

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2021/0317
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<b>Responsible Officer:</b>	Adam Croft
<b>Land to be developed (Address):</b>	Lot 5 DP 8075, 82 - 84 Bower Street MANLY NSW 2095
<b>Proposed Development:</b>	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
<b>Zoning:</b>	Manly LEP2013 - Land zoned E3 Environmental Management
<b>Development Permissible:</b>	No
<b>Existing Use Rights:</b>	Yes
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Trustees Roman Catholic Church Archdiocese Sydney 82-84 Bower Street Pty Ltd
<b>Applicant:</b>	Michael Bushell

<b>Application Lodged:</b>	03/06/2021
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	10/06/2021 to 24/06/2021
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	2
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### EXECUTIVE SUMMARY

The application seeks to modify DA2020/0211, which was approved by the Northern Beaches Local Planning Panel (NBLPP) on 15 September 2020. The application involves the revision of privacy screening to the balcony, kitchen and living room windows, which 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 from the one property were received by way of objection in response to the notification of the application, generally relating to the revision of the privacy screening and subsequent amenity impacts to the adjoining property. Minor amendments to the modification were made by the applicant to address privacy concerns raised by Council and in response to the submission from the adjoining property.

The amended privacy screen design is considered to achieve the intent of the conditions imposed by the NBLPP in relation to potential overlooking from inside the dwelling, however overlooking from the balcony remains of concern. As such, the proposed modifications are supported in part, with amended conditions recommended to minimise overlooking from the rear balcony.

## PROPOSED DEVELOPMENT IN DETAIL

The proposed modification seeks consent for the revision of privacy screening to the kitchen window, living/dining room window, and the rear balcony as required by conditions 7 and 8 imposed by the NBLPP as part of the approved development consent DA2020/0211. Conditions 7 and 8 are listed below, with the resultant screening being full height louvre screens along the full length of the respective windows and the balcony.

The revised screening proposed in this modification consists of:

1. Full height angled screens to the kitchen and living/dining room windows, solid up to 1.5m above finished floor level;
2. Solid cross-screens up to 1.25m above finished floor level (to part of the kitchen and living/dining room windows); and
3. 1.6m long planter box with timber screens up to 1.5m above finished floor level to the ground floor balcony.

The construction of the proposed screening in accordance with the drawings submitted by the applicant, and subject to the further amendments discussed in this assessment, necessitates the amendment of conditions 7 and 8. The recommended conditions of consent are included in the Recommendation of this report.

Condition 7 of DA2020/0211 reads as follows:

*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.*

Condition 8 of DA2020/0211 reads as follows:

*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.*

#### Amendments to the modification application following lodgement

On 22 July 2021 (after lodgement of the modification application) the applicant submitted plans that included the following changes to the screening:

- Increase width of window screen panels from 650mm to 700mm and reduce total number of panels
- Increase length of planter box from 1.55m to 1.6m and add timber screening up to 1.5m above finished floor level

In addition to the above amendments, the categorisation of the modification application was changed from a S4.55(1A) to a S4.55(2) following a preliminary review of the application by Council. It is Council's view that the applicant's categorisation of the application as a S4.551A application with minor environmental impact is not correct and that the application would be more appropriately categorised as a S4.55(2) application. The applicant agreed to this change and the application has been assessed as a section 4.55(2) modification application.

#### **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 E3 Environmental Management  
Manly Local Environmental Plan 2013 - 6.2 Earthworks  
Manly Local Environmental Plan 2013 - 6.5 Terrestrial biodiversity  
Manly Local Environmental Plan 2013 - 6.8 Landslide risk  
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

<b>Property Description:</b>	Lot 5 DP 8075 , 82 - 84 Bower Street MANLY NSW 2095
<b>Detailed Site Description:</b>	<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 698.4m<sup>2</sup>.</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><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by detached dwellings, dual occupancies and residential flat buildings.</p>

Map:



## SITE HISTORY

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



DA0034/2016 for Alterations and additions to an existing semi-detached dwelling including new upper level internal reconfiguration and new roof, reconstruction of the existing ground floor entry, partial demolition of rear of dwelling , new plunge pool, terrace, new double garage and landscaping - No 84 Bower Street, Manly only - Approved on 27 April 2016 by the former Manly Development Assessment Unit.

DA0168/2017 for Alterations and additions to the existing dual occupancy - Approved on 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 - Under assessment.

It is noted that works associated with multiple previously approved development consents for the site are currently under construction.

## **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, 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 originally granted was modified (if at all), and	<p>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 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>The modified development generally maintains the approved built form, and is considered to maintain a reasonable level of privacy to the adjoining property in the context of the site, subject to the further amendments discussed in this report.</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	Development Application DA2020/0211 did not require concurrence from the relevant Minister, public authority or approval body.

Section 4.55 (2) - Other Modifications	Comments
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	
(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, and the Northern Beaches Community Participation 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 a 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)(iia) –	None applicable.

Section 4.15 'Matters for Consideration'	Comments
Provisions of any planning agreement	
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&amp;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&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 allow Council to request additional information. No additional information was requested under these Clauses in this case.</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 matter has been addressed via a condition in the original consent.</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>
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) <b>Environmental Impact</b> 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) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental</p>



Section 4.15 'Matters for Consideration'	Comments
	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 “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

The application of existing use rights for the ongoing use of the site as a dual occupancy was established in the assessment of the approved consent (DA2020/0211), which the subject application seeks to modify.

This approved consent remains valid and the ongoing works on-site and lodgement of the subject modification 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 10/06/2021 to 24/06/2021 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 2 submission/s from:

Name:	Address:
Mrs Tess Lavender	86 Bower Street MANLY NSW 2095
Mccullough Robertson Lawyers	MLC Centre Level 32 19-29 Martin Place SYDNEY NSW 2000

The matters raised within the submissions are addressed as follows:

- Effectiveness of proposed screening**

Comment:

The sill height of the Kitchen and Living/Dining windows is 900mm above the finished floor level (FFL) and the lower 600mm of the proposed timber paneling is solid with no gaps, providing screening up to 1.5m above the FFL. The cross-screens up to 1.25m above the FFL prevent downward view lines between each louvre panel to the private open space of the adjoining property. The level of privacy provided by the proposed screening is equivalent to that imposed by the previous conditions of consent, and is supported.

The proposed balcony screening consists of a 1.6m long planter box and timber panelling up to 1.5m above the FFL of the balcony. This screening still permits overlooking of the adjoining

property from a large proportion of the balcony and is unacceptable. Therefore, the recommended conditions require that the planter box and timber panels up to 1.5m extend along the length of the balcony edge. The screening as conditioned will afford a similar level of screening to that provided by condition 8 of DA2020/0211, while minimising the reduction to views and solar access to the subject site. This solution results in a significantly improved privacy outcome to that which was approved under the original development consent, DA0168/2017.

The screening design, as proposed to be conditioned, offers adequate protection of privacy and achieves a balance between the amenity of the adjoining property and the views/outlook from the subject site, consistent with objective 2 of Clause 3.4.2 Privacy and Security. A full assessment of the resulting privacy impacts is outlined further completed in this report .

- **Intent of screening requirements imposed by the NBLPP**

Comment:

It is noted that the approval of DA2020/0211 was reliant on the provision of appropriate privacy screening to 86 Bower Street. The modified screening design, as amended by the recommended conditions of consent, is considered to provide the adjoining property with an equivalent level of privacy to previous NBLPP approval.

- **Categorisation of S4.55 Modification**

Comment:

Following a preliminary review of the application by Council, the categorisation of the modification was changed to a S4.55(2) modification.

- **Submission of amended plans**

Comment:

On 14 July 2021, two new provisions were introduced into the EP&A Regulations 2000, enabling a consent authority to both request additional information (clause 121A) and for an applicant to amend a modification application with the agreement of the consent authority (clause 121B). The Applicant submitted amended plans to Council on 22 July 2021 in accordance with these new provisions.

- **Content of submissions and attached previous submissions**

Comment:

The background information and inclusion of a number of submissions made to preceding applications is noted and is of assistance as to the site history and context of the concerns raised. These matters and previous submissions have been addressed in the assessment of this modification application and previous applications.

## REFERRALS

No referrals were sent in relation to this application

## 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 subject to SEPP 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 structures are 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)

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.

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

**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.

**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?	Yes
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
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

**Zone E3 Environmental Management**

Under the provisions of MLEP 2013, dual occupancy development is prohibited within the E3 zone. The application relies upon existing use rights in this regard.

**6.2 Earthworks**



No earthworks are proposed as part of the modification.

### 6.5 Terrestrial biodiversity

The proposed modifications are located above ground level within the existing building footprint, and will not adversely impact biodiversity values on the site.

### 6.8 Landslide risk

The proposed modification includes non-structural changes above ground level, and no further geotechnical investigation is required.

### 6.9 Foreshore scenic protection area

The proposal will not result in any unreasonable impacts in relation to visual aesthetic amenity or views to and from the Pacific Ocean or Manly Foreshore.

## 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
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	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
3.8 Waste Management	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	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

#### Proposed Changes to Screening

The approved development required the implementation of privacy screening in accordance with conditions 7 and 8, which generally required full height louvre screening along the full length of the respective windows and the balcony, as depicted below in Figure 1.

The amended modification proposes the following alternative screening components:

1. Full height angled screens to the kitchen and living/dining room windows, solid up to 1.5m above finished floor level;
2. Solid cross-screens up to 1.25m above finished floor level (to part of the kitchen and living/dining room windows); and
3. 1.6m long planter box with timber screens up to 1.5m above finished floor level on the balcony.

The comparison between the screens required by conditions 7 and 8 and the proposed modified screens is highlighted in the drawing prepared by the applicant, below. The approved screening outcome is shown in the bottom perspective image, with the proposed screening outcome shown in the top perspective image.

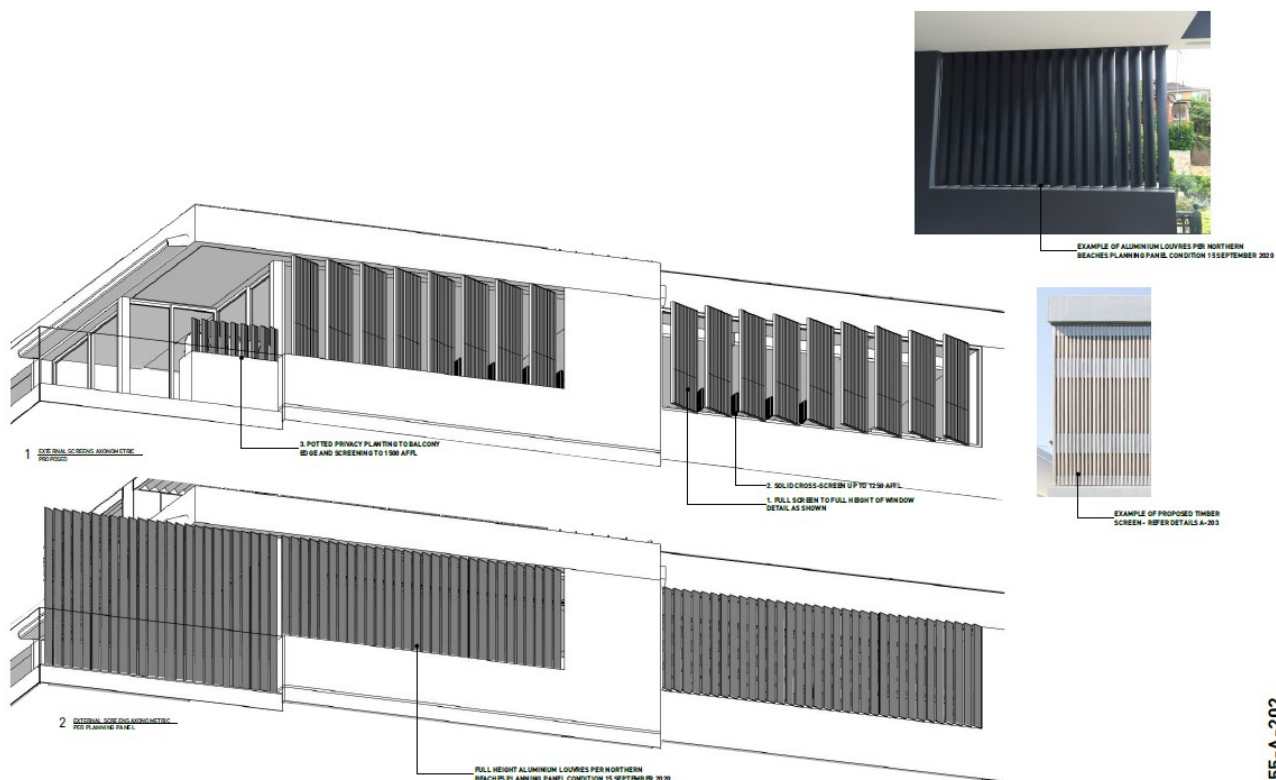


Figure 1. Comparison of approved and proposed screening.

#### Merit consideration:

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:

S4.55-A-202

## Windows

The 900mm sill height and solid lower portion of the proposed vertical timber panels provide solid screening to the Kitchen and Living/Dining room windows up to 1.5m above FFL (eye level). The cross-screens up to 1.25m will prevent downward viewing between the individual vertical screen panels to the private open spaces of the adjoining property. The location of the kitchen bench adjacent to the window will also reduce the ability of occupants to stand at the kitchen window and look out. It is noted that cross-screens are not provided along the full length of the windows as view lines to the private open space of the adjoining property are not available through the vertical screening at the southern end of the Kitchen window or the northern end of the Living/Dining window. The window screen design is considered to provide an adequate level of screening comparable to that required by condition 7.

Photos 1 and 2 below demonstrate the privacy outcome of the proposed screen design with a partial template of the screens constructed at the northern end of the Kitchen window. Photo 3 shows the potential overlooking impacts from the Living/Dining window, with a template of one vertical panel visible on the left of the photo. The photos, taken from an approximate height of 1.5m above floor level, indicate that the solid portion of the vertical screens combined with the cross-screens will not allow any view lines from the windows to the private open space of the adjoining property.

## Balcony

The proposed planter box and screen will orientate some views from the subject site towards the north and reduce overlooking from part of the balcony. However, a large proportion of the balcony remains unscreened and allows occupants to approach the eastern edge of the balcony and overlook the adjoining property from close proximity to the common boundary. Given the proposed reduction of screening and the increased privacy impacts, the modified balcony screening is not considered to achieve Objective 1. Specifically, the proposed screen design is not appropriate in minimising the loss of privacy or mitigating direct viewing between the windows and outdoor living areas of 86 Bower Street. Photos 4 and 5 below indicate the potential overlooking impacts from the rear ground floor balcony with the planter box template constructed.

Due to the proximity of the balcony to the boundary and lack of alternative mitigation measures proposed, the planter box and screening is conditioned to extend along the full length of the balcony in order to achieve consistency with Objective 1 and maintain a comparable level of privacy to that afforded by condition 8. The timber screens to the balcony edge are required to be solid up to 1.5m above FFL, consistent with the design of the window screens.

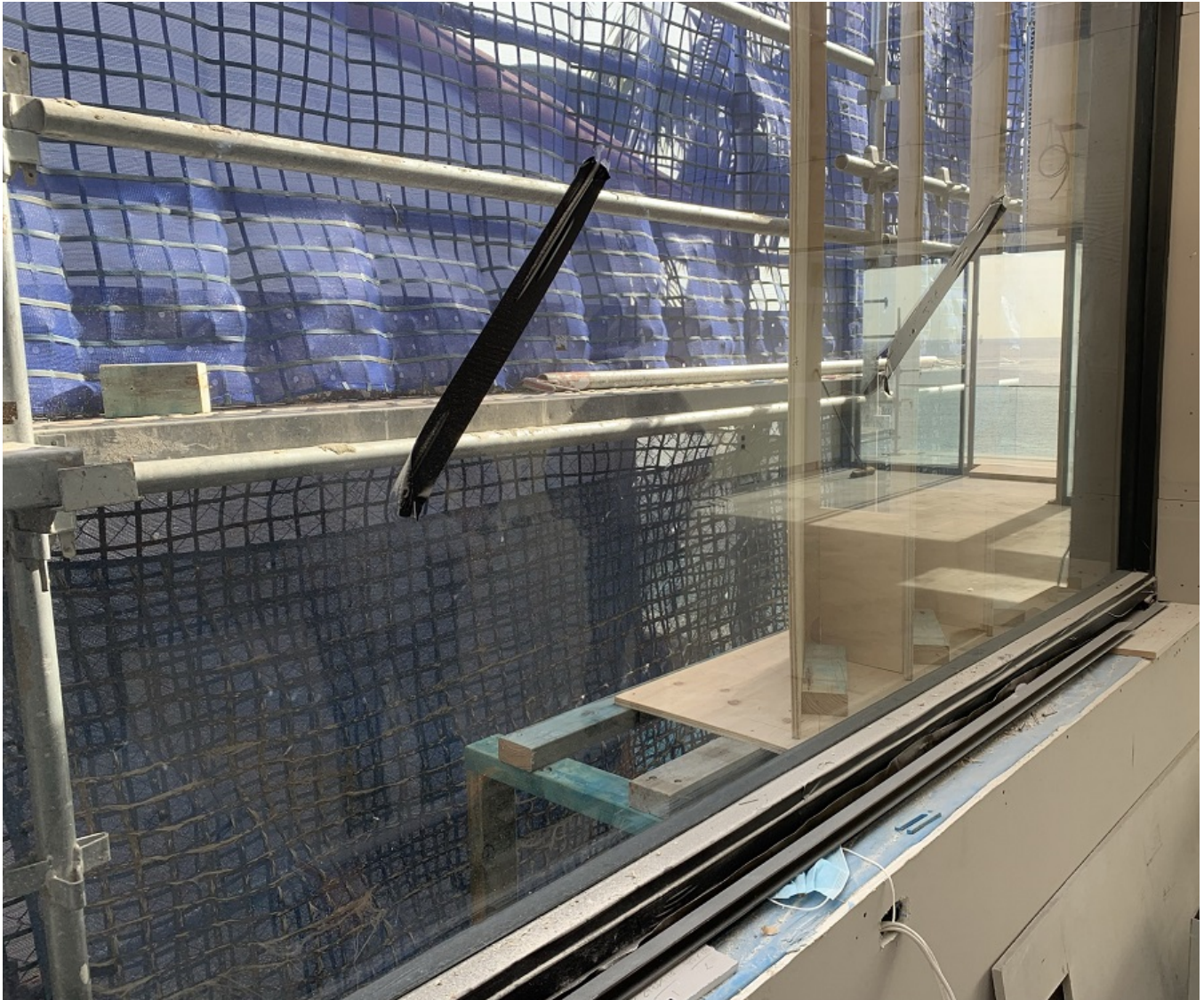


Photo 1. View line from Kitchen window with partial screen template.





Photo 2. View line from Kitchen window with partial screen template.





Photo 3. View line from Living/Dining window with vertical screen panel template.



Photo 4. View line from centre of rear balcony with proposed planter box template.





Photo 5. View line from eastern edge of rear balcony with proposed planter box template.

*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 proposed screening, as conditioned to extend the full length of the balcony, will maintain a level of screening that is consistent with the approved development, while providing a better outcome to the subject site in relation to sunlight access and views. In this regard, the requirement for balcony screening to extend above 1.5m up to the window head height is not considered to provide any material privacy benefit to the adjoining property, but would detrimentally impact sunlight access and views from the subject site.

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

Comment:

The proposed modification maintains opportunities for passive surveillance of the public domain.

Summary

The modified screening adjacent to the kitchen and living areas is considered to provide an equivalent, if not an increased, level of privacy to the adjoining property compared to that originally approved. As such, it is recommended that Condition 7 be amended to endorse the screening solution proposed. However, the proposed modified screening to the balcony will not provide the level of privacy anticipated by the NBLPP, resulting in unreasonable overlooking of the adjoining property. To address this area of concern, it is recommended that Condition 8 be amended to endorse the screening solution proposed, subject to the requirement for the planter and screen to extend the full depth of the balcony.

### **3.4.3 Maintenance of Views**

The revised screening proposed as part of this application will not result in any adverse view impacts from adjoining properties.

## **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, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

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

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP

- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

The proposal seeks modifications to the privacy screening required by the approved conditions of consent.

The proposal is considered to maintain a reasonable and comparable level of privacy to that provided by the previous approval, subject to the recommended conditions of consent.

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 and the recommended conditions of consent, the application is acceptable and is recommended for approval.

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

## RECOMMENDATION

THAT Northern Beaches Local Planning Panel as the consent authority grant approval to Modification Application No. Mod2021/0317 for 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 on land at Lot 5 DP 8075,82 - 84 Bower Street, MANLY, subject to the conditions printed below:

### A. Add New Condition 2A 'Modification of Consent - Approved Modified Plans' 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) Approved Modified Plans

Architectural Plans - Endorsed with Council's stamp		
Plans	Dated	Prepared By
Ground Plan, Revision B	22/07/2021	Smith & Tzannes
Elevations, Revision B	22/07/2021	Smith & Tzannes
Screen Details, Revision B	22/07/2021	Smith & Tzannes

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

### B. Modify Condition 7 to read as follows:

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, 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.

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

**C. Modify Condition 8 to read as follows:**

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 following amendment:

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 1.5m above the FFL of the balcony.

The planter box and screens are to be retained for the life of the development and are to be in place prior to the issue of any Occupation Certificate.

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

**D. Add new Condition 9 to read as follows:**

The planter box is to contain plantings with a minimum height of 400mm.

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

Plantings within the planter box are to be retained for the life of the development, and are to be replaced if any plants die or are destroyed/removed.

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.

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

**Signed**

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

**Anna Williams, Manager Development Assessments**

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**Peter Robinson, Executive Manager Development Assessment**