

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2018/0180
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<b>Responsible Officer:</b>	Benjamin Price
<b>Land to be developed (Address):</b>	Lot 74 DP 8075, 77 Bower Street MANLY NSW 2095
<b>Proposed Development:</b>	Modification of Development Consent DA269/2015 granted for construction of a dwelling house.
<b>Zoning:</b>	Manly LEP2013 - Land zoned E3 Environmental Management
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Local Planning Panel
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Trustees Roman Catholic Church Archdiocese Sydney Cathal Halligan O'Rourke
<b>Applicant:</b>	Housed - Nanna Lesiuk

<b>Application lodged:</b>	09/04/2018
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Single new detached dwelling
<b>Notified:</b>	11/04/2018 to 27/04/2018
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	3
<b>Recommendation:</b>	Approval

### ASSESSMENT INTRODUCTION

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

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

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

## SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards  
 Manly Development Control Plan - 3.4.2 Privacy and Security  
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping  
 Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 74 DP 8075 , 77 Bower Street MANLY NSW 2095
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the southern side of Bower Street Manly.</p> <p>The site is irregular in shape with a frontage of 16.4m along Bower Street and a depth of 45.875m. The site has a surveyed area of 698.8m<sup>2</sup>.</p> <p>The site is located within the E3 Environmental Management zone and is currently under construction for a dwelling house.</p> <p>The site slopes from south to north and includes a crossfall of 4.12m.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by two and three storey dwelling houses.</p>

Map:



## SITE HISTORY

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

DA269/2015 - For demolition and construction of a new three (3) storey dwelling house, with double garage, internal lift, swimming pool and landscaping. This application was approved by the Manly Independent Assessment Panel on the 21 April 2016 subject to conditions. The following conditions are of relevance to this application:

### "ANS01

*The Landscape Plan, submitted in conjunction with the approved Development Application and as amended by these conditions of consent, is to be amended to exclude the following species: Echium candicans, Yucca filamentosa. Alternative species chosen to replace these plants must be selected from the following list: Adiantum sp., Banksia spinulosa, Callistemon sp., Calochlaena sp., Caustis sp., Dianella sp., Gleichenia sp., Grevillea 'Robyn Gordon', Grevillea juniperina, Iso/epis sp., Juncus sp., Lomandra sp., tussocky native grasses (e.g. Kangaroo Grass), Westringia fruticosa, Xanthorrhoea sp. Plans are to be amended prior to the issue of the Construction Certificate.*

*Reason: To improve potential Long-nosed Bandicoot habitat at the site. reduce the risk of weed encroachment to surrounding areas, and/or to offset reductions in potential Bandicoot foraging habitat as a result of the development.*

### ANS03

*The viewing platform on top of the cabana is to be deleted by removal of access from the kitchen (Level 01) and replacement of the platform with a nontrafficable roof. With the exception of a 900mm wide "folly" which may be provided on the top of the cabana. Plans are to be amended accordingly, prior to the issue of any Construction Certificate.*

*Reason: To ensure privacy to No. 75 Bower St, Manly.*

### ANS04

*The existing tree near the western boundary, adjacent to the proposed terrace to Level 01, is to be*

*retained and protected during all stages of construction. Plans are to be suitably amended, prior to the issue of any Construction Certificate.*

*Reason: To preserve privacy between No. 77 and No.81 Bower St.*

#### **ANS05**

*A landscaped buffer is to be provided along the western boundary. Plans are to be suitably amended, prior to the issue of any Construction Certificate.*

*Reason: To protect the privacy of No.81 Bower St and reduce the visual impact of the development."*

### **PROPOSED DEVELOPMENT IN DETAIL**

The proposed modifications that are identified in red on the plans and have been completed on-site include:

#### Level 00 Entry

- Swimming pool adjusted to remove the full surround coping. The pool alignment with masonry entry wall 3790mm from the western boundary (adjusted from 4690mm)
- Internal stair adjusted to accommodate the adjusted floor level rl 25.5 to rl 26
- Service area reconfigured to allow for a light well void
- Gym reconfigured
- minor adjustments to internal bathroom

#### Level 01 Living Plan

- Powder room relocated.
- Bathroom relocated
- Floor level adjusted from RL 25.5 TO RL 26.0
- Laundry/cellar reconfigure
- Adjustment to stair shape and provision of an entry platform

#### Level 02 Bedrooms Plan

- Main bed ensuite reconfigured

#### Roof

- Roof overhang deleted - parapet to street front
- Delete lift overrun

The proposed modifications that are identified in red on the plans and have not been completed on-site include:

The removal of the tree adjacent to the western boundary and deletion to consent condition ANS04 which is as follows:

*"The existing tree near the western boundary, adjacent to the proposed terrace to Level 01, is to be retained and protected during all stages of construction. Plans are to be suitably amended, prior to issue of any Construction Certificate.*

*Reason: To preserve privacy between No.77 and No.81 Bower st."*

The modifications that have been completed/are being completed on-site that are shown on the plans but not identified in red include:

- External stairs on western boundary
- Balustrade and access stairs to the roof of the cabana.

The application was amended to a S4.55(2) on the 16 May 2018.

Amended plans were received on the 17 May 2015 deleting the access from the kitchen to the roof of the cabana. The plans differ in only minor respects and the development would not result in greater environmental impact. As such re-notification was not necessary.

It is also noted that landscape works have been completed that are not in accordance with the approved landscape plan. These works were not applied for or shown on the plans submitted with this application. As such they will be referred to compliance for investigation.

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment C.

**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 DA269/2015, 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 that consent as	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



Section 4.55 (2) - Other Modifications	Comments
originally granted was modified (if at all), and	DA269/2015.
(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	Development Application DA269/2015 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with:  (i) the regulations, if the regulations so require,  or  (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Local Environmental Plan 2011 and Manly Development Control Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on “Notification & Submissions Received” in this report.

### 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	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<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.

Section 4.15 'Matters for Consideration'	Comments
	<p><u>Clause 50(1A)</u> of the EP&amp;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&amp;A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;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&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This Clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;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&amp;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>
<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>	<p><b>(i) Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p><b>(ii) Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p>

Section 4.15 'Matters for Consideration'	Comments
	(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 3 submission/s from:

Name:	Address:
MHD Planning	4 Roselands Avenue FRENCHS FOREST NSW 2086
Turnbull Planning International Pty Ltd	2301/4 Daydream Street WARRIEWOOD NSW 2102
Mr Jason Halliwell	81 Bower Street MANLY NSW 2095

The following issues were raised in the submissions and each have been addressed below:

- Viewing Platform
- Clear glass on window DW02.08
- Retrospective approval
- Works as executed plan
- Should be considered as a S4.55(2)
- Swimming Pool
- Landscaping - removal of tree and deletion of condition ANS04 - objection to Landscape condition, should be replaced if the tree fails
- Insufficient Information - Landscape plan and window changes
- Floor Space Ratio
- Staircase - not adequately notated and privacy impact
- Inadequacy of western buffer planting

The matters raised within the submissions are addressed as follows:



- Viewing Platform  
Comment:  
The viewing platform was assessed under Clause 3.4.2 of the Manly DCP 2013. In summary it is recommended the condition be amended to ensure the development achieves the intention of the condition.
- Clear glass on window DW02.08  
Comment:  
This window is subject to and will remain subject to ANS07 requiring the window be made opaque.
- Retrospective approval  
Comment:  
The findings from Talbot in Windy Dropdown v Warringah Council allows for retrospective approval.
- Works as executed plan  
Comment:  
The plans provide sufficient information to determine this application. Works as executed plans are not required.
- Should be considered as a S4.55(2)  
Comment  
The application was amended to a S4.55(2) on the 16 May 2018.
- Swimming Pool  
Comment  
The modifications to the swimming pool have been assessed in accordance with the objectives of Clause 4.1.9 Swimming Pools, Spas and Water Features. In summary the proposed modifications will not result in unreasonable impacts on the neighbouring properties.
- Landscaping - removal of tree and deletion of condition ANS04 - objection to Landscape condition, should be replaced if the tree fails Landscape Plan  
Comment:  
Councils Landscape officer is satisfied that the tree is not viable and is of little retention value. The recommended condition will ensure the intention of the condition is achieved.
- Insufficient Information - Landscape plan and window changes  
Comment  
The modifications do not make it essential to have a landscape plan. There is sufficient information to detail the windows.
- Floor Space Ratio  
Comment  
The change to the floor space ratio is due to the re-arrangement of the services on the entry plan and will not alter the built form of the development. The proposal has been assessed in accordance with Clause 4.6 and was found to be satisfactory.
- Staircase - not adequately notated and privacy impact  
Comment

The staircase is adequately shown on the site plan and the statement of environmental effects. The staircase was assessed under Clause 3.4.2 Privacy and Security of the Manly DCP 2013 and was found to be satisfactory.

- Inadequacy of western buffer planting  
Comment  
Compliance is currently investigating this matter.

## MEDIATION

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

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The modification to the landscape is acceptable, subject to tree replacement as proposed by modification application.</p> <p>However it should be noted that the original condition of the retention of the existing tree (Pear Tree) has not been adhered to with more than 10% of its canopy being removed, and in its current condition this tree will most likely fail.</p>
NECC (Bushland and Biodiversity)	<p>The subject site is located within the declared population area for the endangered population of Long-nosed Bandicoots at North Head. While the proposed modification will result in the removal of an additional 20m<sup>2</sup> bandicoot habitat, the submitted Terrestrial Biodiversity Report (GIS Environmental Consultants, 2 February 2018) recommends updated ameliorative conditions to reduce additional effects on the endangered population. A Landscape Plan incorporating plantings to achieve higher quality bandicoot habitat on the site is also required as a condition of consent in order to offset the additional loss of habitat. The Bushland &amp; Biodiversity Team raise no further objections to the proposed modification, subject to implementation of recommended conditions in Section 7 ("Updated Ameliorative Conditions") of the updated Terrestrial Biodiversity Report and those recommended by the Natural Environment Officer.</p> <p>It is noted that unapproved landscaping works appear to have commenced in the Council road reserve adjoining the northern property boundary. Compliance have been notified to investigate.</p>
NECC (Coast and Catchments)	<p>This assessment constitutes the assessment for MOD2018/0180, relating specifically to the coastal management requirements.</p> <p>This assessment is based on a review of submitted documentation for MOD2018/0180 and the assumption that all documented structures and procedures are applied and recommendations followed.</p> <p>It is recommended that this modification be approved with conditions.</p>

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

### ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

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

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

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

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

#### SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 675020S\_03 dated 26 May 2018).

#### Manly Local Environmental Plan 2013

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

#### Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.5m	No proposed change	N/A	As approved
Floor Space Ratio	FSR: 0.45:1 (314.5sqm)	FSR: 0.63:1 (444.2sqm) as measured from approved plans	FSR: 0.68:1 (475.57sqm)	51.2%	No

#### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes

Clause	Compliance with Requirements
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.9 Foreshore scenic protection area	Yes

### Detailed Assessment

#### **4.6 Exceptions to development standards**

The following assessment of the variation to Clause 4.4 - Floor Space Ratio development standard has taken into consideration the questions established in *Winten Property Group Limited v North Sydney Council* (2001) NSW LEC 46.

Requirement:	0.45:1 (314.5sqm)
Approved	FSR: 0.63:1 (444.2sqm) as measured from approved plans
Proposed:	FSR: 0.68:1 (475.57sqm)
Is the planning control in question a development standard?	YES
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical
If numerical enter a % variation to requirement	51.2%

The proposal must satisfy the objectives of Clause 4.4 Floor Space Ratios, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the MLEP 2013. The assessment is detailed as follows:

#### **Is the planning control in question a development standard?**

The prescribed Floor space ratio limitation pursuant to Clause 4.4 of the MLEP 2013 is a development standard.

#### **What are the underlying objectives of the development standard?**

The underlying objectives of the standard, pursuant to Clause 4.4 – 'Floor Space Ratio' of the MLEP 2013 are:

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

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

#### Comment:

The increase to the floor space ratio is due to the re-configuration of the entry area. This area

was previously identified as basement services which is not included in the gross floor area. The proposal modifies this area to a gym, which is included in the gross floor area. The proposal will retain the built form of the approved development on the site and will not result in any change that will alter the approved bulk and scale of the development as viewed from the streetscape.

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

Comment:

The proposal will result in a building density and bulk that is generally consistent with that approved. The proposed modifications will not obscure any important landscape features or townscape features.

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

Comment:

The proposal will retain the approved form of the development, its relationship between new development and the existing character and landscape of the area.

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

Comment:

The proposed modifications will not result in any unreasonable environmental impacts on the use or enjoyment of the adjoining land and the public domain.

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

Comment:

Not Applicable.

### **What are the underlying objectives of the zone?**

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the E3 Environmental Management zone.

#### The underlying objectives of the E3 Environmental Management zone

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

Comment:

The proposed modifications will not result in any unreasonable impacts on the areas ecological, scientific, cultural or aesthetic values.



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

Comment:

The proposed modifications are within the range of development that will not have an adverse effect on the above mentioned values.

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

Comment:

The proposal subject to the conditions of consent will maintain tree canopies and will not result in any unreasonable impact on the scenic qualities of the foreshore.

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

Comment:

The proposed modifications will not negatively impact on nearby foreshores, significant geological features and bushland.

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

Comment:

The proposal is not located within the immediate vicinity of the foreshore. Storm water disposal was appropriately conditioned in the original consent conditions

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

Comment:

The proposed modifications will not result in a change to the height or the bulk of the building.

**Is the variation to the development standard consistent with the objectives of Clause 4.6 of the MLEP 2013?**

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

*(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development.*

Comment:

The proposal is for reconfiguration of the existing floor area and will not result in any significant change to the built form. The requested degree of flexibility is satisfactory in this circumstance.

*(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Comment:

The proposed modifications will retain the existing built form and will not result in any unreasonable impacts in the locality. The proposal is satisfactory in this circumstance.

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

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

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

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

Comment:

This application has been made under S4.55(2) of the Act. This is a standalone provision and does not rely upon clause 4.6 to vary development standards. As such no application in accordance with Clause 4.6 was required to be submitted. However, it is considered that the proposals consistency with the objectives of the development standard and objectives of zone E3 Environmental Management are sufficient to justify that compliance is unreasonable an unnecessary and that there are sufficient environmental planning grounds to justify the contravention.

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

*(a) the consent authority is satisfied that:*

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

Comment:

Not applicable. However, as discussed above there is sufficient evidence to demonstrate the matters required to be demonstrated by subclause (3).

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

Comment:

For reasons detailed above, the proposal is considered to be consistent with the objectives of the E3 Environmental Management zone in the MLEP 2013.

(b) the concurrence of the Director-General has been obtained

Comment:  
Not applicable.

## Manly Development Control Plan

### Built Form Controls

Built Form Controls - Site Area: 698.8	Requirement	Approved	Proposed	Complies
4.1.2.3 Roof Height	Parapet Height: 0.6m	garage nil	garage 0.2m	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (384.34sqm)	45.9% (321.2sqm) as measured from approved plans	48% (336.3sqm)	No
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (117.7sqm)	64%(206sqm)	59% (198.6sqm)	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	3m	3m	No proposed change
	<b>Side setback Coping/concourse</b> Eastern side 1m Western side (equal to height above ground) 1.8m	East side 1.5m West side 3.3m	East side 1.5m West side 3.4m	No further non-compliance
	<b>Side Setback Waters Edge</b> Eastern side 1.5m Western side (equal to height above ground) 1.8m	East 6.7m West 4.5m	East 7.8m West 3.7m	
	Front Setback Equal to 2 x height above ground	0.28m	0.28m	

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.7 Stormwater Management	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	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**

##### 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 application does not specifically propose any modification to the viewing platform. The original application included the following condition:

"ANS03

*The viewing platform on top of the cabana is to be deleted by removal of access from the kitchen (Level 01) and replacement of the platform with a non-trafficable roof. With the exception of a 900mm wide "folly" which may be provided on the top of the cabana. Plans are to be amended accordingly, prior to the issue of any Construction Certificate.*

*Reason: To ensure privacy to No. 75 Bower St, Manly."*

The proposed plans indicate a balustrade and steps to the viewing platform. Upon site inspection it was evident the roof was trafficable and was intended to remain trafficable. The intention of the condition was clearly articulated in the assessment report as follows:

*"A condition will be included deleting the viewing platform from the proposal."*

It is clear that the development does not comply with this condition or the intention of this condition. It is noted that the steps from the pool level to the platform were not specifically deleted in the above condition. However, there is not a reasonable purpose for permanent steps to a non-trafficable roof

form except for the use of this structure as a viewing platform. This use will lead to an unreasonable impact on the privacy of the neighbouring property. As such it is recommended the condition be amended to read as follows:

**ANS03**

*The viewing platform on top of the cabana is to be deleted by removal of all access and replacement of the platform with a non-trafficable roof. Plans are to be amended accordingly, prior to the issue of any Construction Certificate.*

*Reason: To ensure privacy to No. 75 Bower St, Manly.*

The recommended condition will ensure the development achieves the intention of the condition ANS03.

The window DW02.08 is identified in the doors and window schedule as clear glass. This application will be subject to the original condition of consent ANS07 which requires the window to be opaque. A site inspection on the 28 May 2018 confirmed an opaque film had been applied to the window.

Councils Landscape Officer assessed the health of the pear tree on the site and determined that it was no longer viable for retention. The officer recommended a condition to ensure the tree be replaced with an appropriate species. The condition has been included in this recommendation. The proposal subject to the recommended condition will achieve the intention of the condition on the original consent.

The proposed stair on the western boundary is for access purposes only and will not result in any unreasonable impacts on the privacy of the neighboring property. It is recommended condition ANS05 be amended to allow for the stair.

The entry platform is adequately setback from the side boundary and the side boundary wall will ensure no unreasonable overlooking. Furthermore the landscaping on the western boundary will limit views to the private open space of the neighbouring property.

The proposed amendment to the swimming pool will not result in any unreasonable impacts on the privacy of the neighbouring properties.

The proposed amendments, subject to the conditions of consent, will not result in any unreasonable impacts on the privacy of the neighbouring properties.

*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 subject to the condition of consent will achieve an adequate level of privacy within the locality. The proposal will achieve a balanced outlook from habitable rooms and private open spaces.

*Objective 3) To encourage awareness of neighbourhood security.*

Comment:

The proposal will maintain the approved buildings passive surveillance of the streetscape.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP 2013 and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the



proposal is supported, in this particular circumstance.

#### **4.1.5 Open Space and Landscaping**

##### Description of non-compliance

The proposal will result in an increase to the total open space from the approved situation but will remain non-compliant.

##### 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 retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.*

##### Comment:

The proposal subject to the condition of consent will augment the landscape features and native flora on the site.

*Objective 2) To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.*

##### Comment:

The proposal will increase the total open space on the site and reduce the soft landscaped area on the site. The landscape plan was not proposed to be amended in this application and will retain the soft landscaped area. The proposal maximises the soft landscaped area and will remain compliant with the control. The proposal subject to the conditions of consent is consistent with this objective.

*Objective 3) To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.*

##### Comment:

The proposal subject to the conditions of consent will ensure no unreasonable impacts on the amenity of the site streetscape or surrounding area.

*Objective 4) To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.*

##### Comment:

The proposal will maintain adequate stormwater management.

*Objective 5) To minimise the spread of weeds and the degradation of private and public open space.*

##### Comment:

The proposal will not result in the spread of weeds.

*Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.*

Comment:

The proposal subject to conditions will provide adequate wildlife habitat, subject to conditions.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP 2013 and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

#### **4.1.9 Swimming Pools, Spas and Water Features**

Description of non-compliance

The proposal will maintain the the non-compliance with the swimming pool front setback controls of the Manly DCP 2013 .

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 be located and designed to maintain the privacy (visually and aurally) of neighbouring properties and to minimise the impact of filter noise on neighbouring properties;

Comment:

The proposal is adequately designed and located to ensure no unreasonable impact on visual or acoustic privacy of the neighbouring properties.

*Objective 2) To be appropriately located so as not to adversely impact on the streetscape or the established character of the locality;*

Comment:

The proposed modifications will not result in any unreasonable impact on the streetscape or established character of the locality.

Objective 3) To integrate landscaping; and

Comment:

The approved landscaping will ensure landscaping is integrated into the design

Objective 4) To become an emergency water resource in bush fire prone areas.

Comment

Not applicable

#### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

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

## **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

## **POLICY CONTROLS**

### **Manly Section 94 Development Contributions Plan**

S94 Contributions are not applicable to this application.

## **CONCLUSION**

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

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

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

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

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

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

## **RECOMMENDATION**

THAT Council as the consent authority grant approval to Modification Application No. Mod2018/0180 for Modification of Development Consent DA269/2015 granted for construction of a dwelling house. on land at Lot 74 DP 8075,77 Bower Street, MANLY, subject to the conditions printed below:

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

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

a) Modification Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
01 Site/Roof Plan	1/08/2017	Housed
02 Level 00 Entry Plan	1/08/2017	Housed
03 Level 01 Living Plan	30/01/2018	Housed
04 Level 02 Bedrooms Plan	30/01/2018	Housed
05 Elevation North and East	30/01/2018	Housed
06 Elevation South and West	30/01/2018	Housed
07 Section 01 and 02	30/01/2018	Housed
08 Section 03	30/01/2018	Housed
Door and Window Schedule - Schedule of BASIX Commitments	30/01/2018	Housed

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
BASIX Certificate 675020S_03	26 May 2018	GRS Building Reports

b) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

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

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

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans. (DACPLB01)

**B. Modify Condition ANS01 to read as follows:**

The approved Landscape Plans submitted in support of approved DA0269/2015 are to be amended prior to the issue of the Construction Certificate to include the following elements:

1. A planting schedule including stratum, species/common names, species quantities, pot sizes and staking details;
2. Planting of at least one (1) Banksia integrifolia specimen in a minimum 200L container located in the same location of the ornamental pear to be removed;
3. At least 60% of species listed in the planting schedule are to be selected from the Native Gardening Booklet as provided on Council's website:

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/native-gardening/pittwaternativegardeningbooklet.pdf>

4. The proposed finished treatment of garden areas, including soil depth and retaining walls and the location of underground services.

Each plan/sheet is to be certified by a qualified landscape architect, confirming that the plans/details for the works to be carried out will achieve the relevant conditions of the development consent of this modification and approved DA0269/2015. The Landscape Plan is to detail works on the subject property only. Landscaping works outside the property boundary are not permitted.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To offset the loss of additional endangered Long-nosed Bandicoot habitat as a result of the development and maintain appropriate landscaping on the site.

**C. Modify Condition ANS03 to read as follows:**

The viewing platform on top of the cabana is to be deleted by removal of all access and replacement of the platform with a non-trafficable roof form. Plans are to be amended accordingly, prior to the issue of any Construction Certificate.

Reason: To ensure privacy to No. 75 Bower St, Manly.

**C. Modify Condition ANS04 to read as follows:**

One (1) Banksia integrifolia is to be planted in the same location as the pear tree (identified as 7 on the approved plans), and planted at min 200 litres. This tree shall be maintained for the life of the development.

Reason: This is to ensure the landscaping is completed in accordance with the intent of the DA 0269/2015

**D. Modify Condition ANS05 to read as follows:**

A landscaped buffer is to be provided along the western boundary, with the exception of the external western stairs shown on 03 Level 01 Living Plan dated 30/01/2018 and prepared by Housed. Plans are to be suitably amended, prior to the issue of any Construction Certificate.

Reason: To protect the privacy of No.81 Bower St and reduce the visual impact of the development.