



## **Planning Assessment Report**

### **Development Application DA 102 05-2005**

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#### **1 SUMMARY**

This report is an assessment of the proposed development the subject of Development Application number DA 102-05-2005.

The application seeks consent for the demolition of an existing one storey dwelling and construction of a new two-storey residence.

The Minister for Planning is consent authority under Clause 10(1) of State Environmental Planning Policy No.56 – Sydney Harbour Foreshores and Tributaries.

It is recommended that the development application be **granted consent**.

#### **2 BACKGROUND**

##### **2.1 Site Context**

The site is located at 1095 Middle Head Rd, Mosman in the Mosman Municipal Council local government area. The site is identified as Lot 4, DP 233157 and has an area of 691.3 sqm.

The development application was lodged with the Department on 4 May 2005 in accordance with the *Environmental Planning and Assessment Act, 1979* (the Act).

The site lies on the southern side of Middle Head Road, between Bradley Bushland Reserve and Markham Close. The lot is located on land generally flat with a 3m high rock outcrop on the rear third of the site. A site and locality plan is Tag **A(1)** and **A(2)**.

#### **3 THE PROPOSED DEVELOPMENT**

The proposed development seeks consent for:

- demolition of an existing one-storey dwelling; and
- construction of a new two-storey residence.

##### **3.1 Amended Plans**

On 22 August 2005 the applicant, submitted amended plans the application incorporating: -

- Landscape Plan: replacement of the Blueberry Ash trees located in the rear south western and south eastern corners with small-leaved Lilly Pilly trees.
- Deletion of south-east dining room balcony.
- Relocation of raised walkway from the south-eastern corner to the middle of the block on the southern facade, adjoining the second storey kitchen and dining space.
- Recalculated maximum ridge height of the development shown as 8591mm.

These amendments differ only in minor respects from the development application submitted and do not give rise to any additional impacts. Accordingly, these amendments were accepted as a replacement application in accordance with clauses 55 and 90 of the *Environmental Planning & Assessment Regulation 2000* (the Regulations). In accordance with clause 90 of the Regulations further notification of the application was not undertaken, and the applicant was advised of the acceptance of the amended plans on 10 October 2005.

## **4 STATUTORY FRAMEWORK**

### **4.1 Statement of permissibility**

Under Mosman Local Environmental Plan 1982, the site is zoned 2(a1) residential. Dwelling houses may be carried out with development consent in this zone.

### **4.2 Instrument of consent and other relevant planning instruments**

Under clause 10(1) of State Environmental Planning Policy (SEPP) No. 56 – Sydney Harbour Foreshores and Tributaries, the Minister for Planning is the consent authority for the proposal.

The relevant environmental planning instruments (EPIs), draft environmental planning instruments (draft EPIs), development control plans (DCPs) and other relevant planning documents that apply to the site are as follows:

- *State Environmental Planning Policy No. 56;*
- *Sydney Regional Environmental Plan No. 23 and accompanying Sydney Harbour Foreshores and Waterways Area DCP;*
- *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005;*
- *Mosman Local Environmental Plan No.1;*
- *Mosman Residential Development Control Plan 1999; and*
- *Sydney Harbour Federation Trust - Georges Heights and Markham Close Management Plan.*

The planning instruments above have been considered in accordance with the provisions of Section 79C of the Act (see attached assessment tag 'B'). There are no potential issues identified during assessment that have not been addressed through these considerations.

### **4.3 Legislative context**

State Environmental Planning Policy No. 56 – Sydney Harbour Foreshores and Tributaries applies to this proposal. Under Part 3 of SEPP No. 56, the development is classified as a Site of State or Regional Significance (land in Schedule 1 of SEPP 56).

*State Environmental Planning Policy (State Significant Development) 2005* was gazetted on 25 May 2005. The SEPP amended SEPP 56 by removing the Minister's consent role over the site. Notwithstanding this, the transitional provisions of the SEPP apply and the Minister remains the consent authority for this application.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 which was gazetted on 28 September 2005 amends a number of provisions within SEPP 56. However, transitional provisions apply and the application is assessed on the basis that Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 has been exhibited but not adopted.

#### **4.4 Master Plan waiver**

Under clause 11(1) of SEPP No. 56, a master plan is required for the development site.

It is recommended that the master plan requirements be waived in determining this development application as:

- The Sydney Harbour Federation Trust (the Trust) has prepared a Management Plan for the Markham Close, Georges Heights area, including the subject site.
- The Management Plan addresses the relevant guiding principles and master plan issues identified in SEPP No. 56;
- The applicant has undertaken to provide a development proposal that complies with the requirements of the Markham Close Management Plan (see Section 79C assessment tagged 'B').

Under clause 11(4) the Minister may waive the requirements of clause 11(1) if the development relates to only part of a strategic foreshore site, and, any grounds for waiver are satisfied, and the Minister is satisfied that the waiver will not compromise the application of the guiding principles of SEPP 56.

Consideration is given to the requirement for a master plan within the Section 79C assessment (tagged 'B'). In summary, the development proposal generally conforms to the requirements of the Markham Close Management Plan, the Plan having been prepared to address the relevant parts of SEPP No. 56. It is considered that the Management Plan, in conjunction with the *Mosman Residential Development DCP, 1999*, provide adequate planning controls applicable to the site and it is therefore recommended that the need for a master plan be waived in this instance.

A separate instrument to waive the master plan has been prepared and signed by the Minister, covering this and all other applications within the Markham Place Management Plan area.

## **5 CONSULTATION**

### **5.1 Public consultation**

The application was notified, in accordance with the Regulations:

|                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|---------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Notifications – landowners/occupiers</b> | The Sydney Harbour Federation Trust, Mosman Council, NSW Rural Fire Service and 16 nearby landowners/occupiers were notified by letter on 17 May 2005. Sydney Region East (SRE) (Department of Planning, NSW) was notified of the SEPP 1 objection (to vary the height from the LEP requirement) on 19 May 2005. On 29 September SRE was notified of a further SEPP 1 objection (to vary the erection of a dwelling on land less than 700m <sup>2</sup> ). |
| <b>Newspaper Ads</b>                        | Advertised in the Mosman Daily on 19 May 2005.                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Site notices</b>                         | The site notice was placed on site on 17 May 2005.                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Exhibition dates</b>                     | Start: 20 May 2005. End: 21 June 2005.                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Exhibition venues</b>                    | <ul style="list-style-type: none"><li>▪ Planning Information Centre, 20 Lee St Street Sydney</li><li>▪ Mosman Council offices</li></ul>                                                                                                                                                                                                                                                                                                                    |

2 submissions were received regarding the Application. A summary of submissions is at attachment tagged 'C'. Issues are considered in Section 6.2 of this report.

## **5.2 Referrals**

### **5.2.1 Integrated Approval Bodies**

The application is integrated development under Section 138 of the *Roads Act* 1993 and Mosman Council has issued general terms of approval for the development (these are included in the proposed conditions of consent).

### **5.2.2 Council**

The application was referred to Mosman Municipal Council on 17 May 2005 in accordance with SEPP No.56 and the Regulations. Council responded on 20 June 2005. Issues raised by Council include:

- Need for a SEPP 1 objection in respect of lot size as per the terms of Clause 10 of Mosman LEP.
- The overall building height is not stated and the extent to which this exceeds the height limit is also not stated. No adequate argument to support a departure from the stated height limit is offered.
- The proposed balcony and walkway present privacy issues for neighbours.
- No stormwater management plan was submitted

Mosman Council's submissions are discussed in detail in Section 6.2 of this report.

Mosman Council's full submission is attached tagged 'D'. A SEPP 1 objection relating to the variation in lot size limit was provided by the applicant on 25 August 2005 as was information necessary to finalise the appropriate S94 contribution.

Mosman Council provided draft conditions with their submission of 20 June 2005. The Department has prepared draft conditions for the proposed development utilising the schedule of draft conditions provided by Council and, where appropriate, has supplemented these with additional conditions deemed necessary by the Department to address issues and concerns raised by Council and the assessment process.

The issues relating to building height, trees, rear deck implications were addressed by the applicant during the assessment period and modified plans were submitted which responded to these concerns. A summary of the changes to plans and design is provided in Section 6.2.

### **5.2.3 Other Agencies**

#### **5.2.4 NSW Rural Fire Service**

Advised that the DA does not require the issue of a Bush Fire Safety authority and raised no other concerns or considerations

#### **5.2.5 Sydney Harbour Federation Trust**

Provided no response to the referral.

## **5.3 Internal consultations**

The Sydney Region East Team has been consulted regarding the application and the submitted SEPP 1 objections, and raised no objections.

## **6 CONSIDERATION**

### **6.1 The Environmental Planning & Assessment Act**

#### **6.1.1 Section 79C**

The application and the likely impacts of the proposed development have been considered in accordance with Section 79C of the Act. Significant issues are discussed

below in Section 6.2 and a detailed assessment is provided with the Section 79C assessment tagged 'B'.

The subject site is considered suitable for the proposed development. Submissions have been considered and issues raised in submissions are discussed in Section 6.2. On balance, the proposed development is considered to be in the public interest.

## **6.2 Issues**

### **6.2.1 SEPP 1 Objection Lot size**

- Issue:* Council noted that the lot size of the development was less than the required lot size for development under Clause 10(1) of the Mosman LEP. On request the applicant submitted a SEPP 1 objection to allow for the variation.
- Raised by:* Council
- Consideration:* The lot area is 691.3 square metres, 8.7 square metres less than the required minimum lot size for development under CI 10(1) of the Mosman LEP. CI 10(3) states that consent may be granted for a development on a lot that does not comply if the allotment was already in existence on the appointed day. This is a development which replaces an existing dwelling which was in existence prior to 1982, and as such complies under Clause 10(3) of the Mosman LEP. In addition, strict compliance with the statutory lot size control is considered unnecessary and unreasonable in this instance. Non-compliance does not raise any matters of significance for State or regional planning. It is considered that there will be no detrimental impact upon public or private views and the public interest will not be comprised.
- Resolution:* It is recommended the SEPP 1 Objection be accepted.

### **6.2.2 SEPP 1 Objection Maximum height**

- Issue:* The applicant has lodged a SEPP 1 objection to vary the statutory restriction regarding maximum heights of buildings.
- Raised by:* Council and Urban Assessments
- Consideration:* The proposed dwelling does not comply with the statutory height restriction of 8.5m, Clause 11 of the Mosman LEP No.1. The proponent states the maximum height of the building will be 8.591m. Although the building height exceeds the statutory LEP control, it complies with the maximum ridge height limitations within the Management Plan. Ceiling heights for both storeys are 3.1m. In this instance, compliance with the statutory height control is not considered unreasonable and the proponent has not shown non-compliance to be necessary for the design or any other purpose.
- Resolution:* It is recommended that the SEPP 1 objection be refused and a maximum height of 8.5m will be imposed as a condition of the consent.

### **6.2.3 Privacy**

- Issue:* The application included a balcony and raised walkway on the south-eastern upper floor area which raised privacy issues of overlooking the rear of the adjoining block.
- Raised by:* Council
- Consideration:* On request, the applicant submitted amended plans relocating the walkway to the centre of the site and deleting the balcony.
- Resolution:* The plans, as amended are satisfactory.

### **6.2.4 Obstruction of views**

- Issue:* Two submissions were received expressing concerns regarding plantings in the SE and SW corners and obstruction of existing views from neighbouring properties.
- Raised by:* Mark and Marcelle Small - owners and occupiers of 8 Markham Close, and Sandra Jane Dorney – owner of 4 Markham Close.
- Consideration:* The Blueberry Ash trees proposed for the southern corners of the site grow to a mature height of 8m with a spread of up to 5m. The Applicant has submitted an amended landscape plan substituting this species for the Small Leafed Lilly Pilly (max. height 3-5m) in these areas of the site.
- Resolution:* The landscape plans, as amended are considered satisfactory.

## 7 CONCLUSION

The Minister for Infrastructure and Planning is the consent authority.

The application has been considered with regard to the matters raised in section 79C of the Act is considered to be satisfactory.

The application has been notified in accordance with the Regulations. All submissions received in the period prescribed by the Regulations have been considered.

On balance, it is considered that the proposed development is acceptable and should be approved.

## 8 CONSULTATION WITH APPLICANT – DRAFT CONDITIONS

The applicant was asked to comment on the draft conditions of consent on 27 October 2005. The applicant responded on 5 November 2005 and was generally supportive of the drafted conditions.

## 9 DELEGATION

Under the instrument of delegation dated 12 September 2005, the Minister has delegated to the Deputy Director General his functions under the Act for granting development consents where they satisfy the circumstances set out in the Schedule of the Instrument.

## 10 RECOMMENDATION

It is recommended that the A/Deputy Director General, as delegate of the Minister for Planning in accordance with the Instrument of Delegation dated 12 September 2005, pursuant to section 80 (1) and 80A of the *Environmental Planning and Assessment Act, 1979* (as amended) and clause 11(4) of State environmental Planning Policy No.56 – Sydney Harbour Foreshores and Tributaries.

- (A) **note** the Masterplan waiver signed by the Minister;
- (B) grant **consent** to the application subject to conditions (Tagged “C”), and
- (C) authorise the Department to carry out post-determination notification.

For Approval Under delegation

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