

# Development Application Report No. D92/17



**Subject:** 185 Boyce Road, Maroubra (DA/847/2016/A)

**Folder No:** DA/847/2016/A

**Author:** Chahrazad Rahe, Senior Assessment Planner

**Proposal:** Section 96 modification of the approved development to delete condition 2(f) that requires deletion of the void areas at first floor level of both dual occupancies

**Ward:** Central Ward

**Applicant:** Mr G Lombardo

**Owner:** Boyce Group Pty Ltd

**Summary Recommendation:** Approval



## Development Application Executive summary report

The application is referred to the Planning Committee for determination at the request of Councillors Andrews, Seng and Stavrinou.

## 1. History & details of current approval:

On 22 February 2017 Council issued Development Consent under DA/847/2016 for demolition of the structures on site, Torrens title subdivision into 2 allotments, construction of 2 storey attached dual occupancy with garages front access from Galvin Street and construction of a 2 storey attached dual occupancy with semi-basement carparking and storage with access from Boyce Road and associated works.

As part of the consent Council supported a variation to Clause 4.4 of Randwick Local Environmental Plan 2012, relating to floor space ratio, however, the development was subject to a number of conditions, one in particular condition relates to deletion of the void areas at the first floor level of both dual occupancies which is the subject of this application. The condition reads as follows:

- 2(f) The void areas at the first floor level of both dual occupancies shall be deleted and roofs shall be designed within the void areas having a maximum height of 3.5m from the ground level. The void area above the roofs shall step in to be in line with the hallways of the dual occupancies. The Galvin Street dual occupancy voids shall be setback a minimum of 5m from the eastern and western side boundaries and the Boyce Road dual occupancy shall be setback a minimum of 4.2m from the eastern and western side boundaries. Any new glazing proposed in these parts of the development shall be incorporated into an amended BASIX certificate and submitted to Council for approval. Any new glazing shall incorporate external privacy screens to protect the privacy of the neighbouring buildings and rear yards opposite. The total area of any openings within the privacy screens must not exceed 25% of the area of the screens. Details showing compliance with this condition shall be submitted to Council for approval prior to a construction certificate being issued for the development.*

## 2. Details of proposed modification:

The Section 96 modification application seeks to remove Condition 2(f) in order to permit the inclusion of the voids to the centre of the dwellings in both approved dual occupancies to allow solar access into the living areas.

## 3. Referrals:

No referrals are required for this application.

## 4. Section 96 Assessment:

Under the provisions of Section 96 of the Environmental Planning and Assessment Act, 1979, as amended, Council may only agree to a modification of an existing Development Consent if the following criteria has been complied with: -

### 4.1 Substantially the Same Development:

Section 96 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 the consent was originally granted and before that consent as originally granted was modified (if at all), and*

- (c) *it has notified the application*
- (d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

The proposed modifications seek to delete a condition imposed by Council which do not alter the nature or essence of the approved development and therefore, is considered to be substantially the same development as that for which the consent was originally granted.

**4.2 Notification and Consideration of Submissions:**

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance with the Randwick Comprehensive DCP 2013. The following submission was received as a result of the notification process:

83 Cooper Street, Maroubra

<i>Issue</i>	<i>Comment</i>
<p><u>Bulk and scale</u> The proposed void areas, not only unnecessarily add to the bulk and scale of these dual occupancies, it is in effect additional 'floor area' in a development that already exceeds the allowable FSR Development Standard for this site.</p> <p>This could potentially create a precedent for other Section 96 applications to convert the enclosed void areas as additional floor area to dual occupancy buildings.</p>	<p>Refer to discussion on DCP requirements in Section 5.1.2 of this report.</p>

**5. Key Issues**

**5.1 Section 79C Assessment:**

The site has been inspected and the application has been assessed having regard to Section 79C of the Environmental Planning and Assessment Act, 1979, as amended.

**5.1.1 Environmental Planning Instruments  
Randwick Local Environmental Plan 2012**

The modified development is not inconsistent with the general aims and objectives of the RLEP 2012.

The following clauses of LEP 2012 are relevant to the proposed development:

**Zone R2 – Low Density Residential**

Subject to Condition 2 (f) being slightly altered, the proposed modifications to the approved development will continue to be consistent with the relevant objectives of the zone in that the change and additions are sympathetic to the existing built environment and will not result in unacceptable impacts on the amenity of neighbouring residents and the streetscape.

**Clause 4.4 - Floor Space Ratio**

There are no changes made to the FSR of the approved building.

**Clause 4.3 - Height of Building**

There are no changes made to the height of the approved building.

**Development Control Plan – Part C1 Low Density Residential****Section 4 - Building Design****Sub-section 4.1 - General**

Building envelope is defined by setbacks, building height, wall height and FSR. Façade treatment and detailing affect the visual presentation of buildings and play a pivotal role in either enhancing the character, continuity of streetscapes and visual amenity of neighbouring properties.

One of the key objectives of the DCP under matters relating to the building design is to ensure building facades are articulated to complement or enhance the existing streetscape and neighbourhood character. The additional void area to both of the dual occupancies unnecessarily adds mass to the façade composition along the side elevations thereby not meeting the objectives of the control. The building could potentially be modified in the future to provide additional floor area to the dwellings which will result in a further non-compliance to the FSR standard in the LEP of the approved development. This also results in unnecessary impacts on the perceivable bulk and scale of the buildings and significantly detracts from the visual amenity of the neighbouring properties.

The DCP control for design measures for modelling and articulating a building requires the side elevations of the walls to be divided into sections, bays or modules of not more than 12m in length, separated by measures, such as recesses or side courtyards, in order to avoid massive or unrelieved walls. The proposed dual occupancies do not meet this control and extend for a length of 16.625m (for the dwellings facing Boyce Road) and 15.826m (for the dwellings facing Galvin Street).

Under the original assessment Council raised concerns with the applicant that the physical enclosure of voids with masonry and window openings did not represent genuine void areas for the purposes of both maximising light and ventilation to the dual occupancies and ensure adequate articulation. The following assessment was concluded:

*The legitimacy of the void areas was challenged in that whilst the voids provide a greater sense of internal space; they don't maximise light and ventilation to the dwellings and the long unrelieved walls along the side elevations are contrary to key building design objectives and controls under Part C1 of the Randwick Development Control Plan (RDCP) 2013 which seek to provide adequate levels of modulation and articulation by stepping in the building along the side elevations. This is not fatal to the application in that a condition may be included requiring the walls and openings associated with the voids to be stepped further in along the side elevations at first floor levels with a higher ceiling over ground level. Such a condition will improve light and ventilation, reduce mass and introduce articulation that provides visual interest inclusive of the sense of internal space.*

The assessment by the previous planning officer is therefore supported. By lowering the wall height of the void areas to the centre of the building the massing of the side walls will be reduced. The visual amenity and articulation along the side elevations as viewed from the neighbouring properties will also be improved. However, there is opportunity to increase the wall height by 500mm to 4m (from the ground level) to improve solar access and ventilation into the living areas throughout both dual occupancies as requested as part of this application whilst still meeting the control

objectives of the DCP. The additional wall height of 500mm will still achieve articulation to the side of the walls and does not unreasonably impact on the visual amenity of the neighbouring properties.

In order to articulate the external facades and reduce the apparent mass of the buildings, condition 2 (f) shall be slightly altered to read as follows:

- 2 (f) The void areas at the first floor level of both dual occupancies shall be deleted and roofs shall be designed within the void areas having a maximum height of 4m from the ground level. The void area above the roofs shall step in to be in line with the hallways of the dual occupancies. The Galvin Street dual occupancy voids shall be setback a minimum of 5m from the eastern and western side boundaries and the Boyce Road dual occupancy shall be setback a minimum of 4.2m from the eastern and western side boundaries. Any new glazing proposed in these parts of the development shall be incorporated into an amended BASIX certificate and submitted to Council for approval. Any new glazing shall incorporate external privacy screens to protect the privacy of the neighbouring buildings and rear yards opposite. The total area of any openings within the privacy screens must not exceed 25% of the area of the screens. Details showing compliance with this condition shall be submitted to Council for approval prior to a construction certificate being issued for the development.

### **Relationship to City Plan**

The relationship with the City Plan is as follows:

- Outcome 4: Excellence in urban design and development.  
Direction 4a: Improved design and sustainability across all development.

### **Financial impact statement**

There is no direct financial impact for this matter.

### **Conclusion**

The proposed modifications to the existing development have been assessed against the requirements of the relevant planning guidelines of the RLEP 2012 and Council's Randwick Comprehensive Development Control Plan, as well as in regard to Section 79C of the Environmental Planning and Assessment Act, 1979, as amended. The proposed modifications are considered to be substantially the same development as that previously approved.

The request to retain the void areas in both approved dual occupancies are not supported. However, Condition 2 (f) has been slightly modified to allow for more solar access and ventilation into the living areas of both dual occupancies.

### **Recommendation**

That Council, as the consent authority, grants development consent under Section 96 of the Environmental Planning and Assessment Act 1979, as amended, to modify Development Consent No. DA/847/2016/A for permission to delete condition 2(f) that requires deletion of the void areas at first floor level of both dual occupancies for 185 Boyce Road, Maroubra in the following manner:

#### **Non standard conditions**

**Amend Condition 2 (f) to read as follows:**

- f. The void areas at the first floor level of both dual occupancies shall be deleted and the roofs shall be designed within void areas having a maximum height of 4m from the ground level. The void area above the roofs shall step in to be in line with the hallways of the dual occupancies. The Galvin Street dual occupancy voids shall be setback a minimum of 5m from the eastern and western side boundaries and the Boyce Road dual occupancy shall be setback a minimum of 4.2m from the eastern and western side boundaries. Any new glazing proposed in these parts of the development shall be incorporated into an amended BASIX certificate and submitted to Council for approval. Any new glazing shall incorporate external privacy screens to protect the privacy of the neighbouring buildings and rear yards opposite. The total area of any openings within the privacy screens must not exceed 25% of the area of the screens. Details showing compliance with this condition shall be submitted to Council for approval prior to a construction certificate being issued for the development.

**Attachment/s:**

Nil