

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2018/0547
Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 5 DP 8075, 82 - 84 Bower Street MANLY NSW 2095
Proposed Development:	Modification of Development Consent No. DA168/2017 granted for alterations and additions to the existing dual occupancy
Zoning:	
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Trustees Roman Catholic Church Archdiocese Sydney 82-84 Bower Street Pty Ltd
Applicant:	Smith & Tzannes
Application lodged:	11/10/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	19/10/2018 to 06/11/2018
Advertised:	Not Advertised
Submissions Received:	0
Recommendation:	Approval

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;

- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.3 Height of buildings

Manly Local Environmental Plan 2013 - 4.4 Floor space ratio

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

SITE DESCRIPTION

Property Description:	Lot 5 DP 8075 , 82 - 84 Bower Street MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northern side of Bower Street, Manly.</p> <p>The site is irregular in shape with a frontage of 16.365m along Bower Street and XXxm along Marine Parade, and an average depth of 45.83m. The site has a surveyed area of 698.4m².</p> <p>The site is located within the E3 Environmental Management zone and accommodates a two-storey dual occupancy with vehicular access via an existing driveway from Bower Street to an existing double garage to the front of the existing dwelling.</p> <p>The site slopes approximately 8m from south to north.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by a mix of one- and two-storey detached dwellings.</p>

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

- DA0034/2016 for Alterations and additions to an existing semi-detached dwelling including new upper level internal reconfiguration and new roof, reconstruction of the existing ground floor entry, partial demolition of rear of dwelling , new plunge pool, terrace, new double garage and landscaping - No 84 Bower Street, Manly only was approved on 27 April 2016 by the former DAU.
- DA0168/2017 for Alterations and additions to the existing dual occupancy was approved on 14 November 2017 under staff delegation.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks to modify Development Consent DA0168/2017 as follows:

- Removal of the *Ficus benjamina* tree;
- Remedial works to walls;
- Deletion of the lift;
- Extension of the basement level at No. 84 for the plant room;
- Internal reconfiguration;
- Changes to windows and doors;
- Changes to entry;
- Modifications to the roof;
- Addition of skylights;
- Deletion of stairs to yard; and
- Construction of a planter box, seat and entry stair.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA0168/2017, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) - Other Modifications	Comments
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	Yes The modification, as proposed in this application, is considered to be of minimal environmental impact.
(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), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA0168/2017.
(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	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Local Environment Plan 2011 and Manly Development Control Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or	No submissions were received in relation to this application.

Section 4.55(1A) - Other Modifications	Comments
provided by the development control plan, as the case may be.	

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No Additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition of the application Council received no submissions.

MEDIATION

No requests for mediation have been made in relation to this application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The application indicates that 1 x <i>Ficus benjamina</i> (Weeping Fig) is proposed for removal as it is now listed as an exempt species. Manly DCP has been amended since the previous approval which required retention of the tree. <i>F. benjamina</i> was not an exempt species at that stage.</p> <p>The site is not a hertiage item nor in a heritage conservation area, which would remove the exemption.</p> <p>As Council has now declared the tree to be a species not requiring Council approval to remove, removal of the tree is not opposed.</p> <p>It is noted that the amended Landscape Plan indicates planting of 3 x <i>Acmena simthii</i> and 1 x <i>Glochidion ferdinandi</i> on the site. These native trees grow to a size that will replace the canopy of the <i>F. benjamina</i> be removed. However it is noted that the Landscape Plan indicates pot size at planting of 300mm. In view of the size of the tree to be removed, it is recommended that semi mature sized trees be planted to help mitigate the canopy loss more quickly. It is recommended that the replacement trees be minimum pot size of 75 litre at planting.</p> <p>No objections subject to additional conditions as recommended</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the

application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate Nos. A278130_02 and A260049_02 dated 21 August 2018). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

Manly Local Environmental Plan 2013

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	4.8-11.2m	New works to 10.4m	22.35%	No
Floor Space Ratio	0.45:1 314.28sqm	0.65:1 451.1sqm	0.64:1 446.9sqm	42.19%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes

Detailed Assessment

4.3 Height of buildings

See detailed comment in the section of this report relating to Clause 4.6 Exceptions to Development Standards.

4.4 Floor space ratio

See detailed comment in the section of this report relating to Clause 4.6 Exceptions to Development Standards.

4.6 Exceptions to development standards

Whilst the modification application will result in a building height and floor space ratio that exceed the maximum permitted by Clauses 4.3 and 4.4 of the MLEP 2013, the application does not strictly need to address the requirements of Clause 4.6. This application has been made under Section 4.55 the Environmental Planning and Assessment (EP&A) Act 1979, which is a free-standing provision that in itself authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as substantially the same test and consideration of all relevant s.79C matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application. Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 96 modification applications. In accordance with this, the Applicant has not provided a written request to vary the Height of Buildings and Floor Space Ratio development standards. Nevertheless, assessment of the variations is as follows:

Height of Building:

Description of non-compliance:

Requirement:	8.5m
Approved:	4.8-11.2m
Proposed:	New works to 10.4m
Is the planning control in question a development standard?	YES
If numerical enter a % variation to requirement	22.35%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 Height of Building development standard has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* and an assessment of the request to vary the development standard in accordance with the requirements of Clause 4.6 is provided below:

Clause 4.6 Exceptions to development standards:

(1) *The objectives of this clause are as follows:*

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Comment:

Clause 4.3 Height of Building development standard is not expressly excluded from the operation of this clause.

(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

(4) *Development consent must not be granted for development that contravenes a development standard unless:*

- (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Secretary has been obtained.*

CI 4.6 (4)(a)(i) (Justification) assessment:

Cl 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6 (3) and these are addressed as follows:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

Comment:

As detailed, a written request is not required in this case.

Cl 4.6 (4)(a)(ii) (Public Interest) assessment:

Cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out*

Comment:

In considering whether or not the proposed development will be in the public interest consideration must be given to the underlying objectives of the Height of Building development standard and the objectives of the E3 Environmental Management zone. An assessment against these objectives is provided below.

Objectives of development standard:

The underlying objectives of cl 4.3 Height of Buildings development standard are:

- (a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*

Comment:

The proposed modifications retain the approved overall building height and flat roof form. The development remains consistent with existing developments along Bower Street in relation to building height and roof form.

- (b) to control the bulk and scale of buildings,*

Comment:

The proposed modifications are set below the approved maximum building height and include a reduction in the floor space ratio, thereby demonstrating that the bulk and scale of the resultant building is adequately controlled.

- (c) to minimise disruption to the following:*

- (i) views to nearby residential development from public spaces (including the harbour and fore;*
- (ii) views from nearby residential development to public spaces (including the harbour and fore*
- (iii) views between public spaces (including the harbour and foreshores),*

Comment:

As above, the proposed modifications are set below the approved maximum building height and reduce the overall floor space ratio. As such, the resultant development is not of greater scale and does not result in any unreasonable additional disruption to views to, from, or between public or private spaces.

- (d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*

Comment:

As above, the proposed modifications are set below the approved maximum building height and reduce the overall floor space ratio. As such, the resultant development is not of greater scale and does not result in any unreasonable additional overshadowing.

(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses

Comment:

The proposed modifications generally maintain the approved building footprint and are set below the approved maximum building height, thereby having regard to the existing vegetation and topography of the subject site. Further, the proposed modifications retains adequate landscaped open space.

Conclusion:

The proposed development satisfies the underlying objectives of the development standard.

Zone objectives

The underlying objectives of the E3 Environmental Management zone are as follows:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*

Comment:

The proposed modifications are acceptable in terms of their impacts on the ecological and aesthetic values. The proposed modifications generally retain the approved building footprint and therefore allow for the protection, management and restoration of the area.

- *To provide for a limited range of development that does not have an adverse effect on those values.*

Comment:

The proposed modifications will not unreasonably impact upon the special ecological, scientific, cultural and aesthetic values of the site or locality, as demonstrated throughout this report.

- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*

Comment:

Subject to inclusion of the recommended conditions of consent, the proposed modifications will not unreasonably impact on tree canopies or the amenity of the natural and scenic qualities of the foreshore.

- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*

Comment:

The proposed modifications do not result in unreasonable impacts on the foreshore, as the proposed works are contained predominantly within the approved building footprint and envelope.

- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*

Comment:

As above, the proposed modifications are generally within the approved building footprint and

envelope, thereby reducing the impact of hard surfaces and associated pollutants in storm water run-off on the ecological characteristics of the locality, including water quality.

- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

Comment:

The height and bulk of the development have adequate regard to existing vegetation, topography and surrounding land uses, and are acceptable for the reasons detailed in this report.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the E3 Environmental Management zone.

Cl 4.6 (4)(b) (Concurrence of the Secretary) assessment:

Cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted. Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of Buildings development standard is assumed.

Floor Space Ratio:

Description of non-compliance:

Requirement:	0.45:1 (314.28sqm)
Approved:	0.65:1 (451.1sqm)
Proposed:	0.64:1 (446.9sqm)
Is the planning control in question a development standard?	YES
If numerical enter a % variation to requirement	42.19%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.4 - Floor space ratio development standard has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* and an assessment of the request to vary the development standard in accordance with the requirements of Clause 4.6 is provided below:

Clause 4.6 Exceptions to development standards:

(1) *The objectives of this clause are as follows:*

- to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental*

planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Comment:

Clause 4.4 Floor space ratio development standard is not expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Secretary has been obtained.

cl 4.6 (4)(a)(i) (Justification) assessment:

cl 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6 (3) and these are addressed as follows:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Comment:

As detailed, a written request is not required in this case.

Cl 4.6 (4)(a)(ii) (Public Interest) assessment:

Cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

Comment:

In considering whether or not the proposed development will be in the public interest consideration must be given to the underlying objectives of the Floor space ratio development standard and the objectives of the E3 Environmental Management zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of cl 4.4 Floor space ratio development standard are:

(a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,

Comment:

The proposed modifications retain a bulk and scale that is comparable to existing development along Bower Street, particularly on the northern side of the street, where the subject site is located. As such, the proposed modified development remains consistent with the existing and desired streetscape character.

(b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,

Comment:

The subject site is in the vicinity of views to the Manly foreshore area, the ocean and Fairy Bower. The proposed modifications do not unreasonably obscure any of these views.

(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,

Comment:

The proposed development generally retains the approved building footprint, and proposes suitable landscaping works. Further, the modified development is of a comparable bulk and scale to existing development in the street. In this way, the proposed development does not unreasonably impact upon the existing character or landscape of the area.

(d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,

Comment:

The proposed modifications do not unreasonably impact upon the use or enjoyment of adjoining land and the nearby public domain along Marine Parade.

(e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres,

Comment:

Not applicable. The subject site is zoned E3 Environmental Management.

Conclusion:

The proposed development satisfies the underlying objectives of the Floor space ratio development standard.

Zone objectives

The underlying objectives of the E3 Environmental Management zone are addressed above in relation to the Height of Buildings development standard variation.

CI 4.6 (4)(b) (Concurrence of the Secretary) assessment:

CI. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted. Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Floor Space Ratio development standard is assumed.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 698.4	Requirement	Approved	Proposed	Complies
4.1.2.3 Roof Height	Height: 2.5m	1.2m	1.2m	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	0m to garage 16.1m to dwelling	No change to garage 17.3 to new works	Yes - Approved Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	East: 1.2m to lower floor (based on wall height)	0-1.4m	Remedial work to walls, but no change to setback	Yes
	East: 1.83m to ground floor (based on wall height)	0-1.4m	Remedial work to walls, but no change to setback	Yes
	West: 1.73m to lower floor (based on wall height)	700mm-1.2m	Remedial work to walls, but no change to setback	Yes
	West: 2.63m to ground floor (based on wall height)	700mm-1.2m	Remedial work to walls, but no change to setback	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.7 Stormwater Management	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Manly Section 94 Development Contributions Plan

S94 Contributions are not applicable to this application.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2018/0547 for Modification of Development Consent No. DA168/2017 granted for alterations and additions to the existing dual occupancy on land at Lot 5 DP 8075,82 - 84 Bower Street, MANLY, subject to the conditions printed below:

A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A-010 Site Plan	Undated	Smith & Tzannes
A-100 Basement & Lower Ground	Undated	Smith & Tzannes
A-101 Ground & Level 1	Undated	Smith & Tzannes
A-102 Roof	Undated	Smith & Tzannes
A-200 Elevations	Undated	Smith & Tzannes
A-201 Sections	Undated	Smith & Tzannes

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Arboricultural Assessment	21 May 2018	Footprint Green

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

c) The development is to be undertaken generally in accordance with the following:

Landscape Plans		
Drawing No.	Dated	Prepared By
LP01 C Landscape Plan	15 May 2018	Selena Hannan Landscape Design

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

B. Add Condition ANS12A Required Planting to read as follows:

Trees shall be planted in accordance with the following schedule:

No. of	Species	Locatio
-------------------	----------------	----------------

Trees Required.		
3	<i>Acmena smithii</i>	As indic Plan
1	<i>Glochidion ferdinandi</i>	As indic Plan

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To maintain environmental amenity.

C. Add Condition ANS12B Landscape Completion Certification to read as follows:

Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with the approved landscape plan and inclusive of any conditions of consent, including required tree planting.

Reason: Landscape amenity.

D. Add Condition ANS15 Landscape Maintenance to read as follows:

- i) Trees shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilized as required at the time of planting.
- ii) If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan.

Reason: To maintain local environmental amenity.

In signing this report, I declare that I do not have a Conflict of Interest.

Signed



Claire Ryan, Planner

The application is determined on 10/01/2019, under the delegated authority of:



Luke Perry, Acting Development Assessment Manager