



Planning Assessment Report

Development Application DA 97-04-2005

8 Markham Close, Mosman

1 SUMMARY

This report is an assessment of the proposed development the subject of Development Application number DA 97-04-2005 lodged by Molnar Freeman Architects Pty Ltd.

The application seeks consent for the demolition of an existing single storey brick dwelling and construction of a new two-storey dwelling including garage, outdoor pool and associated works.

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 subject to conditions**.

2 BACKGROUND

2.1 Site Context

The site is located at 8 Markham Close, Mosman in the Mosman Municipal Council Local Government Area (Mosman Council). The site is identified as Lot 103, DP 1064882.

The application was lodged with the Department on 27th April 2005 in accordance with the *Environmental Planning and Assessment Act, 1979* (the Act).

The lot is located on land gently sloping to the north east. A site plan and locality plan is attached at tag “**A(1)** and **A(2)**”.

3 THE PROPOSED DEVELOPMENT

The development application seeks consent for:

- (1) Demolition of an existing single storey brick dwelling and concrete driveway;
- (2) Construction of a new two-storey dwelling including:
 - a) On ground level: three secondary bedrooms; one bathroom; one laundry; one rumpus room; one art room; one store room; a covered rear terrace; entry area and water feature; and double garage;
 - b) On first level: one study; one WC; kitchen and pantry; open plan living/dining area and associated terrace and entry; television room; one

main bedroom with associated deck area, walk-in-wardrobe room, laundry chute, en-suite and spa; and terrace over garage;

- c) outdoor pool and associated tiled area;
- d) new concrete driveway;
- e) new landscape works; and
- f) drainage works in accordance with the site stormwater concept plans.

4 STATUTORY FRAMEWORK

4.1 *Statement of permissibility*

Under Mosman Local Environmental Plan No. 1 (gazetted 1982 with subsequent amendments to 1997), the site is zoned 2(a1) Residential. The development of dwelling houses is permissible with development consent in this zone.

Hence, the proposed development is considered permissible within Zone 2 (a1) Residential under the Mosman Local Environmental Plan No. 1 (gazetted 1982 with subsequent amendments to 1997).

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 development application.

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 Section 79C assessment tag 'B').

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.

Master Plan Waiver

Under clause 11(1) of SEPP No. 56, a master plan is required for the development site. However, pursuant to clause 11(4) the Minister has waived the requirements of clause 11(1). (see copy of waiver tag F)

5 CONSULTATION

5.1 *Public consultation*

The application was notified, in accordance with the *Environmental Planning and Assessment Regulation, 2000*, (prior to 1st August 2005), (the Regulation), including:

Notifications – landowners/occupiers	The Sydney Harbour Federation Trust, Mosman Council and eleven nearby landowners were notified of the proposal by letter dated 6 May 2005. Sydney Region East (SRE) (Department of Planning, NSW) was notified of the SEPP 1 objection (to vary the wall height from the LEP requirement) on 15 August 2005.
Newspaper advertisements	The proposal was advertised in the Mosman Daily on 12 May 2005.
Site notices	The site notice was placed on site on 13 May 2005.
Exhibition dates	Start: 13 May 2005. End: 14 June 2005.
Exhibition venues	<ul style="list-style-type: none"> ▪ Planning Information Centre, 20 Lee Street, Sydney; ▪ Mosman Council offices, Mosman Square, Mosman.

Two submissions were received with regard to the development application:

- One submission in support of the proposal from a private landowner (this landowner requested to be informed of any modification made to the development application);
- One submission raising concern with some aspects of the proposal from Mosman Council. These issues are discussed below in Section 5.2.2.

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 the Mosman Council on 6 May 2005 in accordance with the requirements under SEPP No.56 and the Regulation. Council responded on 14 June 2005. Issues raised by Council include the following:

- Non-compliance with the statutory wall height control under Clause 11 of the Mosman LEP No.1;
- The requirement to submit a SEPP 1 objection to the proposed breach of Clause 11 of the Mosman LEP No. 1;
- Inclusion of unnecessary or undesirable works to raise the ground level at the eastern boundary;
- Location of swimming pool and relationship to adjoining property at eastern boundary;
- Design of the upper floor deck (terrace 1) and access including non-compliance with setback requirements, bushfire hazard and potential overlooking;
- Concerns over nominated species for landscape planting which are considered unlikely to thrive in the locations proposed on the landscape plan;
- The absence of a BASIX certificate; and
- Section 94 contribution requirements.

Mosman Council's full submission is attached tagged 'D'. A SEPP 1 objection relating to the variation in the statutory wall height limit was provided by the applicant on 27 July 2005.

Mosman Council provided a schedule of draft conditions with their submission of 14 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.

During assessment, additional information was provided by the applicant in relation to addressing landscaping, landscape area and a SEPP No.1 objection in regard to building height.

5.2.3 NSW Rural Fire Service

The NSW Rural Fire Service advised that the development should have the following conditions:

1. Construction shall comply with AS3959-1999 level 1 'Construction of Buildings in bushfire prone areas'
2. Roofing shall be gutterless or have leafless guttering and valleys are to be screened to prevent the build up of flammable material.
3. The entire property shall be managed as an 'Inner Protection Area' as outlined within Section 4.2.2 in Planning for Bushfire Protection 2001.

5.2.4 Sydney Harbour Federation Trust

The application was referred to the Trust on 6 May 2005 as the previous land owner. The Trust had no further comments other than those made in a letter to the applicant dated 21 April 2005 (tagged "E"). The letter states that the Trust provides its approval of the application's compliance against the restrictive covenants subject to conditions including the requirement that the applicant should submit details of the colour, texture and substance of all external materials to the Trust for approval prior to construction.

5.3 The Environmental Planning & Assessment Act

5.3.1 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 5.4 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 below in Section 5.4. On balance, the proposed development is considered to be in the public interest.

5.4 Issues

5.4.1 SEPP 1 Objection

Issue: The applicant lodged a SEPP 1 objection to vary the statutory wall height limit of 7.2 metres under the Mosman LEP No.1.

Consideration: The LEP controls are general controls for development in all residential zones in the Mosman local government area made to:

- Minimise the visual impact of buildings when viewed from the harbour and surrounding foreshores; and
- Minimise the impacts of bulk and scale of new development in existing residential areas.

The proposed dwelling does not comply with the statutory wall height control contained in Clause 11 of the Mosman LEP No.1. The rear wall and north eastern corner of the building exceed the 7.2 metre limit. However, the non-compliance amounts to an approximate height of 0.4 metres which occurs only at the north eastern corner of the building. Consequently, the Department considers the SEPP 1 objection reasonable in this case.

Resolution: It is recommended that the SEPP 1 objection be accepted.

5.4.2 Landscape Plan

- Issue:* Council does not consider the landscape plan to be satisfactory in terms of nominated plant species.
- Consideration:* Council did not consider the nominated plant and tree species, as shown on the landscape plan dated 18 April 2005, to be satisfactory. Particular concerns relate to the incorporation of species which are considered unlikely to thrive in the locations. In response to the Council's comments, the applicant has submitted a revised landscape plan. The revisions appear to address concerns raised by Council with regard to nominated plant species, however, the Department considers it appropriate for Council to give approval to the final landscaping plan prior to the issue of the Construction Certificate.
- Resolution:* It is recommended that a condition of consent be imposed requiring that the final landscape plan be submitted to Council (or the Accredited Certifier) for approval prior to the issue of the Construction Certificate.

5.4.3 Significant Trees

- Issue:* The proposed development proposes the removal of a 'significant tree' identified for retention in the SHFT Management Plan.
- Raised by:* Department of Planning
- Consideration:* The applicant proposes to remove a significant tree to facilitate development at the site. An arborist's report has been submitted in support of the removal of the tree which states that there is '*visible decline*' in the condition of the Eucalyptus and is assessed as having a Safe Useful Life Expectancy of less than five years. The tree is considered to be of moderate landscape significance. In order to mitigate against the loss of the significant tree, a replacement tree is proposed in the front garden of the lot as part of the landscape plan. Council has proposed a condition addressing removal of trees on site.
- Resolution:* It is recommended that the condition proposed by Council addressing removal of trees on site be imposed.

5.4.4 Unnecessary Site Works

- Issue:* Unnecessary site works to raise the ground level by 900mm to the rear of the eastern boundary.
- Raised by:* Mosman Council
- Consideration:* The Council has concerns regarding the raised ground level at the rear eastern boundary which is considered to be excessive. Potential impacts include construction issues including the maintenance of the proposed retaining structure and amenity impacts relating to overlooking of the adjoining property. There is an opportunity to plant screen planting along this eastern boundary to address any privacy or amenity concerns. The Department

considers the design proposal preferable to possible alternatives. The outdoor entertainment areas of the garden are located on the west side of the garden away from the eastern boundary. The proposal is considered acceptable in the circumstances.

Resolution: It is recommended that the proposed works to raise the ground level at the eastern boundary be accepted subject to conditions of consent which impose a requirement for adequate landscape screening to be provided along this eastern boundary. This landscape screening shall be submitted and approved by Council as part of the Landscaping Plan prior to the issue of the Construction Certificate.

2.4.5 Location of the Pool

Issue:

- (a) The location of the pool appears unnecessarily elevated in relation to adjoining properties which raises concerns relating to construction and amenity issues.
- (b) Non-compliance with DCP setback requirements

Raised by: Mosman Council and Department of Planning

Consideration: Council raised concerns regarding the location of the pool in relation to the potentially negative impacts in terms of amenity and privacy for adjoining neighbours. Council proposes that these amenity issues could be addressed by relocating the pool towards the western boundary.

The applicant ascertains that the location of the pool has been sited in order to minimise the need for cut and fill and excavation. The applicant has sought to address issues of privacy and amenity by preventing access along the rear of the pool (the northern elevation) and by providing a 1m high privacy wall along this elevation. The land between the pool and northern boundary fence will be landscaped. Along the eastern elevation, only a narrow strip of pool surround (approximately 850mm) is provided in order to limit usage in this area. The eastern boundary is also to be landscaped.

Furthermore, the pool does not comply with minimum setback requirements specified within clause 7.4 of the DCP. These setbacks include a 2 metre minimum separation distance between the external edge of the pool surround and the property boundary and a minimum 2 metre width of landscaping between the pool and the property boundary.

The Department considers that location of the pool should be adjusted in order to accord with minimum setback requirements. Compliance with the DCP setback controls will result in the pool being shifted approximately 1m westwards. This relocation accompanied by an increased area of landscaping along the eastern boundary is considered sufficient to alleviate concerns regarding privacy and overlooking at the northern and eastern elevations.

Resolution: It is recommended that the location of the pool is acceptable subject to the applicant meeting the minimum setback requirements

as set out above and subject to the provision of satisfactory landscaping. Conditions of consent shall apply to this effect.

5.4.6 Location of rear deck

- Issue:* Design of the upper floor deck (terrace 1) and access including non-compliance with setback requirements, bushfire hazard and potential overlooking
- Raised by:* Mosman Council
- Consideration:* The applicant has agreed to remove side access stairs to terrace 1 thereby permitting the planting of landscaping along this boundary and to reduce the width of the terrace so that it complies with rear setback requirements.
- Resolution:* It is recommended that conditions of consent be applied deleting the access on the western side of terrace 1 and reconfigure the deck area so that it does not extend outside the permitted setback lines.

6 CONCLUSION

The Minister for Planning is the consent authority.

The application has been considered with regard to the matters raised in Section 79C of the Act.

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

Under clause 11(1) of SEPP No. 56, a master plan is required for the development site. However, pursuant to clause 11(4) the Minister has waived the requirements of clause 11(1).

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

7 CONSULTATION WITH APPLICANT – DRAFT CONDITIONS

The applicant was asked to comment on draft conditions of consent issued by fax on 14 September 2005. The applicant's comments were as follows:

- General acceptance of the draft conditions;
- Particular reference and acceptance of draft conditions B1 and B2 which proposed to limit the width of the driveway and driveway crossing; and
- The applicant requested to be kept informed of any changes and progress of the determination by the Minister.

The applicant has also advised acceptance of the additional conditions proposed by the NSW Rural Fire Service.

8 RECOMMENDATION

It is recommended that the A/Deputy Director General, as delegate for the Minister for Planning, in accordance with the Instrument of delegation dated 12 September, 2005, pursuant to Section 80 (3) of the *Environmental Planning & Assessment Act, 1979*, (as amended) and clause 10(1) of State Environmental Planning Policy (SEPP) 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.

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