

**SECTION 4.55 REQUEST  
TO NORTHERN BEACHES COUNCIL  
FOR MODIFICATION TO  
DEVELOPMENT CONSENT 168/2017  
FOR ALTERATIONS AND ADDITIONS  
TO EXISTING DUAL OCCUPANCY  
AT 82-84 BOWER STREET MANLY**

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# **Section 4.55 Request to Northern Beaches Council for Modification to DA 168/2017 for Alterations and Additions to Existing Dual Occupancy at 82-84 Bower St Manly**

## **Introduction**

This Modified Statement of Environmental Effects (Modified SEE) has been prepared in support of a Section 4.55 Modification for the proposed modification to Development Consent No.168/2017 for alterations and additions to existing dual occupancy.

The modifications sought are a result of detailed investigations primarily into an issue of water ingress and damage to the lower level of No 82 Bower St Manly and the rapid growth and associated impact from the ficus spp located within the front setback of the subject site. It is noteworthy that this tree species is now listed on Councils policy documentation as a species of tree that is not covered by Councils Tree Preservation Orders.

I have inspected the subject site and surrounding locality and assessed the plans and supporting documents for the proposed modified development. I consider that the proposed modified development is very reasonable and is worthy of approval of Northern Beaches Council (Council).

It is my professional view that the proposed modifications should be assessed as “modifications involving minimal environmental impact” pursuant to Division 4.55 of the Environmental Planning and Assessment Act, 1979, due to the fact that there are no unreasonable adverse amenity impacts on adjoining properties or the public domain.

## **Background**

The parent Development Application (168/2017) approved on 14<sup>th</sup> November 2017 granted consent for works primarily to the existing dual occupancy which also had the effect of modifying Development Consent No.34/2016 which was for alterations and additions to 82 Bower Street.

The proposed modifications under this modification application were the subject of a pre-lodgement meeting with senior Council staff wherein the proposal was discussed and recommendations made as to the required matters to be addressed under the proposed modifications.

## The Requested Modification

This modification application is submitted to Northern Beaches Council under the provisions of Division 4.55 – modification of consents– generally, ***Part 1(A) modifications involving minimal environmental impact.***

The requested modifications include the requested removal of a tree in the front setback of No.82, a species of *Ficus benamina* which has been assessed by Footprint Green, qualified arborists who advise, in their report dated 21<sup>st</sup> May 2018 that the retention of the subject tree will constrain the growth of species nominated in the approved landscape plan.

The requested removal of the subject *Ficus* tree is bolstered by the listing of this tree species in the Exempt Tree Species under the MDCP 2013 (3.3.2.3) which would allow the subject tree to be removed without the necessity for development consent to be obtained beforehand however the consents issued required the retention of this tree, hence the request to allow this tree to be removed.

The requested modification seeks the inclusion of Landscape Plan LP01C dated 15<sup>th</sup> May 2018 be included in the list of approved documents to replace Landscape Plan LP02A dated 9 March 2017 and its replacement in condition ANS12 which also requires modification to delete reference to the retention of the subject *Ficus benamina* tree.

Further modifications are requested to the approved list of plans as indicated in the following Table extracted from the development consent 168/2017.

Plan No. / Title	Issue/ Revision & Date	Prepared By
DA-A-010 Site Plan	21 June 2017	Smith & Tzannes
DA-A-100 Basement and Lower Ground	21 June 2017	Smith & Tzannes
DA-A-101 Ground and Level 1	21 June 2017	Smith & Tzannes
DA-A-102 Roof	21 June 2017	Smith & Tzannes
DA-A-200 Elevations	21 June 2017	Smith & Tzannes
DA-A-201 Sections	21 June 2017	Smith & Tzannes
LP02A Landscape Plan	9 March 2017	Selena Hannan Landscape Design

The requested modification seeks replacement of the approved plans with the following plans prepared by Smith Tzannes Architects-

S4.55-A-000	TITLE
S4.55-A-001	NOTES
S4.55-A-010	SITE PLAN
S4.55-A-100	BASEMENT & LOWER GROUND
S4.55-A-101	GROUND & LEVEL 1
S4.55-A-102	ROOF
S4.55-A-200	ELEVATIONS
S4.55-A-201	SECTIONS
S4.55-A-800	AREA CALCULATIONS
S4.55-A-990	Neighbour Notification

The modifications sought are represented in the following extracts from the Smith Tzannes plans submitted as part of this modification application as follows-

***Basement and Lower Ground Level***

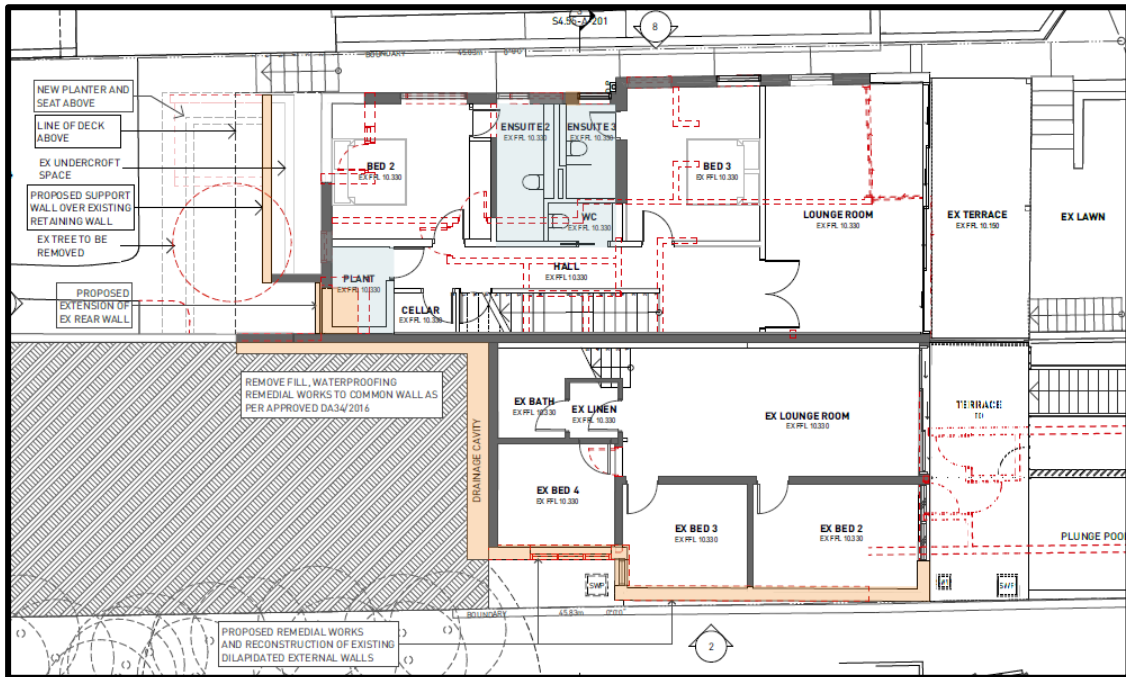
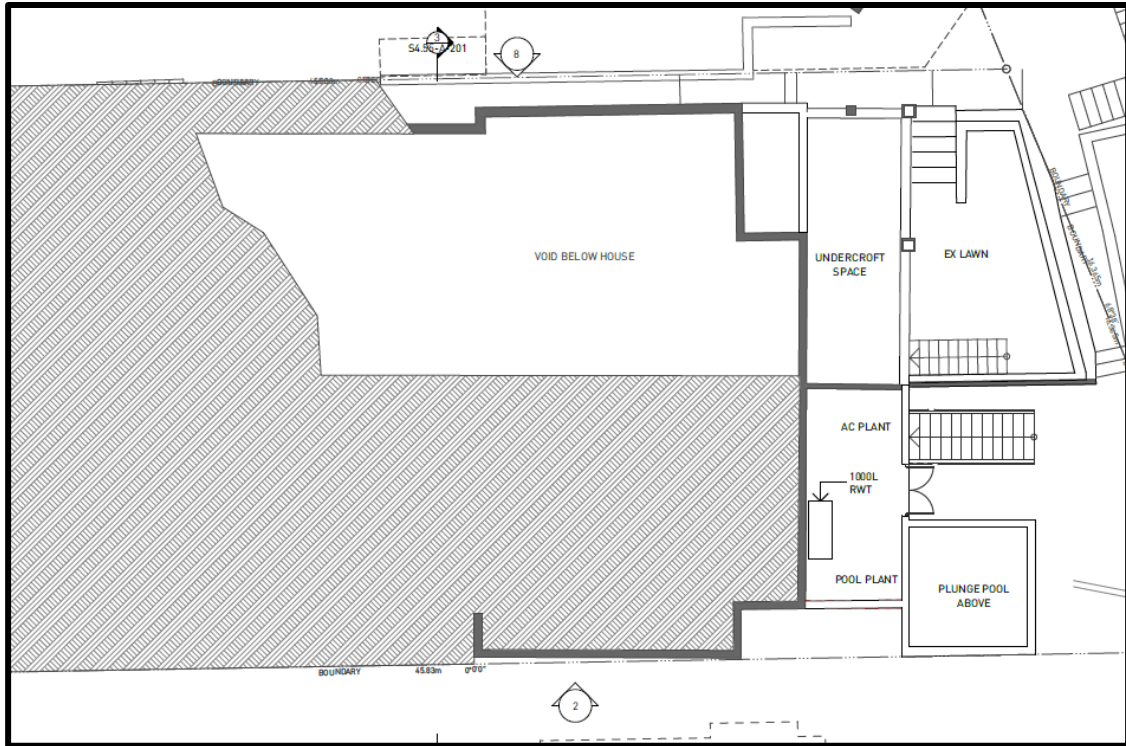
Note: No changes to Basement

No.82

- remedial works to party wall and remedial reconstruction of eastern walls

No.84

- Deletion of lift
- Extension of corner of south eastern wall accommodating plant room.
- Amendment to window associated with internal layout amendments at ensuite 3
- Minor internal layout amendments



EXTRACTS FROM ARCHITECTURAL PLANS FOR BASEMENT AND LOWER GROUND LEVELS

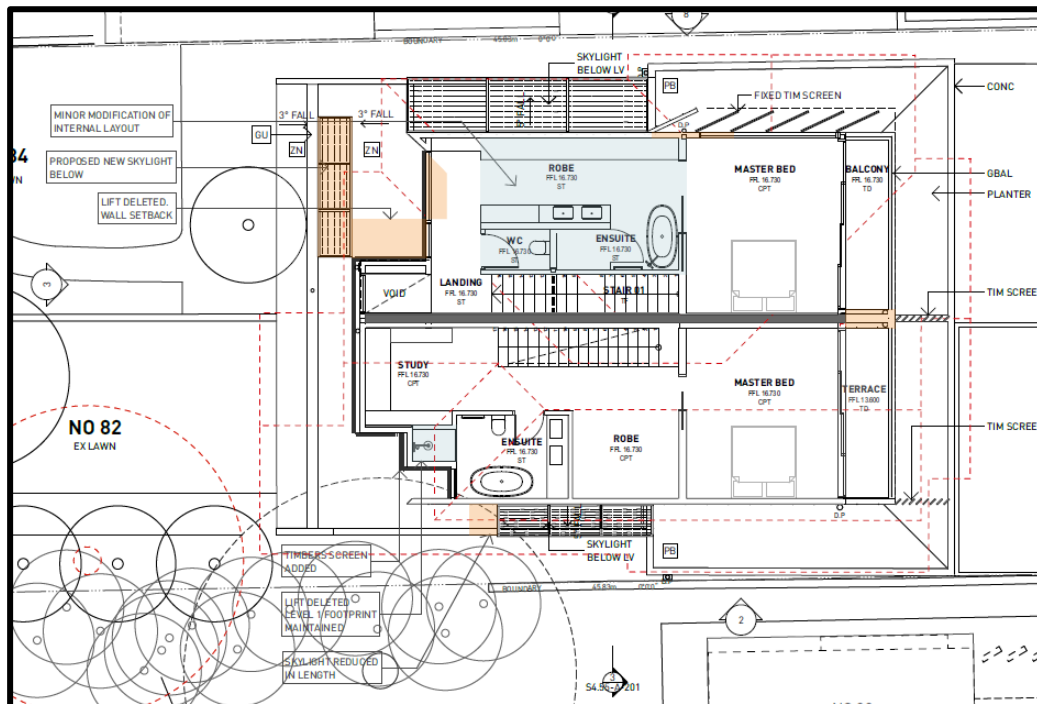
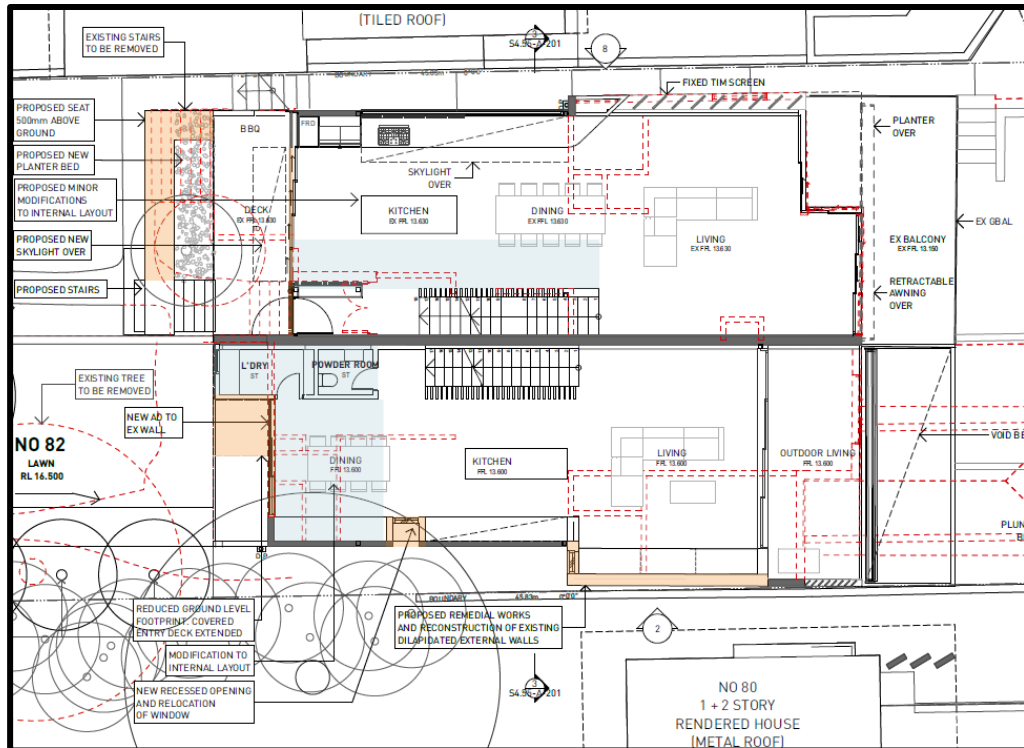
### ***Ground Floor and Level 1***

#### **No.82**

- Entry deck extended reducing the ground floor footprint
- New aluminium sliding door entry associated with entry deck extension
- Minor internal layout amendments associated with new entry doors
- Single recessed opening in eastern kitchen and dining wall

#### **No.84**

- Deletion of lift and amendment to sliding doors and entry door to suit
- Existing stairs to yard to be removed
- New planter box, seat and entry stair
- Minor internal layout amendments as a result of removing lift

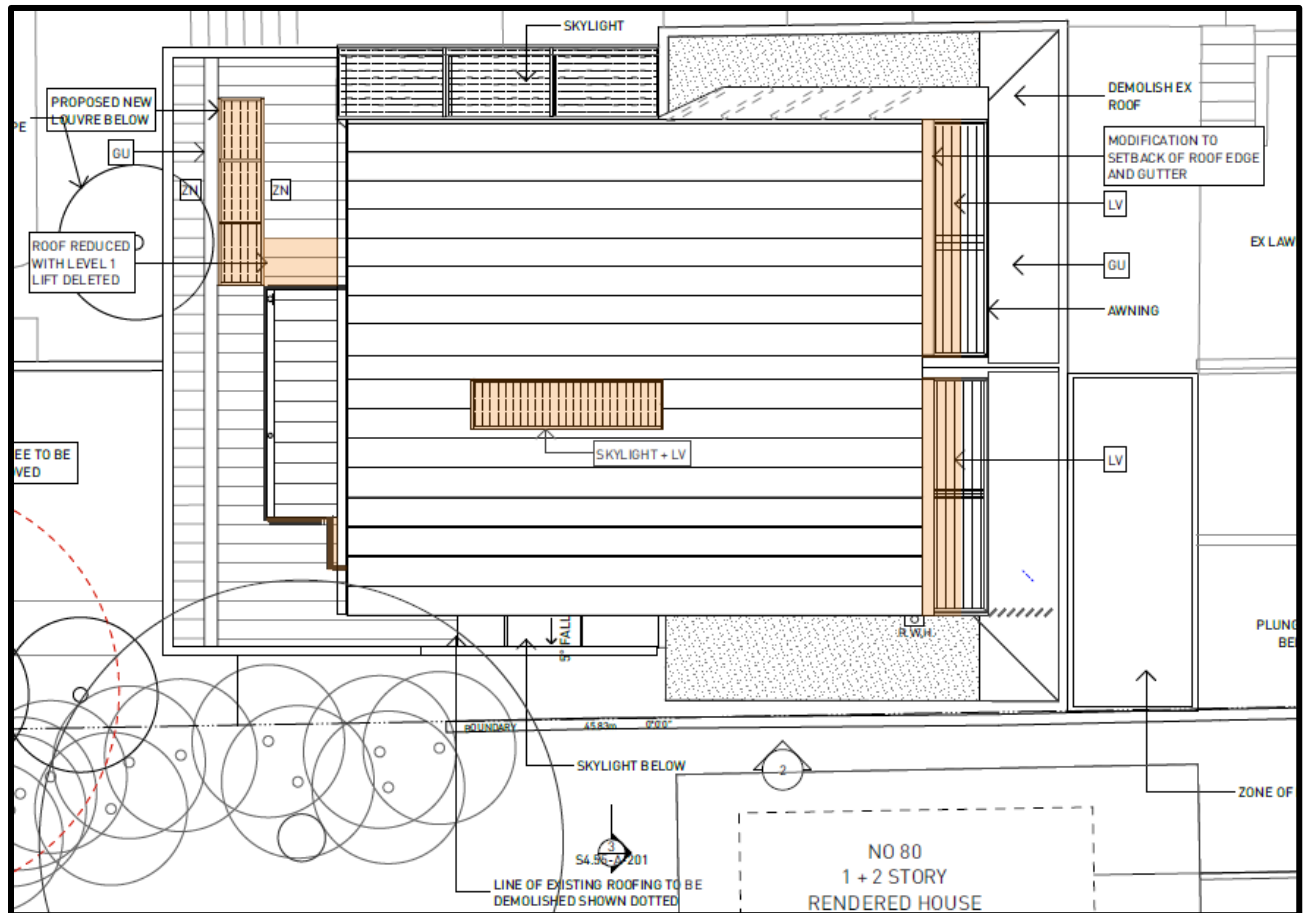


EXTRACTS FROM ARCHITECTURAL PLANS FOR GROUND AND LEVEL 1



## Roof Level

- Minor changes to roof at No. 82 and 84 following deletion of lift and modification to easternmost roof of both No. 82 and 84 resulting in reduction of roof height and setback of roof edge.
- Skylight added over Level 1 stair to No.82
- Skylight added over entry deck to No.84



EXTRACT FROM ARCHITECTURAL PLANS FOR ROOF LEVEL

## **Division 4.55 of the Environmental Planning and Assessment Act 1979 No. 203.**

The relevant provisions of Division 4.55 (1A) are as follows –

*A consent authority must, 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,*

### **RESPONSE**

The proposal is considered to be of minimal environmental impact due to the minor nature of the changes and the retention of the overall approved proposal and no material impacts resulting from the proposed modifications.

- b) It is satisfied that the development to which the consent has 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), and*

### **RESPONSE**

The development as proposed to be modified will be the same development for which development consent was granted that is, the approved development will remain alterations and additions to existing dual occupancy.

- 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 in the Council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

### **RESPONSE**

The requested modification will be notified in accordance with Councils notification policy.

- d) It has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan*

## **RESPONSE**

Submissions made in response to the notification of the requested modification will be considered by the consent authority as part of the assessment process.

### **Reasons for the Proposed Modification**

The reasons for the support of the proposed Division 4.55 Modification are due to the fact that Council has listed the Ficus species in its list of exempt species, structural investigations into No.82 revealed structural damage to the southern wall due to water ingress and the deletion of the approved lift required adjustments to the plans as approved.

## **Division 4.15 Evaluation**

### **4.15 Evaluation**

#### **7.6 Matters for consideration—general**

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

*(a) the provisions of:*

*(i) any environmental planning instrument, and*

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

#### **RESPONSE**

The relevant provisions of the MLEP and relevant SEPP (Coastal Management 2018) have been addressed in the body of this Statement.

*(iii) any development control plan,*

#### **RESPONSE**

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

*and*

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

#### **RESPONSE**

No planning agreements apply to the proposal

*and*

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

### **RESPONSE**

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

*and*

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

### **RESPONSE**

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

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

### **RESPONSE**

The subject site, by virtue of its existing approval, layout, topography and locality is suitable for the modified proposal.

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

### **RESPONSE**

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

*(e) the public interest.*

### **RESPONSE**

The proposal endorses the public interest by limiting the impact of the proposal to the impacts contemplated by the parent development consent with subsequent limited disturbance to the natural and built environment.

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

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

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

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

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

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

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

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

***(3A) Development control plans***

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

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

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

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

**(4) Consent where an accreditation is in force**

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

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

**(6) Definitions**

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

**Environmental Planning Instruments**

The proposal as approved and as modified remains a permissible development under the provisions of existing use rights under the relevant provisions of the EP and A Act and Regulations thereunder.

The relevant provisions of the recently gazetted State Environmental Planning Policy (Coastal Management) 2018 are considered 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.*

*(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.*



*(3) This clause does not apply to land within the Foreshores and Waterways Area within the meaning of [Sydney Regional Environmental Plan \(Sydney Harbour Catchment\) 2005](#).*

## **RESPONSE**

The subject modifications are designed and located to have minimal environmental impacts upon the natural or built environment.

The modifications are unlikely to impact upon coastal processes in a negative manner, in fact the modifications are being sought as the ingress of groundwater and to a lesser extent, surface water, has resulted in deterioration of the southernmost wall of the subject site, thereby requiring repairs and rebuilding, as proposed under this modification application.

### **14 Development on land within the coastal use area**

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

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

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

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

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

*(iv) Aboriginal cultural heritage, practices and places,*

*(v) cultural and built environment heritage, and*

*(b) is satisfied that:*

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

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

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

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

(2) *This clause does not apply to land within the Foreshores and Waterways Area within the meaning of [Sydney Regional Environmental Plan \(Sydney Harbour Catchment\) 2005](#).*

## **RESPONSE**

The proposed modifications will not impact upon public access along the foreshore, nor result in any material impact upon overshadowing, wind funnelling or view loss from public places. The removal of the Ficus benjamina tree may result in a marginal increase in views across the subject site from some public areas in Bower Street.

The requested modifications will be of minimal environmental impact in terms of visual amenity or the scenic qualities of the coast, including coastal headlands.

### *Development Control Plans*

The proposal is bound by the provisions of Manly Development Control Plan. The proposed modification to the Development Consent does not encompass any further variation to Council's Controls than those endorsed by the granting of current Development Consent No 168/2017.

### *Impact on the Natural Environment.*

The proposed modification seeks consent for the removal of the Ficus benjamina located within the front setback of No.82 Bower St. The modification will not adversely impact upon flora and fauna, soil or water quality, air quality or the conservation of natural resources apart from the approved works and requested modification.

The submitted arborist report concludes that the tree removal requested will have a beneficial impact upon flora in the vicinity.

### *Impact on the Built Environment.*

**Scenic qualities** – The proposed modification is consistent with the current and future character of the locality as expressed within the provisions of the Manly Local Environmental Plan and Manly Development Control Plan thereunder.

**Compatibility with adjacent land uses** – The proposed modification will not materially alter the compatibility with the adjacent land uses.

**Bulk and scale** – The proposed modification will not materially change the proposed built form on the subject site.

**Overshadowing** – The proposed modification will not impact upon the solar access to nearby sites.

**Views and vistas** – There will be no adverse impacts upon views and vistas across or around the subject site.

**Site design** – The site design will remain generally as approved apart from the proposed modifications which are minor.

**Public domain** – The proposed modifications are generally not visible from the public domain.

**Amenity Impacts** – I consider that there will be no unreasonable amenity impacts from the proposed modification.

*Impact on the Social and Economic Environment.*

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

*Suitability of the Site.*

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

## **Conclusion**

For the reasons set out in the preceding sections of this Request, the proposed modification will be, by any measure, of minimal environmental impact and will enable the consent to be modified without any material change to the approved proposal.

The proposal, as confirmed in the recent pre-lodgement meeting with senior Council staff, remains alterations and additions to an existing dual occupancy development on the subject site and can reasonably be dealt with under the provisions of Clause 4.55 of the EP and A Act, subject to the imposition of any conditions required as a consequence of this request being granted consent.

**Prepared by Lance Doyle, Town Planner**

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**28<sup>th</sup> August 2018**