



**66 Bower Street, Manly**

**Alterations and additions to an existing apartment building:**

**Replacement of existing garages, storage areas, new entry stairs and landscaping**

**Statement of Environmental Effects  
For Northern Beaches Council**

**Prepared by Geoff Goodyer  
December 2019**

**Project No. 20-010**

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## Contents

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<b>1.</b>	<b>Executive summary .....</b>	<b>1</b>
<b>2.</b>	<b>Introduction.....</b>	<b>2</b>
<b>3.</b>	<b>Description of proposal .....</b>	<b>3</b>
<b>4.</b>	<b>Pre-lodgement consultation.....</b>	<b>5</b>
<b>5.</b>	<b>Locality analysis.....</b>	<b>6</b>
<b>6.</b>	<b>Existing Use Rights .....</b>	<b>13</b>
6.1.	Section 4.65 of EPA Act 1979 - Existing Use Rights.....	13
<b>7.</b>	<b>Manly LEP 2013 .....</b>	<b>15</b>
7.1.	Introduction .....	15
7.2.	Aims of MLEP 2013 .....	15
7.3.	Zoning, permissibility, and zone objectives.....	16
7.4.	Principal development standards .....	16
7.5.	Miscellaneous provisions .....	17
7.6.	Additional provisions.....	17
<b>8.</b>	<b>Manly DCP 2013 .....</b>	<b>19</b>
8.1.	Part 3 – General Principles of Development.....	19
8.2.	Compliance Table .....	25
8.3.	Part 4 – Development Controls.....	25
8.4.	Part 5 – Special character areas and sites.....	27
<b>9.</b>	<b>State Environmental Planning Policies.....</b>	<b>28</b>
9.1.	SEPP No. 55 - Remediation of land .....	28
9.2.	SEPP 65 - Design Quality of Residential Apartment Development.....	28
9.3.	SEPP (Building Sustainability Index) 2004.....	28
9.4.	SEPP (Infrastructure) 2007 .....	29
9.5.	SEPP (Vegetation in Non-Rural Areas) 2017 .....	29
9.6.	SEPP (Coastal Management) 2018.....	29
<b>10.</b>	<b>Environmental Planning and Assessment Regulation 2000.....</b>	<b>32</b>
10.1.	Demolition .....	32
<b>11.</b>	<b>Other matters under Section 4.15 of the Environmental Planning &amp; Assessment Act 1979 .....</b>	<b>33</b>
11.1.	The likely impacts of the development.....	33
11.2.	The suitability of the site .....	33
11.3.	Submissions.....	33
11.4.	The public interest .....	33
<b>12.</b>	<b>Summary .....</b>	<b>34</b>
	<b>Appendix A – Details of the author .....</b>	<b>35</b>
	<b>Appendix B – DA 481/2006 .....</b>	<b>36</b>

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## **1. Executive summary**

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- 1.1. The proposal is to carry out alterations and additions to the existing apartment building at 66 Bower Street, Manly.
- 1.2. The site currently contains an apartment building containing 4 apartments with two double carports at the street front.
- 1.3. The proposal is to replace the double carports with two new double garages in the same location. The existing carports do not comply with Australian Standards and the new garages address this non-compliance. Bin storage is provided within the garages. The new garages are architecturally designed and will enhance the streetscape.
- 1.4. Storage for bulky items is proposed under the garages to address a lack of storage within the existing apartment building which was constructed at a time prior to contemporary requirements for such storage areas.
- 1.5. The stairs into the building are to be ungraded and new landscaping provided in the area between the apartment building and the garages. These works will improve the appearance of the building and enhance its landscaped setting.
- 1.6. The use of the building for apartments is prohibited within the E3 Environmental Management zone under the *Manly Local Environmental Plan 2013*. However, the site benefits from “existing use rights” and the alterations and additions to the building are permissible pursuant to ss. 4.65 – 4.70 of the EPA Act 1979 and clauses 39 – 46 of the EPA Regulation 2000.
- 1.7. The proposal satisfies the objectives and numerical requirements of all controls in the *Manly Development Control Plan 2013* with the exception of front and side setback controls. These variations are considered acceptable given the nature of existing site development and the context of the existing streetscape.
- 1.8. The proposed works will complement the character of the area and maintain the amenity of neighbouring dwellings and the development is considered to be suitable for approval.

## **2. Introduction**

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- 2.1. This Statement of Environmental Effects has been prepared by Geoff Goodyer of Symons Goodyer Pty Limited, Balgowlah. My professional details are included in Appendix A of this Statement of Environmental Effects.
- 2.2. I am a town planner with over 30 years' experience in local government and private practice. I am a Registered Planner accredited by the Planning Institute of Australia.
- 2.3. I have been instructed by Vahuvu Pty Ltd to assess the impacts of a proposal to carry out alterations and additions to the existing apartment building at 66 Bower Street, Manly, under section 4.15 of the *Environmental Planning and Assessment Act 1979*.
- 2.4. In the course of preparing this Statement of Environmental Effects I have:
- inspected the site and surrounding locality;
  - taken photographs of the site and surrounding locality; and
  - reviewed relevant environmental planning instruments and Council policies, in particular *Manly Local Environmental Plan 2013* and *Manly Development Control Plan 2013*.

### 3. Description of proposal

- 3.1. The proposal is to carry out alterations and additions to the existing apartment building at 66 Bower Street, Manly.
- 3.2. The proposal is to replace the existing double carports with two new double garages in the same location at the street frontage. The existing carports do not comply with Australian Standards and the new garages address this non-compliance. The garages include bin storage areas and have internal widths of 6.0m x 6.2m (Garage 1) and 6.3m x 5.7m (Garage 2).
- 3.3. Storage for bulky items is proposed under the garages to address a lack of storage within the existing apartment building which was constructed at a time prior to contemporary requirements for such storage areas. The area under Garage 1 is divided into 2 storage areas whilst the area under Garage 2 is a single storage area. A new plant room is proposed between the storage areas.
- 3.4. The stairs into the building are to be ungraded and new landscaping provided in the area between the apartment building and the garages. These works will improve the appearance of the building and enhance its landscaped setting.
- 3.5. The proposal is shown on the following plans:

No.	Title	Drawn by
DA02/E	Site analysis	Watershed Design
DA03/E	Existing site and roof plan	Watershed Design
DA04/E	Existing lower ground floor	Watershed Design
DA05/E	Existing ground floor	Watershed Design
DA06/E	Proposed site and roof plan	Watershed Design
DA07/E	Proposed lower ground floor	Watershed Design
DA08/E	Proposed ground floor	Watershed Design
DA09/E	Proposed sections 01	Watershed Design
DA10/E	Proposed sections 02	Watershed Design
DA11/E	Proposed elevation 01	Watershed Design
DA12/E	Existing winter shadows	Watershed Design
DA13/E	Proposed winter shadows	Watershed Design
DA14/E	Landscape plan	Watershed Design
DA14/E	Demolition plan	Watershed Design
DR-000/0	Stormwater management plan – legend	Stellen Consulting
DR-001/0	Stormwater management plan – pipe layouts	Stellen Consulting
DR-002/0	Stormwater management plan – details	Stellen Consulting
18125	Detail survey	CMS Surveyors

- 3.6. The proposal is accompanied by the following reports:

Title	Date	Prepared by
Report on Geotechnical Site Investigation	17.12.2019	Crozier Geotechnical Consultants
Statement of Environmental Effects	December 2019	Symons Goodyer
Waste Management Plan		

#### **4. Pre-lodgement consultation**

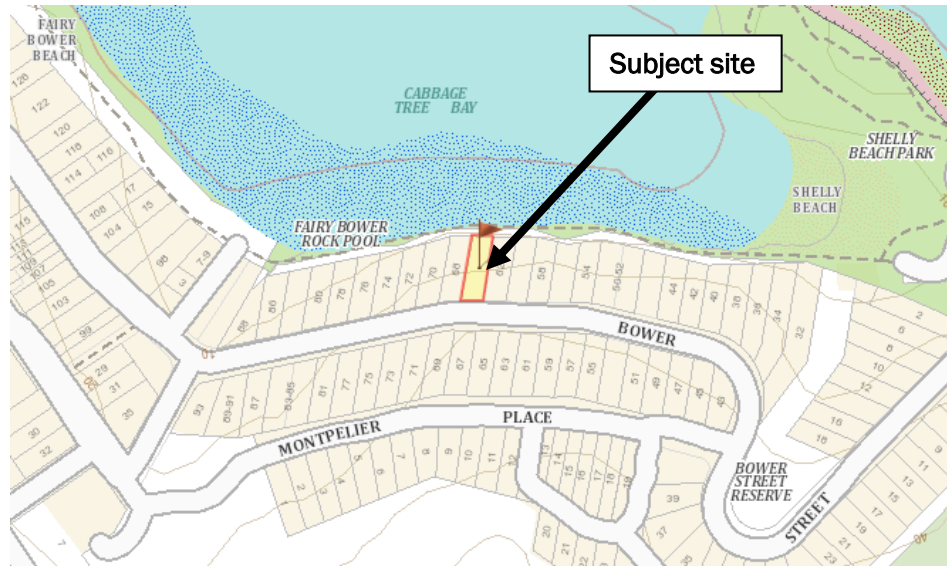
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- 4.1. The applicant undertook a formal process of pre-lodgement consultation with Council officers. A meeting was held on 29 October 2019 (PLM2019/0213) attended by Council planners, the project architects and town planner and a representative of the owners of the site.
- 4.2. Council's written advice arising from the meeting included comments from technical officers (Bushland and Biodiversity, Development Engineering).
- 4.3. The feedback from the pre-lodgement consultation was positive. The design has been amended since that meeting to reflect the comments that were provided by Council officers.



## 5. Locality analysis

- 5.1. The subject site is Lot 13, DP 8075, known as No. 66 Bower Street, Manly. It is located on the northern side of Bower Street, east of College Street, and extends through to Marine Parade (pedestrian walkway). The site's location is shown on the following maps:



Map 1 – Location (source: sixmaps)



Map 2 – Aerial photograph (source: sixmaps)

- 5.2. The site is shaped as a parallelogram. It has a frontage of 15.405 metres to Bower Street to the south, a rear boundary of 15.405 metres to Marine

Parade to the north, and eastern and western side boundaries of 45.72 metres.

- 5.3. The site area is 696.6 m<sup>2</sup> (by calculation).
- 5.4. The land slopes down steeply from Bower Street to Marine Parade in two distinct tiers, with the carports located at RL25.6 (ie: approximate street level) and the majority of the site being at approximately RL21 -RL23 and containing the existing apartment building. The land drops steeply at its northern end down to Marine Parade.
- 5.5. The site is occupied by a 3-storey and 4-storey rendered apartment building with a tile roof. The building contains four (4) units. At the street frontage are two double carports. Pedestrian access from the street to the building is either via an elevated walkway or via stairs down to the lower building level. Between the building and Marine Parade there are lawns, landscaping and a plunge pool.
- 5.6. The surrounding area has been developed for dwelling houses in landscaped settings, generally 2-storeys and 3-storeys in height. The houses have generally been sited and designed to obtain views of the Pacific Ocean.
- 5.7. The following photographs show the site and surrounding area:



**Photo 1:**

The subject site, showing the existing carports when viewed from Bower Street.



**Photo 2:**  
The subject site viewed from the elevated pedestrian pathway on the opposite side of Bower Street.



**Photo 3:**  
The existing apartment building showing, on the right, the entry area that is to be refurbished.





**Photo 4:**  
The subject site, showing the  
existing western carport.



**Photo 5:**  
The subject site, showing existing  
storage under the western carport.



**Photo 6:**  
The adjoining dwelling house to the west, 68 Bower Street, showing the streetscape presentation.



**Photo 7:**  
The adjoining dwelling house to the east, 62 Bower Street, showing the streetscape presentation.



**Photo 8:**  
Streetscape presentation to the east of the site showing the predominance of garages at the streetfront.



**Photo 9:**  
Streetscape presentation to the west of the site showing the predominance of garages at the streetfront.





**Photo 10:**  
Existing development on the opposite side of Bower Street. Note that this development is substantially elevated above the subject site and that views are maintained over the property.

## 6. Existing Use Rights

### 6.1. Section 4.65 of EPA Act 1979 - Existing Use Rights

- 6.1.1. Development for the purpose of alterations and additions to a residential flat building is prohibited within the E3 Environmental Management zone pursuant to MLEP 2013.
- 6.1.2. Notwithstanding such prohibition, if “existing use rights” can be satisfactorily established for the land affected by the proposed development, then the consent authority may approve a development application, however subject to meeting the relevant requirements applying to existing uses under Sections 4.65 through 4.68 of the *Environmental Planning and Assessment Act 1979*, the *Environmental Planning and Assessment Regulation 2000*, and considering the impacts of the proposal through a merit assessment.
- 6.1.3. Clause 4.65 of the *Environmental Planning and Assessment Act 1979* provides the following definition for “existing use”:

*“In this Division, **existing use** means:*

- (a) *The use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4 of this Part, have the effect of prohibiting that use, and*
- (b) *The use of a building, work or land:*
- (i) *For which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
  - (ii) *That has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse.”*

- 6.1.4. A review of Council’s records on 1 October 2015 revealed the following relevant approvals:

Date	Number	Approval
8.12.2006	DA 481/2006	Alterations and additions to an existing residential flat building – Unit 3
3.6.2004	S96 233/2002 (Part 2)	Section 82A Review of Determination – swimming pool
20.4.2001	DA 610/2000	Alterations to garages and car spaces
To be posted *	DA 347/1995	Extension of existing building DA/BA
To be posted *	DA 583/1994	Alterations and additions DA/BA



Date	Number	Approval
To be posted *	DA 5205/1992	Alterations and additions to balconies
To be posted *	DA 3565/1990	No details *

\* No further information published on DA Tracker

- 6.1.5. A copy of the Notice of Determination and accompanying plans published on Council's DA Tracker are attached as Appendix B. The residential flat building existing on the site is consistent with that which is shown in the plans for DA 481/2006 approved on 8.12.2006. The other approvals published on the DA Tracker do not provide additional documentation.
- 6.1.6. A residential flat building first became prohibited on the site when the current *Manly Local Environmental Plan 2013* came into force on 19 April 2013. The discussion above demonstrates that the building was lawfully established and used on that date. If Council requires further information in this regard a full file search can be requested of Council and the documents further reviewed. It is clear from the existing structure on site that that use has continued uninterrupted since that date, so the site benefits from "existing use rights".
- 6.1.7. Section 4.66 of the *Environmental Planning and Assessment Act 1979* outlines the provisions relating to the continuance of and limitation on the existing use and states that nothing in an environmental planning instrument prevents the continuance of an existing use, so the use as a residential flat building may continue.
- 6.1.8. Section 4.67(1)(a) of the *Environmental Planning and Assessment Act 1979* states that the regulations may make provision for alterations or extensions to the building being used for an existing use. The proposal involves alterations to the existing building.
- 6.1.9. Consequently, clauses 41-43 of the *Environmental Planning and Assessment Regulation 2000* are relevant. Clause 41(1)(b) provides that an existing use may be altered or extended. Clause 43(1) provides that development consent is required for such an alteration or extension. The proposal satisfies clause 43(2), which requires that the alteration or extension must be for the existing use of the building and for no other use, and that the works must be carried out only on the land on which the building was erected immediately before the relevant date (ie: 19 April 2013).
- 6.1.10. In summary, the proposed development is permissible with consent pursuant to the relevant provisions of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000* relating to existing uses.

## **7. Manly LEP 2013**

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### **7.1. Introduction**

- 7.1.1. As detailed in Part 6 above, the property benefits from existing use rights. Section 4.67(3) of the EPA Act 1979 provides:
- (3) *An environmental planning instrument may, in accordance with this Act, contain provisions extending, expanding or supplementing the incorporated provisions, **but any provisions** (other than incorporated provisions) **in such an instrument that, but for this subsection, would derogate or have the effect of derogating from the incorporated provisions have no force or effect while the incorporated provisions remain in force.*** [Emphasis added]
- 7.1.2. The following assessment of the proposal has been carried out mindful of the fact that the provisions of MLEP 2013 cannot derogate from the existing use rights enjoyed by the property. For example, development standards (building height and floor space ratio) are not applicable to the extent that they would derogate from the existing use rights enjoyed by the property.

### **7.2. Aims of MLEP 2013**

- 7.2.1. The proposal is considered to be consistent with the aims stated in clause 1.2 of MLEP 2013, in particular:
- 2(a)(ii) The proposal has been architecturally designed and achieves a high standard of urban design.
- 2(a)(iv) The proposal responds appropriately to the constraints of the site.
- 2(b)(i) The proposal maintains the diverse range of housing opportunities and choices in the area.
- 2(b)(ii) High quality landscaping is proposed.
- 2(f)(i) There is no impact on any areas of the natural environment, noting that Council's Biodiversity and Bushland Officers will undertake a "5-Part Test" assessment of the proposal under the *Biodiversity Conservation Act 2016*.
- 2(f)(ii) The building has been designed to be environmentally sustainable, and the refurbishment of the existing building to enable its continued use is consistent with environmentally sustainable development principles.
- 2(f)(iv) The proposal has been designed in response to the natural hazards affecting the site. A Geotechnical Investigation by Crozier Geotechnical Consultants accompanies the proposal.

2(g)(i) Views from the ocean are maintained.

### 7.3. Zoning, permissibility, and zone objectives

- 7.3.1. The land is zoned E3 Environmental Management. Residential flat buildings are prohibited in the zone but the residential flat building benefits from existing use rights and, pursuant to the EPA Regulation 2000, the use may continue and the proposed alterations and additions may be carried out with development consent.
- 7.3.2. The proposal is considered to be consistent with the objectives of the zone in that it maintains the environmental characteristics of the area, maintains the tree canopy whilst providing for additional areas of vegetation, protects water quality, and is of a height and bulk consistent with the existing use rights applying to the site and responsive to the site's topography.

### 7.4. Principal development standards

	Maximum permitted	Proposed	Complies
Building height	8.5 metres	7.9 metres	Yes
Floor space ratio	0.45:1 (313.47m <sup>2</sup> )	No change	Existing

- 7.4.1. The maximum building height occurs at the peak of the roof over the entry foyer. When measured from that point to the underside of the floor slab at the lowest level the building has a height of 7.9 metres
- 7.4.2. Building height has been measured in accordance with the relevant definitions in MLEP 2013:

***building height (or height of building) means:***

- (a) *in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- (b) *in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,*

*including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.*

***ground level (existing) means the existing level of a site at any point.***

- 7.4.3. The proposal involves no change to the existing floor space ratio of the building. It is noted that the floor space ratio control in clause 4.4(2) of MLEP 2013 is not relevant to the proposal as it would derogate from the existing use rights enjoyed by the existing site development.

## **7.5. Miscellaneous provisions**

- 7.5.1. The site does not contain a heritage item, is not in the vicinity of any heritage items, and is not within a conservation area (clause 5.10).

## **7.6. Additional provisions**

- 7.6.1. The site is unclassified on the Acid Sulphate Soils Map. The development complies with clause 6.1 of MLEP 2013.
- 7.6.2. The building has been designed to be sited generally on the existing building platform. Earthworks are proposed to provide additional area for the storage rooms under the garages and to address existing drainage issues which are damaging the existing building. A Geotechnical Impact Assessment report has been prepared by Crozier Geotechnical Consultants which relevantly concludes:

*The risks associated with the proposed development can be maintained within 'Acceptable' levels with negligible impact to the neighbouring properties or structures provided the recommendations of this report and any future geotechnical directive are implemented. As such the site is considered suitable for the proposed construction works provided that the recommendations outlined in this report are followed.*

- 7.6.3. The proposal satisfies clause 6.2 of MLEP 2013.
- 7.6.4. The site is not a flood control lot (clause 6.3).
- 7.6.5. Stormwater will be disposed of in accordance with the details prepared by Stellen Consulting (clause 6.4).
- 7.6.6. The site is identified as affected on the Terrestrial Biodiversity Map (clauses 6.5, 6.6 and 6.7). In particular the site is identified as being within the area that provides habitat for the long-nosed bandicoot. Prior to construction commencing fencing will be provided to minimise the possibility of bandicoots accessing the site. Workers will be made aware of the potential presence of bandicoots and will be given a site induction relevant to bandicoot protection. Other matters relating to bandicoot protection during construction works can be addressed through appropriate conditions of development consent.
- 7.6.7. The site is not identified as being at risk on the Landslide Risk Map (clause 6.8).
- 7.6.8. The site is within a Foreshore Scenic Protection Area (clause 6.9). The proposal is consistent with the matters for consideration. The building will blend in with the urban backdrop when viewed from the foreshore and maintain the visual amenity of the area and there is no potential for conflict with water-based coastal activities.

- 7.6.9. The site is not within the foreshore area (clause 6.10).
- 7.6.10. The site is connected to all essential services (clause 6.12).
- 7.6.11. The site is not prone to bushfire.

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## 8. Manly DCP 2013

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### 8.1. Part 3 – General Principles of Development

Issue	Consistent with principle	Inconsistent with principle
Streetscape	✓	
Heritage	✓	
Sunlight access and overshadowing	✓	
Privacy and security	✓	
Maintenance of views	✓	

#### 8.1.1. Streetscape

The streetscape in the vicinity of the site is dominated by garage doors and tall front fences located either directly on the front boundary or on a minimal setback, as shown in the following photographs:



**Photo 11:** Bower Street streetscape – the subject site.



**Photo 12:** Bower Street streetscape – to the immediate west of the subject site.



**Photo 13:** Bower Street streetscape – looking east from the subject site.





**Photo 14:** Bower Street streetscape – to the immediate east of the subject site.

Within the road reserve in front of the subject site is an existing tree which is indicated on the detail site survey by CMS Surveyors to have a height and spread of 4 metres. This tree contributes to the softening of the streetscape.

The proposal is to replace the two disparately designed carports and roller doors with a contemporary and architect designed car parking structure. The structure has been designed to retain the existing street tree in front of the site.

A planter box is proposed adjacent to the pedestrian entry to the site. The garages are well proportioned. The façade is modulated by the separation of the garages by the pedestrian entry and planter box and the indentation of the garage doors behind the framing elements to create areas of light and shade. Horizontal elements comprising the clerestory windows and the awning over the pedestrian entry tie the design together.

The proposed garages are considered to be consistent with the existing streetscape in Bower Street and will enhance the streetscape through their superior architectural design.

#### 8.1.2. Sunlight access and overshadowing

The proposal retains reasonable levels of solar access to neighbouring properties. Shadow diagrams have been provided (DA13, Issue E, by Watershed Design).

Due to the orientation of the site (north-south) and the siting of the proposed works (adjacent to the southern street frontage) nearly all



additional shadows from the proposed works fall over Bower Street in front of the site with no impact on neighbouring residential properties.

8.1.3. Privacy and security

The proposal maintains existing levels of privacy. The access bridge to the building replaces the existing access bridge and does not offer any new opportunities for views between the buildings. There are existing 2.2m high walls on the both side boundaries adjacent to the courtyard between the garages and the apartment building that prevent views into neighbouring properties. The following photographs show the view from the existing pedestrian entry bridge down to the courtyard and the boundary walls:



**Photo 15:** View of courtyard and boundary walls, looking west, demonstrating no overlooking.



**Photo 16:** View of courtyard and boundary walls, looking east, demonstrating no overlooking.

The site will have security entries.

8.1.4. Maintenance of views

The proposed garages replace existing structures of a similar size, height and siting. The existing structures do not obscure views from any private property. IN particular, properties on the opposite side of Bower Street are substantially elevated and look over the top of the site, with any views being obscured from the apartment building rather than the car parking structure, as shown in the following photograph:





**Photo 17:** View over subject site taken from Bower Street standing in front of 67 Bower Street.



**Photo 18:** View towards 67 Bower Street from the subject site, showing the extent to which the dwelling houses on the opposite side of the street are elevated.

#### 8.1.5. Sustainability

The proposal falls within the definition of “BASIX excluded development” as defined in the EPA Regulation 2000 and a BASIX Certificate is not required.

### 8.2. Compliance Table

Control	Required / Permitted	Proposed	Complies?
Residential density – Area D5	1 dwelling per 500m <sup>2</sup>	1 dwelling per 174.15m <sup>2</sup>	Existing use
Wall height	East 7.7m West 7.3m	Stairs/foyer: 6.3m Garage: 4.6m Stairs/foyer: 6.3m Garage: 4.0m	YES YES YES YES
Number of storeys	2	2	YES
Roof allowance	2.5m	1.7m	YES
Front Setback	6.0m or prevailing / established front setback	Nil - Prevailing setback	YES
Side setback	East 1.53m West 1.33m	East 0m West 0m	NO NO
Rear setback	8.0m	33 metres	YES
Open Space (OS3) - Total - Soft	55% site area (383.13m <sup>2</sup> ) > 35% of TOS (134.1m <sup>2</sup> )	No change No change	Existing Existing
Number of endemic trees	3	3 (condition)	YES
Car parking	Residents: 6 spaces Visitors: 1 space	Residents: 4 spaces Visitors: Nil	Existing Existing
Garage width	6.2m maximum	6.5m – 6.8m	NO
Cut and fill	1.0m maximum	3.1m	NO

### 8.3. Part 4 – Development Controls

#### 8.3.1. Height of buildings

The proposal complies with the wall height control in the MDCP 2011.

The proposal complies with the wall height control. It also complies with the control on the number of storeys.

#### 8.3.2. Front setback

The proposed garages are sited at an angle to the front boundary, providing a minimum nil setback and a maximum setback of 1.0m. The pedestrian entry gates are set back 1.6m – 1.9m from the front boundary.

The northern side of Bower Street in the vicinity of the site is characterised by garages and pedestrian entry structures located on the street frontage. The proposed front setback is consistent with the prevailing setbacks in the street.

The proposal has been architecturally designed and the new garages will enhance the streetscape.

#### 8.3.3. Side setback

The proposed entry foyer and stairs comply comfortably with the side boundary setback control.

The garages are sited on a nil side setback. This is consistent with the existing structures on the site and with the prevailing side setbacks in the vicinity of the site. In this way the proposal maintains the existing streetscape in Bower Street. A planter box is proposed at the street frontage to soften the appearance of the development. The garages have been sited to enable the retention of the existing street tree located in front of the site.

#### 8.3.4. Car parking and access

The existing development requires 6 resident car spaces and one visitor car space. There are currently four car parking spaces provided, although the existing eastern car spaces do not meet AS 2890.1:2004 due to insufficient width (5.4m required, 5.0m provided).

The proposal maintains the existing provision of fourth car parking spaces. There is no additional demand for car parking generated by the proposal.

The proposed garages have dimensions that meet the requirements of AS2890.1:2004. In particular, the proposal addresses the existing non-compliance of the eastern car parking spaces with regards to the width of the structure.

The proposed garages exceed the maximum width of 6.2m required by MDCP 2013. The additional width that is proposed enables the use of the structure for storage of garbage bins which would otherwise require a separate enclosure. It is considered that a separate garbage bin enclosure would have a negative impact on the streetscape and character of the area through the proliferation of structures on the street frontage and that the proposed garages represent a more integrated and preferred design outcome.

#### 8.3.5. Cut and fill

Excavation is proposed to accommodate the extension of the storage areas underneath the garages. The excavation is limited to the footprint of the buildings. The storage areas are proposed for bulky goods and improve the amenity of the existing apartments. The provision of storage for bulky goods is consistent with Objective 4G-1 of the Apartment Design Guide.

A Geotechnical Report has been prepared by Crozier Geotechnical Consultants which relevantly concludes:

*The risks associated with the proposed development can be maintained within 'Acceptable' levels with negligible impact to the neighbouring*

*properties or structures provided the recommendations of this report and any future geotechnical directive are implemented. As such the site is considered suitable for the proposed construction works provided that the recommendations outlined in this report are followed.*

## **8.4. Part 5 – Special character areas and sites**

### **8.4.1. Foreshore scenic protection area**

The site is within the Foreshore Scenic Protection Area. The proposal is consistent with the matters for consideration in clause 5.4.1.1. Site landscaping is proposed. The building is sited well below the ridge line. The proposed works are not visible from the foreshore.

### **8.4.2. Threatened species and critical habitat**

The site is identified as being within an area of terrestrial biodiversity, being within the mapped habitat area of the Long-nosed bandicoot.

The notes from the Pre-Lodgement Meeting provide that the proposed impacts are considered to be minor in nature and that Council will undertake a 'five-part test' assessment internally.

A landscape plan forms part of the development proposal including a planting schedule, as requested in the Pre-Lodgement Meeting notes.

## **9. State Environmental Planning Policies**

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### **9.1. SEPP No. 55 - Remediation of land**

- 9.1.1. Clause 7 of SEPP 55 requires Council to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land.
- 9.1.2. The site has been used for a tennis court and swimming pool as part of residential development for residential purposes, and prior to that as a dwelling house, for approximately 75 years prior to which it was vacant.
- 9.1.3. The historical uses of the site are not listed in Table 1 to the Planning Guidelines under SEPP 55 as being activities likely to cause contamination. It is considered unlikely that the site has experienced any contamination, and no further assessment is considered necessary.

### **9.2. SEPP 65 - Design Quality of Residential Apartment Development**

- 9.2.1. Clause 4 of SEPP 65 provides:

(1) *This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:*

(a) *the development consists of any of the following:*

- (i) *the erection of a new building,*
- (ii) *the substantial redevelopment or the substantial refurbishment of an existing building,*
- (iii) *the conversion of an existing building, ...*

- 9.2.2. The proposal does not constitute the erection of a new building or the conversion of an existing building. The works are relatively minor and do not constitute “*the substantial redevelopment or the substantial refurbishment of an existing building*”. Consequently, SEPP 65 does not apply to the proposal.

### **9.3. SEPP (Building Sustainability Index) 2004**

- 9.3.1. Under clauses 8 and 9 of SEPP BASIX, other planning instruments and DCP's do not apply to BASIX commitments.
- 9.3.2. The development does not comprise “*BASIX affected development*” as defined in clause 3 of the EPA Regulation 2000 because the garages and storage rooms are “*BASIX excluded development*” and the remaining works have an estimated construction cost of development that is less than \$50,000. Consequently, a BASIX Certificate is not required and has not been provided.

#### **9.4. SEPP (Infrastructure) 2007**

- 9.4.1. Clause 45 of SEPP Infrastructure requires the Consent Authority to notify the electricity supply authority of any development application (or an application for modification of consent) for any development proposal:
- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists),
  - immediately adjacent to an electricity substation,
  - within 5m of an overhead power line
  - that 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 5m of an overhead electricity power line
- 9.4.2. Given the proximity of electricity infrastructure to the site it is recommended that Council notify the electricity supply authority in accordance with its usual practice.

#### **9.5. SEPP (Vegetation in Non-Rural Areas) 2017**

- 9.5.1. Under clause 10 of SEPP (Vegetation in Non-Rural Areas) 2017, Council may issue a permit to clear vegetation in any non-rural area of the State.
- 9.5.2. The proposal does not involve the removal of any vegetation.

#### **9.6. SEPP (Coastal Management) 2018**

- 9.6.1. The site is located within the Coastal Environment and the Coastal Use Areas as identified in SEPP (Coastal Management) 2018.
- 9.6.2. Under clause 13(1) Council must consider whether the proposed development is likely to cause an adverse impact on the following:
- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*  
  
Comment: The proposal will have no impacts in this regard as it is within the existing building footprint.
  - (b) *coastal environmental values and natural coastal processes,*  
  
Comment: The proposal will have no impacts in this regard as it is within the existing building footprint.
  - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*



Comment: The proposal is connected to all relevant infrastructure including sewerage services and will have no impact on the water quality of the marine estate.

- (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*

Comment: The site is not located in proximity to any undeveloped headlands or rock platforms and the proposal will have no impact on marine vegetation, native vegetation and fauna and their habitats.

- (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*

Comment: The proposal will have no impact on any public open space. All access to public open space is maintained.

- (f) *Aboriginal cultural heritage, practices and places,*

Comment: No impact.

- (g) *the use of the surf zone.*

Comment: No impact.

9.6.3. Under clause 13(2) Council must be satisfied of the following matters before granting consent to the development:

- (a) *the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*

Comment: The proposal will have no impacts in this regard as it is located on the existing building footprint.

- (b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*

Comment: No adverse impacts arise as a result of the development.

- (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact*

Comment: No adverse impacts arise as a result of the development.

9.6.4. Under clause 14(1)(a) Council must consider whether the proposed development is likely to cause an adverse impact on the following:

- (i) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*

Comment: The proposal maintains public access to the foreshore and beach.

- (ii) *overshadowing, wind funnelling and the loss of views from public places to foreshores,*

Comment: The proposal has no impacts with regards to overshadowing, wind funnelling and view from public places to foreshores.

- (iii) *the visual amenity and scenic qualities of the coast, including coastal headlands,*

Comment: The alterations and additions are generally within the existing building envelope and have minimal impact on the visual amenity and scenic qualities of the coast.

- (iv) *Aboriginal cultural heritage, practices and places,*

Comment: The proposal will have no impact on aboriginal heritage, practices and places.

- (v) *cultural and built environment heritage*

Comment: The proposal has no impact on heritage items in the vicinity of the site.

- 9.6.5. Under clause 14(1)(b) Council must be satisfied of the following matters before granting consent to the development:

- (i) *the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*

Comment: No adverse impacts arise as a result of the development.

- (ii) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*

Comment: No adverse impacts arise as a result of the development.

- (iii) *if that impact cannot be minimised—the development will be managed to mitigate that impact*

Comment: No adverse impacts arise as a result of the development.

- 9.6.6. Under clause 14(c) Council must take into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development. In this regard, the proposal is generally within the existing building envelope and is not visible from the foreshore.

## **10. Environmental Planning and Assessment Regulation 2000**

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### **10.1. Demolition**

- 10.1.1. The proposal involves partial demolition of the existing structures on the site. Under Clause 92(1)(b) of the *Environmental Planning and Assessment Regulation 2000* Council must consider the provisions of Australian Standard AS 2601: The demolition of structures ("AS 2601").
- 10.1.2. All demolition works will be carried out in accordance with AS 2601, including the preparation of an appropriate Work Plan. This matter may be addressed by a condition of consent.

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**11. Other matters under Section 4.15 of the Environmental Planning & Assessment Act 1979**

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**11.1. The likely impacts of the development**

11.1.1. These have been addressed above.

**11.2. The suitability of the site**

11.2.1. The site is considered to be suitable for the proposed development. It does not contain any particular environmental features and does not have a history that would indicate any land contamination.

**11.3. Submissions**

11.3.1. None.

**11.4. The public interest**

11.4.1. The public interest is served by developing the land in an efficient and economic way that maintains the character of the area and the amenity of the neighbourhood. The Council's planning controls encourage such development in this locality.

## **12. Summary**

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- 12.1. The merits of this application have been identified in this assessment under Section 4.15 of the *Environmental Planning and Assessment Act 1979*, *Manly Local Environmental Plan 2013* and the *Manly Development Control Plan 2013*.
- 12.2. The proposed alterations and additions to the existing apartment building have been designed to maintain the amenity of neighbouring dwellings and to enhance the character of the area.
- 12.3. The proposal achieves the objectives of Council's development controls and strategic aims and is considered to be suitable for approval on town planning grounds.

## **Appendix A – Details of the author**

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### **ACADEMIC QUALIFICATIONS**

Bachelor of Town Planning (Honours), University of New South Wales (1988).  
Master of Professional Accounting (Distinction), University of Southern Queensland (1999).

### **PROFESSIONAL EXPERIENCE**

#### **1997 to present                      SYMONS GOODYER PTY LTD**

Principal town planning consultant responsible for providing expert town planning advice to a diverse range of clients.

Expert witness in the Land and Environment Court.

Statutory and strategic projects within numerous Council areas, including Ashfield, Bankstown, Canterbury, Hornsby, Ku-ring-gai, Lane Cove, Leichhardt, Liverpool, Manly, Mosman, North Sydney, Pittwater, Randwick, Rockdale, Sutherland, Warringah, Waverley, and Woollahra.

#### **1988 to 1997      WARRINGAH COUNCIL**

Manager, Planning and Urban Design Branch (1994-7). Responsible for drafting of operative provisions of the Warringah Local Environmental Plan 2000.

Senior Strategic Planner (1993-1994)

Development Assessment Officer (1988-1993)

#### **1986 to 1988      MARRICKVILLE MUNICIPAL COUNCIL**

Town Planner

#### **1986                      EDWARDS MADIGAN TORZILLO BRIGGS INTERNATIONAL PTY LTD**

Town Planner

#### **1984                      RYDE MUNICIPAL COUNCIL**

Student Town Planner

### **PUBLICATIONS**

Goodyer, G (1988)

Retail and office activities in industrial areas in the Sydney region. University of New South Wales.

Goodyer, G (1989)

Hi-tech industry. Planning Law and Practice, UNSW, 1989.

Goodyer, G (1995)

Modern Planning Instruments. Health and Building Surveyors' Association (NSW) Conference, 1995.

## Appendix B – DA 481/2006

### Manly Council



Reference: 071206 DA481/06 BR:RS  
Enquiries: Environmental Services

Ole Kjaer  
9 Mortain Avenue  
ALLAMBIE HEIGHTS NSW 2100

**Council Offices**  
1 Belgrave Street  
Manly NSW 2095

**Correspondence to**  
General Manager  
PO Box 82  
Manly NSW 1655

DX 9205 Manly

Telephone 02 9976 1500  
Facsimile 02 9976 1400

[www.manly.nsw.gov.au](http://www.manly.nsw.gov.au)  
[records@manly.nsw.gov.au](mailto:records@manly.nsw.gov.au)

ABN 43 662 868 065

Dear Sir,

**Notice of Determination under Section 81(1)(a) of the  
Environmental Planning and Assessment Act, 1979  
Development Application No. 481/06**

**Proposed Development: Internal Alterations and Additions to Unit 3 in  
An existing Residential Flat Building**

**Land to be developed: Unit 3, 66 Bower Street, Manly**

Pursuant to the Building Code of Australia, the building is a Class 2 building.

Council determined this application and has granted consent subject to the conditions described below:

**DA1**

This approval relates to drawings/plans Nos. 5A and site plan 101 dated 26 May 2006 and received by Council on the 23 August 2006.

**DA016**

Pursuant to Section 97 of the Local Government Act, 1993, Council requires, prior to issue of the Construction Certificate, or commencement of any excavation and demolition works, payment of a Trust Fund Deposit of \$300. The Deposit is required as security of compliance with Conditions of Consent, and as security against damage to Council property during works on the site.

Note: Should Council property adjoining the site be defective eg, cracked footpath, broken kerb etc., this shall be reported in writing to Council, at least 7 days prior to the commencement of any work on site.

Note: Where Council is not the principal certifying authority, refund of the trust fund deposit will also be dependant upon receipt of a final occupation certificate by the Principal Certifying Authority and infrastructure inspection by Council.

**DA018**

Details of the builder's name and licence number contracted to undertake the works shall be provided to Council/Accredited Certifier prior to issue of the Construction Certificate.

**CLEANER HEALTHIER HAPPIER**  
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DS

DA019

Insurance must be undertaken with the contracted builder in accordance with the Home Building Act, 1997. Evidence of Insurance together with the contracted builders name and licence number must be submitted to Council /Accredited Certifier prior to issue of the Construction Certificate.

DA021

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

DA038

A Certificate of Adequacy signed by a practising Structural Engineer is to be submitted to the Council/Accredited Certifier in respect of the load carrying capabilities of the existing structure to support the proposed additions prior to the issue of the Construction Certificate.

DA039

Four (4) certified copies of the Structural Engineer's details in respect of all reinforced concrete, structural steel support construction and any proposed retaining walls shall be submitted to the Council/Accredited Certifier prior to the issue of the Construction Certificate.

DA044

The floor surfaces of bathrooms, shower rooms, laundries and WC compartments are to be of an approved impervious material properly graded and drained and waterproofed in accordance with AS3740. Certification is to be provided to the Principal Certifying Authority from a licenced applicator prior to the fixing of any wall or floor tiles.

DA048

The implementation of adequate care during demolition/ excavation/ building/ construction to ensure that no damage is caused to any adjoining properties.

DA109

All demolition is to be carried out in accordance with AS2601-2001.

DA111

Asbestos cement sheeting must be removed in accordance with the requirements of the WorkCover Authority.

DA119

A Fire Safety Schedule specifying the fire safety measures (both current and proposed) that should be implemented in the building premises shall be submitted with the Construction Certificate application, in accordance with Part 9 Clause 168 of the Environmental Planning and Assessment Regulation 2000. Note: A Construction Certificate cannot be issued until a Fire Safety Schedule is received.



DA120

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

DA121

All building work must be carried out in accordance with the provisions of the Building Code of Australia.

DA126

An automatic fire detection and alarm system shall be installed in the proposed dwelling in accordance with the requirements of Part 3.7.2 of the Building Code of Australia 1996 - Housing Provisions.

DA269

A Construction Certificate Application is required to be submitted to and issued by the Council/Accredited Certifier prior to any building works being carried out on site.

DA270

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

Beam prior to lining inspection  
Fire rated lining to beam inspection  
Wet area moisture barrier  
Final inspection

The cost of these inspections by Council is \$920 (being \$230 per inspection inclusive of GST). **Payment of the above amount is required prior to the first inspection.** Inspection appointments can be made by contacting the Environmental Services Division on 9976 1414.

At least 24 hours notice should be given for a request for an inspection and submission of the relevant inspection card. Any additional inspection required as a result of incomplete works will incur a fee of \$110.

DA271

An Occupation Certificate is to be issued by the Principal Certifying Authority prior to occupation of the development.

DA337

Building operations such as brickcutting, washing tools or paint brushes, and mixing mortar not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.

DA289

Building or construction work must be confined to the hours between 7.00am to 6.00pm, Monday to Friday and 7.00am to 1.00pm, Saturday, with a total exclusion of such work on Public Holidays and Sundays. Non-offensive works where power operated plant is not used and including setting out, surveying, plumbing, electrical installation, tiling, internal timber or fibrous plaster fixing, glazing, cleaning down brickwork, painting,

building or site cleaning by hand shovel and site landscaping, is permitted between the hours of 1.00pm to 4.00pm Saturdays. Note: That the Protection of the Environment Operations Act 1997 may preclude the operation of some equipment on site during these permitted working hours.

DA323

This approval shall expire if the development hereby permitted is not commenced within 2 years of the date hereof or any extension of such period which Council may allow in writing on an application made before such an expiry.

**WARNING: Failure to obtain a Construction Certificate prior to the commencement of any building works is a serious breach of Section 81A(2) of the *Environmental Planning & Assessment Act 1979*. It is also a criminal offence which attracts substantial penalties and may also result in action in the Land and Environment Court and orders for demolition.**

The reason for the imposition of the conditions is to ensure that the development generally conforms with section 79C of the Environmental Planning and Assessment Act, 1979, Building Code of Australia and Council Development Control Plan and Policies.

In accordance with Clause 284 of the Environmental Planning and Assessment Regulation 2000, non compliance with the above conditions may result in Council issuing a Penalty Notice of \$600.

Notes:

1. If you are dissatisfied with this decision, Section 97 of the Environmental Planning and Assessment Act 1979 gives you the right to appeal to the Land and Environment Court (their address being Level 4, 225 Macquarie Street, Sydney NSW 2000) within 12 months after the date on which you receive this notice.
2. If you are dissatisfied with this decision, Section 82A of the Environmental Planning and Assessment Act gives you the right of review by Council within twelve months of the date of determination.
3. Details in regard to Notice of Commencement of Building/Subdivision Work and appointment of the Principal Certifying Authority are to be submitted to Council following issue of the Construction Certificate and two (2) working days prior to commencement of building works.

It is necessary for payment of a Long Service Levy for works costing \$25,000 or more at a rate of 0.35% of the cost and insurance pursuant to the Building and Construction Industry Long Service Payments Act 1986 prior to issue of a Construction Certificate.

It is advised that your plans must be submitted to Sydney Water for approval at least fourteen days before commencement of works. Please phone Sydney Water on Tel: 132 092 for information regarding an office closest to you. Further, you are advised to consult with Sydney Electricity with respect to electrical installations, telephone installers with respect to any telecommunication lines and Australia Post should the proposal involve the provision of a letterbox.

The erection of a building in accordance with this development consent must not be commenced until:

1. Detailed plans and specifications of the building have been endorsed with a Construction Certificate by the Consent Authority, or an Accredited Certifier, and
2. The person having the benefit of the development consent has appointed a Principal Certifying Authority, and has notified the Consent Authority and the Council (if the Council is not the consent authority) of the appointment, and
3. The person having the benefit of the development consent has given at least two days notice to the Council of the person intending to commence the erection of the building. (Form 7 enclosed)

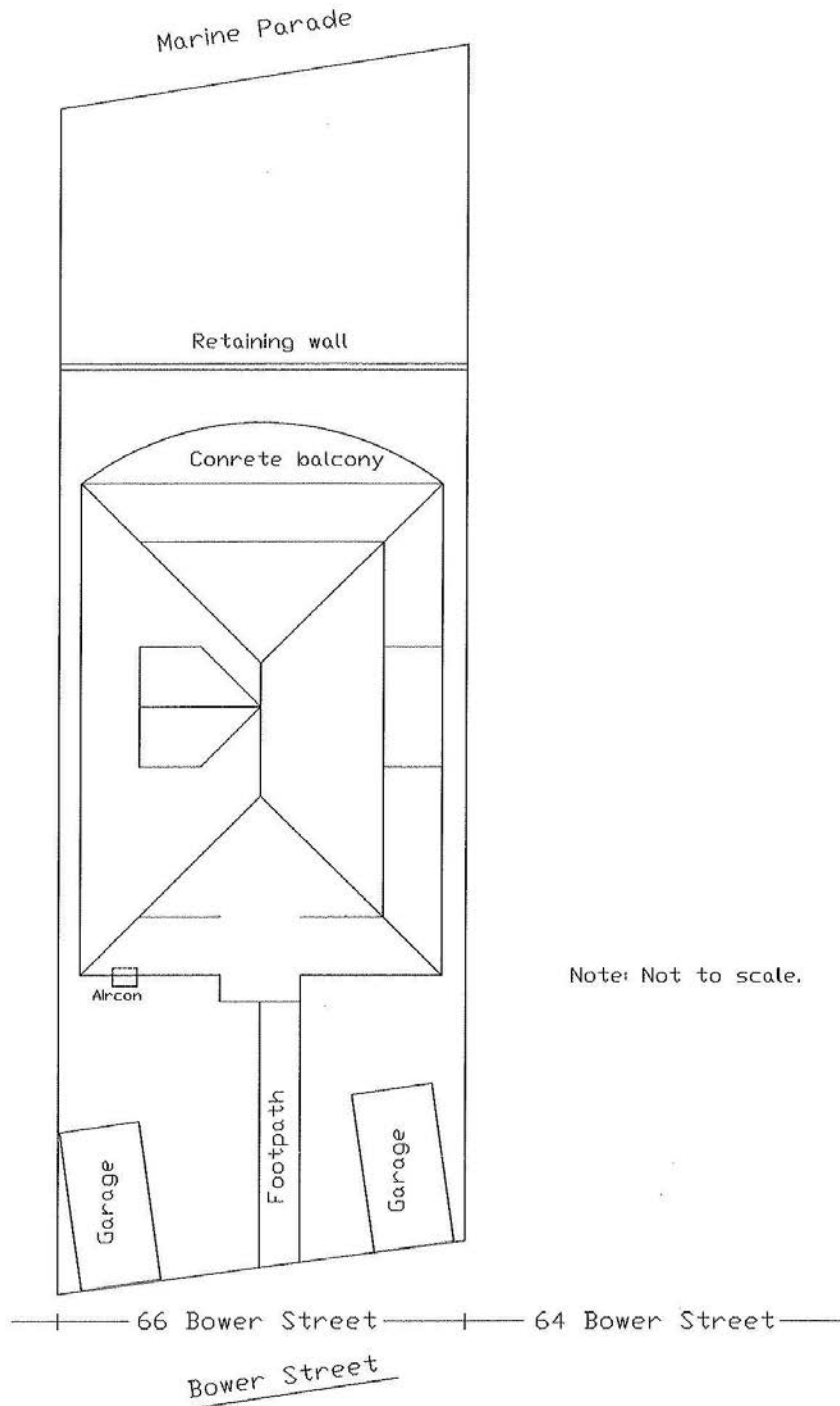
Should you have any questions in relations to the matter, please contact Council's Environmental Services, on 02 9976 1414, during business hours or email [myda@manly.nsw.gov.au](mailto:myda@manly.nsw.gov.au).

Signed below on behalf of the consent authority.

Date: 8.12.06

Yours faithfully,

  
Va Hudson  
Public Officer



Ole Kjaer - Builder/Construction Architect (DK) Licence no. 31290C, 9 Mortain Avenue Allendale Heights NSW 2100 Ph. 02-9907 7196 Fax 02-9948 6779 Mob. 0404 074 288	Alterations & Additions for Peter Hurley 3/66 Bower Street Manly	Amendment	Issue	SITE PLAN		
				Date	Scale	Drawing no.
				26.05.06	1/200	101.

