



Land and Environment Court
New South Wales

Case Name: Bushell v Northern Beaches Council

Medium Neutral Citation: [2022] NSWLEC 1397

Hearing Date(s): Conciliation conference on 18 and 19 July 2022

Date of Orders: 3 August 2022

Decision Date: 3 August 2022

Jurisdiction: Class 1

Before: Chilcott C

Decision: The Court orders that:
(1) The Applicant is granted leave to rely on the documents described in Annexure 'A'.
(2) The appeal is upheld.
(3) Approval is granted to Modification Application no. MOD2021/1009 to modify development consent no. DA2020/0211 granted by the Respondent on 15 September 2020 at 82-84 Bower Street, Manly (Lot 5/DP 8075) subject to the conditions at Annexure 'B' to this agreement.
(4) As a consequence of Order (3) above, Development Application No. 2020/0211 granted by the Respondent on 15 September 2020 is now in the form of Annexure 'C'.

Catchwords: DEVELOPMENT APPLICATION – conciliation conference – agreement between the parties – orders.

Legislation Cited: Environmental Planning and Assessment Act 1979, ss 4.15, 4.55, 8.9, div 4.8
Environmental Planning and Assessment Regulation 2000, cl 77
Land and Environment Court Act 1979, s 34
Manly Local Environmental Plan 2012, cl 1.2

Texts Cited: Land and Environment Court of NSW, COVID-19
Pandemic Arrangements Policy (April 2021)
Manly Development Control Plan 2013
Northern Beaches Council, Northern Beaches
Community Participation Plan (2019)

Category: Principal judgment

Parties: Michael Bushell (Applicant)
Northern Beaches Council (Respondent)

Representation: Counsel:
J Reid (Applicant)
L Nupuri (Respondent)

Solicitors:
Swaab Attorneys (Applicant)
Northern Beaches Council (Respondent)

File Number(s): 2022/97178

Publication Restriction: No

JUDGMENT

- 1 **COMMISSIONER:** Michael Bushell (the Applicant) has appealed the refusal by Northern Beaches Council (the Respondent) of its modification application MOD2021/1009, made with owner's consent, seeking amendment to a consent granted by the Respondent to development application DA202/0211 (the Proposed Modification) at 82-84 Bower Street, Manly (the Subject Site).
- 2 The Proposed Modification seeks approval of alternation and additions in relation to privacy screening to the rear balcony on the Subject Site.
- 3 The appeal is made under s 8.9 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and falls within Class 1 of the Court's jurisdiction. The appeal is determined pursuant to the provisions of s 4.55(2) of the EP&A Act.
- 4 Pursuant to the provisions of cl 77 of the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation) and the Northern Beaches Community Participation Plan 2019, the Proposed Modification was placed on

public exhibition for 14 days by the Respondent between 4 and 18 February 2022, and one submission was received in response to that notification.

- 5 A site inspection was undertaken at the commencement of the proceedings, consistent with the Court's COVID-19 Pandemic Arrangements Policy. One objector submission was received from the owners of an adjoining property in relation to the appeal.
- 6 On 18 and 19 July 2022, the Parties participated in a conciliation conference undertaken via Microsoft Teams. At that conference, the Parties reached agreement as to the terms of a decision in the proceedings that would be acceptable to the Parties. This decision involved the Court upholding the appeal and granting consent to the Applicant's modification application, subject to conditions.
- 7 The Parties' agreement included a requirement that, inter alia, the following condition 2A be imposed with approval of the Proposed Modification:

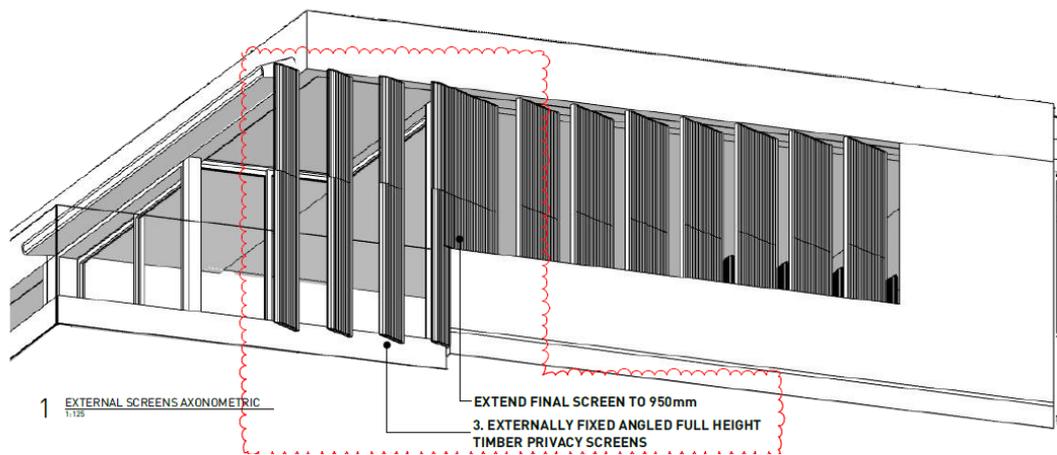
"The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Modified Plans

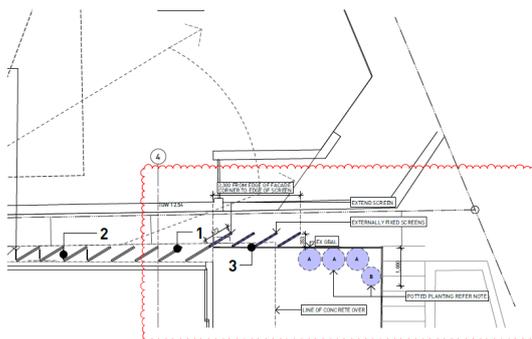
Architectural Plans – Endorsed with Council's Stamp		
Plans	Dated	Prepared By
Screen Details, Revision G – 15_117 S4.55-A-203	18 July 2022	Smith & Tzannes
Ground Floor, Revision F – 15_117 s.4.55-A-101	19 July 2022	Smith & Tzannes

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

- 8 I note that the plan entitled 'Screen Details, Revision G – 15_117 S4.55-A-203' included the following detail of the privacy screens that are to be installed as a requirement of condition 2A:



9 I further note that the plan entitled 'Ground Floor, Revision F – 15_117 s 4.55-A-101' includes the following detail in relation to the size and locations of certain round planter containers that are to be installed at the north-west corner of the balcony at ground level to restrict view lines from the balcony to an adjacent property:



S4.55 MODIFICATION TO EXISTING CONSENT NOTES

1. ANGLED TIMBER PRIVACY SCREENS TO FULL HEIGHT OF WINDOW, 20 DEGREES FROM TRUE NORTH
2. SOLID TIMBER CROSS SCREENING TO 1250mm ABOVE FINISHED FLOOR LEVEL
3. ANGLED FULL HEIGHT TIMBER PRIVACY SCREENS

POTTED PLANTING NOTE:

TYPE A - MIN 600mm DIA AT WIDEST POINT AND MIN 700mm IN HEIGHT
TYPE B - MIN 500mm DIA AT WIDEST POINT AND MIN 550mm IN HEIGHT

 NOT PART OF DEVELOPMENT APPLICATION	DOCUMENT GROUND PLAN	PROJECT 82- 84 Bower Street Manly
 PROPOSED AMENDMENTS	DOCUMENT S4.55 APPLICATION	
	DATE 8th Feb 2022	
	DATE DA SUBMISSION	CLIENT Michael & Jenny Bullen John & Anna Lake
		ARCHITECTURE: URBAN PLANNING 10/17 McEwen St, Alexandria NSW 2015 P: 02 9550 2022 E: info@smithstannus.com.au www.smithstannus.com.au Registered Architects: Peter Smith (Reg 1704)

10 Under s 34(3) of the *Land and Environment Court Act 1979* (LEC Act), I must dispose of the proceedings in accordance with the Parties' decision if the Parties' decision is a decision that the Court could have made in the proper exercise of its functions.

11 There are jurisdictional matters that must be satisfied before the Court can exercise its power to grant consent to the Proposed Development, and those requirements have been satisfied as follows:

- (1) consistent with the provisions of s 4.55(2) of the EP&A Act, I am satisfied that:
 - (a) the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified; and
 - (b) there are no conditions of consent to which the development, as approved, nor in relation to the Proposed Modification, that are imposed as a requirement of a concurrence from a relevant Minister, public authority or approval body (within the meaning of div 4.8 of the EP&A Act in relation to Integrated Development) or in accordance with the general terms of an approval proposed by the approval body; and
 - (c) the Respondent has notified the application in accordance with the relevant provisions of the EP&A Regulation and Northern Beaches Community Participation Plan 2019; and
 - (d) the submissions made concerning the Proposed Modification within the period prescribed by the regulations or provided by the provisions of Manly Development Control Plan 2013 (MDCP) have been considered;
- (2) consistent with the provisions of cl 1.2(a)(iv) of Manly Local Environmental Plan 2013, I am satisfied that the Proposed Modification responds to environmental constraints and does not adversely affect the character, amenity or heritage of Manly or its existing permanent residential population;
- (3) the Proposed Modification is compliant with the privacy controls in clause 3.4.2.2 of MDCP, and is consistent with the privacy objectives of clause 3.4.2 of MDCP, noting that the Parties agree that:
 - (a) the privacy screens and proposed planter containers on the rear balcony of the property that are the subject of the Parties' agreement:
 - (i) will limit overlooking of nearby properties, in particular the property adjacent to the Subject Site to its west;
 - (ii) will be fixed in position and suitably angled to protect visual privacy;
 - (b) the privacy screens and proposed planter containers that are the subject of the Parties' agreement will:
 - (i) minimise the loss of privacy to the adjacent development to the west; and
 - (ii) balance outlook and views from habitable rooms and private open space;

12 Having considered the advice of the Parties, provided above at [11], I agree that:

- (1) the Applicant's Development Application can be approved having regard to the matters in s 4.15(1) of the EP&A Act including in relation to the submission of the objectors which is a relevant consideration under s 4.15(1)(d) of that Act; and
 - (2) the jurisdictional prerequisites on which I must be satisfied before I can exercise the power under s 4.55(2) of the EP&A Act have been so satisfied.
- 13 Further, I am satisfied that the Parties' decision is one that the Court could have made in the proper exercise of its functions, as required by s 34(3) of the LEC Act.
- 14 As the Parties' decision is a decision that the Court could have made in the proper exercise of its functions, I am required to dispose of the proceedings in accordance with the Parties' decision.
- 15 In making the orders to give effect to the agreement between the Parties, I was not required to make, and have not made, any merit assessment of the issues that were originally in dispute between the Parties.
- 16 The Court notes that:
- (1) the Council, as the relevant consent authority, has agreed pursuant to cl 55 of the EP&A Regulation to amend Development Application No. DA2020/0211;
 - (2) the amended plans and documents were uploaded on the NSW Planning Portal on 19 July 2022 and were filed with the Court on 20 July 2022 as described in Annexure 'A'.

Orders

- 17 The Court orders that:
- (1) The Applicant is granted leave to rely on the documents described in Annexure 'A'.
 - (2) The appeal is upheld.
 - (3) Approval is granted to Modification Application no. MOD2021/1009 to modify development consent no. DA2020/0211 granted by the Respondent on 15 September 2020 at 82-84 Bower Street, Manly (Lot 5/DP 8075) subject to the conditions at Annexure 'B' to this agreement.
 - (4) As a consequence of Order (3) above, Development Application No. 2020/0211 granted by the Respondent on 15 September 2020 is now in the form of Annexure 'C'.

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M Chilcott

Commissioner of the Court

[Annexure A \(89956, pdf\)](#)

[Annexure B \(180245, pdf\)](#)

[Annexure C \(208686, pdf\)](#)

Amendments

05 August 2022 - Pursuant to UCPR r 36.17, the Court amends the Court orders to correct a typographical error in Order 4 by deleting “15 September 2022” and inserting “15 September 2020”.

DISCLAIMER - Every effort has been made to comply with suppression orders or statutory provisions prohibiting publication that may apply to this judgment or decision. The onus remains on any person using material in the judgment or decision to ensure that the intended use of that material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court or Tribunal in which it was generated.

ANNEXURE A

Architectural Plans – Endorsed with Council’s Stamp		
Plans	Dated	Prepared By
Screen Details, Revision G – 15_117 S4.55-A-203	18 July 2022	Smith & Tzannes
Ground Floor, Revision F – 15_117 s.4.55-A-101	19 July 2022	Smith & Tzannes

**Annexure B –
List of amendments to DA2020/0211**

Modification Application No:	MOD2021/1009
Development Consent modified:	Development Consent No DA 2020/0211 granted by Northern Beaches Council on 15 September 2020
Description of development to be carried out under the consent:	Dual Occupancy - Development Application seeking consent for the reconstructions 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.
Address and particulars of title of land on which development to be carried out:	Lot 5 DP8075, known as 82-84 Bower Street, Manly. Works relate only to 84 Bower Street, Manly
Description of modification to the development consent:	Modify the approved development to delete condition 9 and amend condition 2A and condition 8

Determination: The development consent is modified as follows:

A. Modify Condition 2A 'Modification of Consent - Approved Modified Plans' to read as follows:

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

- a) Approved Modified Plans

Architectural Plans – Endorsed with Council’s Stamp

Plans	Dated	Prepared By
Screen Details, Revision G – 15_117 S4.55-A-203	18 July 2022	Smith & Tzannes
Ground Floor, Revision F – 15_117 s.4.55-A-101	19 July 2022	Smith & Tzannes

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

approved plans.

B. Modify Condition 8 to read as follows:

8. *The north-western edge of the northernmost privacy blade nominated on the Screen Details 15_117 S4.55-A-203, Revision G plan dated 18 July 2022 is to project beyond the northern façade alignment of the adjacent living room by a minimum of 2300mm and is to project at least 353mm from the outside edge of the glass balustrade in this location.*

Reason: To minimise privacy impacts between adjoining development

C. Delete Condition 9 to read as follows:

9. DELETED

D. Insert new Condition 10 to read as follows

10. *Pots are to be placed along the western edge of the mid-level balcony as shown in Detail 1 of the Screen Details 15_117 S4.55-A-203, Revision G plan dated 18 July 2022 with gaps of no more than 50mm between the pots at their widest point.*

The pots are to extend along the area between the northern extent of the required fixed privacy screen and the northern edge of the balcony, with Pot Type B to be located to prevent persons standing within 1000mm of the western balcony edge in that location.

The pots are to contain plants which collectively achieve a minimum height of 1 metre above finished balcony floor level, being equivalent to the height of the adjacent balustrade. The plantings and pots are to be maintained in the locations shown in Detail 1 on the Screen Details 15_117 S4.55-A-203, Revision G plan dated 18 July 2022 for the life of the development. If any of the plantings fail, they are to be replaced with similar species that satisfy the requirements of this condition.

Reason: To minimise privacy impacts between adjoining development

Annexure C

DETERMINATION OF DEVELOPMENT APPLICATION BY GRANT OF CONSENT

Development Application: DA2020/0211

Development: Dual Occupancy - Development Application seeking consent for the reconstructions 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.

Property: Lot 5 DP8075, known as 82-84 Bower Street, Manly.

Schedule of Modifications

Date approved	Modification Application Number	Decision maker (Land and Environment Court or relevant council)	Proceedings Name and Number (if applicable)
18/08/21	MOD2021/0317	Northern Beaches Council	
3 August 2022	MOD2021/1009	Land and Environment Court	Land and Environment Court No. 2022/97178

The above development application has been determined by the granting of consent subject to the conditions specified in this consent.

Date of determination: 15 September 2020

Date from which consent takes effect: 15 September 2020

TERMINOLOGY

In this consent:

- (a) Any reference to a Construction, Compliance, Occupation or Subdivision Certificate is a reference to such a certificate as defined in the Environmental Planning and Assessment Act 1979.
- (b) Any reference to the "applicant" means a reference to the applicant for development consent or any person who may be carrying out development from time to time pursuant to this consent.
- (c) Any reference to the "site", means the land known as Lot 5 DP8075 known as 82-84 Bower Street, Manly.

The conditions of consent are as follows:

Part A - General Conditions

1. The development being carried out in accordance with the amended plans submitted to the Northern Beaches Council on or about 30 July 2020 which were the subject of an approval to amend the development application pursuant to cl 55 of the Environmental Planning and Assessment Regulation 2000 (NSW).
2. The amended plans referred to in (1) above are as follows:

- a. Site Plan - Revision A dated 10/12/19 – 15_117 DA4-A-010 prepared by Smith & Tzannes;
- b. Basement & Lower Ground – Revision A dated 10/12/19 – 15_117 DA4-A-100 prepared by Smith & Tzannes;
- c. Ground & Level 1 – Revision B dated 29/7/2020 – 15_117 DA4-A-101 prepared by Smith & Tzannes;
- d. Roof – Revision A dated 10/12/19 – 15_117 DA4-A-102 prepared by Smith & Tzannes;
- e. Elevations – Revision B dated 29 /7/2020 – 15_117 DA4-A-200 prepared by Smith & Tzannes;
- f. Sections – Revision A dated 10/12/19 – 15_117 DA4-A-201 prepared by Smith & Tzannes;

2A. The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Modified Plans

Architectural Plans – Endorsed with Council’s Stamp		
Plans	Dated	Prepared By
Screen Details, Revision G – 15_117 S4.55-A-203	18 July 2022	Smith & Tzannes
Ground Floor, Revision F – 15_117 s.4.55-A-101	19 July 2022	Smith & Tzannes

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

3. 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.

4. **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) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) 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.
- (d) 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.

- (e) 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.
- (f) 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.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) 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.
- (k) 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.

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) 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.

- 5. This consent is to be read in conjunction with DA0168/2017 dated 14 November 2017 and Mod2018/0547 dated 10 January 2019.

Works on the site that are subject to this consent cannot proceed unless a Construction Certificate application for this Development Application has been lodged with and approved by Council or an accredited certifier, and relevant conditions of the consent have been carried out.

FEES / CHARGES / CONTRIBUTIONS

6. **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 are required 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, and 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

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 be solid up to 1.6m above the FFL and above that shall have vertical angled fins that cover the windows, and otherwise in accordance with Approved Modified Plans referenced in Condition 2A of this modified consent. The screens are to be maintained for the life of the development and are to be in place prior to the issue of any Occupation Certificate. The Approved Modified Plans shall be amended to reflect this condition and submitted to Council prior to the issue of the Construction Certificate.

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

8. The north-western edge of the northernmost privacy blade nominated on the Screen Details 15_117 S4.55-A-203, Revision G plan dated 18 July 2022 is to project beyond the northern façade alignment of the adjacent living room by a minimum of 2300mm and is to project at least 353mm from the outside edge of the glass balustrade in this location.

Reason: To minimise privacy impacts between adjoining development

9. Deleted
10. Pots are to be placed along the western edge of the mid-level balcony as shown in Detail 1 of the Screen Details 15_117 S4.55-A-203, Revision G plan dated 18 July 2022 with gaps of no more than 50mm between the pots at their widest point.

The pots are to extend along the area between the northern extent of the required fixed privacy screen and the northern edge of the balcony, with Pot Type B to be located to prevent persons standing within 1000mm of the western balcony edge in that location.

The pots are to contain plants which collectively achieve a minimum height of 1 metre above finished balcony floor level, being equivalent to the height of the adjacent balustrade. The plantings and pots are to be maintained in the locations shown in Detail 1 on the Screen Details 15_117 S4.55-A-203, Revision G plan dated 18 July 2022 for the life of the development. If any of the plantings fail, they are to be replaced with similar species that satisfy the requirements of this condition.

Reason: To minimise privacy impacts between adjoining development