

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/1009
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Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 5 DP 8075, 82 - 84 Bower Street MANLY NSW 2095
Proposed Development:	Modification of Development Consent DA2020/0211 granted for alterations and additions to an attached dual occupancy
Zoning:	Manly LEP2013 - Land zoned C3 Environmental Management
Development Permissible:	No
Existing Use Rights:	Yes
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	Yes
Owner:	The Trustees Of The Roman Catholic Church For The Archdiocese Of Sydney 82-84 Bower Street Pty Ltd
Applicant:	Michael Bushell

Application Lodged:	01/02/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	04/02/2022 to 18/02/2022
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Refusal

EXECUTIVE SUMMARY

The application seeks to modify DA2020/0211, which was approved by the Northern Beaches Local Planning Panel (NBLPP) on 15 September 2020. A further modification, Mod2021/0317 was approved by the NBLPP on 18 August 2021.

The subject application involves the revision of privacy screening to the balcony and requires the amendment of conditions of consent imposed by the NBLPP.

As the subject modification application has been made under Section 4.55(2) of the EPA Act and seeks to amend conditions of consent imposed by the NBLPP, the application is referred back to the NBLPP

for determination.

Two submissions on behalf of one property were received by way of objection in response to the notification of the application, generally relating to the privacy impacts to the adjoining property as a result of the revised privacy screening.

The amended privacy screen design would result in unreasonable privacy impacts and is not considered to achieve the objectives of MDCP Clause 3.4.2 Privacy and Security. As such, the application is not supportable and is recommended for refusal.

PROPOSED DEVELOPMENT IN DETAIL

The proposed modification seeks consent for the revision of privacy screening to the rear balcony as required by condition 8 and 9 imposed by the NBLPP.

DA2020/0211 was approved by the Northern Beaches Local Planning Panel with the following conditions imposed in relation to privacy screening:

7. The 'Ground & Level 1 Revision B' plan and 'Elevations Revision B' plan are conditionally amended so that any subsequent construction certificate application is to indicate that the West Elevation Ground Floor windows accessible from the kitchen, dining and living areas of No. 84 Bower Street, Manly are fitted with external screens which shall have vertical angled fins that cover the windows. The individual vertical fins shall have a width of 200mm and be positioned top to bottom at an angle of 20 degrees orientated to the north with 50mm overlaps so as there can be no vision and overlooking onto the adjoining property to the west No. 86 Bower Street, Manly.

Reason: To preserve and maintain visual privacy and amenity to the immediate adjoining property to the west at No. 86 Bower Street, Manly.

8. The external screens with vertical fins referred to in (7) above shall be replicated in size and continued in a northerly direction from the external wall of the dwelling along the western edge of the external balcony accessible from the living area of No. 84 Bower Street, Manly.

Reason: To preserve and maintain visual privacy and amenity to the immediate adjoining property to the west at No. 86 Bower Street, Manly and to also maintain design consistency with the similar edge type screening along the adjoining dwelling.

Mod2021/0317 sought to revise the design of the required privacy screening and was approved by the Northern Beaches Local Planning Panel, with conditions 7 and 8 subsequently amended and condition 9 added as follows:

7. Any subsequent construction certificate application is to indicate that the West Elevation Ground Floor windows accessible from the kitchen, dining and living areas of No. 84 Bower Street, Manly are fitted with external screens which shall be solid up to 1.6m above the FFL and above that shall have vertical angled fins that cover the windows, and otherwise in accordance with Approved Modified Plans referenced in Condition 2A of this modified consent. The screens are to be maintained for the life of the development and are to be in place prior to the issue of any Occupation Certificate. The Approved Modified Plans shall be amended to reflect this condition and submitted to Council prior to the issue of the Construction Certificate.

Reason: To preserve and maintain visual privacy and amenity to the immediate adjoining property to the west at No. 86 Bower Street, Manly

8. Any subsequent construction certificate application is to incorporate the provision of a planter box and timber screens to the Ground Floor Balcony of No. 84 Bower Street, Manly in accordance with Approved Modified Plans referenced in Condition 2A of this modified consent and subject to the

a. The planter box and screens are to extend the full length of the western elevation of the Ground Floor Balcony. The screen panels to the balcony shall be solid up to 1.6m above the FFL of the balcony.

Reason: To preserve and maintain visual privacy and amenity to the immediate adjoining property to the west at No. 86 Bower Street, Manly.

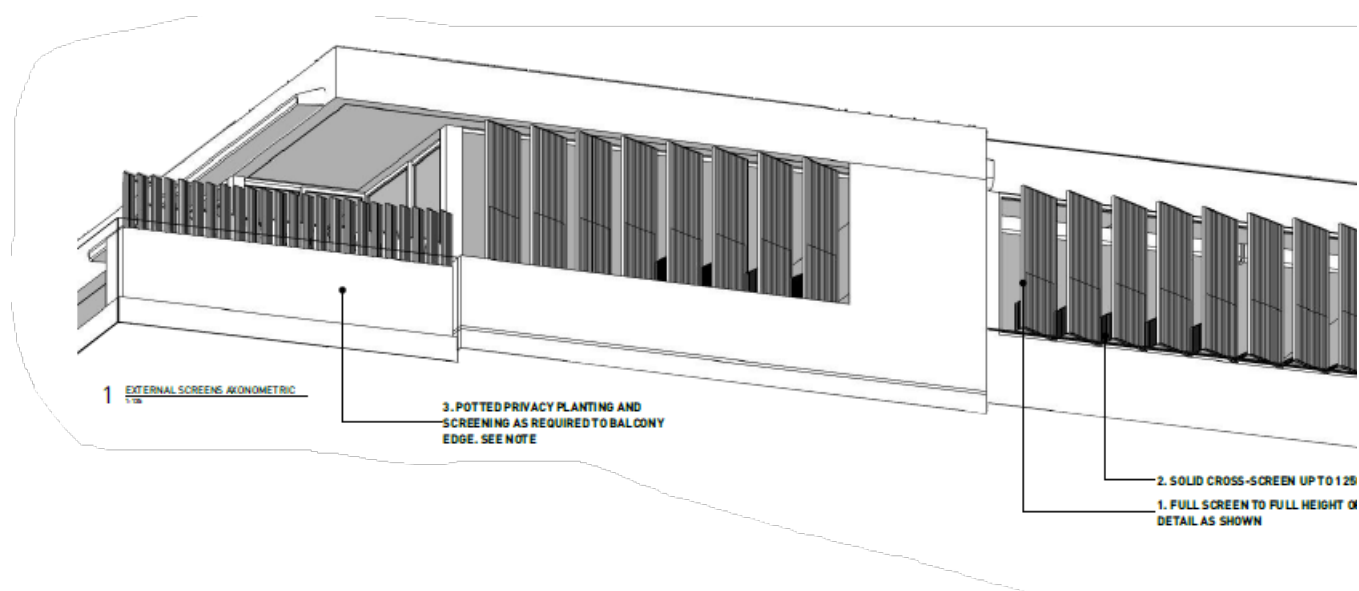
Details including species, mature height, planting, pot size and spacing to provide continuous screening are to be provided to the Certifying Authority.

Reason: To ensure that the selected species are capable of providing suitable visual screening to the adjoining property to the west at No. 86 Bower Street, Manly.

The site plan illustrates the proposed pool area and associated landscaping. Key features include:

- POTTED PRIVACY PLANTING AND SCREENING TO BALCONY EDGE:** A designated area for planting along the balcony edge.
- EX RL +13.520:** Elevation marker for the existing ground level.
- GBAL:** Ground Balcony label.
- AW:** Area Wall labels.
- CNC:** Concrete label.
- REN:** Retention wall label.
- EX BAL:** Existing Balcony label.
- LINE OF FENCING TO ADJOINING PROPERTY AT No.86 BOWER STREET SHOWN DOTTED**
- LINE OF POOL PAVING LEVEL TO ADJOINING PROPERTY AT No.86 BOWER STREET SHOWN DOTTED**

Plan 1. West Elevation of approved Mod2021/0317 (Construction Certificate plan).



Plan 2. Axonometric plan of approved Mod2021/0317 (Construction Certificate plan).

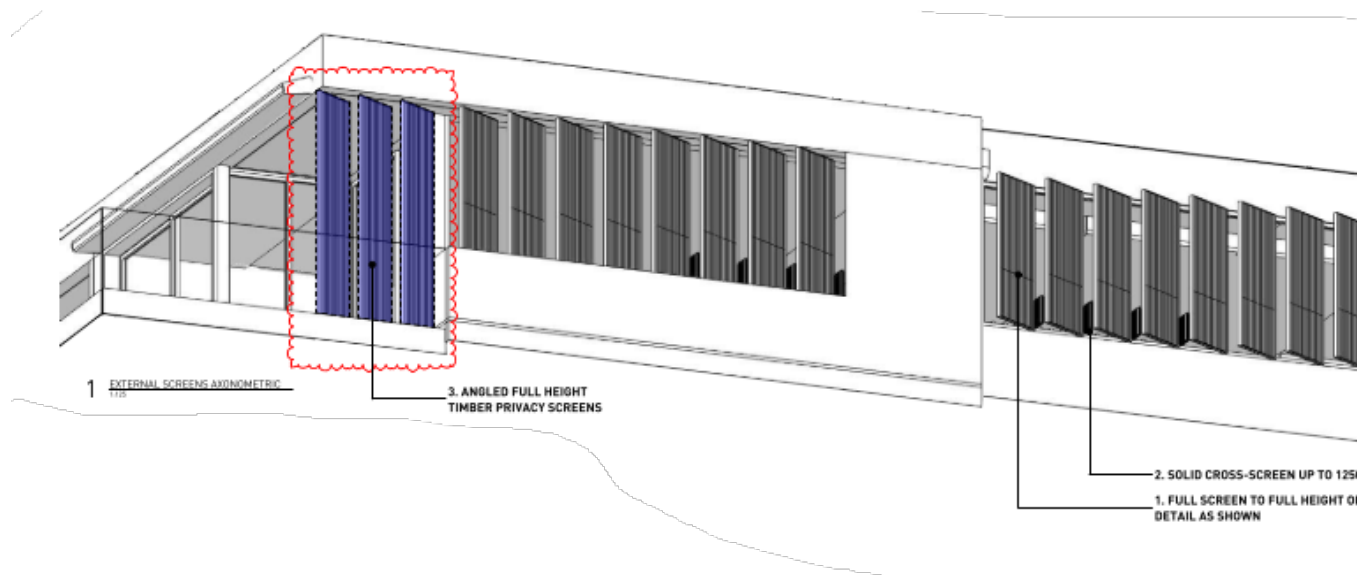
Mod2021/1009, the subject modification, seeks to further revise the balcony privacy screen design, including a reduced screening length and deletion of the adjacent planter box. The proposed modification would require the further amendment of condition 8 and the deletion of condition 9. No change is proposed to the window privacy screening required by condition 7 of Mod2021/0317.

The proposal seeks to amend condition 8 to read as follows:

8. The external screens with vertical fins referred to in (7) above shall be replicated in size and continued in a northerly direction for a length of 1.62 metres from the external wall of the dwelling along the western edge of the external balcony accessible from the living area of No. 84 Bower Street, Manly as depicted on plans S4.55-A-101 and S4.55-A-203 prepared by Smith and Tzannes.

Reason: To preserve and maintain visual privacy and amenity to the immediate adjoining property to the west at No. 86 Bower Street, Manly and to also maintain design consistency with the similar edge type screening along the adjoining dwelling.

The below plan reflects the form the privacy screening proposed by the subject modification.



Plan 3. Axonometric plan of subject modification Mod2021/1009.

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 - Zone C3 Environmental Management

Manly Local Environmental Plan 2013 - 6.5 Terrestrial biodiversity

Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 3.4.3 Maintenance of Views

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 (No. 82-84 Bower Street) located on the northern side of Bower Street.</p> <p>The site is irregular in shape with a frontage of 16.365m along Bower Street and a 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 an existing dual occupancy (attached).</p> <p>The site slopes 7.57m from front (south) to rear (north).</p> <p>The site planted vegetation generally within the front setback. No significant trees are located on the site.</p> <p>Detailed Description of Adjoining/Surrounding Development</p>

Adjoining and surrounding development is characterised by detached dwellings, dual occupancies and residential flat buildings.

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 - 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 - Approved on 27 April 2016 by the former Manly Development Assessment Unit.

DA0168/2017 - Alterations and additions to the existing dual occupancy - Approved 14 November 2017 under staff delegation.

Mod2018/0547 - Modification of Development Consent No. DA168/2017 granted for alterations and additions to the existing dual occupancy - Approved 10 January 2019 under staff delegation.

DA2019/0126 - Alterations and additions to a dual occupancy - Approved 10 July 2019 by the Development Determination Panel.

DA2019/0125 - Demolition works and construction of two garages - Approved 10 July 2019 by the Development Determination Panel.

EPA2019/0374 - A Stop Works Order was issued by Council when the unauthorised works were brought to the attention of the Building Control Team - Dated 21 November 2019 (revoked), and re-issued 19 December 2019.

BC2020/0048 - Reconstruction of existing walls and existing floors - Approved 15 September 2020.

DA2020/0211 - Development Application seeking consent for the reconstruction of walls/structures that were to be retained and have been demolished, and for the use of walls/structures that were to be retained, but have been demolished and rebuilt - Approved 15 September 2020 by the Northern Beaches Local Planning Panel.

DA2021/0868 - Alterations and additions to an attached dual occupancy involving landscape works - Approved 11 August 2021 under staff delegation.

Mod2021/0317 - Modification of Development Consent DA2020/0211 granted for the reconstruction of walls/structures that were to be retained and have been demolished, and for the use of walls/structures that were to be retained, but have been demolished and rebuilt - Approved 18 August 2021 by the Northern Beaches Local Planning panel.

Mod2021/1009 - Subject application under assessment.

NSW LEC Proceedings No. 2022/97178 - On 5 April 2022, the Applicant commenced Class 1 appeal proceedings against Council's deemed refusal of the Development Application.

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 DA2020/0211 and Mod2021/0317, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - 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 development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before	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 DA2020/0211

Section 4.55 (2) - Other Modifications	Comments
<p>that consent as originally granted was modified (if at all), and</p>	<p>and Mod2021/0317 for the following reasons:</p> <p><i>"(2) Other modifications 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—</i></p> <p><i>(a) 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"</i></p> <p><u>Comment:</u></p> <p>The proposed changes maintain the approved dual occupancy use and do not alter the intent of the lot to be developed. The resulting built form and general appearance of the development is materially the same as previously approved. The modifications relate to changes to the privacy screening that is required by the conditions of consent imposed by the consent authority.</p>
<p>(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and</p>	<p>Development Application DA2020/0211 did not require concurrence from the relevant Minister, public authority or approval body.</p>
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require, or</p> <p>(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</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan.</p>
<p>(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided</p>	<p>See discussion on "Notification & Submissions Received" in this report.</p>

Section 4.55 (2) - Other Modifications	Comments
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 96 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	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
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 allow Council to request additional information. No additional information was requested in this case.</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>

Section 4.15 'Matters for Consideration'	Comments
	<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 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 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 unsuitable 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	This assessment has found the proposal to be contrary to the relevant requirement(s) of the Manly DCP and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

EXISTING USE RIGHTS

The application of existing use rights for the ongoing use of the site as a dual occupancy was established by the approval of DA2020/0211, which the subject application seeks to modify.

This approved consent remains valid and the works on-site and lodgement of subsequent S4.55 modification applications indicate that the existing use rights have not been abandoned

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 04/02/2022 to 18/02/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
McCullough Robertson Lawyers	Level 16 55 Hunter Street SYDNEY NSW 2000

The issues raised in the submission are addressed as follows:

- **Privacy/overlooking impacts**

The submission raised concerns that the revised balcony privacy screen design does not provide adequate privacy to the occupants of 86 Bower Street, noting the context and history of the development on the subject site including previous decisions by the Northern Beaches Local Planning Panel.

Comment:

This assessment finds that the revised privacy screen design would result in excessive overlooking of No. 86 that would not achieve an appropriate level of privacy. The assessment has given regard to the context of the site and the necessity of effective privacy screening at the western elevation of the subject dwelling and balcony. Due to the potential privacy impacts to No. 86 it is considered necessary to maintain the balcony privacy screening as previously approved by the NBLPP. The proposal is found to be inconsistent with the objectives of MDCP Clause 3.4.2 and is recommended for refusal.

- **Height of previously approved balcony privacy screen**

The submission raised concerns that the height of the previously approved balcony privacy screen is insufficient to provide privacy to the occupants of 86 Bower Street.

Comment:

Based on the inspections undertaken at the subject site and No. 86, the previously approved privacy screening is considered to maintain adequate privacy to the adjoining property. No amendment to the approved screening is necessary and the changes sought by the applicant are not supportable. As such, the application is recommended for refusal.

REFERRALS

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 (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.

SEPP (Coastal Management) 2018

The site is classified as land within the coastal environment area and the coastal use area under the State Environmental Planning Policy (Coastal Management) 2018. Accordingly, an assessment under the SEPP has been carried out as follows:

13 Development on land within the coastal environment area

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered 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,*
 - (b) *coastal environmental values and natural coastal processes,*
 - (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,*
 - (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
 - (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,*
 - (f) *Aboriginal cultural heritage, practices and places,*
 - (g) *the use of the surf zone.*

Comment:

The proposed modified privacy screen is located within the existing building footprint and will not unreasonably impact the coastal environment area.

- (2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
- (a) *the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*
 - (b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment:

The proposed modification is consistent with this Clause.

14 Development on land within the coastal use area

- (1) (a) *has considered 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,
- (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
 - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
 - (iv) Aboriginal cultural heritage, practices and places,
 - (v) cultural and built environment heritage, and
- (b) is satisfied that:
- (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The proposed modified works are minor in extent and will not adversely impact the coastal use area in relation to any of the above matters.

15 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

The proposal is unlikely to cause increased risk of coastal hazards on the site or surrounding land.

As such, it is considered that the application complies with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

Manly Local Environmental Plan 2013

Is the development permissible?	No
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	No
zone objectives of the LEP?	Yes

Principal Development Standards

The proposed modifications relate to privacy screening and do not result in any changes to the approved building height or floor space ratio. As such, there are no development standards under Part 4 of the Manly LEP to consider as part of this assessment.

Compliance Assessment

Clause	Compliance with Requirements
6.5 Terrestrial biodiversity	Yes

Clause	Compliance with Requirements
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes

Detailed Assessment

Zone C3 Environmental Management

The proposal is permissible under the provisions of existing use rights.

6.5 Terrestrial biodiversity

The privacy screen that is proposed to be modified is located above ground level and will not impact existing vegetation of biodiversity values on the site.

6.9 Foreshore scenic protection area

The proposal relates to an approved privacy screen and would result in no adverse impacts in relation to visual aesthetic amenity or views from public places.

Manly Development Control Plan

Built Form Controls

There are no built form controls under Part 4 of the Manly DCP to consider as part of this assessment.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.4.2 Privacy and Security	No	No
3.4.3 Maintenance of Views	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

Description of non-compliance

3.4.2.2 Balconies and Terraces

a) Architectural or landscape screens must be provided to balconies and terraces to limit overlooking nearby properties. Architectural screens must be fixed in position and suitably angled to protect visual privacy.

b) Recessed design of balconies and terraces can also be used to limit overlooking and maintain privacy.

Comment:

The approval of Mod2021/0317 required the provision of a planter box and 1.6m high privacy screen extending the full length of the western elevation of the balcony. The proposed modification includes full height privacy screening for a length of 1.62m from the external wall of the dwelling, with the remaining 2.8m of the western edge of the balcony being unscreened. The reduction in the length of the proposed screen is not considered to adequately limit overlooking of the adjoining property, noting the existing non-compliant side setback to the balcony and the resulting proximity to the swimming pool and private open space areas of No. 86.

The visual privacy interface between the subject site and No. 86 is shown in the below photos provided by the adjoining property owner.



Photo 1. The balcony of the subject site as viewed from 86 Bower Street, prior to the installation of any screening. The proposed privacy screen extends from the dwelling wall to the northern edge of the roof element above.



Photo 2. Overlooking of 86 Bower Street from the subject site balcony prior to the installation of any screening.

Note: The photo is not taken from the proposed unscreened northern section of the balcony, but demonstrates the proximity of the balcony to No. 86 and the extent of the resulting privacy impact.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

Objective 1) To minimise loss of privacy to adjacent and nearby development by:

- *appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; and*
- *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

Comment:

The amended screen design allows for unobstructed overlooking of No. 86 from the 2.8m northern section of the balcony that is unscreened. Given the limited separation between the balcony and the private open space area of No. 86, the proposal does not minimise loss of privacy by providing appropriate screening and mitigating direct viewing between the outdoor living areas of the adjacent properties. The proposal would also allow view lines from the balcony to the north-facing glazing of the dwelling at No. 86.

Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.

Comment:

The proposal seeks to reduce the impact to the available views from the subject site but does so at the expense of the privacy of the adjoining property. It is noted that the balcony previously benefitted from views of Marine Parade and the Manly foreshore. However, given the history of the subject site - whereby the existing dwelling was largely demolished and rebuilt - the previously imposed privacy screening is considered to achieve a more appropriate outcome in relation to privacy and views. It is also noted that the affected views from the subject site are obtained across a side boundary and that the expansive views available towards the north and north-west across the rear boundary remain unaffected.

The below photos demonstrate the level of impact to the available views from the subject site as a result of the previously imposed screening requirements. Based on these photos and the assessment undertaken against the requirements and objectives of the control, the privacy screening conditions imposed under Mod2021/0317 are seen to achieve a more appropriate balance between privacy, sunlight access, outlook and views in comparison to the proposed screen design.



Photo 3. Obstruction of the available views from the subject site balcony by the privacy screen conditions imposed by Mod2021/0317.



Photo 4. Obstruction of the available views from the subject site balcony by the privacy screen conditions imposed by Mod2021/0317.



Photo 5. Obstruction of the available views from the subject site living room by the privacy screen conditions imposed by Mod2021/0317.



Photo 6. Obstruction of the available views from the subject site living room by the privacy screen conditions imposed by Mod2021/0317.



Photo 7. Obstruction of the available views from the subject site living room by the privacy screen conditions imposed by Mod2021/0317.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal will not adversely impact opportunities for passive surveillance.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

3.4.3 Maintenance of Views

The revised screening proposed as part of this application would not result in any adverse view impacts from adjoining properties. However, the application is recommended for refusal due to the privacy impacts to 86 Bower Street. The view impacts to the subject site are not unreasonable as considered against the view loss planning principle.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect 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

Northern Beaches Section 7.12 Contributions Plan 2021

Section 7.12 contributions were levied on the Development 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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

- Inconsistent 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
- Inconsistent with the objects of the Environmental Planning and Assessment Act 1979

The proposal seeks modifications to the privacy screening required by the conditions of consent imposed by Mod2021/0317.

The revised privacy screening proposed in this application would not maintain a reasonable level of privacy to the adjoining property in accordance with the objectives of MDCP Clause 3.4.2.

One submission was received in response to the notification of the application, and is addressed in detail within this report.

Based on the assessment completed within this report the application is not supportable and is recommended for refusal.

It is considered that the proposed development does not satisfy the appropriate controls and that all

processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council , as the consent authority REFUSE Modification Application No. Mod2021/1009 for Modification of Development Consent DA2020/0211 granted for alterations and additions to an attached dual occupancy on land at Lot 5 DP 8075,82 - 84 Bower Street, MANLY, subject to the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Manly Local Environmental Plan 2013.
2. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.4.2 Privacy and Security of the Manly Development Control Plan. Specifically, the proposed modification would not afford a reasonable level of privacy to the adjoining property in accordance with Clause 3.4.2 and the previously imposed conditions of consent.