

STATEMENT OF ENVIRONMENTAL EFFECTS

TO ACCOMPANY CLAUSE 4.55 (2)
MODIFICATION APPLICATION TO MODIFY
PRIVACY SCREENS TO APPROVED WORKS
UNDER DEVELOPMENT APPLICATION
2020/0211 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
TO EXISTING DUAL OCCUPANCY AT 82-84
BOWER STREET MANLY
(LOT 5 DP 8075)

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1. INTRODUCTION AND BACKGROUND

This Statement of Environmental Effects has been prepared in support of a Clause 4.55 (2) Modification application seeking consent to modify approved privacy screens approved under DA 2020/0211 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* as part of the existing dual occupancy at 82-84 Bower Street Manly.

The proposed modifications incorporate a refinement to the approved vertical privacy louvres to the windows facing the common boundary of the subject site with 86 Bower Street and the replacement of the required privacy screens to the existing balcony at 84 Bower Street with a planter box and screen as illustrated in the attached architectural plans.

These proposed modifications incorporate the provision of timber screens and a blocking device along the living area and kitchen windows. A planter box and screen to a height of 1500mm along part of the edge of the deck facing 86 Bower Street is also proposed.

The modification is proposed as the screening devices required under the development consent, particularly to the balcony, are by any measure, inappropriate and not consistent with most residential developments in the locality. The proposed modifications will have little environmental impact.

Relevantly, the provisions of the Manly DCP (3.4.2) require overlooking to be limited, the DCP does not require or envisage the solution imposed by the consent. In fact, the DCP states that - *Consideration of privacy are typically balanced with other considerations such as views and solar access*. The required screen "wall" under the development consent severely reduces both currently available views and solar access from the balcony and living areas which on a site such as this, should be generally unhindered.

It must be a fundamental consideration in the assessment of this request that the subject balcony is not new, it has been in the exact position for almost three decades.

In the preparation of this Statement of Environmental Effects, consideration has been given to the following documents:

- Plans of the proposed modification prepared by Smith and Tzannes Architects
- Development Consents 34/2016, 168/2017 and Mod 2018/0547 and DA2020/0211
- Manly Local Environmental Plan 2013 (MLEP)
- Manly Development Control Plan 2013 (MDCP)
- AMCORD
- Planning Principles of the NSW Land and Environment Court, in particular, *Stockland Development Pty Ltd v Manly Council [2004] NSWLEC 472* and *Meriton v Sydney City Council [2004] NSWLEC 313*, *North Sydney Council v Ligon 302 Pty Ltd (1995) 87 LGERA 435* and in the later decision *North Sydney Council v Ligon 302 Pty Ltd (No 2) (1996) 93 LGERA 23*.
- State Environmental Planning Policy (Coastal Management) 2018

During the preparation of this Statement of Environmental Effects, I have attended the subject site and the surrounding locality to gain an understanding of the proposed modification and assess the consistency of the application of planning controls within the locality of the subject site.

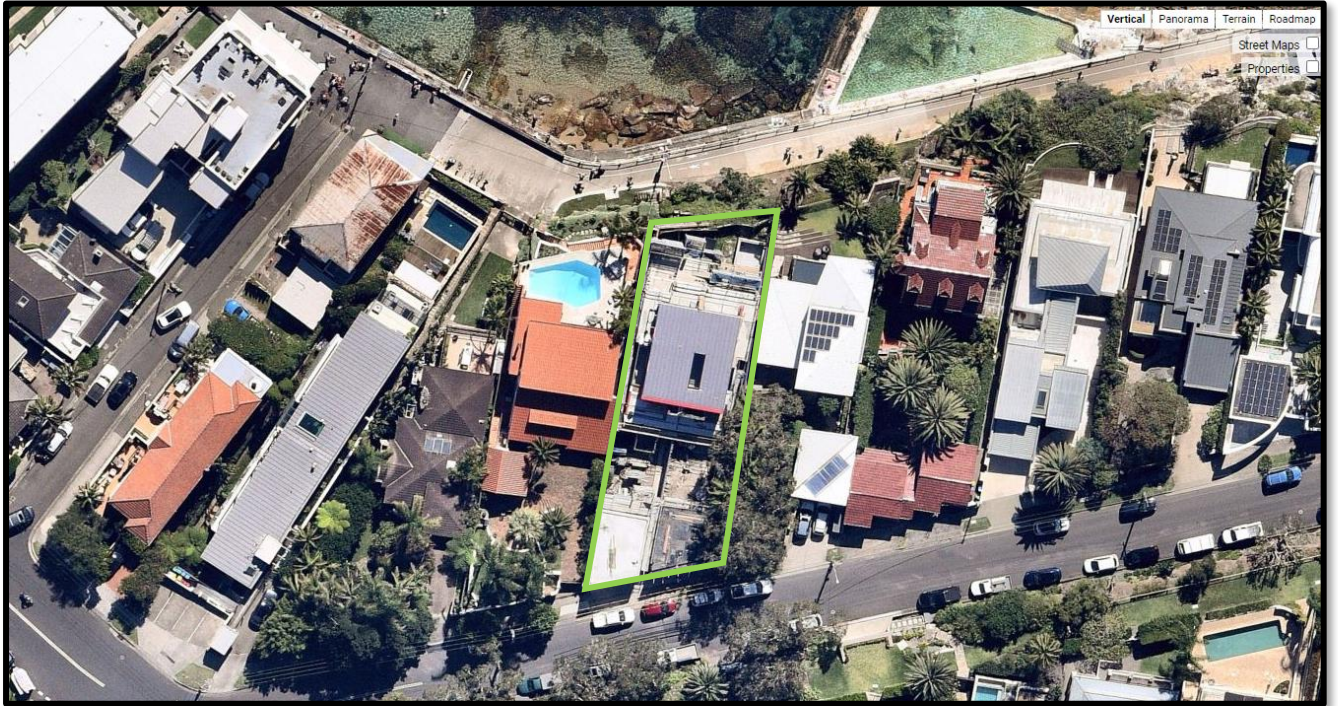
2. SITE AND LOCALITY

The subject site is known as 82-84 Bower Street, Manly and its legal description is Lot 5 DP 8075 and encompasses a total area of 698.4m². Current improvements on the site include a pair of attached dwellings, a garage (no.84 only) and landscaping.

The subject site is subject to a number of controls, particularly the detailed provisions of the Manly Local Environmental Plan 2013 and Manly Development Control Plan 2013. The subject site is zoned E3 Environmental Management under the provisions of the Manly Local Environmental Plan 2013.

The existing structures on the subject site comprising dual occupancies, are being constructed under the benefit of acknowledged existing use rights and current development consents, namely Development Consents 34/2016,

168/2017, Mod 2018/0547 2020/0211 and any associated Construction Certificates thereunder.



SUBJECT SITE OUTLINED (NEARMAP)



PHOTOGRAPH FROM *domain.com.au* DATED JUNE 2011 SHOWING DECK AT No.84 VIEWED FROM No.86 BOWER STREET - NOTE SHADE STRUCTURE

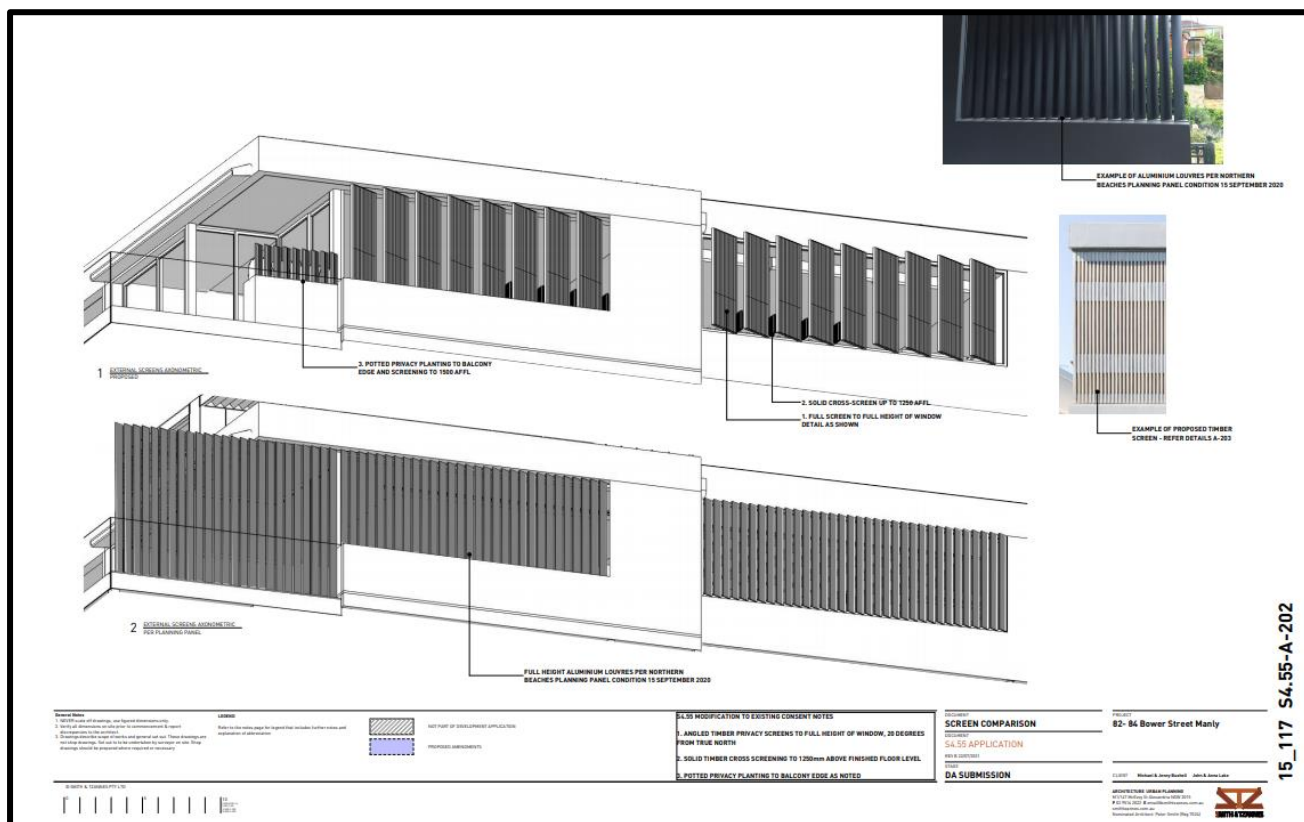


EXTRACT FROM NBLPP MINUTES OF 29 JUNE 2020

3. PROPOSED MODIFICATIONS

The final appearance of the proposed modifications when viewed from 86 Bower St is illustrated in the following extract from the submitted architectural drawings to enable an assessment of the resultant reduction in bulk of the completed development due to the removal of the requested vertical privacy screens to be continued for the entire length of the Balcony edge.

The following extract from the architectural plans clearly show the reduction in bulk between the screens approved in accordance with the Planning Panel Condition imposed on 15 September 2020 and the proposed screens and planter box proposed under the requested modification.



EXTRACT FROM SCREEN DETAIL PLAN 15_117 S4.55-A-202

The proposed modifications seek the deletion of the following Condition No.7 of the subject DA -

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

And its replacement with the following condition-

7. Any subsequent construction certificate application is to indicate that the West Elevation Ground Floor windows accessible from the kitchen, dining and living areas of No. 84 Bower Street, Manly are fitted with external screens which shall have vertical angled fins that cover the windows. The vertical screens shall be as illustrated in the following Drawings by Smith and Tzannes No's **15_117 S4.55-A-101, 15_117 S4.55-A-200, 15_117 S4.55-A-201 and 15_117 S4.55-A-202.**

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

The proposed modifications also seek the deletion of the following Condition No.8 –

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

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

And its replacement with the following condition -

8. Any subsequent construction certificate application is to incorporate the provision of planter boxes to the Balcony as illustrated in the following Drawings by Smith and Tzannes No's **15_117 S4.55-A-101, 15_117 S4.55-A-200, 15_117 S4.55-A-201 and 15_117 S4.55-A-202.**

The requested modifications satisfy the provisions of Section 4.55 (2) of the Environmental Planning and Assessment Act in that the proposed modifications ensure that the consent as modified will result in a development that 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).

REASONS FOR PROPOSED MODIFICATIONS

1. INCONSISTENT APPLICATION OF DCP CONTROLS

The consistent application of development controls is a fundamental objective of assessment of Development Applications as expressed within the matter of *North Sydney Council v Ligon 302 Pty Ltd* (1995) 87 LGERA 435 and in the later decision *North Sydney Council v Ligon 302 Pty Ltd (No 2)* (1996) 93 LGERA 23.

The imposition of a significant structural component in order to overcome perceived privacy concerns does not appear to be a consistent outcome of decisions made on similar and in many cases higher, density residential developments in the immediate vicinity of the subject site.

The following photographs illustrate the lack of any meaningful privacy screens on medium density areas of private open space within the Bower Street/Marine Parade vicinity of the subject site.

The inconsistency in the application of controls under the relevant planning instruments and Development Control Plans is highlighted in the following extract from the minutes of the Northern Beaches Local Planning Panel dated 29 July 2020 as follows –

The other very important matter that needed to be considered was the site location and its context.

All of the ocean foreshore lots along Bower Street (and Marine Parade) are sloping sites where most of the dwellings and outdoor terrace/deck areas all overlook one another. This is an inevitable consequence of the sloping nature of these types of sites. The subject site and the adjoining site are typical examples of foreshore lots.

The Planning Principle relevant to the consistent application of DCP controls is contained within the quoted decision by the Court of Appeal which states the following –

· A development control plan is a detailed planning document which reflects a council's expectation for parts of its area, which may be a large area or confined to an individual site. The provisions of a development control plan must be consistent with the provisions of any relevant local environmental plan. However, a development control plan may operate to confine the intensity of development otherwise permitted by a local environmental plan.

· A development control plan adopted after consultation with interested persons, including the affected community, will be given significantly more weight than one adopted with little or no community consultation.

· A development control plan which has been consistently applied by a council will be given significantly greater weight than one which has only been selectively applied.

· A development control plan which can be demonstrated, either inherently or perhaps by the passing of time, to bring about an inappropriate planning solution, especially an outcome which conflicts with other policy outcomes adopted at a State, regional or local level, will be given less weight than a development control plan which provides a sensible planning outcome consistent with other policies.

· Consistency of decision-making must be a fundamental objective of those who make administrative decisions. That objective is assisted by the adoption of development control plans and the making of decisions in individual cases which are consistent with them. If this is done, those with an interest in the site under consideration or who may be affected by any development of it have an opportunity to make decisions in relation to their own property which is informed by an appreciation of the likely future development of nearby property.

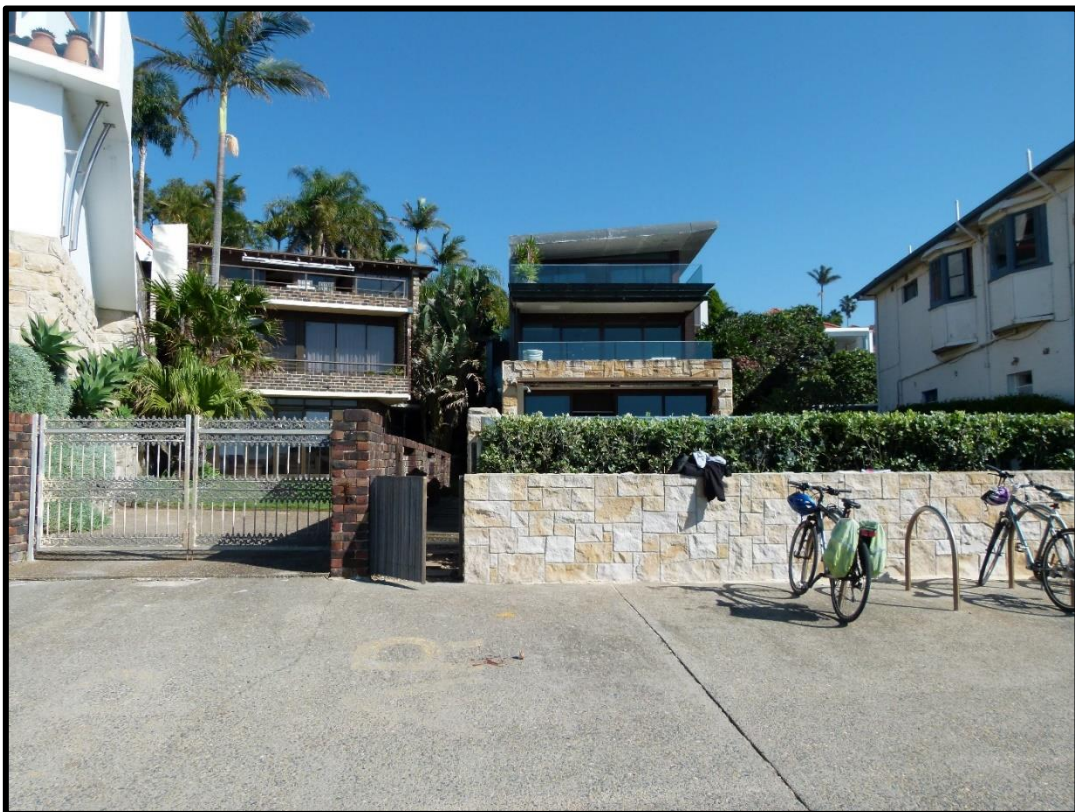
The inconsistency in applying development controls in this locality is highlighted by the following extract from Clause 3.4, of the Manly DCP 2013, objective 2(a) Designing for Amenity which states-

a) Careful design consideration should be given to minimise loss of sunlight, privacy, views, noise and vibration impacts and other nuisance (odour, fumes etc.) for neighbouring properties and the development property. This is especially relevant in higher density areas, development adjacent to smaller developments and development types that may potentially impact on neighbour's amenity such as licensed premises.

It is therefore concluded that the inconsistent application of development controls by the imposition of a requirement to provide a substantial and potentially dominating privacy screen on an existing unchanged deck on an oceanfront site in a locality where *most of the dwellings and outdoor terrace/deck areas all overlook one another* (extract from Planning Panel minutes of 29 July 2020) is a valid reason to have the relevant condition of consent No.8, struck out and replaced as requested in this application.



RESIDENTIAL DEVELOPMENT ALONG MARINE PARADE/BOWER STREET



RESIDENTIAL DEVELOPMENT ALONG MARINE PARADE/BOWER STREET



RESIDENTIAL DEVELOPMENT ALONG MARINE PARADE/BOWER STREET



RESIDENTIAL DEVELOPMENT ALONG BOWER STREET

2. UNREASONABLE IMPOSITION OF CONDITION OF CONSENT

The imposition of condition No.8 requiring the provision of external screens along the western edge of the external balcony accessible from the living area of No.84 Bower Street were imposed for the following 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 (Minutes of NBLPP 29 July 2020).

The imposition of this condition of consent is unreasonable as the existing external balcony is unchanged and as evidenced in the following photographs from the website *realestate.com.au*, the subject deck was in use by the occupiers of No.84 in the photographs dated July 2011 and thirdly, no apparent attempt has been made by the owners of No.86 to ameliorate claimed privacy impacts by any other means.



**EXTRACT FROM *realestate.com.au* SALES DOCUMENTATION SHOWING
JUXTAPOSITION OF DECK AT NO.84 AND POOL AREA AT NO.86 BOWER ST –
NOTE SHADE SAIL (SINCE REMOVED)**

It is noteworthy that the photograph extracted from the advertising documentation indicates the provision of a shade sail on 86 Bower Street on

or around the time of sale (estimated July 2011). It is also particularly noteworthy that the shade sail has since been removed giving a clear line of sight from one property to another and there has been no provision of any mechanism within the area of 86 Bower Street to prevent overlooking from the window in the adjacent wall of 84 or the deck attached to 84.

The following photograph from the NBLPP Minutes confirms the absence of any devices placed on No.86 to ameliorate claimed privacy impacts.



It would be reasonable to believe that if privacy between the two properties was a concern, the objector would have taken some steps within the ambit of their ownership of the subject site to impose or incorporate some mechanism such as a privacy screen, shade sail or landscaping (or all of these) within the site to overcome privacy concerns.

The imposition of this condition requiring an unacceptably bulky screen wall to the entirety of the length of the balcony facing 86 Bower Street is not reasonable and the decision to impose this unreasonable condition would, if the screen wall was constructed, result in unreasonable levels of adverse amenity impacts to the users of the 84 Bower Street balcony and unreasonable impacts upon the open environment of the locality.

Again, the DCP is clear-

Clause 3.4.2 Privacy and Security- Note: Consideration of privacy are typically balanced with other considerations such as views and solar access.

The Manly Development Control Plan 2013 states the following –

This plan is to be read in conjunction with various State and Federal Codes, Standards and Guidelines include the following:

- *AMCORD -Planning and Building Design – Design Elements;*

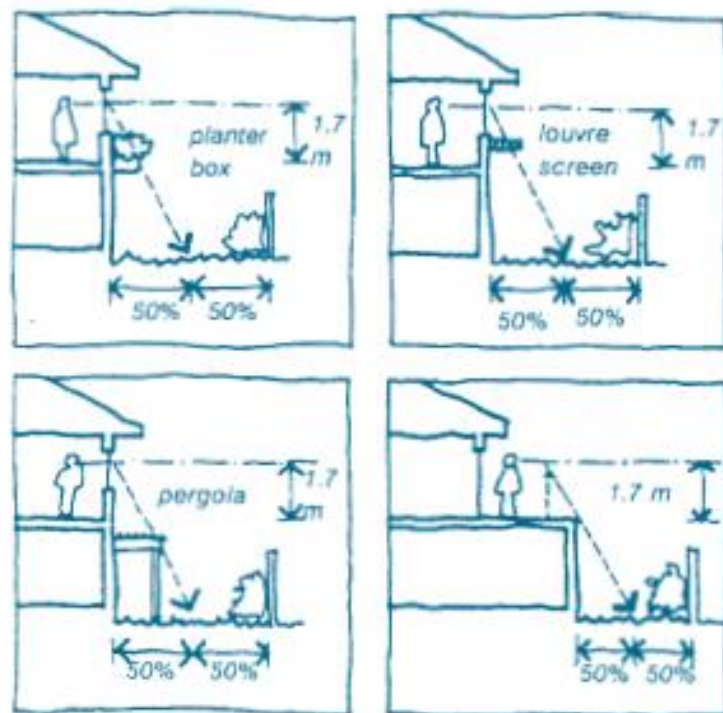


Figure 5: Techniques for providing privacy to a lower dwelling's private open space.

The following provisions of AMCORD are particularly relevant in the current situation -

Standards of privacy therefore need to balance the need for more intensive housing with the attainment of a reasonable level of privacy. This approach places an onus on adjacent residents to take supplementary action to secure their required level of privacy rather than requiring a new development to provide total protection of a neighbour's privacy.

The lack of any privacy protecting structures or mechanisms on the adjacent site at 86 Bower Street is relevant to the assessment of the subject proposal and is demonstrated in the photographs on preceding sections of this Statement.

Close, intimate views can often be effectively screened although, for above-ground viewpoints, fixed screening can be difficult. Residents are also able to exercise some control over the extent of overlooking when indoors, through their choice of such window screening as curtains or blinds.

Where privacy is achieved through remoteness rather than screening, there is no exact distance at which it can be assured. A judgement must be made about issues such as the intimacy and frequency of the activities being overlooked, the likely frequency and ease of overlooking, other distracting views, the obliqueness of the line of view, and cultural expectations.

The views available from the 84 Bower Street balcony are, by any measure, distracting, whilst overlooking of 86 Bower Street would be on an oblique angle and the cultural expectations are as illustrated by the significant majority of residential balconies in the surrounding locality having no privacy screens.

These views and solar access will be unreasonably reduced if the required screen wall is constructed and this level of loss on a site with panoramic views and unhindered solar access to an existing balcony is unreasonable.

The proposed planter box and screen as illustrated in the submitted architectural plans will reduce the available space of the existing deck, impact upon views and solar access from the balcony and are proposed as a compromise solution to address the unwarranted concerns raised by the residents of 86 Bower Street.

3. UNCHARACTERISTIC BUILDING BULK

Whilst it is readily accepted that the imposition of privacy screens to the new window to the living area of No. 84 Bower Street is reasonable by virtue of the

fact this element is new and larger than the existing window on the subject site prior to the development being carried out as illustrated in one of the previous photographs taken from No. 86 Bower Street.

The extension of this privacy screen however on to the western element of the existing unchanged balcony/deck is at odds with Councils objectives in that Council seeks to ensure that – *development should not detract from the scenic amenity of the area. In particular, the apparent bulk and design of a building should be considered and assessed from surrounding public and private viewpoints* (MDCP 2013 - Designing for Amenity (b)).

The proposed modification to the requisite screens as expressed within the accompanying architectural drawings will give effect to the intent of the Panel in seeking to ameliorate privacy impacts from the internal living areas of 84 Bower Street by the provision of a more sympathetic design of screen which incorporates devices between the individual elements of the screen in order to prevent any looking down upon areas of 86 Bower Street.

The proposed modification to the requisite screens to the balcony/deck seek to the screens as firstly they will substantially contribute to the bulk of the building, secondly they are unwarranted and thirdly, the planter box as proposed will reduce the current level of overlooking from the balcony/deck that has been there for several decades.

The proposed modification to the window screens incorporates solid screening to a height of 1250 mm above the finished floor level which, when coupled with the fit out of the kitchen benches and dining seating will prevent any overlooking of 86 Bower Street. This has been tested by the use of a “mockup” in the precise location sought by the modification. The full screen to each of the windows has been designed and will be constructed to allow reasonable solar access to the living areas of 84 Bower Street without allowing any over viewing of 86 Bower Street. The design as shown below contains vertical members angle in such a way that the finished structure will retain the intent of the original condition but will allow reasonable degrees of amenity for occupants of 84 Bower Street.

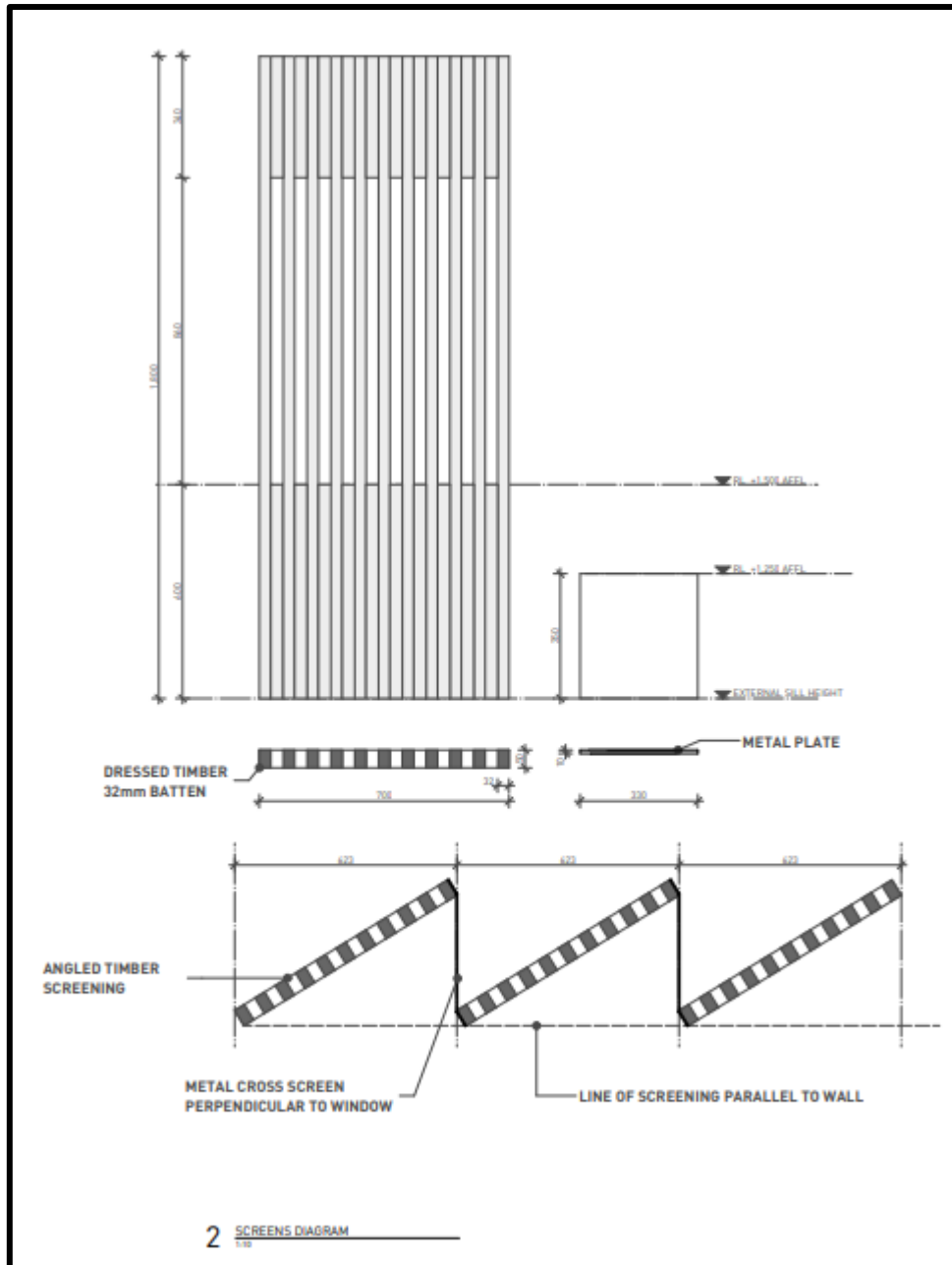


DIAGRAM OF PROPOSED SCREENS TO NORTHERNMOST WINDOWS

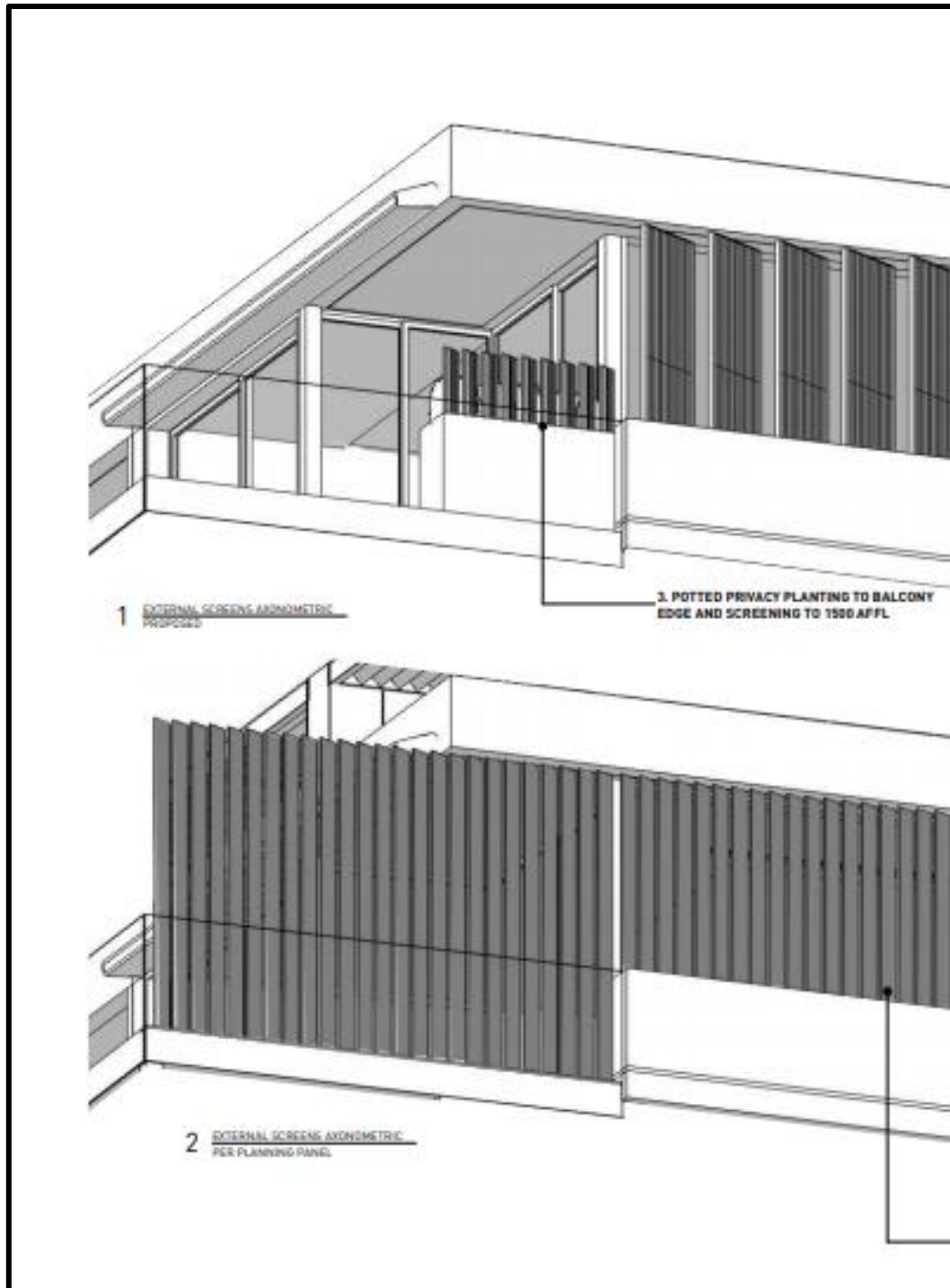
The imposition of the condition of consent requiring full height screens to the entire length of the existing balcony at 84 Bower Street will be, by any measure an incongruous element in this part of Manly which is typified by open decks and balconies with privacy screens on these balconies and decks being the exception rather than the rule.

Bolstering this request is the note that the Northern Beaches Planning Panel was clearly of the opinion that this locality is typified by open structures facing the distracting view of the land and water interface and the ocean.

The proposed planter box was also tested by the use of a "mock-up" with a finished height of 1 metre above finished floor level.

The proposed planter box is seen as an entirely reasonable solution as it does not overwhelm the locality in terms of its bulk, allows reasonable view corridors from the living areas of 84 Bower Street, does not impose unacceptable bulk upon the open vistas of 86 Bower Street and is a more considered design outcome than the full height screen originally imposed.

The outlook to the ocean front locality will remain the distracting view from the balcony.



EXTRACT FROM ARCHITECTURAL PLANS INDICATING THE DIFFERENCE BETWEEN THE PROPOSED PLANTER BOX AND THE REQUESTED FULL HEIGHT SCREENS.

4. PLANNING INSTRUMENTS

4.1 State Environmental Planning Policy (Coastal Management) 2018



3 Aim of Policy

The aim of this Policy is to promote an integrated and co-ordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the [Coastal Management Act 2016](#), including the management objectives for each coastal management area, by:

- (a) managing development in the coastal zone and protecting the environmental assets of the coast, and
- (b) establishing a framework for land use planning to guide decision-making in the coastal zone, and
- (c) mapping the 4 coastal management areas that comprise the NSW coastal zone for the purpose of the definitions in the [Coastal Management Act 2016](#).

RESPONSE

It is considered that the proposal is in keeping with the objectives of the Coastal SEPP.

14 Development on land within the coastal use area

(1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:

(a) has considered whether the proposed development is likely to cause an adverse impact on the following:

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

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

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

(iv) Aboriginal cultural heritage, practices and places,

(v) cultural and built environment heritage, and

(b) is satisfied that:

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

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

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

(c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

RESPONSE

The requested modifications are consistent with the above outcomes, where relevant.

4.2 Manly Local Environmental Plan 2013

The subject site is zoned E3 Environmental Management under the Manly LEP 2013.

1.2 Aims of Plan

- (1) This Plan aims to make local environmental planning provisions for land in Manly in accordance with the relevant standard environmental planning instrument under section 33A of the Act.*
- (2) The particular aims of this Plan are as follows:*
 - (a) in relation to all land in Manly:*
 - (i) to promote a high standard of urban design that responds to the existing or desired future character of areas, and*
 - (ii) to foster economic, environmental and social welfare so that Manly continues to develop as an accessible, sustainable, prosperous, and safe place to live, work or visit, and*
 - (iii) to ensure full and efficient use of existing social and physical infrastructure and the future provision of services and facilities to meet any increase in demand, and*
 - (iv) to ensure all development appropriately responds to environmental constraints and does not adversely affect the character, amenity or heritage of Manly or its existing permanent residential population,*
 - (b) in relation to residential development:*
 - (i) to provide and maintain a diverse range of housing opportunities and choices that encourages affordable housing to cater for an ageing population, changing demographics and all socio-economic groups, and*
 - (ii) to ensure high quality landscaped areas in the residential environment, and*
 - (iii) to encourage higher density residential development to be located close to major transport nodes, services and employment opportunities, and*

- (iv) to maintain active retail, business and other non-residential uses at street level while allowing for shop top housing in centres and offices at upper floors in local centres,*
- (c) in relation to business and the economy:*
 - (i) to encourage, provide and consolidate business opportunities for a range of uses in appropriate locations that support local employment, community services and economic growth in business centres and light industry zones, and*
 - (ii) to recognise that tourism is a major industry and employer in Manly and to encourage its growth and continuing viability while protecting the needs of the local community,*
- (d) in relation to transport, infrastructure and amenities:*
 - (i) to reduce private car dependency, increase the viability of various public transport modes, minimise conflict between pedestrians and vehicular movement systems and encourage walking and cycling while concentrating intensive land uses and trip generating activities in locations most accessible to public transport and centres, and*
 - (ii) to provide for a range of recreational and community service opportunities to meet the needs of residents and visitors to Manly and promote the efficient and equitable provisions of public services, infrastructure and amenities,*
- (e) in relation to heritage—to identify, protect, sustain, manage and conserve all heritage, including archaeological relics, sites and resources, places of Aboriginal heritage significance, heritage items (and their curtilages), heritage conservation areas and the cultural (natural and built) environmental heritage of Manly,*
- (f) in relation to the natural environment:*
 - (i) to conserve and enhance terrestrial, aquatic and riparian habitats, biodiversity, wildlife habitat corridors, remnant indigenous vegetation, geodiversity and natural watercourses, and*
 - (ii) to promote energy conservation, water cycle management (incorporating water conservation, water reuse, catchment management,*

stormwater pollution control and flood risk management) and water sensitive urban design, and

- (iii) to protect, enhance and manage environmentally sensitive land with special aesthetic, ecological, scientific, cultural or conservation values for the benefit of present and future generations, and*
- (iv) to protect existing landforms and natural drainage systems and minimise the risk to the community in areas subject to environmental hazards, particularly flooding, bush fires, acid sulfate soils, sea level rise, tsunami and landslip, and*
- (v) to provide a framework that facilitates and encourages measures to assist the adaptation of the local environment to mitigate the impacts of climate change, and*
- (vi) to give priority to retaining bushland for its own intrinsic value and as a recreational, educational and scientific resource,*
- (g) in relation to Manly's unique harbour, coastal lagoon and ocean beach setting:*
 - (i) to preserve and enhance the amenity of public places and areas visible from navigable water around Manly, and*
 - (ii) to retain open space, make more foreshore land available for public access and protect, restore and enhance riparian land along watercourses and foreshore bushland.*

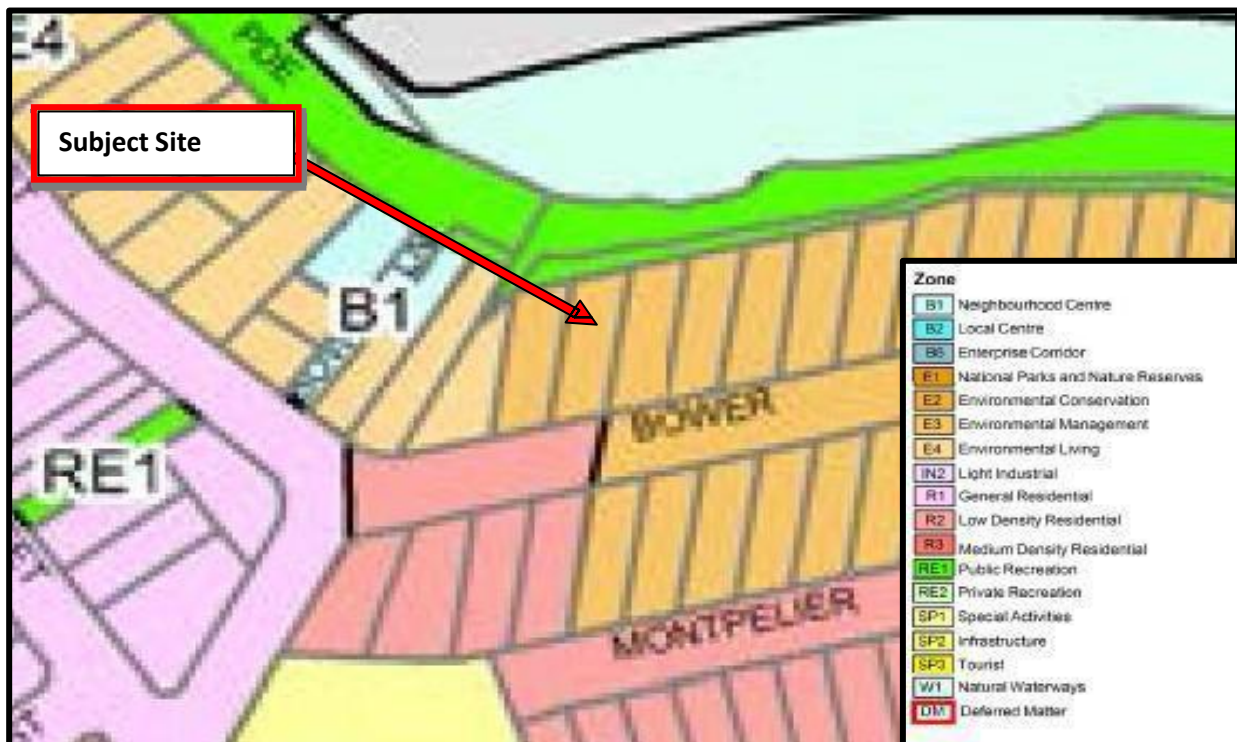
RESPONSE

The proposal accords with the above objectives, however, of particular importance to the subject proposal is the aim, namely part 2 (iv) of the plan which seeks to ensure that *all development appropriately responds to environmental constraints and does not adversely affect the character, amenity or heritage of Manly or its existing permanent residential population.*

This aim is endorsed by the proposed modification as the modification seeks to respond to a concern over amenity, particularly privacy, by proposing an appropriate remedy to address perceived privacy impacts in a manner that is consistent with Councils invoking of Development Control Plan controls and will result in a suitable urban design outcome.

The requested modification, namely the reduction in scale, but not effectiveness, of the required privacy screens to the internal living area windows and the removal of the vertical louvres to the existing balcony/deck and replacement with a planter box is a suitable and appropriate design response.

Zone E3 Environmental Management



2 Permitted without consent

Home-based child care; Home occupations

3 Permitted with consent

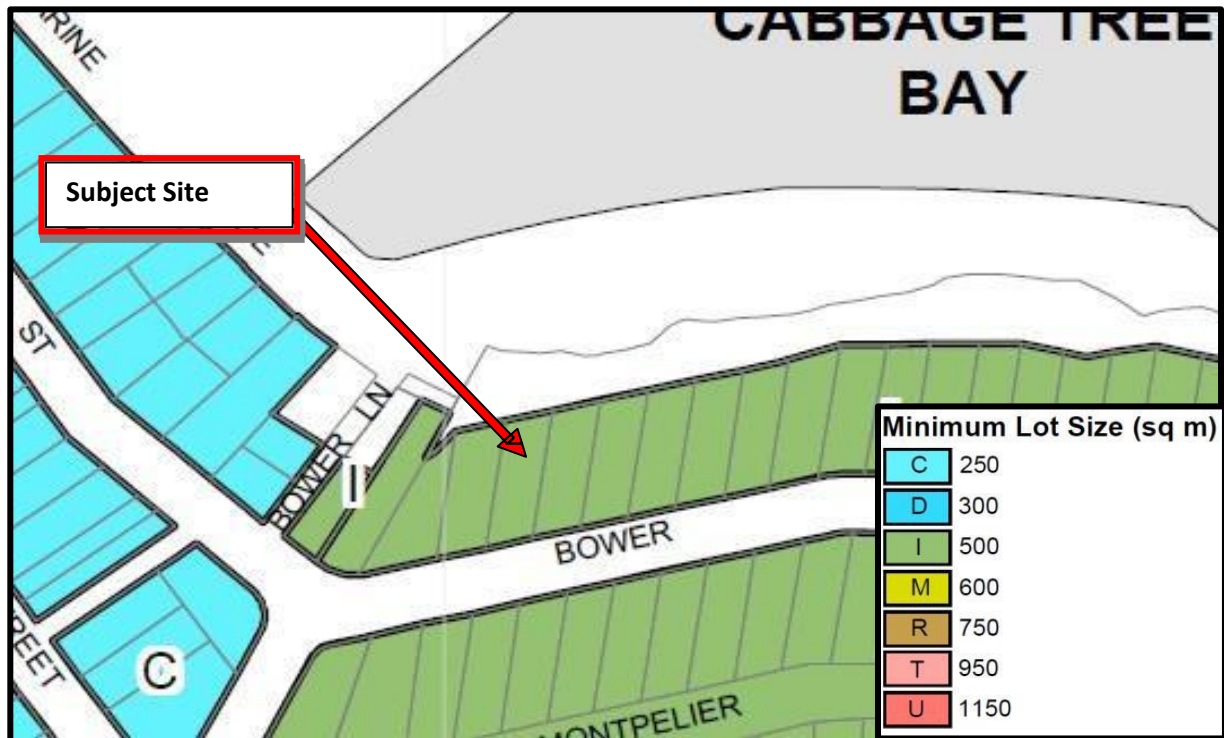
Bed and breakfast accommodation; Dwelling houses; Environmental protection works; Flood mitigation works; Health consulting rooms; Home businesses; Roads; Secondary dwellings; Water supply systems

4 Prohibited

Industries; Multi dwelling housing; Residential flat buildings; Retail premises; Seniors housing; Service stations; Warehouse or distribution centres; Any other development not specified in item 2 or 3

RESPONSE

The proposal is not a permitted use within the E3 Zone. The subject proposal relies upon recognised existing use rights.



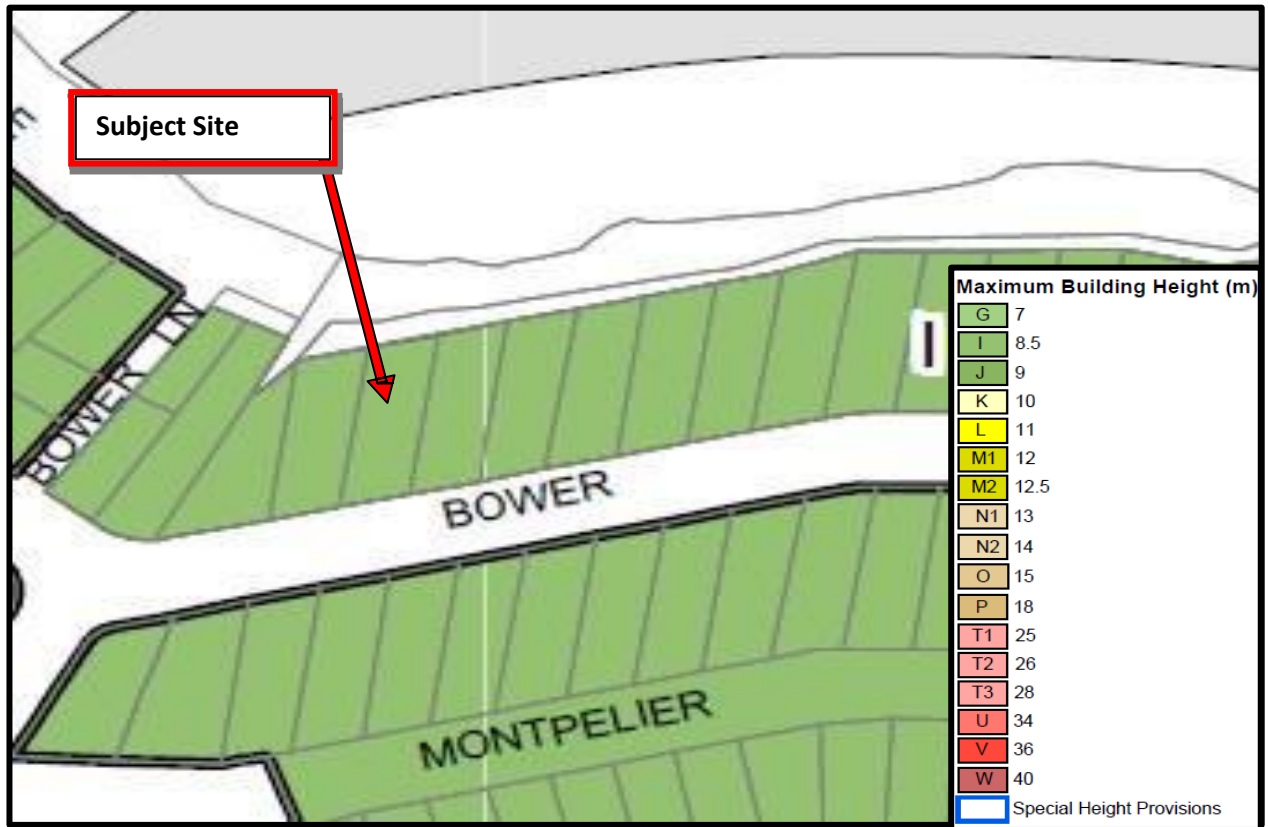
4.1 Minimum subdivision lot size

- (1) The objectives of this clause are as follows:
- (a) to retain the existing pattern of subdivision in residential zones and regulate the density of lots in specific locations to ensure lots have a minimum size that would be sufficient to provide a useable area for building and landscaping,
 - (b) to maintain the character of the locality and streetscape and, in particular, complement the prevailing subdivision patterns,
 - (c) to require larger lots where existing vegetation, topography, public views and natural features of land, including the foreshore, limit its subdivision potential,
 - (d) to ensure that the location of smaller lots maximises the use of existing infrastructure, public transport and pedestrian access to local facilities and services.

RESPONSE

Although no subdivision is yet proposed, the existing lot size of 698m² satisfies the above control.

Height of buildings



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

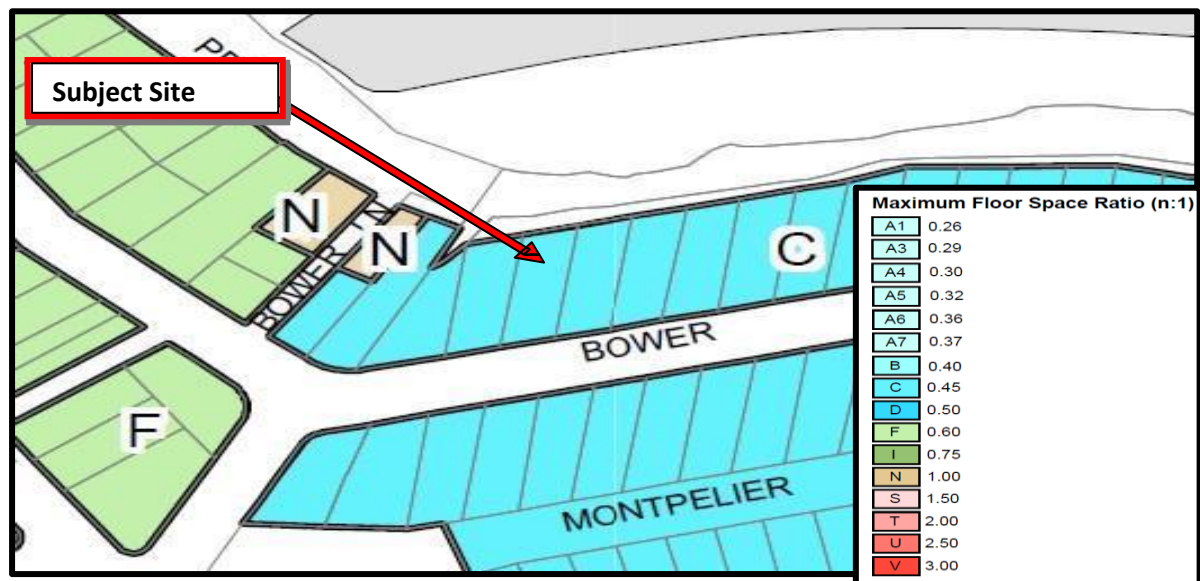
- (a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,
- (b) to control the bulk and scale of buildings,
- (c) to minimise disruption to the following:
 - (i) views to nearby residential development from public spaces (including the harbour and foreshores),
 - (ii) views from nearby residential development to public spaces (including the harbour and foreshores),
 - (iii) views between public spaces (including the harbour and foreshores),

- (d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,
 - (e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.
- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the [Height of Buildings Map](#).

RESPONSE

The proposal seeks to endorse objective (1)(b) by reducing the potential building bulk resulting from the required screens to the living area windows being reduced in bulk (but with enhanced effectiveness) and the incongruous screens to the existing balcony/deck being removed and replace with planter boxes.

Floor space ratio



- (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,

- (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,
 - (c) to maintain an appropriate visual 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,
 - (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.
- (2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the [Floor Space Ratio Map](#).
- (2A) Despite subclause (2), the floor space ratio for a building on land in Zone B2 Local Centre may exceed the maximum floor space ratio allowed under that subclause by up to 0.5:1 if the consent authority is satisfied that at least 50% of the gross floor area of the building will be used for the purpose of commercial premises.

RESPONSE

No changes are proposed to the existing approved Gross Floor Area.

4.6 Exceptions to development standards

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

RESPONSE

The proposed modification does not breach any of the development standards applicable to the subject site.

5.5 Development within the coastal zone

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

- (a) to provide for the protection of the coastal environment of the State for the benefit of both present and future generations through promoting the principles of ecologically sustainable development,*
- (b) to implement the principles in the NSW Coastal Policy, and in particular to:*
 - (i) protect, enhance, maintain and restore the coastal environment, its associated ecosystems, ecological processes and biological diversity and its water quality, and*
 - (ii) protect and preserve the natural, cultural, recreational and economic attributes of the NSW coast, and*
 - (iii) provide opportunities for pedestrian public access to and along the coastal foreshore, and*
 - (iv) recognise and accommodate coastal processes and climate change, and*
 - (v) protect amenity and scenic quality, and*
 - (vi) protect and preserve rock platforms, beach environments and beach amenity, and*
 - (vii) protect and preserve native coastal vegetation, and*
 - (viii) protect and preserve the marine environment, and*
 - (ix) ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area, and*
 - (x) ensure that decisions in relation to new development consider the broader and cumulative impacts on the catchment, and*
 - (xi) protect Aboriginal cultural places, values and customs, and*
 - (xii) protect and preserve items of heritage, archaeological or historical significance.*

- (2) Development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority has considered:
- (a) existing public access to and along the coastal foreshore for pedestrians (including persons with a disability) with a view to:
 - (i) maintaining existing public access and, where possible, improving that access, and
 - (ii) identifying opportunities for new public access, and
 - (b) the suitability of the proposed development, its relationship with the surrounding area and its impact on the natural scenic quality, taking into account:
 - (i) the type of the proposed development and any associated land uses or activities (including compatibility of any land-based and water-based coastal activities), and
 - (ii) the location, and
 - (iii) the bulk, scale, size and overall built form design of any building or work involved, and
 - (c) the impact of the proposed development on the amenity of the coastal foreshore including:
 - (i) any significant overshadowing of the coastal foreshore, and
 - (ii) any loss of views from a public place to the coastal foreshore, and
 - (d) how the visual amenity and scenic qualities of the coast, including coastal headlands, can be protected, and
 - (e) how biodiversity and ecosystems, including:
 - (i) native coastal vegetation and existing wildlife corridors, and
 - (ii) rock platforms, and
 - (iii) water quality of coastal waterbodies, and
 - (iv) native fauna and native flora, and their habitats, can be conserved, and

- (f) the cumulative impacts of the proposed development and other development on the coastal catchment.*
- (3) Development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority is satisfied that:*
 - (a) the proposed development will not impede or diminish, where practicable, the physical, land-based right of access of the public to or along the coastal foreshore, and*
 - (b) if effluent from the development is disposed of by a non-reticulated system, it will not have a negative effect on the water quality of the sea, or any beach, estuary, coastal lake, coastal creek or other similar body of water, or a rock platform, and*
 - (c) the proposed development will not discharge untreated stormwater into the sea, or any beach, estuary, coastal lake, coastal creek or other similar body of water, or a rock platform, and*
 - (d) the proposed development will not:*
 - (i) be significantly affected by coastal hazards, or*
 - (ii) have a significant impact on coastal hazards, or*
 - (iii) increase the risk of coastal hazards in relation to any other land.*

RESPONSE

The above objectives, where relevant, will be unaffected by the requested modifications however Objective 2 (b) (iii) will be endorsed by the requested removal of the privacy screen to the balcony/deck.

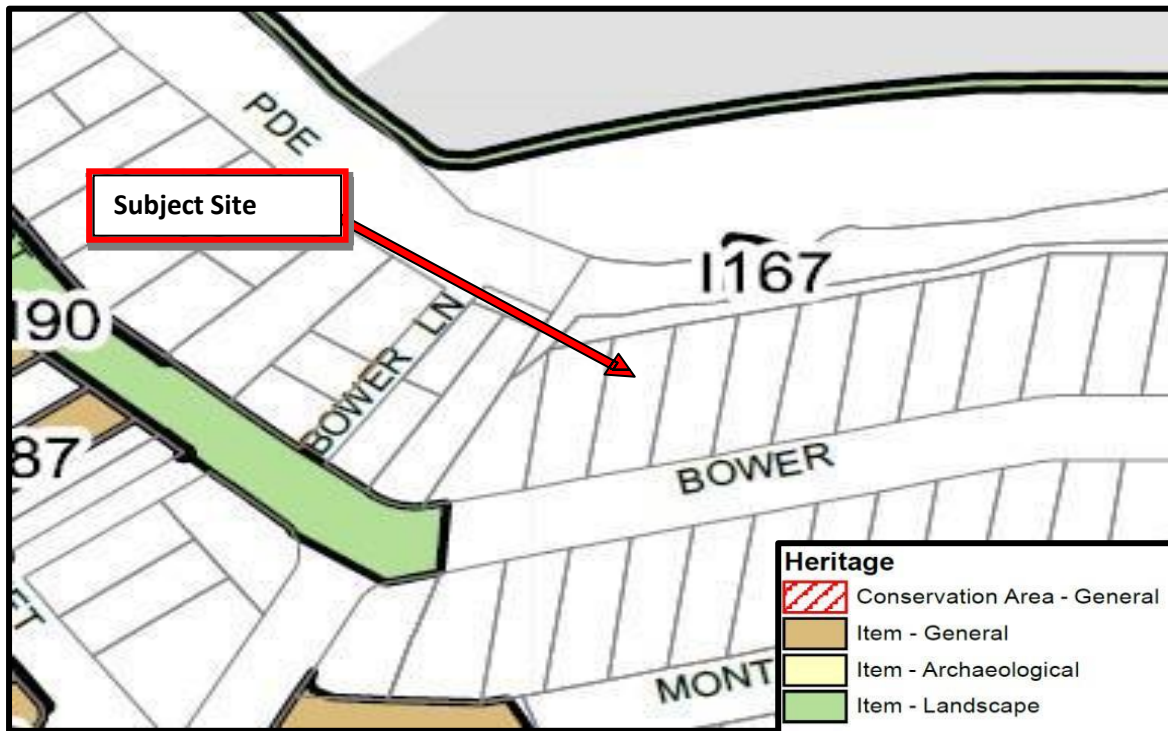
Preservation of trees or vegetation

- (1) The objective of this clause is to preserve the amenity of the area, including biodiversity values, through the preservation of trees and other vegetation.*

RESPONSE

No trees are proposed for removal.

Heritage conservation



(1) Objectives

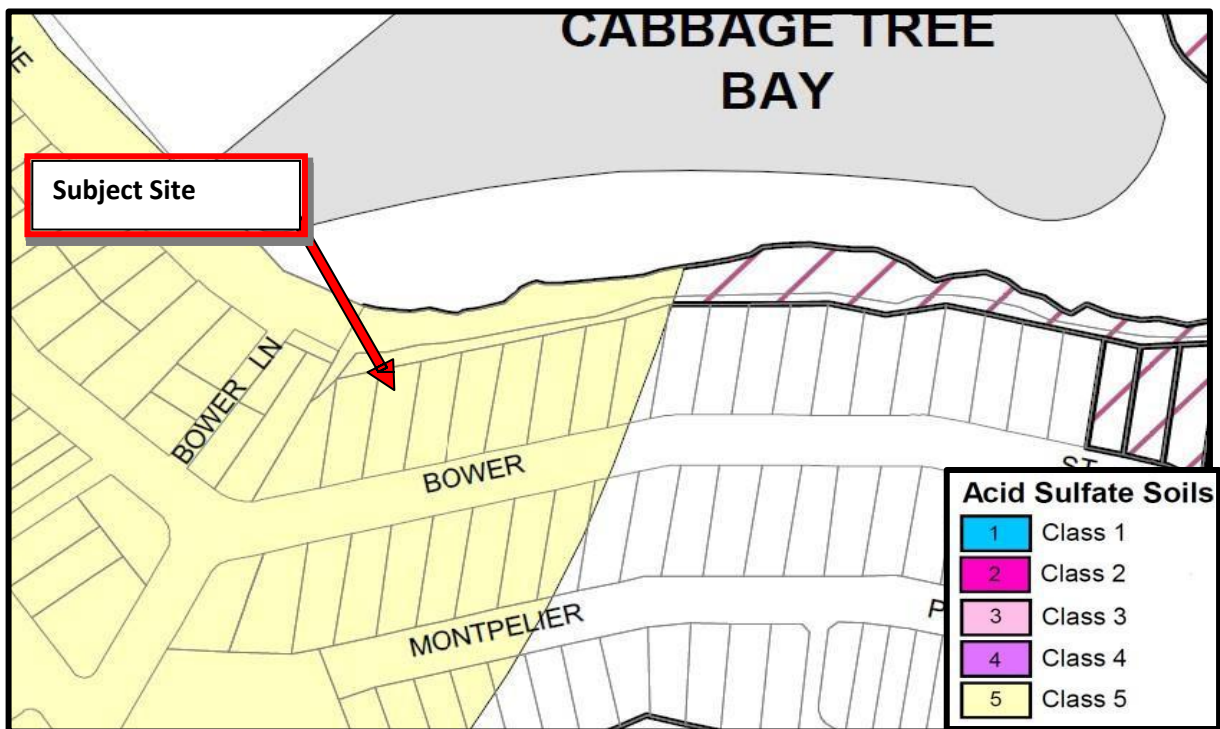
The objectives of this clause are as follows:

- (a) to conserve the environmental heritage of Manly,
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,
- (c) to conserve archaeological sites,
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.

RESPONSE

The subject site and the proposed modifications will not adversely impact upon heritage items identified under the MLEP.

Acid sulfate soils



- (1) *The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.*

RESPONSE

The subject site is identified as "Class 5" under the above Clause. The proposed modification will not affect the objectives of this control.

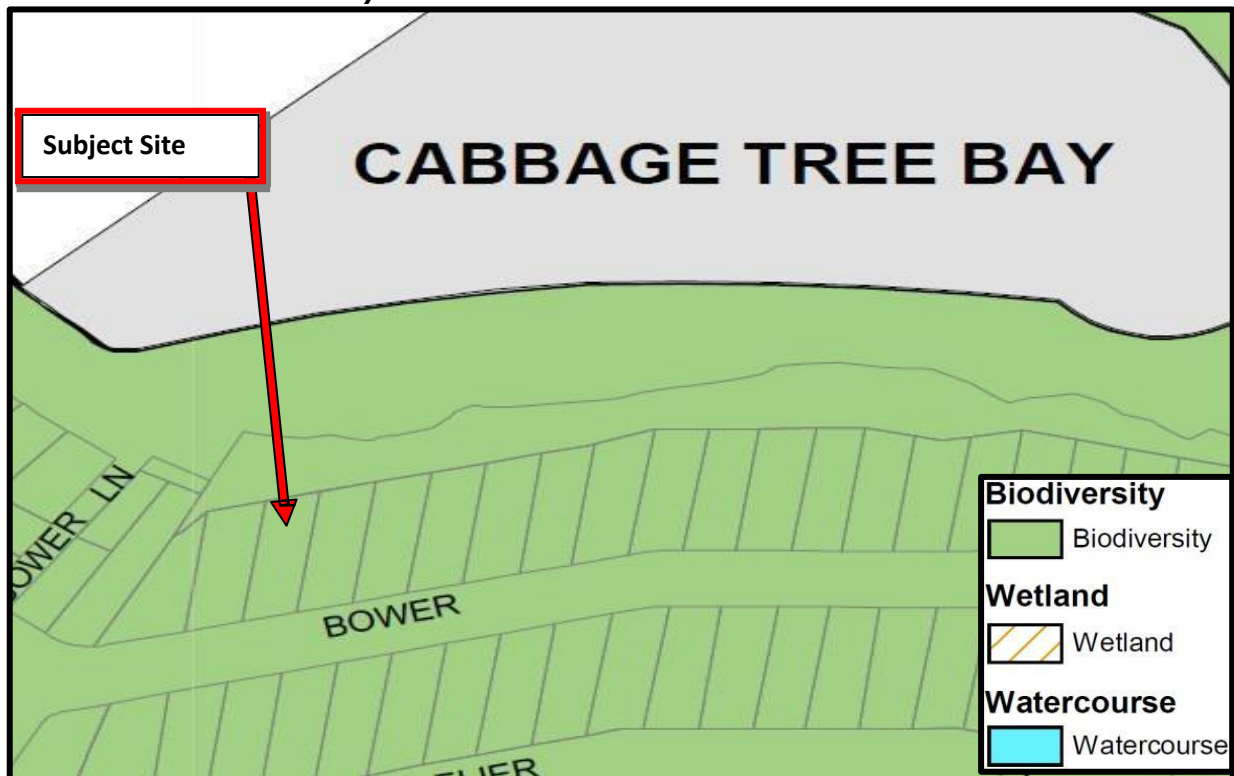
Earthworks

- (1) *The objectives of this clause are as follows:*
- (a) *to ensure that earthworks and associated groundwater dewatering for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land,*
 - (b) *to allow earthworks of a minor nature without requiring a separate development consent.*

RESPONSE

No earthworks are proposed.

6.5 Terrestrial biodiversity



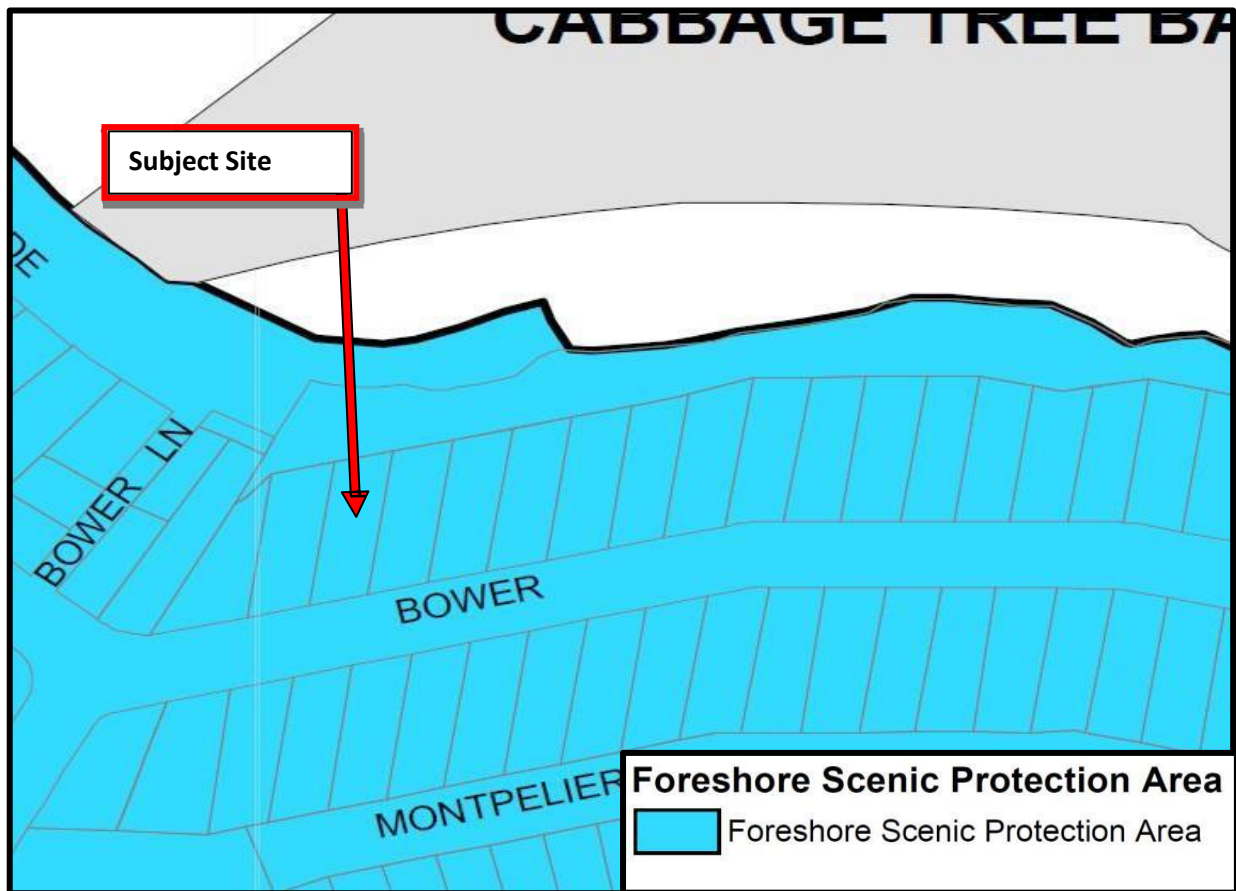
- (1) The objective of this clause is to maintain terrestrial biodiversity by:
 - (a) protecting native fauna and flora, and
 - (b) protecting the ecological processes necessary for their continued existence, and
 - (c) encouraging the conservation and recovery of native fauna and flora and their habitats.
- (2) This clause applies to land identified as "Biodiversity" on the [Terrestrial Biodiversity Map](#).
- (3) Before determining a development application for development on land to which this clause applies, the consent authority must consider:
 - (a) whether the development is likely to have:

- (i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and*
- (ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and*
- (iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*
- (iv) any adverse impact on the habitat elements providing connectivity on the land, and*
- (b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*
- (4) 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 any significant adverse environmental impact, or*
 - (b) if that impact cannot be reasonably avoided by adopting feasible alternatives—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.*

RESPONSE

No tree removal or disturbance of any areas of biodiversity value is proposed.

6.9 Foreshore scenic protection area



- (1) The objective of this clause is to protect visual aesthetic amenity and views to and from Sydney Harbour, the Pacific Ocean and the foreshore in Manly.
- (2) This clause applies to land that is shown as "Foreshore Scenic Protection Area" on the [Foreshore Scenic Protection Area Map](#).
- (3) Development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters:
 - (a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,

- (b) measures to protect and improve scenic qualities of the coastline,*
- (c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,*
- (d) measures to reduce the potential for conflict between land-based and water-based coastal activities.*

RESPONSE

The preservation of the amenity of the locality in terms of visual presence, privacy, solar access and views will be enhanced by the requested modifications.

4.3 Manly Development Control Plan 2013

The *Manly Development Control Plan 2013* (DCP) applies to all forms of development within the Manly locality.

1.7 Aims and Objectives of this Plan

The general aims of this plan are to:

- a) Ensure that development contributes to the quality of the natural and built environments.*
- b) Encourage development that contributes to the quality of our streetscapes and townscapes.*
- c) Ensure that development is economically, socially and environmentally sustainable and to require the principles of ecologically sustainable development to be taken into consideration when determining development applications.*
- d) Ensure future development has consideration for the needs of all members of the community.*
- e) Ensure development positively responds to the qualities of the site and its context.*

f) Ensure development positively responds to the heritage and character of the surrounding area.

RESPONSE

Aims and objectives of the DCP, where relevant, have been addressed and endorsed by the proposed modifications to preserve and where possible, enhance the character of the surrounding area as expressed in (b) above.

Streetscapes and Townscapes

Relevant DCP objectives to be met include the following:

Streetscape

Objective 1) To minimise any negative visual impact of walls, fences and carparking on the street frontage.

Objective 2) To ensure development generally viewed from the street complements the identified streetscape.

Objective 3) To encourage soft landscape alternatives when front fences and walls may not be appropriate.

Townscape

Objective 4) To ensure that all parking provision is designed and sited to respond to and respect the prevailing townscape.

Objective 5) To assist in maintaining the character of the locality. Objective 6) To recognise the importance of pedestrian movements and townscape design in the strengthening and promotion of retail centres.

Objective 7) To minimise negative visual impact, in particular at the arterial road entry point into the Municipality, so as to promote the townscape qualities of Manly.

Comment

The proposed modifications, if approved, will remain consistent with the established streetscape on this side of Bower Street and will endorse Objective 1) above by reducing the negative visual impact of the required “wall” to the balcony facing the pedestrian walkway.

Streetscape (Residential areas)

Complementary Design and Visual Improvement

- a) Development in the streetscape (including buildings, fences and landscaping) should be designed to:
- i) complement the predominant building form, distinct building character, building material and finishes and architectural style in the locality;
 - ii) ensure the bulk and design of development does not detract from the scenic amenity of the area (see also paragraph 3.4 Amenity) when viewed from surrounding public and private land;
 - iii) maintain building heights at a compatible scale with adjacent development particularly at the street frontage and building alignment, whilst also having regard to the LEP height standard and the controls of this plan concerning wall and roof height and the number of storeys;
 - iv) avoid elevated structures constructed on extended columns that dominate adjoining sites such as elevated open space terraces, pools, driveways and the like. See also paragraph 4.1.8 Development on Sloping Sites and paragraph 4.1.9 Swimming Pools, Spas and Water Features;
 - v) address and compliment the built form and style any heritage property in the vicinity to preserve the integrity of the item and its setting. See also paragraph 3.2 Heritage Considerations;
 - vi) visually improve existing streetscapes through innovative design solutions; and
 - vii) incorporate building materials and finishes complementing those dominant in the locality. The use of plantation and/or recycled timbers in construction and finishes is encouraged. See also paragraph 3.5.7 Building Construction and Design.

Setback Principles in Low Density Areas

- b) In lower density areas including LEP Zones R2, E3 & E4, setbacks should be maximised to enable open space to dominate buildings, especially on the foreshore.

RESPONSE

The proposed modifications will reduce the perceived bulk of the building when viewed from the public waterway along the ocean foreshore. This will be consistent with other developments in the locality.

Front Fences and Gates

- a) Notwithstanding maximum height provisions for fencing at paragraph 4.1.10; the siting, height and form of boundary fences and walls should reflect the fencing characteristic of the locality, particularly those of adjacent properties. All fencing and wall materials must be compatible with the overall landscape character and the general appearance of the building and the streetscape.*
- b) Boundary fences or walls must not be erected where they would conflict with the local character.*
- c) Front fences and gates must be constructed in materials that complement the architectural style and period of the dwelling and improve the streetscape. In particular, fencing adjacent to a public road or place must not be constructed in metal cladding, powder coated or otherwise.*
- d) Gates must not encroach on public land when opening or closing.*

RESPONSE

Not applicable to this modification application.

Roofs and Dormer Windows

- a) Roof forms should complement, but not necessarily replicate the predominant form in the locality and in particular those of adjacent buildings.*
- b) Roofs should be designed to avoid or minimise view loss and reflectivity.*
- c) Dormer windows and windows in the roof must be designed and placed to compliment the roof structure and reflect the character of the building. In particular, such windows are not permitted on the street frontage of the building where there is no precedent in the streetscape, especially on adjoining dwellings.*

RESPONSE

No changes are proposed to the approved roofline.

Garages, Carports and Hardstand Areas

- a) Garages, carports and hardstand areas must be designed and sited in a manner that does not to dominate the street frontage by:*
 - i) its roof form, material choice and detailing by being subservient to the associated dwelling; and*
 - ii) being compatible with the streetscape and the location in relation to front setback criteria.*
- b) Exceptions to setback criteria referred to in this paragraph may be considered where parking structures are a positive element of the streetscape.*

RESPONSE

Not applicable.

Garbage Areas

Buildings with more than 1 dwelling require garbage storage enclosures which are:

- a) not visible off site;*
- b) integrated into the building design;*
- c) unobtrusive and blend in with the design of front fences and walls when forward of the building; and*
- d) located and designed with consideration given to the amenity of adjoining properties.*

RESPONSE

Not applicable to this modification application.

Landscaping Design

Relevant DCP objectives to satisfy in relation to this part include the following:

Objective 1) To encourage appropriate tree planting and maintenance of existing vegetation.

Objective 2) To retain and augment important landscape features and vegetation remnant populations of native flora and fauna.

Landscape Character

a) The design, quantity and quality of open space should respond to the character of the area. In particular:

i) In low density areas (including LEP Zones R2 Low Density, E3 Environmental Management and E4 Environmental Living); open space should dominate the site. Setbacks of buildings from open space should also be maximised to enable open space to dominate buildings, especially when viewed to and from Sydney Harbour, the Ocean and the foreshore.

ii) In higher density areas the provision of adequate private open space and landscaped areas are to maximise residential amenity. Site works must be minimised to protect natural features.

iii) In areas adjacent to native vegetation, the design of development should be sympathetic to the natural environment in order to protect and enhance the area as habitat for native fauna.

iv) In areas of habitat for the long-nosed bandicoot (see paragraph 5.4.2), landscape design must include native plant species to provide new and/or improved low dense clumping habitat to provide for potential foraging and nesting. The planting schedule should comprise species such as *Lomandra* sp., *Dianella* sp., *Banksia spinulosa*, *Caustis* sp., *Xanthorrhoea* sp., *Isolepis* sp., *Juncus* sp., *Adiantum* sp., *Calochlaena* sp., *Callistemon* sp., *Grevillea juniperina*, *Gleichenia* sp., *Grevillea* 'Robyn Gordon' and tussocky native grasses (eg. Kangaroo Grass)

b) Planting criteria including Native Plant Species and Amenity

i) Landscaped Areas must be capable of supporting new native tree species that are typically expected to reach a mature height of 10m notwithstanding the minimum dimension requirements at paragraph 4.1.5.2 of this plan.

ii) The use of locally occurring native plant species is preferred to assist in providing habitat for local fauna; and preserve threatened native plants.

iii) Trees should not be positioned in locations that may significantly affect neighbouring properties in terms of:

Blocking winter sunlight to either living rooms, private open space or solar collectors; or where the proposed location of the tree may be otherwise positioned to minimise any significant loss of views

Undercroft areas

c) Undercroft areas must be presented as a positive space and integrated into the design of the building by use of appropriate landscaping and/or the retention of natural features and vegetation where possible, having regard to the volume of the space and its orientation. In relation to sloping sites (see also paragraph

4.1.8) and in lower density areas, any supporting undercroft structures must be minimised.

RESPONSE

Not applicable to this modification application.

Landscape/Tree Preservation

Relevant DCP objectives to be met in relation to this part include:

Objective 1) To ensure that development protects and conserves the natural environment.

Objective 2) To protect and preserve urban bushland areas in recognition of their:

- Value as part of the natural heritage
- Aesthetic value; and
- Value as recreational, educational and scientific resource.

Objective 3) To protect and prevent clearing of remnant and or rehabilitated riparian land value as a recreational, educational and scientific resource.

a) Developments must maximise the retention and protection of natural landscape features including significant rock outcrops and vegetation

including canopy trees and under-storey vegetation, which would require a tree permit under this plan.

- b) The siting of buildings and landscaping must protect local waterways, drainage lines and riparian land by:*
 - i) protecting existing riparian native vegetation and/or rehabilitating riparian land;*
 - ii) retaining natural ground levels; and*
 - iii) providing a buffer of native planting to existing vegetation, particularly when adjoining land in LEP Zones RE1, RE2, E1 & E2 as further detailed in paragraph 4.1.4.6 of this plan.*
- c) In relation to conservation and energy efficiency, plant species should be retained, selected and planted to achieve:*
 - i) shaded buildings in summer;*
 - ii) reduced glare from hard surfaces;*
 - iii) sunlight access into living rooms in cooler months;*
 - iv) cooling air currents channelled into the dwelling in summer;*
 - v) windbreaks where desirable; and*
 - vi) landscape construction taking advantage of, and using existing site materials, recycled materials and materials that have a low embodied energy.*

RESPONSE

Not applicable to this modification application.

Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)

Relevant DCP objectives to be met in relation to these paragraphs include the following:

Objective 1) To protect the amenity of existing and future residents and minimise the impact of new development, including alterations and

additions, on privacy, views, solar access and general amenity of adjoining and nearby properties including noise and vibration impacts.

Objective 2) To maximise the provision of open space for recreational needs of the occupier and provide privacy and shade.

Designing for Amenity

a) Careful design consideration should be given to minimise loss of sunlight, privacy, views, noise and vibration impacts and other nuisance (odour, fumes etc) for neighbouring properties and/or other occupants of the development property. This is especially relevant in higher density areas

and in relation to development adjacent to smaller developments.

b) Development should not detract from the scenic amenity of the area. In particular, the apparent bulk and design of a development should be considered and assessed from surrounding public and private viewpoints.

c) The use of material and finishes is to protect amenity for neighbours in terms of reflectivity. The reflectivity of roofs and glass used on external walls will be minimal in accordance with industry standards. See also paragraph

2.1.6 regards DA lodgement requirements for material and finishes.

RESPONSE

The modification sought by this application will result in privacy measures by way of vertical screens for the entire length of the new constructed window opening facing the common boundary with 86 Bower Street. The detailed plans submitted with this modification application indicate the additional measures to be incorporated within the vertical screens to prevent looking in a downward direction towards 86 Bower Street and whilst the proposed screens are less bulky than the screens approved under the parent DA, the privacy measures sought will be maintained.

This modification application also seeks the deletion of the condition of consent imposed upon the existing, unchanged balcony/deck requiring the continuation of the vertical louvred panels for the extent of the deck facing 86 Bower Street.

Notwithstanding the above, the applicant is able to provide a planter box as detailed in the attached architectural plans along part of the balcony/deck facing 86 Bower Street which will reduce opportunities for overlooking back onto No. 86. This is seen as a reasonable outcome when assessed against Councils consistent approach in the locality in not requiring screening between balconies, decks and the like within this locality.

The proposal by the deletion of the excessively bulky privacy screens will be required by the condition of consent No. 8 will accord with the following objective of the above control.

d) Development should not detract from the scenic amenity of the area. In particular, the apparent bulk and design of a development should be considered and assessed from surrounding public and private viewpoints.

It is also relevant to consider the absence of any privacy screens, landscaping or the like erected on or near to the common boundary between 84 and 86 Bower Street as the earlier photographs clearly indicate the removal of existing shade sail present on the subject site in photographs dated June 2011. These photographs also clearly indicate the use of the subject balcony/deck for outdoor entertaining use and enjoyment of the solar access and views available to users of the subject balcony/deck. It is reasonable to conclude that if privacy was a significant concern to the occupants of 86 Bower Street, some ameliorative measures they have been put in place during the ambit of the current tenure of the subject site at No. 86.

Overshadowing Adjoining Open Space

In relation to sunlight to private open space of adjacent properties:

- a) New development (including alterations and additions) must not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm at the winter solstice (21 June) ; or*
- b) Where there is no winter sunlight available to open space of adjacent properties from 9am to 3pm, the calculations for the purposes of sunlight will relate to the equinox in March and September from 9am to 3pm.*

RESPONSE

Solar access to adjoining properties will not be materially impacted by the proposed modifications.

Maintaining Solar Access into Living Rooms of Adjacent Properties

In relation to sunlight to the windows or glazed doors to living rooms of adjacent properties:

- a) for adjacent buildings with an east-west orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors to living rooms for a period of at least 2 hours from 9am to 3pm on the winter solstice (21 June);*
- b) for adjacent buildings with a north-south orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors of living rooms for a period of at least 4 hours from 9am to 3pm on the winter solstice (21 June);*
- c) for all adjacent buildings (with either orientation) no reduction in solar access is permitted to any window where existing windows enjoy less than the minimum number of sunlight hours specified above.*

RESPONSE

Solar access to living rooms of adjacent sites will be unaffected by the proposed modifications.

Overshadowing Solar Systems

In relation to solar access to hot water systems and solar collectors new/proposed development must:

- a) not overshadow any existing adjacent solar collectors or hot water heaters between 9am and 3pm at any time of the year; or where there is no existing hot water systems and solar collectors,*
- b) maintain solar access to the north facing roofs of existing dwellings (generally within 45 degrees west to 45 degrees east) to a fixed minimum roof area of 10sqm capable of accommodating solar collectors or hot*

water heaters that will not be overshadowed by the proposed development between 9am and 3pm at any time of the year.

RESPONSE

No solar systems or collectors will be overshadowed by the works incorporated within the proposed modifications.

Overshadowing Clothes Drying Areas

In relation to solar access for clothes drying, an area of the rear yard of minimum dimensions 7.5m by 2m for clothes drying should be free of shade between 10am and 2pm all year.

RESPONSE

Adjacent clothes drying areas will maintain current levels of solar access.

Excessive Glare or Reflectivity Nuisance

All external material and finishes incorporated into the development must consider and mitigate any excessive glare or reflectivity nuisance.

RESPONSE

See the submitted Schedule of Finishes accompanying the Modification Application documentation.

Privacy and Security

Relevant DCP objectives to satisfy in relation to this part include the following: 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;

Mitigating direct viewing between windows and/or outdoor living areas of closely spaced building and adjacent buildings.

Objective 2) To encourage awareness of neighbourhood security.

RESPONSE

It is not considered that the proposed modifications will result in any loss of privacy from the balcony/deck over and above the current level of privacy which has been in effect for over three decades. The provision of planter boxes as shown in the detailed architectural plans will improve the level of privacy over the existing.

Window Design and Orientation

- a) Use narrow, translucent or obscured glass windows to maximise privacy where necessary.*
- b) When building close to boundaries, windows must be off-set from those in the adjacent building to restrict direct viewing and to mitigate impacts on privacy.*

RESPONSE

Windows will remain as approved.

Balconies and Terraces

Architectural or landscape screens must be provided to balconies and terraces to limit overlooking nearby properties.

Comment

No balconies or terraces are proposed however, in accordance with the above control, a landscaped screen in the form of a planter box is proposed to the existing, unchanged balcony/deck which will give effect to the above control by limiting overlooking of nearby properties.

Casual Surveillance

In order to provide for the casual surveillance of the street and to provide a sense of security:

- a) some rooms should be oriented to the street;*
- b) sight lines to the street frontage from a window of at least one habitable room should not be obscured by trees or any other object;*

- c) fences, walls and landscaping should minimise opportunities for concealment and encourage social interaction; and*
- d) in areas of high street noise, double glazing on windows is preferred, rather than the construction of high fences or walls as a sound attenuation measure.*

RESPONSE

Although no surveillance is possible to Bower Street, the Marine Parade frontage is able to be viewed from terraces facing this frontage.

Acoustical Privacy (Noise Nuisance)

- a) Consideration must be given to the protection of acoustical privacy in the design and management of development.*
- b) Proposed development and activities likely to generate noise including certain outdoor living areas like communal areas in Boarding Houses, outdoor open space, driveways, plant equipment including pool pumps and the like should be located in a manner which considers the acoustical privacy of neighbours including neighbouring bedrooms and living areas.*

RESPONSE

Acoustic privacy impacts from the proposed modifications will be unchanged from the level contemplated by the approved works. It should be noted however that the locality abuts a highly trafficked pedestrian walkway and has a relatively high ambient noise level.

Maintenance of Views

Relevant DCP objectives to be satisfied in relation to this paragraph include the following:

Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.

Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or

buildings from both private property and public places (including roads and footpaths).

Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.

- a) The design of any development, including the footprint and form of the roof is to minimise the loss of views from neighbouring and nearby dwellings and from public spaces.*
- b) Views between and over buildings are to be maximised and exceptions to side boundary setbacks, including zero setback will not be considered if they contribute to loss of primary views from living areas.*
- c) Templates may be required to indicate the height, bulk and positioning of the proposed development and to assist Council in determining that view sharing is maximised and loss of views is minimised. The templates are to remain in place until the application is determined. A registered surveyor will certify the height and positioning of the templates.*

RESPONSE

The proposal will have no impact upon views from public spaces however the view from the existing balcony/deck at 84 Bower Street will have an improved view from the primary living area.

Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)

Relevant objectives in relation to this part include the following:

Objective 1) To ensure the principles of ecologically sustainable development are taken into consideration within a consistent and integrated planning framework that achieves environmental, economic and social sustainability in the short, medium and long term.

Objective 2) To encourage the retention and adaptation of existing dwellings including a preference for adaptive reuse of buildings rather than total demolition. Where retention and adaption is not possible, Council encourages the use of building materials and techniques that are energy efficient, non- harmful and environmentally sustainable.

Objective 3) To minimise waste generated by development and embodied in the building materials and processes through demolition.

Objective 4) To encourage the use of recycled materials in landscape construction works.

Objective 5) To encourage the establishment of vegetable gardens and the planting of fruit trees.

Objective 6) To encourage energy efficient building design, construction and practices, that reduce energy consumption (primarily for heating and cooling), reduce the use of non-renewable fossil fuels, minimise air pollution, greenhouse gas emissions and reduce energy bills.

Objective 7) To require that residential site planning and building design optimise solar access to land and buildings.

Objective 8) To site and design development to optimise energy conservation and sustainability in accordance with BASIX legislation and encourage development to exceed requirement particularly to ensure energy efficient use of energy for internal heating and cooling.

See also paragraph 2.1.7 Lodgement Requirements.

Objective 9) To site and design development to optimise energy conservation (in accordance with the energy hierarchy) and sustainability to which BASIX does not apply.

Objective 10) To ensure non-residential development involving a gross total floor area of greater than 500 sqm set and meet criteria for energy efficiency/conservation through an Energy Performance Report.

Objective 11) To ensure non-residential development complies with the Building Code of Australia energy efficiency provisions.

RESPONSE

The approved proposal is accompanied by a BASIX certificate containing recommendations to be incorporated within the proposal.

Solar Access

Building Form, Design and Orientation

- a) *Maximise the length of the north facing walls of living areas where site constraints allow. Where site constraints do not allow, aim to implement solar assisted techniques to compensate for inflexible building forms.*
- b) *In achieving passive solar energy efficiency in building, the 'form' of the building can be a significant factor. In an ideal situation, buildings would be proportioned to ensure maximum solar access, with north facing walls up to 50 percent longer than east and west facing walls. However, the constraints provided by Manly's existing urban environment, means that the ideal situation does not always occur. Invariably, on individual sites, orientation to the street, lot size and shape, and adjacent buildings will significantly influence the proportions and form of a building.*
- c) *Windows should be rated under the Window Energy Rating Scheme (www.wers.net) and the Building Code of Australia Section J - Part 2 Glazing.*

RESPONSE

Solar access to the adjacent site could be marginally improved by the removal of the proposed vertical screen to the existing balcony/deck.

Solar Shading Devices

Whilst the design of buildings should take advantage of winter sun, there is an equal need to provide protection from the severity of summer sun. There is a need to control summer sun penetration and prevent the overheating of the building. This can be achieved using appropriate solar shading devices. The most effective way of controlling overheating of a dwelling is to prevent summer sun from reaching glazed areas.

- a) *The design of buildings may reduce summer sun penetration to north, east and west facing walls of buildings incorporated by the use of external solar shading devices, such as; awnings, external venetians, balconies, pergolas, eaves, overhangs, sails and the like.*
- b) *The minimum projection width for north facing overhangs, or shading devices, should be a width equivalent to at least 45 percent of the height of the shaded opening, measured from the bottom of the glass, to be shaded.*

RESPONSE

Solar shading devices have not been incorporated into the design.

Building Design and Orientation to prevailing wind

- a) Buildings are to be orientated to benefit from cooling summer breezes (generally easterly/north easterly in Manly) where possible.*
- b) Buildings are to provide for cross ventilation by locating windows and openings in line with both each other and the prevailing breezes.*

RESPONSE

The existing orientation of the building facing the cooling summer breezes will be retained.

Location and area of openings

- a) The aggregate opening or openable size of greater than 5 percent of the floor area is required for any occupied room to ensure minimum requirement for ventilation in this plan.*
- b) Locate windows and openings in line with each other, and with the prevailing breezes to assist ventilation so that air can pass through a building from one side to the other, replacing warm inside air with cooler outside air.*
- c) Consider the use of solar or naturally activated exhaust fans to ventilate external walls. This also keeps living areas cool in summer and dry in winter;*
- d) Rooms in residential flat buildings which access exposed balconies are to include a separate opening window as well as a door.*

RESPONSE

The proposal satisfies the provisions of the Building Code of Australia.

Mechanical Systems

- a) If air-conditioning is required, ensure it has sufficient controls so it is used only when required, including on/off programming schedules, after hours and holiday scheduling, and cooling and heating based on occupancy;*
- b) Ensure any air-conditioning system is well insulated, particularly those located in roof space.*

- c) Consider directing air-conditioning only to areas where it is needed, and relying on natural ventilation for the remaining part of the building;
- d) Use a combination of passive methods, such as direct solar access, window shading, appropriate insulation and sealing, and natural ventilation to reduce the overall use of mechanised systems;
- e) Ensure cooking exhaust systems are not oversized in respect of their proposed use, and fit time controls to exhaust fans so that they switch off after a few minutes, or sensors to activate them during cooking;
- f) In industrial units and warehouses, locate goods doors away from areas that may require mechanised heating or cooling;
- g) Depending on the amount of movement, consider rapidly closing doors, plastic strip curtains or pneumatic seals for commercial and industrial buildings;
- h) Cool small office buildings by reverse cycle air-conditioning units that can be controlled individually and operated independently of the rest of the building if needed out-of-hours; Hotels should use a card system so air-conditioning and lighting in each guest room is switched off when the room is vacated;
- i) Install appropriately sized cooling and heat plant and equipment; and
- j) Investigate the use of cooling and heating energy efficiency opportunities including economy cycles, night purging, variable speed drives, humidity controls and electronic expansion valves.

RESPONSE

Not applicable.

Building Construction and Design Environmentally Sound Building Materials

- a) Where possible, reuse existing site materials and materials that have a low embodied energy. That is, materials that have the least impact on the environment in production.
- b) Building materials should be selected to increase the energy efficiency of the building, and to minimise damage to the environment. In particular, the

use of plantation and recycled timber is encouraged and no rainforest timbers or timbers cut from old growth forests are to be used in Manly. Building Specification for timber should specify plantation or regrowth timbers, or timbers grown on Australian farms or State Forest plantations, or recycled timbers. Recommended building timbers are located at Schedule 8 of this plan.

c) Material choice should also take account of environmental considerations, namely:

i) abundant or renewable resources;

ii) energy efficient materials, with low embodied energy;

iii) recycled materials;

iv) non-polluting materials;

v) environmentally acceptable production methods;

vi) durable materials, with low maintenance; and

vii) recyclable and reusable materials.

d) Wood certified by the Forest Stewardship Council known as 'Good Wood' must be utilised where possible.

RESPONSE

Where practical and possible, the proposal will endorse the above.

4.1 Residential Development Controls

Relevant DCP objectives to be met in relation to residential development include the following:

Objective 1) To delineate by means of development control the nature and intended future of the residential areas of Manly.

Objective 2) To provide for a variety of housing types and densities while maintaining the existing character of residential areas of Manly.

Objective 3) To ensure that building form, including alterations and additions, does not degrade the amenity of surrounding residences, the existing environmental quality of the environment or the aesthetic quality of Manly.

Objective 4) To improve the quality of the residential areas by encouraging landscaping and greater flexibility of design in both new development and renovations.

Objective 5) To enable population growth without having adverse effects on the character, amenity and natural environment of the residential areas.

Objective 6) To enable other land uses that are compatible with the character and amenity of the locality.

Objective 7) To ensure full and efficient use of existing social and physical infrastructure and the future provision of services and facilities to meet any increased demand.

Comment

The proposal seeks to endorse the above objectives by seeking the removal of a potentially "foreign" element (namely vertical screens for the entire length of the existing balcony/deck).

4.1.1 Dwelling Density and Subdivision

4.1, the density controls in conjunction with other controls in this plan are also important means of prescribing the nature and intended future of the residential areas of Manly.

Relevant DCP objectives to be satisfied in relation to this part include:

Objective 1) To promote a variety of dwelling types and residential environments in Manly.

Objective 2) To limit the impact of residential development on existing vegetation, waterways, riparian land and the topography.

Objective 3) To promote a variety of allotment sizes, residential environments and housing diversity.

Objective 4) To maintain the character of the locality and streetscape.

Objective 5) To maximise the use of existing infrastructure.

RESPONSE

The proposed modification seeks to maintain the character of the locality as expressed within the minutes of the NBLPP of 29 June 2020 as follows –

All of the ocean foreshore lots along Bower Street (and Marine Parade) are sloping sites where most of the dwellings and outdoor terrace/deck areas all overlook one another. This is an inevitable consequence of the sloping nature of these types of sites. The subject site and the adjoining site are typical examples of foreshore lots.

4.1.1.1 Residential Density

This section contains maximum permissible residential density controls which generally apply to land identified on the LEP Lot Size Map and determine the maximum number of dwellings that may be achieved on any one parcel of land.

- a) The maximum permissible residential density control at Figure 24 - Minimum Residential Density applies to land identified in Residential Density Areas on the Minimum Residential Density Map at Schedule 1 - Map A in this plan.*

Figure 24 - Minimum Residential Density determines the maximum number of dwellings that may be achieved on any one development site. This figure indicates the minimum site area required for every dwelling contained on a site. For example, if a density control of 300sqm per dwelling applies to a site with a site area of 600sqm the density control would allow for a maximum of 2 dwellings.

- b) For the purposes of calculating the residential density control for battle-axe lots, the area of the access handle is excluded from the site area, consistent with the provisions for minimum subdivision lot size in LEP clause 4.1(3A).*

RESPONSE

No changes are proposed to the existing Residential Density established by the existing use of the subject site.

4.1.2 Height of Buildings

(Incorporating Wall Height, Number of Storeys & Roof Height).

- a) LEP Zones where numeric height controls in this DCP apply Height controls under paragraph 4.1.2 of this plan apply to development in LEP Zones R1, R2, R3, E3 and E4. This part of the DCP does not apply to development of other lands subject to the LEP Height of Building standard identified on the LEP Height of Building Map. See also paragraph 4.2 of this plan in relation to height controls and considerations in the LEP Business Zones.
- b) Exceptions to Height Where an existing building exceeds the maximum height controls in this plan or the height of building standards in the LEP, any alterations and/or additions to the building must not increase the overall height of the existing building.

Wall Height

- a) Within the LEP Height of Buildings development standard, the maximum external wall height is calculated based on the slope of the land under the proposed wall. Figures 26, 27 and 28 provide guidelines for determining the maximum height of external walls based on the particular slope of the land along the length of these proposed walls. The maximum wall height control will also vary from one building, elevation or part elevation to another depending on the slope of land on which the wall is sited. Within the range of maximum wall heights at Figures 26 and 28, the permitted wall height increases as the slope of the land increases up to a gradient of 1 in 4, at which point the permitted maximum wall height is capped according to Figure 26.
- b) For the purpose of determining maximum wall height, the slope of the land is calculated at natural ground level along the full length of the proposed wall expressed as a ratio that is applied in Figure 27 - Interpretation of Wall Height based on Slope. The slope of land on which the wall is sited will differ from one building to another and from one elevation of that building to another elevation and will be used in Figure 28 below to determine the maximum wall height in each case.

RESPONSE

No change is proposed to the existing approved building height.

Number of Storeys

- a) *Buildings must not exceed 2 storeys, except on land in areas 'L' and 'N1' on the LEP Height of Building Map and notwithstanding the wall and roof height controls in this plan.*
- b) *Buildings on land in areas 'L' and 'N1' on the LEP Height of Building Map Buildings must not exceed 3 storeys notwithstanding the wall and roof height controls in this plan.*
- c) *Variation to the maximum number of storeys may be considered:*
 - i) *where specific physical site constraints warrant an exception to this requirement. In these circumstances the development must still fully comply with other numeric height controls and development standards; and*
 - ii) *to allow an additional understorey where that storey satisfies the meaning of basements in the LEP.*

RESPONSE

The existing number of storeys will not change.

Roof Height

- a) *Pitched roof structures must be no higher than 2.5m above the actual wall height *, calculated in accordance with Figure 29.*
- b) *Roof parapets may extend up to 0.6m above the actual wall height where Council considers that a parapet is considered to be appropriate to the design of the development and satisfies the objectives of this DCP and the LEP. For example, a parapet roof should not result in the appearance of lift structures and the like that protrude above the roof.*

RESPONSE

No changes are proposed to the approved roof height.

Floor Space Ratio (FSR)

In particular, Objectives in this plan support the purposes of the LEP in relation to maintaining appropriate visual relationships between new development and the existing character and landscape of an area as follows:

Objective 1) To ensure the scale of development does not obscure important landscape features.

Objective 2) To minimise disruption to views to adjacent and nearby development.

Objective 3) To allow adequate sunlight to penetrate both the private open spaces within the development site and private open spaces and windows to the living spaces of adjacent residential development.

RESPONSE

The proposed modification will not alter the approved Floor Space Ratio.

Setbacks (front, side and rear)

Relevant DCP objectives to be met in relation to this part include: Objective 1) To maintain and enhance the existing streetscape. Objective 2) To ensure and enhance local amenity by:

providing privacy

providing equitable access to light, sunshine and air movement; and

facilitating view sharing and maintaining adequate space between buildings.

to limit impacts on views and vistas from private and public spaces.

Facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.

Objective 3) To promote flexibility in the siting of buildings. Objective 4) To enhance and maintain natural features by:

Accommodating planting, including native vegetation and native trees

Ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and

Ensuring the provisions of State Environmental Planning Policy No 19- Urban Bushland are satisfied.

Objective 5) To assist in appropriate bush fire asset protection zones.

RESPONSE

Existing approved setbacks to the common boundary with No.86 Bower Street will be unaltered apart from the intrusion by the required vertical screening elements.

4.1.4.1 Front setbacks

See also paragraph 3.2.4 in relation to Heritage and paragraph 4.2 in relation to controls in LEP Business Zones.

- a) Front setbacks must relate to the front building line of neighbouring properties and the prevailing building lines in the immediate vicinity.*
- b) Where the front building line of neighbouring properties is variable and there is no prevailing building line in the immediate vicinity i.e. where building lines are neither consistent nor established, a minimum 6m front setback applies.*
- c) Projections into the front setback may be accepted for unenclosed balconies, roof eaves, sun-hoods, chimneys, meter boxes and the like, where no adverse impact on the streetscape or adjoining properties is demonstrated to Council's satisfaction.*

RESPONSE

No changes are proposed to the front setback.

Rear Setbacks

- a) The distance between any part of a building and the rear boundary must not be less than 8m.*
- b) Rear setbacks must allow space for planting of vegetation, including trees, other landscape works and private and/or common open space. See also paragraph 3.3 Landscaping.*

Comment

The proposal, on a site with two street frontages does not have a "rear" setback however the proposed modification will not incorporate any change to the Marine Parade setback.

4.1.4.6 Setback for development adjacent to LEP Zones RE1, RE2, E1 and E2

- a) Buildings, swimming pools and garden sheds on sites with a common boundary to land zoned in the LEP as Zones RE1 Public Recreation, RE2 Private Recreation, E1 National Parks and E2 Environmental Conservation must be set back at least 6m from this common boundary and in the case of rear setbacks, the minimum 8m setback prevails (see paragraph 4.1.4.4 of this plan). However, gazebos, barbeques, child play equipment and the like may be permitted within this setback provided they are designed to complement the natural or landscape character of the adjacent LEP Zones.
- b) Remnant native vegetation must be protected on land particularly within the minimum required setback area adjacent to land zoned in the LEP as Public or Private Recreation (Zones RE1 & RE2), National Parks (Zone E1) and Environmental Conservation (Zone E2). The design of development generally adjacent to native vegetation should be sympathetic to the natural environment in order to protect and enhance areas as habitat for native fauna.

Comment

Not applicable.

4.1.5 Open Space and Landscaping

Relevant DCP objectives to be met in relation to these paragraphs include the following:

Objective 1) To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.

Objective 2) To maximise soft landscaped areas, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.

Objective 3) To enhance the amenity of the site, streetscape and surrounding area.

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

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

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

RESPONSE

The proposal will not result in any loss of private open space over the amount approved.

4.1.5.3 Private Open Space

Principal private open space

- a) Principal private open space is to be provided in accordance with the following minimum specifications:*
- i) Minimum area of principal private open space for a dwelling house is 18sqm; and*
 - ii) Minimum area of principal private open space for residential accommodation with more than 1 dwelling on the site is 12sqm for each dwelling.*

Private open space for Boarding Houses

- b) Private open space for Boarding Houses is to be provided in accordance with the following minimum specifications:*
- i) Minimum area of Private Open Space for a boarding house is 20sqm with a minimum dimension of 3m for the use of the lodgers.*
 - ii) if accommodation is provided on site for a boarding house manager – 1 area of at least 8sqm with a minimum dimension of 2.5m is to be provided adjacent to that accommodation.*
 - iii) the area prescribed in paragraph i) above is to receive a minimum of 3 hours direct sunlight between 9am and 3pm in midwinter.*

RESPONSE

No change is proposed to the approved amount of private open space.

First Floor and Roof Additions First Floor Additions

- a) First floor additions must complement the architectural style of the ground floor and where possible retain existing roof forms. Notwithstanding setback provisions, the addition may follow the existing ground floor wall setbacks*

providing adjoining properties are not adversely impacted by overshadowing, view loss or privacy issues.

- b) The dwelling and the form of alterations and additions must retain the existing scale and character of the street and should not degrade the amenity of surrounding residences or the aesthetic quality of Manly. In this regard, it may be preferable that the addition be confined to the rear of the premises or be contained within the roof structure.*

RESPONSE

No first floor or roof addition is proposed.

Habitable Rooms in the Roof Structure

Habitable rooms will be permitted in a roof structure subject to compliance with all other controls in this plan and the LEP including height and FSR in the LEP. However alterations and additions to a building which existed prior to 2007 may involve habitable rooms within an existing roof structure that is above the

maximum wall and roof height; (see paragraph 4.1.2 of this plan) subject to the rooms not detracting from the character or integrity of the roof structure and not adversely impacting on the amenity of adjacent and nearby properties and the streetscape. Similarly, alterations and additions which exceed the maximum height must not increase the overall height of the building.

Consideration may be given in this paragraph to the application of LEP clause 4.6 in considering exceptions to the LEP Building Height standard.

RESPONSE

No habitable room in a roof structure is proposed.

4.1.8 Development on Sloping Sites

- a) The design of development must respond to the slope of the site, to minimise loss of views and amenity from public and private spaces.*
- b) Developments on sloping sites must be designed to:*
 - i) generally step with the topography of the site; and*

- ii) avoid large undercroft spaces and minimise supporting undercroft structures by integrating the building into the slope whether to the foreshore or a street.*

Driveways on sloping sites

- c) On steep sites, driveways must be designed so they do not dominate the street frontage, by:*
 - i) limiting their height above existing ground level to avoid the need for elevated ramps and similar structures to access car parking areas, especially those which may encroach on public land;*
 - ii) limiting their width;*
 - iii) using materials that do not visually detract from the natural surroundings; and*
 - iv) retaining significant trees.*

RESPONSE

The building design will remain unchanged apart from the modifications sought.

5.4 Environmentally Sensitive Lands

5.4.1 Foreshore Scenic Protection Area

5.4.1.1 Additional matters for consideration

LEP clause 6.9(3)(a) to (d) lists certain matters to be taken into account in relation to all development within the Foreshore Scenic Protection Area.

- a) Further to matters prescribed in the LEP, the development in the Foreshore Scenic Protection Area must also:*
 - i) minimise the contrast between the built environment and the natural environment;*
 - ii) maintain the visual dominance of the natural environment;*
 - iii) maximise the retention of existing vegetation including tree canopies, street trees, wildlife corridors and habitat;*

- iv) not cause any change, visually, structurally or otherwise, to the existing natural rocky harbour foreshore areas;*
 - v) locate rooflines below the tree canopy;*
 - vi) consider any effect of the proposal when viewed from the harbour / ocean to ridgelines, tree lines and other natural features; and*
 - vii) use building materials of a non-reflective quality and be of colours and textures that blend with the prevailing natural environment in the locality.*
- b) Setbacks in the Foreshore Scenic Protection Area should be maximised to enable open space to dominate buildings, especially when viewed to and from Sydney Harbour, the Ocean and the foreshores in Manly.*

RESPONSE

As the subject site is located within the Foreshore Scenic Protection Area, the preceding matters were given considerable consideration in order to give effect to the desire for privacy whilst ensuring that the proposal does not result in any loss of the “open” design sought by Council’s controls, as evidenced within the nearby locality and endorsed by the NBLPP.

5. SECTION 4.15 EVALUATION

7.6 Matters for consideration—general

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) the provisions of:*
 - (i) any environmental planning instrument, and*
 - (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*

RESPONSE

The relevant provisions of the MLEP and Coastal Management SEPP have been addressed in the body of this Statement.

(iii) any development control plan,

RESPONSE

The relevant provisions of the Manly DCP have been addressed in the body of this Statement.

and

(iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4,

RESPONSE

No planning agreements apply to the proposal

and

(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),

RESPONSE

The relevant regulations have been given due regard in the construction of this Statement.

and

(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,

RESPONSE

The body of this Statement describes the potential impacts upon the natural and built environments and the mechanisms to be incorporated to reduce or prevent these impacts.

(c) the suitability of the site for the development,

RESPONSE

The subject site, by virtue of its orientation, topography and locality is suitable for the proposed modifications.

(d) any submissions made in accordance with this Act or the regulations,

RESPONSE

Any submissions received in response to Councils notification of the proposal will be considered as part of Councils assessment of the proposal.

(e) the public interest.

RESPONSE

The proposal endorses the public interest by proposing a mechanism to minimise privacy impacts in a manner that does not result in excessive building bulk when viewed from public areas.

(2) Compliance with non-discretionary development standards—development other than complying development

If an environmental planning instrument or a regulation contains non-discretionary development standards and development, not being complying development, the subject of a development application complies with those standards, the consent authority:

(a) is not entitled to take those standards into further consideration in determining the development application, and

(b) must not refuse the application on the ground that the development does not comply with those standards, and

© must not impose a condition of consent that has the same, or substantially the same, effect as those standards but is more onerous than those standards, and the discretion of the consent authority under this section and section 4.16 is limited accordingly.

(3) If an environmental planning instrument or a regulation contains non-discretionary development standards and development the subject of a development application does not comply with those standards:

(a) subsection (2) does not apply and the discretion of the consent authority under this section and section 4.16 is not limited as referred to in that subsection, and

(b) a provision of an environmental planning instrument that allows flexibility in the application of a development standard may be applied to the non-discretionary development standard. Note. The application of non-discretionary development standards to complying development is dealt with in section 4.28 (3) and (4).

(3A) Development control plans

If a development control plan contains provisions that relate to the development that is the subject of a development application, the consent authority:

(a) if those provisions set standards with respect to an aspect of the development and the development application complies with those standards—is not to require more onerous standards with respect to that aspect of the development, and

(b) if those provisions set standards with respect to an aspect of the development and the development application does not comply with those standards—is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development, and

© may consider those provisions only in connection with the assessment of that development application. In this subsection, standards include performance criteria.

(4) Consent where an accreditation is in force

A consent authority must not refuse to grant consent to development on the ground that any building product or system relating to the development does not comply with a requirement of the Building Code of Australia if the building product or system is accredited in respect of that requirement in accordance with the regulations.

(5) A consent authority and an employee of a consent authority do not incur any liability as a consequence of acting in accordance with subsection (4).

(6) Definitions

In this section: (a) reference to development extends to include a reference to the building, work, use or land proposed to be erected, carried out, undertaken or subdivided, respectively, pursuant to the grant of consent to a development application, and (b) non-discretionary development standards means development standards that are identified in an environmental planning instrument or a regulation as non-discretionary development standards.

Environmental Planning Instruments

The proposal is not a permissible use in the E3 Environmental Management zone however the proposal has been approved under the relevant existing use rights legislation.

Development Control Plans

This is addressed in the body of this SEE.

Impact on the Natural Environment.

The proposal is unlikely to unreasonably impact upon flora and fauna, soil or water quality, air quality or the conservation of natural resources due to the sensitive location of the works.

Impact on the Built Environment.

Scenic qualities – the proposed modifications sought by this application will, if approved, improve the scenic qualities by removing insensitive elements that contribute to building bulk and erode the scenic qualities of the locality as expressed within the provisions of the relevant Manly Council policies.

Compatibility with adjacent land uses – The proposal is for a residential use, compatible with surrounding residential uses.

Impact on the Social and Economic Environment.

The proposal is unlikely to result in any negative social or economic impacts.

Suitability of the Site.

The subject site, by virtue of its existing development, topography and locality is suitable for the proposed modifications.

6. CONCLUSION

The subject proposal has been submitted in order to achieve an improved architectural outcome rather than the outcome likely to result from the imposition of the conditions of consent requiring the provision of bulky vertical louvres to a living room window and then further extending that requirement to encompass the entire length of an existing unchanged balcony/deck.

The design of the modified components is by any measure, a better architectural outcome but still provides privacy from the large windows facing the boundary which are new elements and potentially increases overlooking onto the adjacent site.

The requested removal of the condition requiring the vertical louvred structures to be carried along the entire length of the existing balcony/deck is a reasonable and considered outcome.

The landscaped planter box proposed will block the view line from persons gathering on the subject balcony/deck from looking back onto the open unshielded area of 86 Bower Street. This outcome needs to be seen in the context of the surrounding locality as the planter box and screen proposed are generally absent from any residential developments within the Bower Street/Marine Parade locality, an area typified by open areas fronting the ocean and availing themselves of the views.

The proposed modifications are reasonable, have been tested as suitable by the use of “mock-ups” and to some extent exceptional as they propose to provide higher levels of privacy than the majority of developments throughout this area of Manly and as such are worthy of consent.

22nd July 2021

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