

A background graphic consisting of a dark blue diagonal band across the page. Behind this band is a light grey image of a city skyline with several skyscrapers. Overlaid on the skyline are numerous white, 3D wireframe cubes of varying sizes, some of which are partially obscured by the dark blue band.

Statement of Environmental Effects Modification - New Balcony

16 Bower Street, Manly

Submitted to Northern Beaches Council
On Behalf of Paul Mitchell and Lauren Templeman

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1. INTRODUCTION

1.1. The Site

This SEE accompanies an application to modify approved development under S4.55(1A) of the *Environmental Planning and Assessment Act* (the Act). The site is 16 Bower Street Manly (Lot 30 DP 8075) which is zoned E3 Environmental Management and slopes from the street to a public reserve behind Shelly Beach. The site area is approximately 733 square metres. The landowner is the Trustees of the Roman Catholic Church, Sydney Archdiocese.

1.2. The Proposed Development

The proposed development is minor in nature being a single new balcony from the first floor living room. The balcony will be 6.6 square metres in area, have a privacy screen on its southern end and be supported by structural columns (see plans in Appendices A and C). It will not have outer walls and therefore is not floor space as defined in the Manly LEP 2013. Development of this minor scale would not normally require consent because of exemptions given in the Exempt and Complying Development SEPP but in this instance clauses 1.19 and 1.19A preclude exemption because the site is environmentally sensitive and bush fire prone.

The details of and justification of proposed modification and an assessment of potential impacts are detailed below. It is relevant to note that the modifications will not change the approved floor area, floor space ratio or building height all of which will remain as existing.

1.3. The Originally Approved Development

Council's records show that the site has long been used for residential purposes. In 2007 consent was granted for additions and alterations to an existing two storey residence (DA 124/2007). In 2010 a further consent was granted for substantial internal and external additions (DA 271/2010). In 2018 another consent for additions was granted (DA 2018/1268) giving the residence its current form; this final consent is considered to be the "originally approved development" for the purposes of this modification application.

2. MATTERS FOR CONSIDERATION

Section 4.55 of the Act enables a consent authority to modify a previously granted approval. The relevant provisions are as follows:

Modification of consents

(1A) Modifications involving minimal environmental impact. A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all) under this section, and*
- (c) it has notified the application in accordance with:*
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and*

III. it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

Subsection 4.55 (3) states as follows:

(3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The two preconditions prescribed under Section 4.55(1A) are addressed below.

2.1. Substantially the Same Development

The term "substantially" means "essentially or materially" the same or "to have the same essence" (*Vacik v Penrith Council*). In determining whether a modification is substantially the same development the task is to determine whether the development as originally approved is the same as the development proposed with modifications. This requires consideration of both changes to physical features and the consequent impacts (*Moto v North Sydney Council*).

The new balcony would cause minor change to the physical form of a small section of the residence's northern exterior wall. The change would mimic the existing form of the larger remaining section of the wall which contains a substantial deck (see Figure 1).



Figure 1: Proposed works area

The development incorporating the new balcony would have no materially different impacts to the approved development. The affected section of the residence is almost entirely obscured from viewing by neighbours and the public and would be screened by growth of the existing Bougainvillea (*Nyctaginaceae sp*) which covers most of the wall.

The only potential material impact of the modification is some loss of privacy for neighbours to the south (18 Bower Street). This potential impact has been addressed in consultation with the neighbours whereby the design includes the screening requested by them (see Appendix B).

The development as modified would have no further impacts- the modification would not be visible from the property to the east (14 Bower Street) and it would not affect any land, vegetation or views.

It is evident that the development as modified would be materially the same as that originally approved.

2.2. Minimal Impacts

As explained above and in more detail in the following section the modified development is minor and would have no material impacts other than improving the amenity of the subject residence.

3. SECTION 4.15 ASSESSMENT

Section 4.55(3) of the Act says the consent authority must take into consideration any relevant matters listed in Section 4.15(1). Each relevant matter is considered below.

3.1. Provisions of Planning Instruments

The only SEPP applying to the modified development is Coastal Management 2018. This SEPP classifies coastal areas into four categories- wetlands and littoral rainforests, vulnerability area, environment area and use area. The site is only included in the use area. The modified development would not affect coastal access nor cause any overshadowing, wind funnelling, loss of public views or adverse effects on visual amenity. As such, the consent authority can be satisfied that the modified development has been sited and designed to avoid adverse impacts and is therefore consistent with relevant provisions of the Coastal SEPP.

Manly LEP 2013 (MLEP) applies to the proposed modification. The proposal is consistent with relevant aims of the MLEP because it will be a "high standard of urban design" which is "responsive " to the area's character. The site is zoned E3 and the modified development is a permissible use and is consistent with relevant zone objectives because it will "not have an adverse effect on ...ecological, scientific, cultural or aesthetic values".

The following development standards apply to the modified development proposal:

- Earthworks (cl 6.2): the supporting columns will be founded on exposed sandstone and only a small modification to the rock's surface will be needed to create a stable and level platform. These works will not have any detrimental effects on drainage patterns or soil stability and will not affect the site's redevelopment potential or neighbours 'amenity.
- Stormwater (cl 6.4); the new balcony will drain to the garden by being connected to an existing downpipe. Thus, the modified development will have no adverse impact on adjoining properties, bushland or receiving waters.
- Foreshore scenic protection area (cl 6.9): while the site is in the prescribed area the work will not be visible from the foreshore meaning the modification will have no relevant impacts.

In summary, the modified development is consistent with all relevant provisions of the MLEP.

No draft planning instruments apply to the proposed modification.

3.2. Manly DCP

3.2.1. Streetscape and Townscape

The modified development will not be visible from the street or discernible from any public open space. It is, however, designed to be consistent with the character of the existing residence and will thus "assist in maintaining the character of the locality". Also, the modification will not intrude into the setback to the neighbouring residence to the south (18 Bower Street).

3.2.2. Landscaping

The modification will not affect any existing trees or shrubs.

3.2.3. Amenity

The modification will not affect neighbours' views or cause overshadowing or noise intrusion. Privacy will be maintained by installation of screening along the southern end of the new balcony.

3.2.4. Sustainability

The modification will not change energy consumption in the existing residence and the design optimises access to sunlight.

3.2.5. Accessibility

The modifications will be at grade with the existing adjoining living room and will thus be accessible to people with disabilities.

3.2.6. Stormwater

Drainage from the balcony will go to the garden and thus promote ground infiltration.

3.2.7. Waste management

The modified development will produce minimal construction waste. A waste management plan has been prepared (see Appendix A) and it shows waste will be removed by using existing pathways and the garbage storage area on the Bower Street frontage. Waste will be taken away by the builder and disposed of in licenced facilities.

3.2.8. Safety and security

The new balcony has been designed to be safe for all potential users by incorporating 1.05m high balustrades. The balcony will not be accessible from the ground level or any nearby structures meaning security will not be compromised.

The work area is in a buffer zone which adjoins land shown as bushfire prone on Council's maps. Separation of 17m between the bush and work site is provided. A detailed bushfire risk assessment has been undertaken (see Appendix D). The report says that the relevant Australian Standard and provisions of *Planning for Bushfire Protection 2019* would have to be applied to construction of the new balcony.

3.2.9. Foreshore Scenic Protection Area

The modification will not be discernible from any area of the foreshore.

In summary, the modified development complies with all relevant guidelines in the MDCP.

3.3. Provisions of the EPA Regulation

Only one clause in the Regulation is relevant being cl 98 which requires consideration of the Building Code of Australia. This provision can be addressed by imposition of conditions if warranted.

3.4. Likely Impacts

The modified development will have no material adverse impacts on neighbours nor the built or natural environments generally. Similarly, neither the local community nor economy will be affected in any noticeable way.

3.5. Suitability of the Site

The site of the proposed modification is suited to the intended use. It is suitably zoned, readily accessible and obscured from the public and all but one neighbour. Thus, construction can occur without undue disruption, and the modification once complete will be compatible with other development in the locality.

3.6. Submissions Made

The only potentially affected neighbour has been consulted about the proposed development. The resulting design responds to the neighbours wishes (see Appendix B) and is understood to be

acceptable. Council will notify any potentially affected people and take submissions received into account in its determination.

3.7. Public Interest

The modified development is of little consequence for the public interest. Nevertheless, it would be compliant with all applicable standards and guidelines, thus representing orderly development and being in the public interest.

4. CONCLUSION

The modification involves minor works that are substantially the same as the originally approved development.

Impacts from the works will be largely imperceptible except for the neighbour to the south where they will be effectively mitigated.

No additional floorspace will be created and the external impacts will not be noticeable because the modification is of a minor nature.

APPENDIX A:

DA DRAWING SET

Prepared by Chrofi Architects

APPENDIX B:

CORRESPONDENCE WITH NEIGHBOUR

APPENDIX C:

STRUCTURAL ENGINEER'S PLAN

APPENDIX D:

BUSHFIRE REPORT