

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0126
Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 5 DP 8075, 82 Bower Street MANLY NSW 2095
Proposed Development:	Alterations and additions to a dual occupancy
Zoning:	Manly LEP2013 - Land zoned E3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Trustees Roman Catholic Church Archdiocese Sydney John Christopher Lake Anna Mairi Lake
Applicant:	Smith & Tzannes - Stz
Application lodged:	14/02/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	19/02/2019 to 07/03/2019
Advertised:	Not Advertised
Submissions Received:	0
Recommendation:	Approval
Estimated Cost of Works:	\$ 243,000.00

Executive Summary

The application is for alterations and additions to the existing dwelling and includes a variation of 44% to the floor space ratio development standard. The development is described as 2 x Class 1A buildings. As the variation is greater than 10%, the application is referred to the Development Determination Panel.

Notwithstanding the extent of the FSR non-compliance, the majority of the additional gross floor area is achieved within an below the natural ground level within the existing building footprint and the proposal does not result in excessive building bulk.

No further assessment issues are raised and the proposal is recommended for approval.

It is noted that a further application on the site (DA2019/0125) is currently under assessment by Council and includes a further variation to the floor space ratio development standard, which is calculated in the Principal Development Standards table in this report.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Local Environmental Plan 2013 - 6.2 Earthworks
 Manly Local Environmental Plan 2013 - 6.5 Terrestrial biodiversity
 Manly Local Environmental Plan 2013 - 6.8 Landslide risk
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Development Control Plan - 3.3.2 Preservation of Trees or Bushland Vegetation
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)
 Manly Development Control Plan - 5.4.1 Foreshore Scenic Protection Area
 Manly Development Control Plan - 5.4.2 Threatened Species and Critical Habitat Lands

SITE DESCRIPTION

Property Description:	Lot 5 DP 8075 , 82 Bower Street MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one (1) allotment (No. 82-84 Bower Street) located on the northern side of Bower Street.</p> <p>The site is irregular in shape with a frontage of 16.365m along Bower Street and a depth of 45.83m. The site has a surveyed area of 698.4m².</p> <p>The site is located within the E3 Environmental Management zone and accommodates two existing semi-detached</p>

dwellings.

The site slopes 7.57m from front (south) to rear (north).

The site planted vegetation generally within the front setback. No significant trees are located on the site.

Detailed Description of Adjoining/Surrounding Development

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

Map:



SITE HISTORY

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

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

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

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

DA2019/0125 - Demolition works and construction of two garages - Under assessment.

It is noted that works associated with previously approved developments on the site are currently under construction.

PROPOSED DEVELOPMENT IN DETAIL

The proposal includes excavation works at lower ground floor level to provide the following:

- Bathroom
- Laundry
- Plant room
- Storeroom
- Drainage works

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000</p>

Section 4.15 Matters for Consideration'	Comments
	<p>requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	<p>The proposed development has been assessed against the following provisions:</p> <ul style="list-style-type: none"> - NSW Biodiversity Conservation Act 2016 (BC Act) - MLEP Clause 6.5 (Biodiversity) - MDCP Clause 5.4.2 (Threatened Species and Critical Habitat Lands) - MDCP Clause 3.3.1 (Landscape Design - Bandicoot Habitat) <p>The subject site is within declared habitat for the endangered population of Long-nosed Bandicoot at North Head. A 'five-part test' is therefore required under Section 7.3 of the NSW BC Act. However, given that the proposal will have a minimal impact on soft open space additional to the existing approved development, Council's Biodiversity Section has undertaken this assessment. Subject to appropriate mitigation measures during the construction phase, it is considered that the proposal is unlikely to result in impact to individual bandicoots or the endangered population. The proposal is considered to comply with the relevant controls.</p>
NECC (Coast and Catchments)	<p>The application has been assessed for impacts <i>to</i> the Coastal Environment and impacts <i>from</i> the Coastal Environment. The following planning controls have been considered; the Coastal Management Act, SEPP (Coastal Management), Manly LEP and Manly DCP.</p> <p>It has been determined the proposed development will not have a significant impact subject to conditions being applied.</p>
NECC (Development Engineering)	<p>The application proposed an additional room to the lower ground level of the existing building.</p> <p>Development Engineer has no objection to the application subject to the following conditions of consent.</p>
NECC (Riparian Lands and Creeks)	<p>No objection to the proposed development subject to conditions as recommended.</p>

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Coastal Management) 2018

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

13 Development on land within the coastal environment area

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
 - (b) *coastal environmental values and natural coastal processes,*
 - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
 - (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
 - (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (f) *Aboriginal cultural heritage, practices and places,*
 - (g) *the use of the surf zone.*

Comment:

The proposed works are located at basement level within the existing building footprint/envelope and will not unreasonably impact the coastal environment area.

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

- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

The proposal is consistent with this Clause.

14 Development on land within the coastal use area

(1)

- (a) has considered whether the proposed development is likely to cause an adverse impact on the following:
- (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
 - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
 - (iv) Aboriginal cultural heritage, practices and places,
 - (v) cultural and built environment heritage, and
- (b) is satisfied that:
- (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The proposal will not unreasonably impact the coastal use area given the location and scale of the works.

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

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

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

Comment:

Council's Coastal Officer concluded that the proposal will not significantly impact the coastal area, subject to the recommended conditions of consent.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	No change proposed	N/A	N/A
Floor Space Ratio	0.45:1 314.28m ²	Inc. DA2019/0125: 0.7:1 487.5m ²	55.1%	No
		Ex. DA2019/0125 0.65:1 452.5m ²	44%	No

Compliance Assessment

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

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.45:1 (314.28m ²)
Proposed:	0.65:1 (452.5m ²)
Percentage variation to requirement:	44%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.4 - Floor space ratio development standard, has taken into consideration the recent judgement contained within Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.

Clause 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.*

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

Comment:

Clause 4.4 - Floor space ratio development standard is not expressly excluded from the operation of this clause.

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

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

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

(a) the consent authority is satisfied that:

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Secretary has been obtained.*

Clause 4.6 (4)(a)(i) (Justification) assessment:

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

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

Comment:

The Applicant's written request (attached to this report as an Appendix) has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by

cl 4.6(3)(a).

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

Comment:

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The applicants written request argues, in part:

- *The proposal is not an unreasonable attempt to gain additional floor space, views or open space for the proposal. The breach by the proposed additional floor space to the Lower Ground Floor level of No.82 will be imperceptible to the public, does not overshadow any public open space and provides for an essential laundry and associated rooms to provide for the amenity of residents of the subject site without amenity cost to the locality.*
- *The resultant gross floor area does not result in any overshadowing or privacy impacts and provides for additional residential accommodation and utilities in a sensitive design."*

Additional information provided by the applicant included a letter from a Hydraulic Engineer justifying the need for further excavation to construct necessary drainage works under the existing dwelling. The

opportunity to increase the gross floor area arises out of this required excavation work. The resulting additional gross floor area is achieved at the lower ground floor level within the existing footprint/envelope of the dwelling. The proposal provides a new bathroom and laundry (and plant/store rooms excluded from GFA) to service the lower level of the dwelling with negligible change to the external appearance of the dwelling. It is noted that a further application on the site (DA2019/0125) is currently under assessment by Council and includes a further variation to the floor space ratio development standard, which is calculated in the Principal Development Standards table in this report.

In this regard, the applicant's written request has demonstrated that the proposed development is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (g) of the EPA Act.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

Clause 4.6 (4)(a)(ii) (Public Interest) assessment:

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the E3 Environmental Management zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The proposed additional GFA is achieved largely below natural ground level within the existing building envelope. As such, the proposal will not result in additional bulk or scale as viewed from the streetscape or adjoining properties.

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

Comment:

The proposal results in no additional building bulk and will not obscure important landscape or townscape features.

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

Comment:

The proposal will not materially alter the external appearance of the dwelling.

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

Comment:

The proposed non-compliance will not impact on the use or enjoyment of adjoining land or the public domain.

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

Comment:

N/A

Zone objectives

The underlying objectives of the E3 Environmental Management zone are:

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

Comment:

The proposed works are generally within the existing building footprint and are considered to be low impact.

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

Comment:

The proposal will not unreasonably impact the ecological, scientific or aesthetic values of the site.

- To protect tree canopies and ensure that new development does not dominate the natural scenic qualities of the foreshore.

Comment:

The proposed works will not impact the tree canopy or dominate the scenic qualities of the foreshore.

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

Comment:

The proposed works contained generally within the existing building footprint will not unreasonably impact the surrounding natural environment.

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

Comment:

The proposed works are sufficiently separated from the immediate foreshore area.

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

Comment:

The proposal does not contribute additional bulk to the existing dwelling.

Conclusion:

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

Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument where the variation is not greater than 10%. Following the release of PS-003, Council received correspondence from a delegate of the Secretary which granted Council staff, for a period of 30 months from 24 May 2019, the ability to assume the Secretary's concurrence for Class 1 buildings which seek to vary a development standard by more than 10%.

6.2 Earthworks

The proposed excavation reaches a maximum depth of approximately 3.6m and is generally contained within the footprint of the existing dwelling. The excavation provides additional floor area to accommodate a laundry, bathroom and service rooms at lower ground floor level. These works are also required to mitigate drainage issues currently affecting the property, as detailed in the Letter from Partridge Hydraulic Services dated 27 May 2019. A Geotechnical Inspection Report has also been

submitted in relation to the proposed works and includes several recommendations. A condition has been placed requiring further geotechnical assessment/detail be provided prior to completing the works, as recommended.

6.5 Terrestrial biodiversity

The proposed works are within the existing building footprint. Council's Biodiversity Officer raised no objection to the proposal, subject to recommended conditions of consent.

6.8 Landslide risk

A Geotechnical Inspection Report has also been submitted in relation to the proposed works and includes several recommendations. A condition has also been placed requiring further geotechnical assessment/detail be provided prior to completing the works, as recommended.

6.9 Foreshore scenic protection area

The proposed works are located at lower ground level and will result in no unreasonable impacts in relation to visual aesthetic amenity and views to and from the Pacific Ocean.

Manly Development Control Plan

Built Form Controls

As the proposed works are within the existing building envelope, there are no Development Controls under Part 4 of the Manly DCP to consider as part of this assessment.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.7 Stormwater Management	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

Detailed Assessment

3.3.2 Preservation of Trees or Bushland Vegetation

The proposed works are within the existing building footprint and do not include any removal of trees or vegetation.

3.4.1 Sunlight Access and Overshadowing

The proposed works are contained within the existing building envelope and will not result in any additional overshadowing.

4.4.5 Earthworks (Excavation and Filling)

The proposed excavation reaches a maximum depth of approximately 3.6m and is generally contained within the footprint of the existing dwelling. The excavation provides additional floor area to accommodate a laundry, bathroom and service rooms at lower ground floor level. These works are also required to mitigate drainage issues currently affecting the property, as detailed in the Letter from Partridge Hydraulic Services dated 27 May 2019. A Geotechnical Inspection Report has also been submitted in relation to the proposed works and includes several recommendations. A condition has been placed requiring further geotechnical assessment/detail be provided prior to completing the works, as recommended.

5.4.1 Foreshore Scenic Protection Area

The proposed works are located at lower ground level and will result in no unreasonable impacts in relation to visual aesthetic amenity and views to and from the Pacific Ocean.

5.4.2 Threatened Species and Critical Habitat Lands

The proposed works are within the existing building footprint. Council's Biodiversity Officer raised no objection to the proposal, subject to recommended conditions of consent.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Manly Section 94 Development Contributions Plan

S94 Contributions are not applicable to this application.

CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects,

all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2019/0126 for Alterations and additions to a dual occupancy on land at Lot 5 DP 8075, 82 Bower Street, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Site Plan	Rev. B, 17 June 2019	Smith & Tzannes
Basement & Lower Ground	Rev. B, 17 June 2019	Smith & Tzannes
Elevations	Rev. B, 17 June 2019	Smith & Tzannes
Sections	Rev. B, 17 June 2019	Smith & Tzannes

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Inspection Report	4 June 2019	Crozier Geotechnical Consultants
Hydraulic Letter	27 May 2019	Partridge Hydraulic Services

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

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

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

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

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

2. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

- (i) protect and support the adjoining premises from possible damage from the excavation, and
- (ii) where necessary, underpin the adjoining premises to prevent any such damage.
- (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative Requirement

3. **General Requirements**

- (a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative

change. The applicable fee at the time of payment of the Long Service Levy will apply.

- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (j) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

- (4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

FEES / CHARGES / CONTRIBUTIONS

4. Security Bond

A bond (determined from cost of works) of \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at www.northernbeaches.nsw.gov.au).

Reason: To ensure adequate protection of Council's infrastructure.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

5. Geo-Technical Report

A Geo-Technical Report and certificate shall be prepared by an appropriately qualified Geo-technical Engineer certifying that the existing soil and rock formations and substrate on the site are capable of withstanding:

- the extent of the proposed excavation, including any recommendations for shoring works that may be required to ensure the stability of the excavation;
- protection of adjoining properties;
- the provision of appropriate subsoil drainage during and upon completion of construction works.

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

Reason: To ensure the structural integrity of the subject site and adjoining sites during the excavation process.

6. **Structural Adequacy and Excavation Work**

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

(a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and

(b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: To provide public and private safety.

7. **Access to Undercroft Areas – Bandicoot Habitat**

Where concealing material is required for any undercroft areas (e.g. under the house, stairs or balcony), gaps are to be established to allow Long-nosed Bandicoot access. Gaps are to be at least 150mm high and 300mm wide.

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

Reason: To maintain bandicoot access to existing and proposed habitat within and surrounding the site.

8. **Structural adequacy**

A Certificate prepared by an appropriately qualified and practising structural engineer, certifying the structural adequacy of the property and its ability to withstand the proposed additional, or altered structural loads during all stages of construction must be provided prior to the issue of a Construction Certificate to the satisfaction of the Principal Certifying Authority. The certificate shall also include all details of the methodology to be employed in construction phases to achieve the above requirements without resulting in demolition of elements marked on the approved plans for retention.

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of any Construction Certificate.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

9. **Installation and Maintenance of Sediment and Erosion Control**

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004).

Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site (DACNED06)

10. **Geotechnical Hazards**

DA2019/0126

The subject property is identified in the Manly Landslide Risk Map in the LEP. Due to the works proposed, a geotechnical assessment including a Landslide Risk Assessment is required prior to the commencement of works showing the suitability of the development in accordance with Clause 6.8 of the Manly LEP. Any recommendations made in the assessment are to be implemented.

Reason: To ensure that the proposed works will not have any detrimental impacts within the potential geotechnical landslip hazard area or on environmentally sensitive areas.

11. **Site Induction Required – Penguin and Bandicoot Habitat**

All workers, including site inspectors and sub-contractors, are to be made aware of the potential presence of relevant threatened species and endangered ecological communities through a site induction prior to commencement of works. The site induction is to include information about their conservation significance, potential activities on-site, means of identification and the measures to be implemented for their protection. A confirmation of induction is to be signed by every worker and the site manager.

Evidence of the site induction is to be documented and provided to the Principal Certifying Authority.

Reason: To prevent impacts to threatened species, endangered ecological communities and their habitats in accordance with the Biodiversity Conservation Act 2016.

12. **Geotechnical inspection of works**

Geotechnical inspection of the excavation is to be undertaken by a suitably qualified person directly prior to completion

Reason: To allow assessment of long-term stability conditions and provision of any required support design.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

13. **Road Reserve**

The public footways and roadways adjacent to the site shall be maintained in a safe condition at all times during the course of the work.

Reason: Public Safety.

14. **Construction Hours – Manly LEP Clause 6.5**

Construction hours are to be adhered to, with no construction vehicles or heavy machinery used outside the hours of 7:00am and 5:00pm.

Reason: Noise and vibration can disturb local native fauna (including threatened species) and prevent access to their natural habitats.

15. **Pre-clearance Survey Required – Bandicoot Habitat**

A pre-clearance survey for Long-nosed Bandicoot activity and presence is required prior to the removal of any vegetation, material or debris stockpiles. Clearing may only proceed if the survey concludes that no Long-nosed Bandicoots are present within the area to be cleared. All clearing must initially be carried out with hand tools to identify whether any bandicoots are sheltering within the area to be cleared (e.g. at the base of vegetation or under deep litter). Machinery may only be used once it has been confirmed that no bandicoots are sheltering within the area to be

cleared. Clearing must be carried out at dusk and completed within one day so that bandicoots do not reoccupy partially cleared areas overnight. A record of each inspection is to be made in the daily inspection register log-book. The log-book is to be made available to the Principal Certifying Authority.

Reason: To avoid injury or death of Long-nosed Bandicoots which may be utilising stockpiles of vegetation, materials or debris.

16. **Report Dead or Injured Bandicoots – Bandicoot Habitat**

Any injured or dead Long-nosed Bandicoots found within the worksite must be reported to the National Parks & Wildlife Service (9457 9577) or Northern Beaches Council (1300 434 434).

Reason: To prevent impacts to Long-nosed Bandicoots in accordance with the Biodiversity Conservation Act 2016.

17. **Arborist Recommendations to be Implemented**

All pre-construction tree protection measures specified in Sections 8 and 9 of the submitted arborist report and these conditions of consent are to be implemented at the appropriate stage of development. Compliance with pre-construction measures is to be certified by the project arborist prior to issue of the Construction Certificate.

Reason: To confirm compliance with tree protection/replacement measures in accordance with relevant Natural Environment LEP/DCP controls.

18. **Geotechnical Inspection Report**

All recommendations included within the Geotechnical Inspection Report prepared by Crozier Geotechnical Consultants, dated 4 June 2019 are to be complied with during all excavation, demolition and construction works.

Reason: To ensure compliance with the geotechnical assessment of the site.

19. **Blank condition for during works work**

During the works, geotechnical inspections of the excavation is to be undertaken by a suitably qualified person directly in accordance with the Geotechnical Inspection Report prepared by Crozier Geotechnical Consultants dated 4 June 2019.

Reason: To allow assessment of long-term stability conditions and provision of any required support design.

CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE

20. **Documentation of Arborist Site Supervision Required**

Documented evidence of a qualified arborist supervising the works in proximity to trees being retained and ensuring that all tree protection measures as specified in the supplied arborist report is required. This documentation is to be provided prior to the issue of the Occupation Certificate.

Reason: To ensure the retention of the Urban Forest/Natural Environment.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

21. **Maintain Fauna Access and Landscaping Provisions – Manly LEP Clause 6.5**

All fauna access/movement and landscaping provisions specified in these conditions of consent

are to be implemented and maintained for the life of the development.

Reason: To maintain fauna access to existing and proposed habitat within and surrounding the site.

22. **Dead or Injured Wildlife – Manly LEP Clause 6.5**

If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To mitigate potential impacts to native wildlife resulting from construction activity.