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**Sent:** 1/05/2018 10:35:49 AM  
**Subject:** Objection to MOD2018/0180  
**Attachments:** Objection to Modification.pdf;

Attention Benjamin Price

Morning Benjamin, please find attached the objection to the modifications for 75 Bower street Manly

Regards

MHD Planning  
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Northern Beaches Council  
Civic Centre  
Dee WHY NSW 2099  
1 May 2018

Attn: Benjamin Price

Via: [council@northernbeaches.nsw.gov.au](mailto:council@northernbeaches.nsw.gov.au)

RE: Construction of the approved dwelling at 75 Bower Street. (DA269/2015), (CC269/2015), (MOD2018/0180).

Dear Benjamin,

Thank you for your time on the phone discussing the abovementioned application and subsequent modifications to the approved development. As I stated on the phone to you, my client objects to the modification in the strongest possible terms.

Whilst there are numerous small details and changes regarding this proposal, my client is most distressed by the following two elements

1. The continued construction of the building element comprising the viewing platform.
2. The fitting of clear glass within the opening labelled DW02.08 on the east elevation of the subject dwelling.

#### Viewing Platform

As you are aware the platform was deleted via condition of consent by the following text:

#### **ANS03**

*The viewing platform on top of the cabana is to be deleted by removal of access from the kitchen (Level 01) and replacement of the platform with a non-trafficable roof to the cabana. Plans are to be amended accordingly, prior to the issue of any Construction Certificate.*

**Reason: To ensure privacy to No.75 Bower St, Manly.**

The condition indicates “The viewing platform on the top of the cabana is to be deleted”. This is the core of the condition. The development has proceeded to construct the platform, changed its name to a planter bed, and filled it with pebbles. This built form element serves absolutely no purpose and the design may be used as a Segway towards modifying to the originally intended viewing platform by any other name.

We request that Council refuse outright the modification and modify condition ANS03 further to strengthen the clear intent as outlined within the report text:

*“Moreover, the terrace adjoining the kitchen and living area for No.75 is in the north western corner of that site, which is immediately adjacent to the proposed viewing platform. A condition will be included deleting the viewing platform from the proposal.” (Source: Pg24 Development Assessment Unit Report DA No. 269/2015 Site Address 77 Bower St, Manly, Dated 17/11/2015)*

The intent is to delete the building structure and create a roof not a pebble filled raised garden bed, the privacy impacts of deleting this change are catastrophic to my clients living area as has been demonstrated by numerous photos and correspondence under separate cover.

We are concerned that the applicants may be reading the condition in error or altering their development in a way that they may not realise is inconsistent with the intent of the condition or the reporting text. This may result in demolition of elements of the building via demolition orders. This is a situation we hope to avoid by acting now.

#### Window Change

Altering the glazing from opaque nature to clear, as has already been fitted is again contrary to the original assessment and there are no mitigating circumstances as to why this glazing should be changed.

As the condition states:

#### **ANS07**

*The window (DW02.08) to the hall/stair on Level 02 (DA06 - Eastern Elevation) is to be obscured glazing. Details of compliance shall be submitted to the Council/Accredited Certifier, prior to the issue of any Construction Certificate.*

***Reason: To protect the privacy of the rear pool area of No.75 Bower St.***

This window directly overlooks the private open spaces and pool area of my client’s property. The required opaque glazing must be fitted to ensure privacy for the subject and the adjoining occupants.

Site inspection will clearly indicate the resultant impacts of this change.

DW02.08 1200w x 2400

East

Corridor

Fixed clear glass window - double glazed

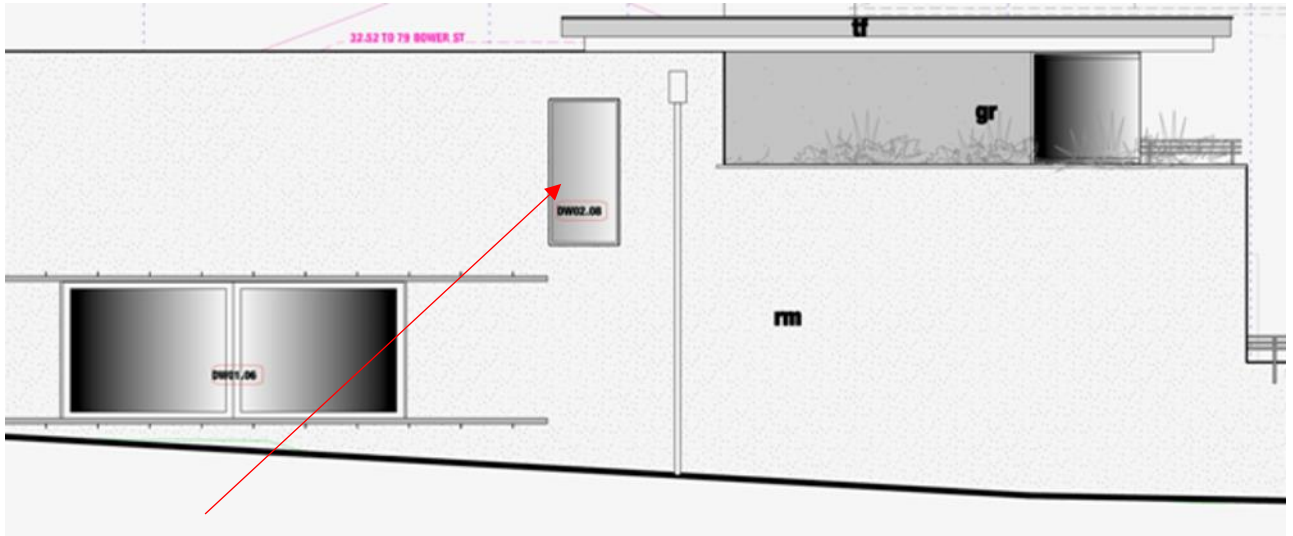


Figure 1 Subject window to retain opaque glazing

Additionally, the application relies on the findings of Justice Talbot in *Windy Dropdown v Warringah Council* for retrospective approval. However it is our understanding that this finding only relates to use of unauthorised structures, thus a separate Building Certificate may be required in addition to any retrospective Section 4.55 relating to structures.

These questions need to be answered prior to completion and we again request Council to issue the appropriate stop work orders whilst the assessment of the modification and subsequent legalities of the development as built.

On a final note, it would seem appropriate for council to request a works as executed plan so as to assess the actual build against the modification.

We do not support the modification or the process by which these changes are being sought.

Regards

Mitchell Drake  
B.Sc., Master U.R.P.

Cc: [Lynden.Grant@northernbeaches.nsw.gov.au](mailto:Lynden.Grant@northernbeaches.nsw.gov.au)