maximum height of 1.2m for a distance of 18m from the south-western corner with the beach; and
- (c) deletion of timber screen and curved portion of deck in vicinity of common boundary with No. 36.

In the event of any inconsistency between the approved plans and supplementary documentation, the plans will prevail except where amended by these conditions.

“And as amended as shown coloured in red on Drawing No:-

Plan Reference	Prepared by	Number	Rev	Dated
Ground Floor Plan	Legge Architects	A100	A	21/12/09
Basement Floor Plan	Legge Architects	A103	A	21/12/09
Section - B	Legge Architects	A203	A	21/12/09
Section - A	Legge Architects	A204	A	21/12/09

- subject to the reduction of the floor to ceiling height in the basement being no more than 2.0m, resulting in a finished floor level of the basement being no higher than RL 0.90. The finished floor level of lift shaft can remain at RL 0.30.

MIAP Report No. 33 (Cont'd)**ANS27**

Before any further work commence, the applicant must inform the Metropolitan Local Aboriginal Land Council (MLALC) of the approved excavation work on the site, and a representative of MLALC be engaged to monitor, as directed by the representative, all works conducted on-site.

Reason: To ensure preservation of significant cultural heritage.

ANS28

Before any further work commence, further test must be carried out by an Engineering Geologist to confirm that there is no evidence of acid sulphate soil to a depth of 3.0m below existing ground level. If acid sulphate soils are uncovered, a management plan (that will be set in place using the CSRIO Acid Sulfate Soil Technical Manual and acceptable Management practices) must be prepared and certified by an appropriate qualified consultant before any further work progresses.

Reason: To reduce impacts on the environment.

ANS29

The basement area must be a tanked/sealed container with no requirement for a pump out system when the basement is complete.

Reason: To ensure the structure is adequate for the purpose and reduce impacts on the environment.

ANS30

Works in connection with this Section 96 modification are not to be commenced/carried out until a new Construction Certificate is issued.

Reason: To comply with Statutory Requirements.

ATTACHMENTS

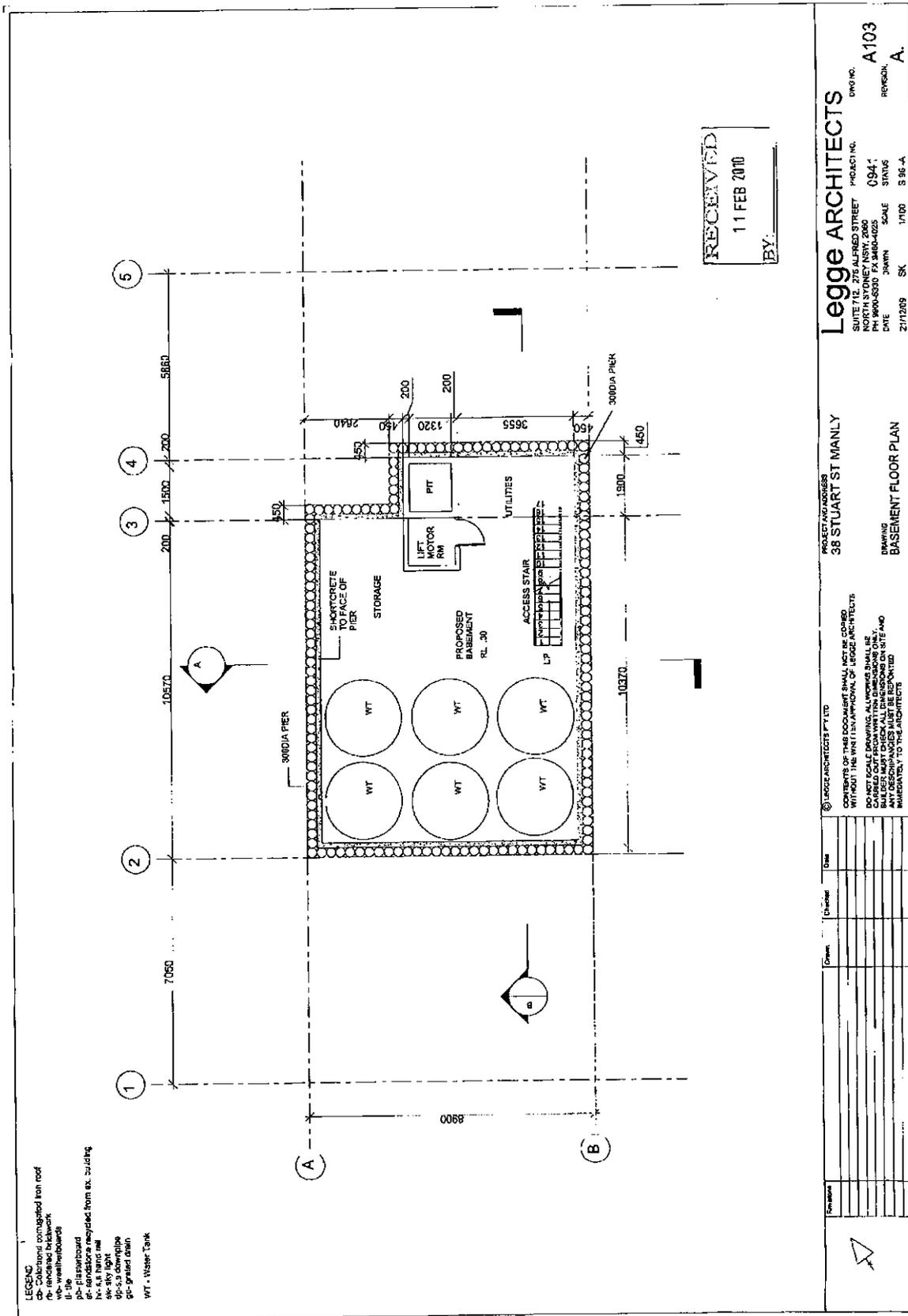
AT- 1 DA Plans - Sec 96 4 Pages

MIAP170610MI_4

***** End of MIAP Report No. 33 *****

ATTACHMENT 1

MIAP Report No. 33 - 38 Stuart Street, Manly - DA261/08
Section 96 Modification
DA Plans - Sec 96



LEGEND
 - - - - - proposed iron roof
 - - - - - proposed brickwork
 - - - - - proposed backwash
 - - - - - wall/hydroblast
 - - - - - lift
 - - - - - glassboard
 - - - - - proposed floor
 - - - - - proposed hand rail
 - - - - - proposed hand rail
 - - - - - proposed sky light
 - - - - - proposed downpipe
 - - - - - proposed drain
 WT - Water Tank

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 BY: _____

LEGGE ARCHITECTS PTY LTD 27/12 ALFRED STREET NORTH STONEY NSW, 2060 PH 9000-6330 FX 9400-0225 CDE DRAWN SCALE 1/100 SK 21/12/09 SK 1/100 S 96-A	PROJECT AND ADDRESS 38 STUART ST MANLY	PROJECT NO. A103
	DRAWING BASEMENT FLOOR PLAN	REVISION A.

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Rev	Drawn	Checked	Date

TO: Manly Independent Assessment Panel - 17 June 2010
 REPORT: MIAP Report No. 34
 SUBJECT: 38 Birkley Road, Manly - DA108/09
 FILE NO: DA108/09

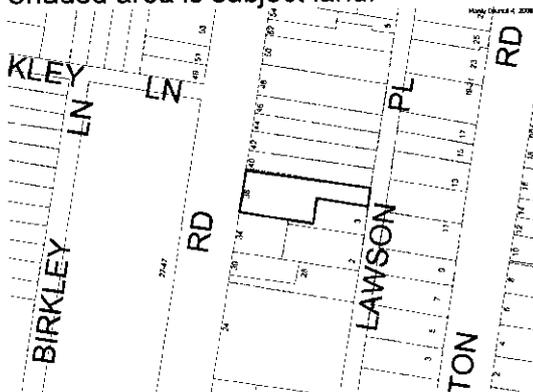
Application Lodged: 8 April 2009
Applicant: David Bedingfield
Owner: David & Sarah Bedingfield
Estimated Cost: \$15,000
Zoning: Manly Local Environmental Plan, 1988 - Residential
Surrounding Development: The locality is residential in character consisting predominantly of one and two storey dwelling houses.
Heritage: Not applicable.

SUMMARY:

1. ON 20 DECEMBER 2007, MANLY COUNCIL CONSENTED TO DEVELOPMENT APPLICATION 52/07 FOR ALTERATIONS AND ADDITIONS TO AN EXISTING DWELLING HOUSE, NEW SWIMMING POOL, AND A DOUBLE GARAGE ON THE SUBJECT SITE. CONDITION ANS08 OF THE CONSENT REQUIRED THE DELETION OF THE PROPOSED RUMPUS ROOM AND BATHROOM ABOVE THE DOUBLE GARAGE AND REQUIRED THE GARAGE TO BE PROVIDED WITH A HIPPED ROOF.
2. THIS APPLICATION FOR A FIRST FLOOR ADDITION TO THE GARAGE WAS LODGED ON 8 APRIL 2009.
3. THE PROPOSAL WAS NOTIFIED TO ALL NEIGHBORING PROPERTIES AND FIVE (5) SUBMISSIONS LETTERS WERE RECEIVED.
4. THE PROPOSAL WAS REFERRED TO COUNCIL'S DEVELOPMENT ASSESSMENT UNIT MEETING ON THE 3 JUNE 2010 WHERE IT WAS DEFERRED FOR THE APPLICANT TO ADDRESS SUBMISSIONS.
5. THE APPLICANT HAS NOW SUBMITTED SKETCH PLANS AND WRITTEN STATEMENT IN SUPPORT OF THE APPLICATION.
6. A SITE INSPECTION IS RECOMMENDED.
7. THE APPLICATION IS RECOMMENDED FOR DEFERRED COMMENCEMENT APPROVAL.

LOCALITY PLAN

Shaded area is subject land.



MIAP Report No. 34 (Cont'd)**Report****Introduction****History**

On 20 December 2007, Manly Council consented to Development Application 52/07 for alterations and additions to an existing dwelling house, new swimming pool, and a double garage on the subject site. Condition ANS08 of the consent required the deletion of the proposed rumpus room and bathroom above the double garage and required the garage to be provided with a hipped roof.

Council is now in receipt of a separate development application which is the subject of this report and proposes a first floor addition over the double garage.

Proposal

The application is for the addition of a 6.8m x 4.5m first floor rumpus room with a bathroom to the approved alterations and additions of the existing garage. The new first floor would be set back 2400mm from rear laneway (Lawson Place). The addition would be 1000mm from the northern side boundary and 880mm from the southern side boundary.

Applicant's Supporting Statement

Plans by Keith Pike and Associates, Statement of Environmental Effects, and survey plan are in the file. The applicant also submitted a written response to the objections received. The applicant has also submitted a further brief comment in conjunction with the sketch plans on 6 June 2010.

Precinct Community Forum Comments

No comments received at the time of writing this report.

Engineers Comments

No objections subject to standard conditions of consent.

Building Comments

No objections subject to standard conditions of consent.

Landscaping Comments

No objections subject to conditions of consent

Planning Comments

The site is located on the eastern side of Birkley Road, midway between Augusta Road and Raglan Street, Manly. The site has an east-west orientation and is legally described as Lot A, DP 329789.

The site slopes from Birkley Road to the rear boundary. The property is an irregular shaped allotment with frontage of 16.79m to Birkley Road. The site is at this width for the first 30m, reducing to 6.78m wide for the last 19.48m, with the 'tail' along the northern side of the site. The site has a frontage to Lawson Place at the rear. There is a single garage at this Lawson Place frontage. The area of the subject site is 621m².

The improvements on the site consist of a part single and part two storey brick dwelling house with slate and metal roof. There is the single garage at the rear of the property onto Lawson Place.

MIAP Report No. 34 (Cont'd)

A part single and part two storey semi detached dwelling is located to the immediate north of the site at No.40 Birkley Road. There are two properties sharing the southern boundary of the site. The property at No.36 Birkley Road contains a two storey dwelling. The property known as No.2 Lawson Place is to the rear (east) of No.36 Birkley Road. In between No.2 Lawson Place and the 'tail' of the subject site, is No.3 Lawson Place, which contains a two storey dwelling. Both No.2 and No.3 Lawson Place have frontages only to Lawson Place.

The proposal is a permissible use with Council's consent.

Environmental Planning & Assessment Act 1979 – Section 79(C)(1)

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

(a) the provisions of:***(i) any environmental planning instrument, and*****Manly Local Environmental Plan 1988:**

The site is in zone No 2 – The Residential Zone which permits dwelling houses with the consent of Council. The proposed first floor addition of a rumpus room is permissible with consent in the zone.

Manly Local Environmental Plan 1988 Clause 10 Objectives

The following comments are made in regard to the objectives for the Residential Zone as stated in Clause 10 of the Manly Local Environmental Plan 1988;

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

The site is used for residential purposes.

(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 has been assessed having regard to the Development Control Plan for the Residential Zone and in its current form is considered satisfactory subject to the recommended conditions of consent.

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

The proposal is designed in a manner to be consistent with the general 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;

Subject to the conditions included in the recommendation, the proposal will not significantly impact surrounding residents and the existing quality of the environment will be maintained.

(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 will not affect the approved available area for landscaping on the site. The design and proposed materials and finishes will not detract from the quality of the area.

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- (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;*

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 utilise existing social and physical infrastructure without increasing demand for services and facilities in the locality.

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

Subject to the conditions contained in the recommendation, the proposal is considered to be suitable development 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.*

Not applicable to this development application.

79C(1)(a)(ii) any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and

There are no Draft Planning Instruments applicable to this development application.

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

The subject site is in Density Sub-zone 3 and in Height Sub-zone 1. The proposal satisfies the density, floor space ratio, height, front setback and landscaping controls in the Development Control Plan. The only area of non-compliance is the side setback.

The reason for removing the first floor rumpus room from the earlier application was "to minimize impact on the adjoining properties and maintain the character of the area." The proposal fronts Lawson Place. Lawson Place generally has the character of a rear laneway with single storey garages, open carparking spaces and 1.5 to 1.8m high fences at the property boundaries. However, immediately adjoining to the south is a two storey residential flat building fronting Lawson Place on a reduced set back of approximately 3.6m. There are a limited number of dwellings/residential flat buildings which front Lawson Place and these maintain 3.5m to 5.0m setbacks from the Lawson Place. There were concerns that the proposed rumpus room with deck on the first floor level over the garage adjoining Lawson Place was out of character with existing development and would visually dominate the immediately adjoining properties and laneway.

With the current application, the main change that the applicant has made to address these concerns was to set the first floor rumpus room a further 1.2m back from Lawson Place. In order to accommodate this larger setback and to get a similar size room, the applicant has increased the length of the garage by another 600mm to 9.6m and reduced the northern side setback from 1400mm to 1000mm. The side setback from the southern side boundary remains at 880mm. Council's Development Control Plan requires a minimum side setback of 1600mm from each side boundary for the proposed 4.8m wall.

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The table below compares the original proposal to the current one.

	Previous	Current
Length of garage	9.0m	9.6m
Width of garage	5.9m	5.9m
Setback of garage from lane	Zero	Zero
First floor - North side setback	1400mm	1000mm
South side setback	880mm	880mm
Setback from lane	1.2m	2.4m
Ridge Height	RL 52.2	RL 52.2

The applicant has submitted that the setback of the proposed rumpus room is not out of character with the setback of the dwelling house at No.3 Lawson Place. It is noted that No.3 Lawson Place (adjoining to the south) only has frontage to Lawson Place, whereas the subject site has frontage to Birkley Road and a portion of the rear boundary adjoining Lawson Place. The existing two storey building at No. 3 Lawson Place is setback 3.6m from the Lawson place boundary.

The height, bulk and scale of the proposed rumpus room over the new double garage at the rear as shown in the original plans are still considered to be unacceptable. The proposed development would have a detrimental impact on the immediate properties at No 40 Birkley Road and No.3 Lawson Place. The rear balcony of No 40 Birkley Road and the dwelling house at No.3 Lawson Place currently view a 5.5m long single storey garage with a pitch roof. The proposal to extend the length of the existing garage to 9.6m with the proposed first floor rumpus room will have an undesirable overbearing impact, not only on the two immediate adjoining properties, but also on the laneway and other adjoining properties.

Shadow diagrams provided by the applicant have shown that there is some overshadowing of the northern side windows of No 3 Lawson Place in Mid Winter.

Concerns have been raised from adjoining N^o 40 Birkley Road regarding loss of ocean view, caused by the addition above the garage. The main view from No. 40 is to the rear (east), and not across the subject site. There is an outlook over the ridgeline of the existing garage, but it is considered that this view impact is not fatal to this application.

79C(1)(a)(iia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and
There is no requirement for a planning agreement in respect of this proposal.

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

The regulations have been considered in this assessment.

79C(1) (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

The proposal, subject to the conditions contained in the recommendation would not result in any significant impact on the immediately surrounding natural and built environments. There would be no identifiable negative impact on the social or economic conditions of the locality.

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

Subject to the conditions contained in the recommendation, the site is considered to be suitable for the proposed development.

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

The application was notified to nearby and adjoining property owners in accordance with Council's Notification Policy and five (5) submissions were received from:- George Spencer c/- GE Spencer & Co Pty Ltd PO Box 296 Rose Bay 2029 (company is owner of 3 Lawson Place Manly); Mathew & Tania Kaley of 42 Birkley Road Manly; Dr N Worsford c/- 41 Fowler Street Camperdown 2050;

MIAP Report No. 34 (Cont'd)

Ian Farrar of 31/204 Victoria Street Potts Point 2011 and Bruce & Deirdre Farrar of 40 Birkley Road Manly, raising the following concerns:

- Proposed stairs on boundary.
- Loss of privacy
- Loss of sunlight
- Noise
- Council refused DA52/207 for similar proposal
- Excessive height and bulk
- Loss of view Loss of privacy
- Inappropriate design
- Excessive bulk and scale
- Overlooking
- Detract from streetscape
- Security risk
- Construction alongside boundaries not acceptable
- Inadequate setbacks
- Loss of visual and private amenity due to gross overdevelopment of garage
- Extension of length of garage from previously proposed
- Setback of first floor from northern side boundary reduced.
- Height of garage wall increased
- No rear access to site
- Length of garage is too long
- Proposed rumpus room can easily be converted to a second dwelling
- Windows in garage overlook into their property
- Rear deck looks directly into lane.
- Photographs from applicant misleading
- Questions cost of building works.
- Applicant has not shown existing garage encroach into No.38

Applicant's response to submissions***"No. 3 Lawson Place:***

- *Loss of privacy due to external stairs – Design as is seeks to overlook only the blank north wall of the property. This intent could be enhanced by relocating stair landing an additional 1.0m to the west. The objector has suggested 1.6-1.8m privacy screens to the landing which we would be happy to do also.*
- *Loss of sunlight on northern wall - Design has been arranged to value more highly sun to the window and has considered that it would be preferable not to obscure the northerly aspect of the window.*
- *Noise from feet on the stairs – we would be happy to address condition to specify the type of stair construction to minimise foot noise e.g. Steel and concrete construction or enclose the stair. 3 Lawson Place has an open timber stair to level 1 and so the point is understood.*

40 Birkley Road 12.05.09

- *Loss of views. Claim that the photograph is not a true representation. – The view photographs from 40 Birkley Road represented by the applicant and the adjoining owner are essentially the same. The main differences in images shown arise because the applicant has not used zoom.*
- *Views general. – design has addressed the view of the adjoining owner buy ensuring that the height of the building is limited to RL52.20 which is lower than the upstand height of level 1 at 40 Birkley Road. Also, the side set back of the proposed level 1 addition of the garage maintains the building line clear of any views enjoyed by 40 Birkley Road.*
- *Increased length of garage wall at boundary of 40 Birkley Road. – It is acknowledged that the garage has been increased in depth. This is a result of increasing the set back from*

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Lawson Place. The garage can be reduced in size by 500mm to achieve a reduced wall length. This reduction would be most effective by introducing a 500mm setback at Lawson Place.

- *Proposed additional level above garage has only stair access from Lawson Place. – Not sure if this has any relevance in town planning but would take Council's direction on this point.*
- *Loss of privacy in private outdoor space due to over viewing from terrace. – Letter suggests screening required. We are agreeable to 1.8m screening as a condition.*
- *Western wall window overlooks rear deck. – Window as proposed is opaque. Letter suggests the sill height be raised which we are agreeable to as well.*
- *Upstairs wall from along terrace northern edge creates too high a wall along the boundary of 40 Birkley Road. – Propose that roof above ground floor be extended so that it is consistent along length of garage. This would delete the reference wall and setback screening to terrace.*
- *Oppressive bulk. Complaint is mainly relates to the previous DA. – Not sure how to address but if the proposal does not effect views, privacy concerns are addressed and the setback rationale is reasonable then I don't consider there is anything more to be done.*
- *Service access not allowable to the property. – Service access is from Birkley Road and through garage. Front and rear garage doors are shown on the elevations of the garage.*

42 Birkley Road

- *High building is unpleasant. – Additional height to ridge is $RL52.52-50.69 = 1.51m$. I believe that adding 1.51m to an overall height to gain a second storey is not excessive.*
- *Query outcome of previous DA. – No comment.*
- *Impact on privacy. – I would argue that the proposal has no impact on their privacy. If we can solve privacy concerns for 40 Birkley Road then we should be able to consider them solved for no. 42.*
- *Loss of view. – I consider there is no impact.*
- *Not sympathetic to existing character of Lawson Place. – The proposal maintains set-backs as per the adjoining properties on the side boundaries. The garage is within the character of any number of properties in Lawson Place. With regards to the second level addition, this is completely in keeping with Lawson Place. A photographic study has been included with the application but entering Lawson Place from Raglan Street and driving along the same you will observe;*
 - *Double storey dwellings with zero set back.*
 - *1 8m high sandstone wall that extends for 75m.*
 - *Garage doors at almost every property with zero set back.*
 - *Immediately adjacent at No.3 Lawson Place the wall height is greater than 6.8m with a set-back of 3.5m.*
 - *Compare this proposal for a wall height of only 4.2m and a set-back of 2.4m.*
- *Not enough changes from the previous application. – No comment.*

40 Birkley Road 15.05.09

- *First floor addition visually distracts from neighbourhood. – Set-backs and height addressed previously.*
- *First floor addition only has access from Lawson Place. – This has been addressed previously.*
- *No service access from Lawson Place. - Separate access not required. Access through garage is sufficient.*
- *Extent of wall on boundary of 40 Birkley Road 9.6m not required for garaging. – Agreed previously. Suggestion is to introduce a setback of garage from Lawson Place.*
- *Set-backs not sufficient. – This has been addressed previously."*

MIAP Report No. 34 (Cont'd)**Comments**

The areas of non compliance and impacts on the amenity of the surrounding area were discussed with the applicant. The applicant has now submitted sketch plans showing amendments designed to address concerns in respect of the future character of Lawson Place, setbacks from boundaries, overshadowing and the apparent bulk and scale of the proposed building.

The sketch plans show privacy screens have been added to the deck to stop overlooking. The impacts on sunlight access to the windows of No.3 Lawson Place have been reduced by lowering the overall height of the proposal and lowering the springing height of the roof at first floor level. The first floor deck has been set back 1.9m from the Lawson Place boundary.

The concern that the proposed rumpus room can easily be converted to a second dwelling is not valid as Council must consider the use as proposed by the applicant.

The concerns raised by the objectors have been discussed previously in this report. If this application were to be approved, the concerns with the overlooking from the window on the western elevation could be addressed by the placement of a translucent glass. A condition of consent in this regard is included in the recommendation.

CONCLUSION:

The application has been assessed having regard to Section 79C and 96 of the Environmental Planning and Assessment Act 1979, the Manly Local Environmental Plan 1988 and the Development Control Plan for the Residential Zone 2007 - Amendment 1.

It is considered that, subject to the conditions contained in the recommendation, the proposal would be consistent with the character of existing development and will not significantly impact on the amenity of adjoining residential properties. It is therefore recommended that **Deferred Commencement consent** be granted.

RECOMMENDATION

That pursuant to Section 80(3) of the Environmental Planning and Assessment Act 1979, Development Application No. 108/09 for a "first floor rumpus room to the existing garage." at 38 Birkley Road Manly, be **Approved but shall not operate until** the applicant has submitted amended plans (generally as shown on sketch plans SK1 and SK 2 dated 6 June 2010 and received by Council 6 June 2010) showing:-

- A1. The maximum length (external dimension) of the proposed garage being 9.0m and the maximum width (external dimension) of the proposed garage being 5.9m.
- A2. The proposed garage being set back 0.88m from the south side boundary.
- A3. The maximum length (external dimension) of the proposed first floor level being 6.6m overall and the maximum width (external dimension) being 4.0m.
- A4. The finished floor level of the proposed garage being RL46.41 and the finished floor level of the first floor level being a maximum RL49.11.
- A5. The maximum height of the roof being RL 51.80.
- A6. The proposed deck area at the eastern end of the first floor level being a maximum 0.6m wide and a maximum 4.0m long and set back a minimum 1.9m from the Lawson Place boundary.

MIAP Report No. 34 (Cont'd)

A7. Access to the proposed first floor level being via an internal stair.

A8. The window to the western elevation first floor level being of translucent glass.

This consent is a **"deferred commencement"**.

Evidence of Items A1 to A8 is to be submitted within a period of three (3) months pursuant to Section 80(3) of the Environmental Planning and Assessment Act 1979. The consent will then operate for a period of two (2) years.

ANS01

The proposed first floor level rumpus room is not to be adapted or used for separate occupation without the prior consent of Council.

ANS02

The proposed garage is not to be used or adapted for habitable purposes.

GENERAL CONDITIONS RELATING TO APPROVAL

Documents relating to consent.

The development, except where modified by the Deferred Commencement conditions of this consent, is to be carried out in accordance with the following plans and documentation.

Plans affixed with Council's stamp relating to Development Consent No. 108/09

Plan No. / Title	Issued	Date Approved
01 to 05	July 2008	29 April 2009

Documentation affixed with Council's stamp relating to Development Consent No. 108/09

In the event of any inconsistency between the approved plans and supplementary documentation, the plans will prevail.

Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

1 (2AP01)

Four (4) copies of architectural drawings consistent with the development consent and associated conditions are to be submitted to the Council/Accredited Certifier prior to the issue of the Construction Certificate.

Reason: To comply with the Environmental Planning and Assessment Act 1979.

2 (2AP03)

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 1991 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 you make yourself aware of your legal position which may involve a survey to identify the allotment boundary.

Reason: To advise developers of their responsibilities and to protect the interests of adjoining owners.

MIAP Report No. 34 (Cont'd)

3 (2BM02)

Roofing materials are to be factory pre-finished with a low glare surface and maximum reflectivity of 20% and be compatible with the colours of neighbouring buildings' roof colours. The applicant is to provide evidence with the Construction Certificate that the selected roofing material will not cause a glare nuisance or excessive reflectivity to adjoining or nearby properties.

Reason: To ensure roofing material does not cause excessive glare or reflectivity nuisance to adjoining properties.

4 (2CD01)

Pursuant to Section 97 of the Local Government Act, 1993, Council requires prior to the issue of Construction Certificate, or commencement of any excavation and demolition works, payment of a Trust Fund Deposit of \$400. The Deposit is required as security against damage to Council property during works on the site. The applicant must bear the cost of all restoration works to Council's property damaged during the course of this development. All building work must be carried out in accordance with the provisions of the Building Code of Australia.

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

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

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

5 (2CD05)

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

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

6 (2CD06)

Four (4) certified copies of the structural engineer's details for the proposed development; including but not limited to all reinforced concrete, structural steel support construction and any proposed retaining walls; must be submitted to the Council/Accredited Certifier prior to the issue of the Construction Certificate.

Reason: To ensure construction of the new development is in accordance with the structural engineers design.

7 (2CD13)

All plumbing and drainage, including sewerage drainage stacks, ventilation stacks and water service pipes are to be concealed within the building. Plumbing other than stormwater downpipes must not be attached to the external surfaces of the building.

Reason: To ensure the visual quality of the development.

8 (2DS01)

A detailed stormwater management plan is to be prepared to fully comply with Council's Specification for On-site Stormwater Management 2003 and Specification for Stormwater Drainage 2003 and must be submitted to Council for approval prior to issue of the Construction Certificate. The stormwater management plan and designs are to be prepared by a suitably qualified engineer.

Reason: To ensure appropriate provision is made for the disposal and management of stormwater generated by the development, and to ensure that infrastructure reverting to Council's care and control is of an acceptable standard.

MIAP Report No. 34 (Cont'd)

9 (2DS02)

A system of Onsite Stormwater Detention (OSD) or Onsite Stormwater Retention (OSR) is to be provided within the property in accordance with Council's Specification for On-site Stormwater Management 2003. The design and details must be submitted with the Construction Certificate Application and be approved by Council prior to the issue of the Construction Certificate. The stormwater management plan and designs must be prepared by a suitably qualified engineer.

Reason: To ensure appropriate provision is made for the disposal and management of stormwater generated by the development, and to ensure public infrastructure in Council's care and control is not overloaded.

10 (2DS04)

The basement car parking level is to be adequately protected from flooding. Details are to be submitted to the Council/Accredited Certifier prior to the issue of the Construction Certificate.

Reason: To prevent property damage and ensure adequate provision is made for the discharge of stormwater from the excavated parts of the site.

11 (2FR02)

The person who benefits from this consent is to engage the services of an Accredited Certifier, Building Grade 1 or 2 (NSW or equivalent) to carry out a Building Code of Australia audit that is based upon inspections of the building in terms of the deemed-to-satisfy fire safety provisions.

The audit must specifically cover all clauses within Section C, D and E of the Building Code of Australia (as per the most recent amendments) nominating 'compliance', 'non-compliance' or 'not applicable' as appropriate. The audit (checklist) is to accompany the report.

The results of the audit are to be incorporated into a report and strategy to overcome the non-compliant provisions either by performance solution or adherence to deemed-to-satisfy provisions by satisfying the fire safety objectives of Sections C, D and E of the Building Code of Australia. The standard of satisfying the fire safety objectives of Sections C, D and E as contained within the Building Code of Australia is the specified standard for the purposes of Section 121P(1)(a) of the Act.

A schedule of existing (if applicable) and the proposed Essential Fire Safety Measures, including their standard of performance must be included in this strategy. The report and strategy must be submitted to Council for written approval prior to issue of any Construction Certificate.

Reason: To ensure an adequate level of fire safety is provided within the premises for the life safety of building occupants.

12 (2FR03)

A building in respect of which there is a change of building use must comply with the Category 1 Fire Safety Provisions applicable to the proposed use.

Note: The obligation to comply with the Category 1 fire safety provisions may require building work to be carried out even though none is proposed or required in relation to this development consent. It is recommended you discuss the requirements for achieving compliance with this condition with an Accredited Certifier (Building), who will be able to advise of any action or works which may be required.

Reason: Statutory requirement.

13 (2MS01)

Where construction or excavation activity requires the disturbance of the soil surface and existing vegetation, details including drawings and specifications must be submitted to Council accompanying the Construction Certificate, which provide adequate measures for erosion and sediment control. As a minimum, control techniques are to be in accordance with Manly Council Guidelines on Erosion and Sediment Control, or a suitable and effective alternative method. The Sediment Control Plan must incorporate and disclose:

- 1) all details of drainage to protect and drain the site during the construction processes,

MIAP Report No. 34 (Cont'd)

- 2) all sediment control devices, barriers and the like,
- 3) sedimentation tanks, ponds or the like,
- 4) covering materials and methods, and
- 5) a schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained.

Details from an appropriately qualified person showing these design requirements have been met must be submitted with the Construction Certificate and approved by the Council/Accredited Certifier prior to issuing of the Construction Certificate.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

Internal Note: This condition is to be imposed in conjunction with 4MS04.

14 (2TC01)

Details of the method of termite protection which will provide whole of building protection, inclusive of structural and non-structural elements must be submitted to the Council / Accredited Certifier prior to issue of the Construction Certificate. Attention is drawn to the provisions of Australian Standard AS 3660.1 - 2000 Termite management – New building work, and to the Manly Code for the Protection of Buildings Against Termite Attack 1996.

Reason: To protect the building from possible termite damage.

CONDITIONS TO BE SATISFIED PRIOR TO ANY COMMENCEMENT**15 (3BM01)**

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

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

16 (3CD01)

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

Reason: To ensure compliance with statutory provisions.

17 (3CD02)

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

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

18 (3CD03)

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

Reason: To protect the public interest and safety.

19 (3CD06)

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.

Reason: To ensure structural adequacy.

MIAP Report No. 34 (Cont'd)

20 (3TS07)

Appropriate runoff and sedimentation control devices must be installed prior to, and maintained throughout, construction to prevent impacts on Little Penguins and their habitat, particularly within the adjoining Little Penguin Critical Habitat areas.

Reason: Silt and sediment runoff can degrade Little Penguin terrestrial and aquatic habitats. It is also an offence under the POEO Act to pollute waters.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

21 (4AP02)

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

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

22 (4CD01)

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

- 1) All demolition is to be carried out in accordance with Australian Standard AS 2601-2001.
- 2) Demolition must be carried out by a registered demolition contractor.
- 3) A single entrance is permitted to service the site for demolition and construction. The footway and nature strip at the service entrance must be planked out.
- 4) No blasting is to be carried out at any time during construction of the building.
- 5) Care must be taken during demolition/ excavation/ building/ construction to prevent any damage to adjoining buildings.
- 6) Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.
- 7) Any demolition and excess construction materials are to be recycled wherever practicable.
- 8) The disposal of construction and demolition waste must be in accordance with the requirements of the Protection of the Environment Operations Act 1997.
- 9) All waste on the site is to be stored, handled and disposed of in such a manner as to not create air pollution (including odour), offensive noise or pollution of land and/or water as defined by the Protection of the Environment Operations Act 1997. All excavated material should be removed from the site in an approved manner and be disposed of lawfully to a tip or other authorised disposal area.
- 10) Section 143 of the Protection of the Environment Operations Act 1997 requires waste to be transported to a place which can lawfully accept it. All non-recyclable demolition materials are to be disposed of at an approved waste disposal depot in accordance with legislation.
- 11) All materials on site or being delivered to the site are to generally be contained within the site. The requirements of the Protection of the Environment Operations Act 1997 must be complied with when placing/stockpiling loose material, disposing of concrete waste, or other activities likely to pollute drains or water courses.
- 12) Details as to the method and location of disposal of demolition materials (weight dockets, receipts, etc.) should be kept on site as evidence of approved methods of disposal or recycling.
- 13) Any materials stored on site must be stored out of view or in such a manner so as not to cause unsightliness when viewed from nearby lands or roadways.
- 14) Public footways and roadways adjacent to the site must be maintained and cleared of obstructions during construction. No building materials, waste containers or skips may

MIAP Report No. 34 (Cont'd)

be stored on the road reserve or footpath without prior separate approval from Council, including payment of relevant fees.

- 15) Building operations such as brickcutting, washing tools or paint brushes, and mixing mortar not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
- 16) All site waters during excavation and construction must be contained on site in an approved manner to avoid pollutants entering into waterways or Council's stormwater drainage system.
- 17) Any work must not prohibit or divert any natural overland flow of water.

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

23 (4CD02)

In order to maintain the amenity of adjoining properties, audible site works must be restricted to between 7.00am and 6.00pm, Monday to Friday and 8.00am to 1.00pm Saturday. No site works can be undertaken on Sundays or public holidays.

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

Reason: To prevent disturbance to the surrounding community.

24 (4CD03)

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

Reason: To maintain sanitary conditions on building sites.

25 (4CD05)

Retaining walls being constructed in conjunction with excavations must be in accordance with structural engineer's details. Certification by a structural engineer that the constructed works comply with the structural detail must be submitted to the Principal Certifying Authority.

Reason: To ensure the structural adequacy of the retaining walls.

26 (4CD06)

All construction works must be strictly in accordance with the Reduced Levels (RLs) as shown on the approved drawings. Certification is to be submitted to the Principal Certifying Authority during construction by a registered surveyor certifying complying and finished ridge levels.

Reason: To ensure compliance with the consent.

27 (4CD07)

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

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

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

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

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

28 (4DS01)

A suitable sub-surface drainage system is to be provided adjacent to all excavated areas and such drains being connected to an approved disposal system.

Reason: To prevent uncontrolled seepage entering excavated areas.

29 (4LD03)

The felling, lopping, topping, ringbarking, wilful destruction or removal of any tree/s unless in conformity with this approval or subsequent approval is prohibited.

Reason: To prohibit the unnecessary damage or removal of trees without permission from Council during any construction.

30 (4MS01)

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

- Silt control fences,
- Footing inspection - trench and steel,
- Reinforced concrete slab,
- Framework inspection,
- Wet area moisture barrier,
- Drainage inspection,
- Driveway inspection
- Final inspection.

The cost of these inspections by Council is \$2,080 (being \$260 per inspection inclusive of GST). Payment of the above amount is required prior to the first inspection. Inspection appointments can be made by contacting the Environmental Services Division on 9976 1414.

At least 24 hours notice should be given for a request for an inspection and submission of the relevant inspection card. Any additional inspection required as a result of incomplete works will incur a fee of \$120.

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

31 (4MS02)

In order to ensure compliance with approved drawings, a Survey Certificate, to Australian Height Datum, must be prepared by a registered surveyor as follows:

- 1) at the completion of the first structural floor level indicating the level of that floor and the relationship of the building to the boundaries, and
- 2) at the completed height of the building, prior to the placement of concrete in form work, or the laying of roofing materials, and
- 3) at completion, the relationship of the building, and any projections thereto, to the boundaries.

Progress certifications in response to points (a) through (c) must be provided to the Principal Certifying Authority at the time of carrying out relevant progress inspections. Under no

MIAP Report No. 34 (Cont'd)

circumstances will work be allowed to proceed should such survey information be unavailable or reveal discrepancies between the approved drawings and the proposed works.

Reason: To ensure compliance with the development consent.

32 (4MS04)

The Sediment Control Plan is to be implemented from the commencement of works and maintained until completion of the development.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

Internal Note: This condition is to be imposed with 2MS02.

33 (4MS08)

At no time during the building works can any encroachment, temporary or permanent be made onto another property without prior written agreement being entered into with all persons to whom these encroachments affect and any persons whose land is subject to the encroachment.

Reason: To ensure adequate protection of property.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE**34 (5DS03)**

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.

Reason: To ensure the on-site detention and/or pump system is maintained to an appropriate operational standard.

35 (5TC01)

Prior to issue of the Occupation Certificate, a durable termite protection notice must be permanently fixed to the building in a prominent location detailing the form of termite protection which has been used in accordance with the Manly Code for the protection of Buildings against Termite Attack.

Reason: To inform owners and future owners of the type of termite protection installed and of the need for regular inspections.

36 (5US01)

Any adjustment to a public utility service is to be carried out in compliance with its standards; where consent is required, with its concurrence; and with the full cost being borne by the applicant.

Reason: To ensure compliance with the terms of this consent.

ONGOING CONDITIONS RELATING TO THE OPERATION OF THE PREMISES OR DEVELOPMENT**37 (6FC01)**

The erection of dividing fences under this consent does not affect the provisions of the Dividing Fences Act 1991. Council does not adjudicate civil disputes relating to the provision of, or payment for, the erection of dividing fences.

Note: Further information can be obtained from the NSW Department of Lands. Community Justice Centres provide a free mediation service to the community to help people resolve a wide range of disputes, including dividing fences matters. Their service is free, confidential, voluntary, timely and easy to use. Mediation sessions are conducted by two impartial, trained mediators who help people work together to reach an agreement. Over 85% of mediations result in an agreement being reached. Mediation sessions can be arranged at convenient times during the day, evening or weekends. Contact the Community Justice Centre either by phone on 1800 671964 or at

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<http://www.cjc.nsw.gov.au/>.

Reason: To ensure the applicant is aware the Dividing Fences Act 1991 may be used to resolve disputes about dividing fences.

38 (6MS02)

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

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

39 (6WM01)

Activities must not detrimentally affect impact existing and future amenity of the adjoining occupations and the neighbourhood in general by the emission of noise, smoke, dust, fumes, grit, vibration, smell, vapour, steam, soot, ash, waste water, waste products, oil, electrical interference or otherwise.

Reason: To protect existing and future amenity of the adjoining occupations from excessive waste emissions.

ATTACHMENTS

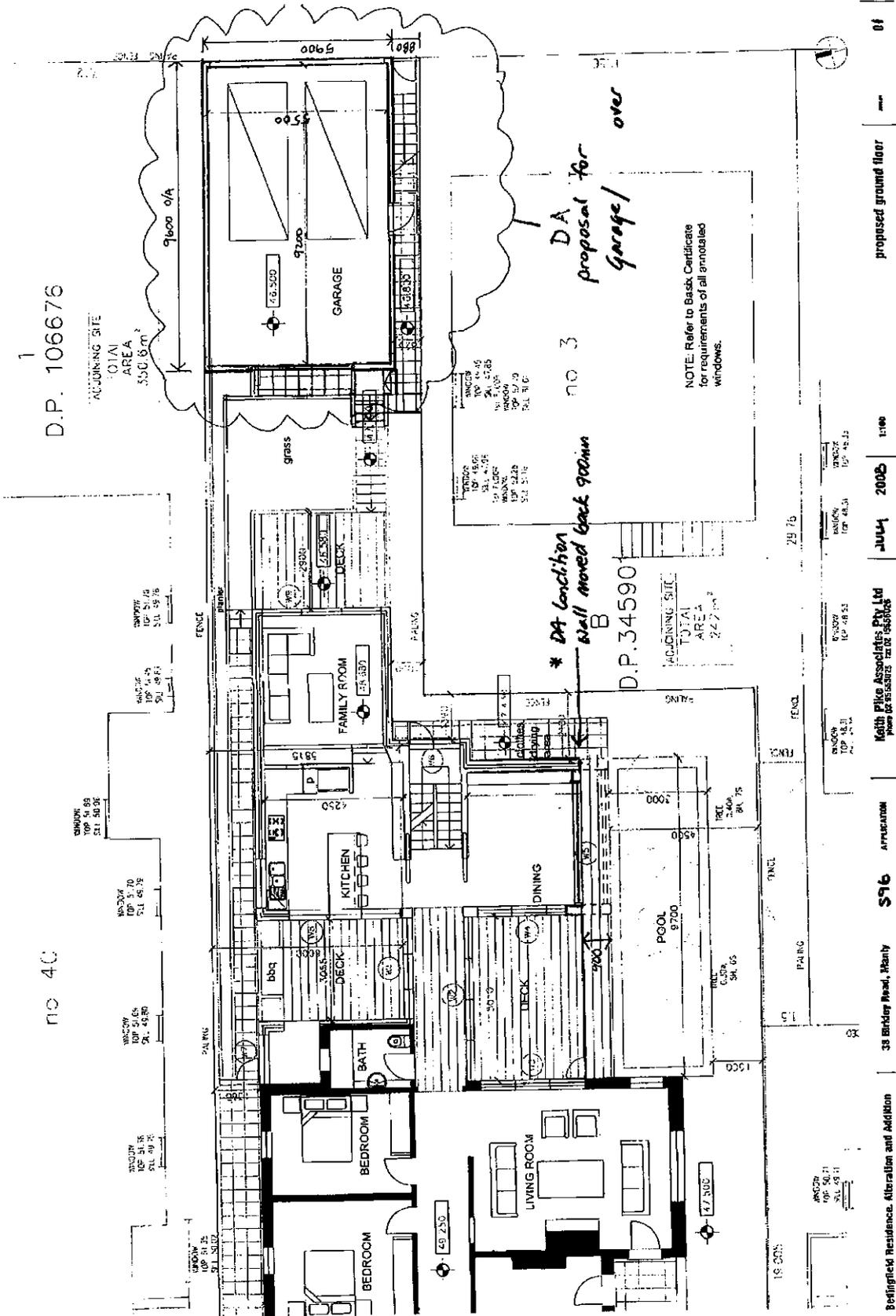
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***** End of MIAP Report No. 34 *****

ATTACHMENT 1

MIAP Report No. 34 - 38 Birkley Road, Manly - DA108/09
DA Plans



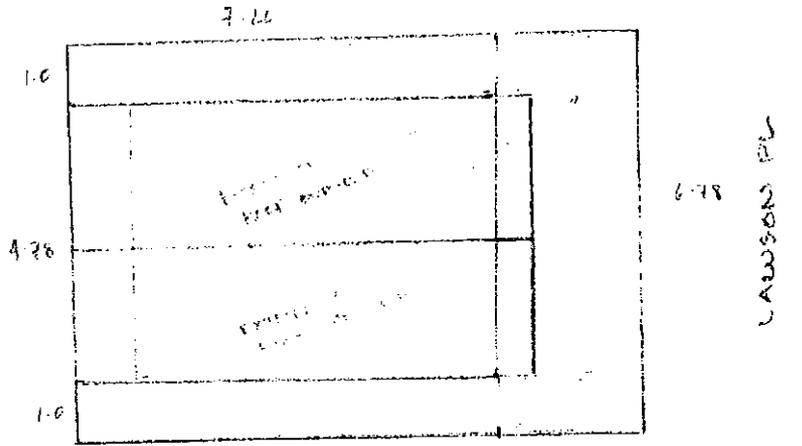
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MIAP Report No. 34 - 38 Birkley Road, Manly - DA108/09

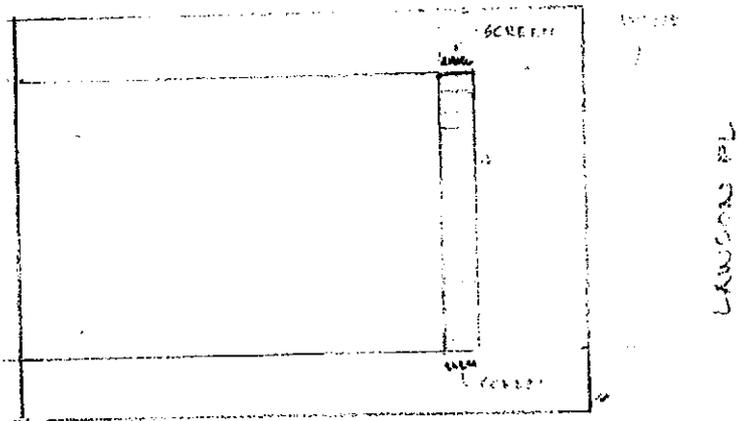
DA Plans

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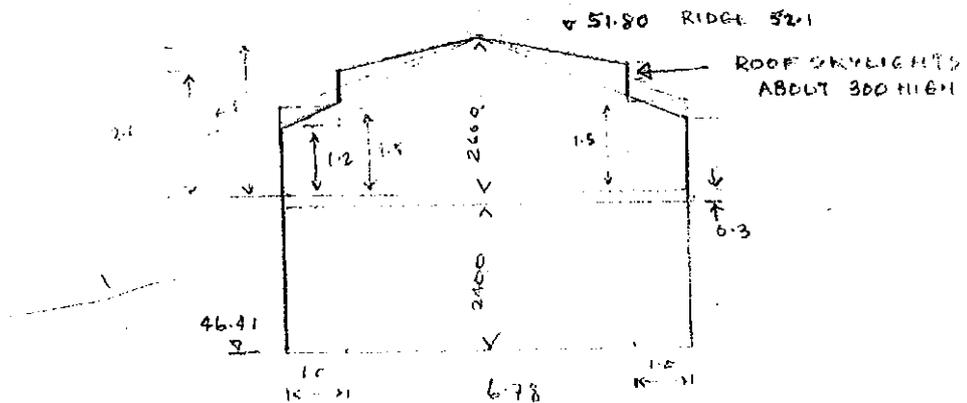
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PLAN



SECTION

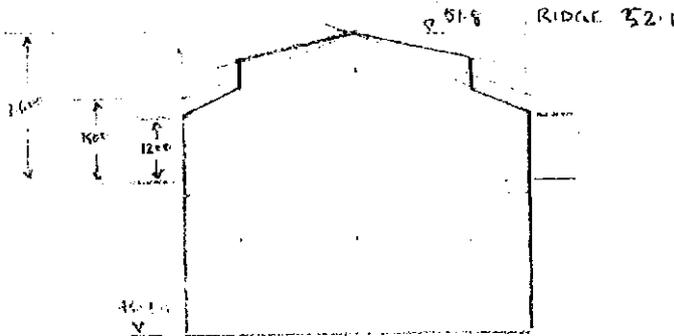
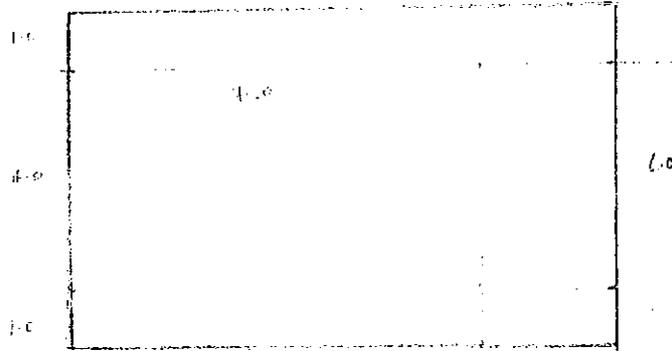
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ATTACHMENT 1

MIAP Report No. 34 - 38 Birkley Road, Manly - DA108/09

DA Plans

ATTACHMENT 1



SK2 6/6/10



TO: Manly Independent Assessment Panel - 17 June 2010
REPORT: MIAP Report No. 35
SUBJECT: Shop 210 - Hugo's – Manly Wharf, East Esplanade, Manly - DA267/07
 Section 96 Modification
FILE NO: DA267/07

Application Lodged: 18 March 2010
Applicant: David Evans
Owner: TMG Developments Pty Ltd
Estimated Cost: Nil
Zoning: Manly Local Environmental Plan, 1988 –Unzoned
 And within Foreshore Scenic Protection Area
Surrounding Development: Adjoins other existing commercial premises and ferry terminal
 at the wharf, opposite Residential Flat Buildings on East
 Esplanade
Heritage: Yes- Manly Wharf- (facade and street returns only)

SUMMARY:

1. DEVELOPMENT CONSENT IS SOUGHT FOR SECTION 96 (1A) MODIFICATION TO PREVIOUSLY APPROVED FITOUT OF SHOP 210 FOR USE AS A RESTAURANT INCLUDING PROPOSED OUTDOOR DINING AREA AND NEW AWNING.
2. THE APPLICATION WAS NOTIFIED TO ALL ADJOINING AND NEARBY PROPERTY OWNERS WITH THREE (3) SUBMISSIONS RECEIVED.
3. THE APPLICATION WAS REFERRED TO THE BALGOWLAH, BALGOWLAH HEIGHTS, CLONTARF, FAIRLIGHT, FAIRY BOWER, IVANHOE PARK, LITTLE MANLY, OCEAN BEACH, NORTH HARBOUR, SEAFORTH, SEAFORTH NORTH AND THE CORSO PRECINCT COMMUNITY FORUMS FOR COMMENT.
4. THE APPLICATION WAS PRESENTED TO THE DEVELOPMENT ASSESSMENT UNIT ON 8 JUNE 2010 WHERE IT WAS RECOMMENDED FOR CONDITIONAL APPROVAL.
5. SITE INSPECTION IS RECOMMENDED.
6. THE APPLICATION IS RECOMMENDED FOR **APPROVAL**.

LOCALITY PLAN

Shaded area is subject land.



Report

Introduction

Subject Site and Locality

The subject site is located along the south western side of the Manly Wharf area which an item of heritage significance. The site gains pedestrian access from Manly Wharf and is located adjacent to the Ferry terminal.

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The subject site currently has a fully operational restaurant with previously approved outdoor dining facilities.

Proposed Development

The subject application is seeking modification to Condition ANS06 of the previously approved DA267/07.

The condition reads as follows:

ANS06

The hours of operation of the premises shall not exceed 7:00am to 12 midnight Monday, Tuesday, Wednesday, Thursday and Sunday and 7:00am to 1:00am Friday and Saturday's without the prior approval of Council. The outdoor eating areas shall be for restaurant use only and shall not operate later than 12 midnight to reduce emission of noise, unless written approval has been received from Council allowing otherwise.

The proposed application seeks approval for extension of hours of operation for the outdoor eating area till 1:00pm.

Applicant's Supporting Statement

In support of the proposal, the applicant submitted a Statement of Environmental Effects in form of a letter, which is available for viewing on Council's file.

Precinct Community Forum Comments

Comments were received from the following Precinct forums:

Little Manly Precinct Community Forum

The May 2010 Meeting discussed the development application and noted the following issues of concern:

The lack of details for this DA precluded a sensible discussion however the detailed objections raised by the Precinct at its August 2009 meeting in relation to an apparent identical DA (180/09) remains and are attached (see below):

Attachment to LM Precinct minutes May 2010 extract from LM Precinct minutes –August 2009.

Little Manly Precinct is strongly against the extension of outdoor seating for Hugo's Manly Wharf Restaurant as proposed by DA 180/09 for the following reasons:

- *The space proposed to be used is public space used by many residents as a passageway and for general recreation and should remain as public space.*
- *It would cause congestion particularly in peak periods.*
- *It would cause constrained access for wheel chairs and thus pose safety concerns.*
- *The outside dining would be popular throughout summer and create noise issue across the open water area. Restaurant licence conditions providing operation through to midnight and 1pm are completely out of the question, particularly given the conditions already imposed on the Wharf Hotel (10pm) and the expected conditions on the Bathers Pavilion, which we assure will also be 10pm.*
- *Sails/Umbrellas would cast shadows over the water impacting the growth of sea grasses and, therefore, the development of marine life.*
- *Noise and light would have a definite, detrimental impact on Penguin*

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- *Sails/ Umbrellas would have a negative impact on public view breeding area under this section of the wharf.*
- *Another source of rubbish and cigarette butts to the water would be established.*
- *It is believed that more than 80 additional customers would be catered for.*

Therefore the DA only gives problems without any benefit to residents of Manly other than few patrons and should be rejected.

Planning Comments:

The subject application is for extension of hours of operations for the outside eating area from 12.00 pm (as approved by previous application DA267/07). The proposed development however includes no internal or external changes to the existing restaurant. The existing restaurant has the benefit of operational hours which are similar to other adjoining uses. It is also noted that the extension of hours of operations for the outdoor dining area is supported as the outdoor dining area will maintain adequate visual and aural screening from the foreshore area and pedestrian areas of the Wharf (as per condition of consent).

Environmental Planning & Assessment Act 1979
Section 96 (1A) Modification of the E P & A Act 1979:

Section 96 (1A) of the Environmental Planning and Assessment Act 1979, states that "a consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) *it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all) under this section, and*
- (c) *it has notified the application in accordance with:*
 - (i) *the regulations, if the regulations so require, or*
 - (ii) *a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and*
- (d) *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be."*

With regards to the above it is considered that the proposed modifications to consent conditions will not alter the original approval and therefore considered to be substantially the same development as the original development that has been consented to. The application to modify the original consent was notified and four (4) submissions received and the issues raised considered. All matters relating to the proposed modification in terms of impact on neighbouring properties and locality has been considered as part of the recommendations.

Environmental Planning & Assessment Act 1979 – Section 79(C)(1)

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) **the provisions of:**
 - (i) **any environmental planning instrument, and**

MIAP Report No. 35 (Cont'd)**Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005:**

The Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (SREP 2005) provides planning framework for development within Sydney Harbour Catchment Area. The subject site is located within the Strategic foreshore sites, as shown on Sheet -5 of the Strategic Foreshore Sites Map and identified as Item 18 in the Heritage Map. The SREP aims to recognize, protect, enhance and maintain the catchment, foreshores and waterways and islands of Sydney Harbour and to achieve a high quality and ecologically sustainable urban environment.

Part 2- Planning Principles

Clause 13 of the SREP states the relevant planning principles that apply to land within the Sydney Harbour Catchment area. The proposal is considered to be consistent with the principles as the Proposal includes works which are contained primarily within the existing footprint of the building on site. No excavation or disturbance of existing soils on site is proposed as a part of the proposal.

Clause 14 sets out planning principles of lands within the Foreshore and Waterway area. The proposal is considered to be satisfactory as the proposed development includes no alterations to the existing building on site. Subject to inclusion of recommended condition of consent, it is not likely to impact upon the unique natural assets, environmental qualities of the harbor and the foreshore.

Clause 15 sets out planning principles for heritage conservation for lands within the Sydney Harbour Catchment. Subject to inclusion of the recommended conditions of consent, the proposed works are not likely to impact upon the environmental qualities of the Foreshore and Waterways areas.

The schedule 4 – Part 2 lists Manly Wharf (Item No.18) as an item of State heritage significance and Part 5- Heritage provisions relates to the subject site. It is noted that while the current operation of the use of the site as a restaurant remains unchanged as part of the proposed application, change in hours of operations of outdoor dining by another hour is not likely to impact upon the use and enjoyment of the public asset and impact upon the quality of urban environment surrounding the existing use.

Part 4- Schedule 3 provides exemption requirement of Master Plan for minor development , which includes extension or variation of operation or trading hours.

Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005 DCP2005

The DCP2005 supplements the SREP (Sydney Harbour Catchment) 2005 and requires a three-part test to be undertaken for Development Applications within the Foreshores and Waterways area. Specifically the three-part test determines the likely impact of the proposed development on known ecological communities on the site or in the locality, the landscape character of the area and the proposal's compliance with the design guidelines of the DCP 2005.

Part 2 - Ecological Assessment

Maps accompanying the DCP 2005 identify the subject site as a landmark and located within the vicinity of the following aquatic ecological communities: Sandy beaches, Seagrass beds and Grassland. The proposal does not involve the removal of any vegetation; accordingly, the proposal satisfies the intent of the Part 2.4, Table 4 of the DCP 2005.

Part 3 - Landscape Assessment

The site is located within Landscape Character Type 8. These areas have a high level of built form with residential uses. The relevant performance criteria seek to ensure that:

- *vegetation is integrated with land-based development to minimise the contrast between natural and built elements.* – Having regard to the proposed modification, changes, the development offers no opportunity provision of landscaping within the foreshore area.

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- *Design and mitigation measures are provided to minimise noise and amenity impacts between incompatible landuses.* – The proposed modification provides adequate mitigation measures to minimise noise likely to be generated from the proposed extended hours of operation. It is thus considered that the amenity of the adjoining landuses would not be adversely impacted by the proposed development and is thus supported.
- *Maritime uses on the harbour are preserved.....new maritime uses are designed and sited to maintain compatibility with existing maritime uses.* - The proposed development provides no change to the existing maritime use of the Wharf.
- *Remaining natural features that are significant along the foreshore are preserved and views of these features are maintained.* - Having regard to the proposed changes, the development is not envisaged to alter the existing natural features on site and is likely to preserve the existing views of these features.

Part 4 - Design Guidelines

There are no changes proposed to the existing use of the site, the proposed development thus meets the requirements of the design guidelines.

Manly Local Environmental Plan 1988:

The site adjoins land Zoned No 6 – Open Space Zone which permits refreshment rooms and recreation areas with consent of Council.

Manly Local Environmental Plan 1988- Clause 10 Objectives

The following comments are made in regard to the objectives for the Open Space Zone as stated in Clause 10 of the Manly Local Environmental Plan 1988:

- (a) *to ensure there is provision of adequate open space areas to meet the needs of all residents and provide opportunities to enhance the total environmental quality of the Manly Council area;*

Subject to inclusion of recommended condition of consent ,the proposal is change of hours of operation for the existing restaurant and is not likely to impact upon the existing environmental quality of the area .

- (b) *to encourage a diversity of recreation activities suitable for youths and adults;*

The proposal includes increase in hours of operation for the existing licensed refreshment room. The proposed development is considered to be suitable for both youths and adults.

- (c) *to identify, protect and conserve land which is environmentally sensitive, visually exposed to the waters of Middle Harbour, North Harbour and the Pacific Ocean and of natural or aesthetic significance at the water's edge;*

The proposed development is located on land that is environmentally sensitive and also visually exposed to the harbour. It is considered that the proposal is an acceptable use of the existing building upon inclusion of the recommended conditions of consent.

- (d) *to facilitate access to open areas, particularly along the foreshore, to achieve desired environmental, social and recreational benefits;*

The proposal will provide no change of access for the public along the foreshore, providing environmental, social and recreational benefits.

- (e) *to conserve the landscape, particularly at the foreshore and visually exposed locations, while allowing recreational use of those areas; and*

Subject to inclusion of recommended condition of consent ,the proposed development will not have an adverse impact upon the use of Manly Cove foreshore area and will allow the recreational use of that area.

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- (f) to identify areas which –
- (i) in the case of areas shown unhatched on the map are now used for open space purposes; and
 - (ii) in the case of land shown hatched on the map are proposed for open space purposes.
- Not applicable to this application.

Clause 17 – Visual and aesthetic protection of certain land

The subject site is located within the Foreshore Scenic Protection Area; however since there are no external changes proposed to the existing building on site, the proposed works will have no visual and aesthetic impact on the foreshore, Subject to inclusion of recommended condition of consent.

Clause 18 –Item of the environmental heritage

The subject site is an Item of Environmental Heritage and it is envisaged that subject to inclusion of the recommended conditions of consent, increase in hours of operation of this existing building on site will not have an adverse impact upon the enjoyment of this item of heritage significance.

79C(1)(a)(ii) - any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and

There is no draft planning instrument of relevance to the subject application.

79C(1)(a)(iii) - any development control plan, and**(a)Manly Development Control Policy for Manly Cove:**

The following is an assessment of the proposal's compliance with the aims and objectives and numerical standards of the Development Control Policy.

The site is located with the Manly Cove and the Manly Cove Development Control Policy lists council's controls and guidelines for development in this locality, apply to the subject site.

Part E which provides the Aims and objectives of Manly Cove DCP include the following:

1. To provide detailed controls for the guidance of developers in order to achieve the aims, objectives, etc of Sydney Regional Environmental Plan No. 23 in relation to development in Manly Cove.
2. To preserve and enhance the amenity of Manly Cove including public places and areas visible from public places or from the navigable waters of Sydney and North Harbours.
3. To provide for maximum public visual and scenic quality to the harbour front and to avoid as much as possible private, exclusive use.
4. To provide and enhance efficient transport facilities while recognising that the wharf and its connection to The Corso act as a gateway to Manly so that all development must be of a high visual quality and have regard to its visual impact on the shoreline and adjacent reserves.
5. To ensure that all development in Manly Cove is complementary to and does not detract from the shoreline and adjacent reserves in Manly Cove.
6. To retain all of the existing beach frontage for aquatic and recreational activities.
7. To make optimum use of the Manly Pavilion precinct while still retaining its existing character.
8. To retain the existing character of the boat club precinct at the south-western end of Manly Cove while seeking to increase public usage.
9. To conserve and enhance the environmental heritage of Manly Cove and its foreshores.

MIAP Report No. 35 (Cont'd)**Comment:**

- The proposed development is not likely to conflict with the qualities of Manly Cove or the existing State heritage significance of Manly Wharf.
- The proposal is not likely to have an adverse impact upon the use of Manly Cove foreshore area. The amenity of surrounding residential use has been considered and suitable conditions imposed to restrict the noise levels from the existing restaurant, while still retaining the existing character and amenity of the area.

(b) Manly Development Control Plan for Late Night Venues 2005:

The following is an assessment of the proposal's compliance with the aims and objectives of the Development Control Plan. The site is proposing to trade after 10.00 pm as a 'restaurant and premises which have liquor license' thus the controls and guidelines for this Development Control Plan, apply to the subject site.

The Aims and objectives of this DCP are:

- *to promote the CBD of Manly as a safe place for all the community late at night.*
- *to minimize disturbances to the public late in the evening and extending into the early morning hours.*
- *to have the Entertainment Precinct recognized as a place where people can be safely entertained and socialize without disturbing the peace of the community.*
- *to achieve an image for Manly as a place of excellence in terms of safety and security while enabling the enjoyment of recreational pursuits.*
- *to provide for all members of the community to use and enjoy the highly valued natural amenity qualities of the Manly CBD has a place for leisure and entertainment.*
- *to regulate late night venues to achieve the other objectives of this DCP.*

Comment:

The proposal is considered acceptable under the aims and objectives of the DCP due to the following reasons:

The proposed modification includes increase in hours of operation from 12:00pm to 1:00pm for outdoor dining area. It is noted that in essence the 'outdoor dining area' is contained within the earlier approved timber balustrade area. With inclusion of blinds this area will present as a part of the existing indoor dining area, thus minimising disturbance to public late in the evening while maintaining the safety and security of the area.

(c) Manly Development Control Plan for Access:

The Development Control Plan is made pursuant to Section 72 of the Environmental Planning and Assessment Act 1979 and applies to the Manly Council area. The general aim and objective of this Development Control Plan is to implement the philosophy, principles, aim, objectives, and strategies of the Manly Council Access Policy.

Comment:

The proposed development proposes no works/changes to the existing use on site.

(d) Manly Development Control Plan for Waste Minimisation and Management 2000:

The following is an assessment of the proposal's compliance with the aims and objectives of the Development Control Plan.

The objectives of this DCP are to:

- *assist in achieving Federal and State Government waste minimisation targets in accordance with regional waste plans.*

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- *minimise overall environmental impacts of waste and foster the principles of ecologically sustainable development (ESD).*
- *encourage environmentally protective waste management practices on construction and demolition sites and in the future use of premises.*
- *facilitate source separation and provide design standards that complement waste collection and management services offered by Council and private service providers.*

Comment:

The proposed development proposes no works/changes to the existing use on site.

79C(1)(a)(iia)- any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and
There is no planning agreement under section 93F in relation to this site.

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

The application has been considered in terms of the regulations

79C(1) (b)- the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality
Subject to inclusion of recommended condition of consent, it is considered that the proposed development would not have any adverse environmental impacts on the natural and built environment or any adverse social or economic impacts in the locality.

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

The subject site has an earlier approval for licensed refreshment rooms and the current application is for increase in hours of operation for the outdoor dining area which have been discussed elsewhere in the report. The site is suitable for the development.

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

The application was notified to nearby and adjoining property owners in accordance with Council's Notification Policy with three (3) submissions received from:- Richard Hewitt of 1 / 17 The Crescent Manly; Roslyn Farr c/- Sweetnams Real Estate of 375 Sydney Road Balgowlah (on behalf of Dr B Nebenzahl owner of Unit 14 / 43 East Esplanade Manly) and Anne & Roger Hale of 6 / 43 East Esplanade Manly.

Issue of concern raised in the submissions:

- Impact of noise on adjoining residences
- Breach of the late Night venue DCP
- More liberal hours as compared to the Wharf Hotel.

Comments

- The submission have raised issues regarding the impact of noise generated by the proposed use it is noted that the existing restaurant benefits from hours of operation allowing use of the outdoor eating areas till 12:00 midnight. The application proposes extension of this by one (1) hour. It is noted that while the increase in hours of operation may generate increase in noise up to midnight, the recommended conditions of consent allowing enclosure of that area with blinds is likely to reduce the impact of the noise generated to the adjoining uses.
- A discussion on the Late Night venue DCP is available earlier in the report.
- It is noted that while the proposed modification will allow extension of trading hours of the outside dining area by one (1) hour, the enclosure of that area with blinds is likely to improve the current situation where the use of the current unenclosed dining area is likely to generate more noise than proposed extended hours of operation. It is thus considered that upon inclusion of recommended conditions of consent the proposed development will generate a more desirable outcome.

MIAP Report No. 35 (Cont'd)**79C(1) (e) *the public interest.***

The wider public interest is served by the continued maintenance of the site and its ability to provide an appropriate landuse within this locality.

CONCLUSION:

The application has been assessed having regard to Section 96 (1A), Section 79C of the Environmental Planning and Assessment Act 1979, the Manly Local Environmental Plan 1988 is considered worthy of **Approval**.

RECOMMENDATION

That pursuant to Section 96(1A) Modification of Development Application No. 267/07 for Modification to previously approved Fitout of Shop 210 for use as a restaurant including proposed outdoor dining area and new awning at Shop 210, Manly Wharf, East Esplanade, Manly be **Approved** subject to the original condition of consent, with amendment to Condition ANS06 and new Condition ANS09 added as follows:

ANS06

The hours of operation of the premises shall not exceed 7:00am to 12 midnight Monday, Tuesday, Wednesday, Thursday and Sunday and 7:00am to 1:00am Friday and Saturday' s without the prior approval of Council. The outdoor eating area shall be for the restaurant use only.

Reason: To reduce impacts on the environment and reduce impacts on the amenity of the area.

ANS09

The entry doors and blinds of the outdoor dining area are to be closed no late that 10:00pm on all nights of the week and all seasons. Blinds should be manufactured from material that reduce noise and avoid light spill onto the foreshore area. Details to be submitted to Council / accredited Certifier prior to the issue of the Construction Certificate.

Reason: To ensure visual and aural amenity of the foreshore from the outdoor dining area and reduce impact on local fauna.

ATTACHMENTS

There are no attachments for this report.

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***** End of MIAP Report No. 35 *****