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**From:** [REDACTED]  
**Sent:** 1/06/2023 9:58:33 AM  
**To:** Council Northernbeaches Mailbox  
**Subject:** TRIMMED: Objections to Section 4.55 Modification to Approved Development Consent for 32 Bower Street Manly (DA 2023/0211)  
**Attachments:** 32COM3.pdf;

Dear Sir/Madam,

Please see attached.

Regards

Hugh Burns

*Gwyn Burns  
45 Bower Street  
Manly NSW 2095  
Australia*

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Attn Mr. Maxwell Duncan

Louise Kerr, Chief Executive Officer,  
Northern Beaches Council  
PO Box 82  
Manly NSW 1655  
council@northernbeaches.nsw.gov.au

*31st May, 2023*

Dear Sir/Madam,

**Re: Section 4.55 Modification to Approved Development Consent for 32 Bower Street Manly (DA 2023/0211)**

We write to object to the Amended Proposed Development No. 2023/0211 for 32 Bower St Manly NSW 2095 by Applicant M. Davies. We are the owners and occupants of premises across Bower Street and can look out in a north easterly direction over the subject site (e.g. from our eastern facing dining room window).

The comments in our submission have been addressed in terms of the Manly LEP and DCP.

**Is Section 4.55 Valid For Extent Of Proposed Changes?**

Firstly we question whether it is appropriate to consider the extensive design changes proposed under this DA as a valid use of the section 4.55 modification (previously known as a section 96 modification). The original intention of this modification clause was for “Modifications involving minor error, misdescription or miscalculation” but changes to the Act have apparently broadened and watered down this provision to now cover more general wording of “Modifications involving minimal environmental impact providing it is substantially the same development for which the consent was originally granted”

It is very clear from the newly submitted plans for number 32, that basically the previous building design being proposed for the site (in DA 2019/0916) has been completely recast and replaced with an entirely new design (by DA 2023/0211). For example, most walls are quite different alignments, rooms are different sizes, and the extent of excavation is different.

Whether the significance of the proposed changes meet the Act’s requirements will ultimately have to be a matter for Council’s planning and legal staff to consider.

Given the extent of the redesign and reconfiguration being proposed for the dwelling on the site, we would be of the view that the applicant should have submitted a revised new DA, as the scale of the changes made would make it easier to assess the new proposal from scratch.

One particularly revealing quote confirming the scale of the changes is in the Applicant's Impact Report (P23) "On the eastern elevation, a direct comparison ..[to the previous plans].. is more difficult as the approval features angled pavilions, whereas the proposal is parallel to the boundary."

### **View Loss**

Our second reason for objection is the view loss from the public street, and potentially numbers 43 (across the road from 32) and 35 to 39 (overlooking 32). This is mainly caused by the "gym and guest" structure planned to be erected near the street. Particularly the top floor of this two storey building.



***View Along Bower Street looking over number 32 as existing. Note original fence height (still existing) can be seen through (about half way up) the construction screens near the tree. Previously no structure on this site was above the road level. The proposed "gym and guest" building will partially block the view from both the public space and some private houses. The adjacent public reserve is on the right. The foot path passing number 32 to the park is highly trafficed.***

From number 45, the previous easterly green bush vista from our dining room will now have a building in this view – the currently proposed gym and guest building. That is, compared to the original (now demolished) premises, the new proposal places

a structure near the street at a height above the road and pedestrian footpaths, where none previously existed.



***Zoomed in view from the previous image. Number 32 is within the foreshore scenic protection area but the proposal will see views of the ocean and headland from public areas, such as the public footpath seen here, blocked by the “gym and guest” structure proposed to be erected near and to a height above the road level.***

Given the enormous size of the site (reported to be 1862m<sup>2</sup>) and the decision to substantially change the whole building design, surely this near-street structure could have been lowered or relocated to remove any view loss from the public thoroughfares or surrounding houses.

This structure seems to rely on the envelope of the 3 dwelling development previously proposed and approved for the site, where the height of the top dwelling above the road would have been used to give all 3 residences a water view. Now with the site being apparently one dwelling again, this need for height so close to the street, causing view loss, is unnecessary and should be removed.

Given the location of the “gym and guest” building near the street, and its separation from the main house, there must also be concerns this building could at some future point be turned into a secondary dwelling or used for short term tourist accommodation.

Thus we continue to be concerned at the precedent being set in this part of Bower Street where DAs are focussing on the 8.5 m height limit as a means to disregard the view loss (“view sharing”) provisions of the planning documents. Such view loss that

directly results from building structures near the street to this maximum height, which end up above the road, when previously existing structures were either substantially or fully below the level road and footpaths in this part of Bower street. Being above the road blocks water views from houses opposite and public spaces on the street.

### **Over height**

Thirdly we object to the building now being proposed for the site being over height in various locations. Again given the size of the site, allowing a large floor area dwelling, there is really no need for any over height buildings (which smaller sites may lead to with large houses). The problem with allowing any over height structure is the precedent it then sets for later DAs in the street on smaller blocks.

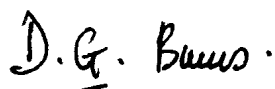
Additionally this block is directly adjacent the reserve linking Bower Street to Shelly Beach and is within the foreshore scenic protection area, so being excess height is also likely to increase the visual impact of the proposed dwelling on the reserve. Given this sensitive location, the applicant should be required to make the proposed building heights fully compliant.

### **Summary**

We thus object to this proposal on the grounds the proposal should be assessed as a new DA, the building proposed nearest the street will cause view loss and that the main building in the proposal is over height on a block directly adjacent to the reserve.

We trust this submission should be of assistance to Council, but please feel free to contact us on [REDACTED] if we can provide any further information.

Yours faithfully



D.G. Burns