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MEMORANDUM

DATE: 28 July 2020

TO: Northern Beaches Local Planning Panel

CC: Anna Williams, Planning Assessments Manager

FROM: Adam Croft, Development Assessment Officer

SUBJECT: DA2020/0211 – 82-84 Bower Street, Manly

REFERENCE: 2020/439697

Dear Panel,

As requested in yesterday's LPP briefing, consideration is given to what would constitute an acceptable development on the subject site, No. 82-84 Bower Street Manly, in accordance with the relevant Manly LEP and DCP controls.

A search of Council's records found only two new dwelling/development approvals (under the MLEP 2013) within the E3 zone on Bower Street that included variations to the FSR development standard. Further discussion of this matter is included under Clause 4.6 of the Assessment Report.

Given the level of compliance with the FSR standard for comparable new developments in the surrounding area, it is argued that the subject proposal should minimise its impact on neighbours in a manner that is consistent with the expectations of new development. Noting the existing use rights circumstances, the DCP are an appropriate guide to understanding what is possible in relation to minimising those impacts.

Where the previous external walls have been demolished, responding to amenity concerns (merit considerations) of neighbours is no longer constrained by existing structure. Using the DCP controls as a guide for what is possible and a template for understanding appropriate levels of impact, a greater level of amenity compliance with the DCP controls is expected/achievable. However, in this case the walls proposed to be reconstructed all remain non-compliant with the side setback control (1/3 wall height), as below, and reinstate a level of impact on neighbours that could be reduced, and would be expected in circumstances where the constraint of existing structure is removed.

Built Form Controls	Requirement		Proposed	Complies
4.1.4.2 Side Setbacks and Secondary Street Frontages	West (No. 84)	LG Lounge, Bed 3: 1.2/1.9m	0.8m/0.9m	No
		LG Bed2,Ensuited: 1.0.3/1.13m	1.1/1.2m	No
		GF Kitchen: 1.53/3m	1.1m	No
	East (No. 82)	GF Living: 1.4/1.83m	0.2m/0.1m	No
		GF Kitchen, Dining: 0.9/1.43m	1.4m/1.3m	No



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The western lower ground floor wall that has been reconstructed is of lesser concern as the extent of that setback non-compliance is far less than the remaining walls yet to be re-constructed. The circumstances of development neighbouring that wall (a wall surrounding the pool) also mitigate that impact.

The greatest numerical non-compliances and potential impacts arise at the ground floor level, where the walls are yet to be constructed. In order to fully comply with the setback controls (as assessed for a new dwelling), the ground floor requires a minimum setback of 2m-2.8m to the western side and 0.9m-1.83m to the eastern side.

*Please note, the compliance table in the report should read should read: GF Kitchen: 1.53m-2m.

Bringing the ground floor walls away from the side boundaries as the wall height increases, as intended by the control, will bring the setbacks closer to compliance and reduce the resulting GFA, and will have a meaningful reduction in the bulk and scale the structure imposes on the western neighbour. As the development is now for the construction of a new three-storey structure, rather than alterations and additions, including a new first floor, it is also considered likely that a corresponding reduction to the scale of the upper floor is required.

As stated in planning principle No. 2 of the judgement in Fodor Investments v Hornsby Shire Council (2005) NSWLEC 71 in relation to existing use rights, *"there is no automatic entitlement to another building of the same floor space ratio, height or parking provision"* where an existing building is proposed for demolition.

Although existing use rights are considered to apply to this site, any future development on the site is not entitled to rebuild the previously existing structure without passing a test of the merit arguments. Rather, the development should seek as much as possible to demonstrate appropriate levels of impact upon neighbours. The applicable controls (setbacks and FSR) offer a tangible and practical example of what that could be. The reliance on retention of existing structure as a reason for not reducing the impact is lost following its removal. The merits need now to be considered with that in mind.

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