

1 November 2022

General Manager  
Northern Beaches Council  
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DEE WHY NSW 2099  
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Dear Sir/Madam

**4.56 MODIFICATION APPLICATION TO DA 2021/2257 IN RELATION TO 42 NORTH STEYNE, MANLY**

This report has been prepared by GYDE Consulting to accompany an application under Section 4.56 of the *Environmental Planning and Assessment Act 1979 (the Act)*. The proposed modifications involve changes to the shop top housing development (DA 2021/2257) approved at 75 The Corso, and 41 and 42 North Steyne, Manly.

The proposed modification includes the installation of a pool and spa on the approved terrace of the level 4 apartment at 42 North Steyne, Manly.

This application is accompanied by the following documentation:

- Architectural Plans prepared by Squillace Architecture / Interiors, referenced as: DA 104 Version F, DA 201 Version D, DA 202 Version E and DA 403 – Version A, all plans dated 05.10.2022
- Landscape Plans prepared by Paul Scrivener Landscape Architects referenced as: C-s.4.55 (1 of 1) dated 17.10.2022
- Acoustic Impact Statement prepared by RenzoTonin and Associates, dated 31.10.2022.
- SEPP 65 Design Verification Statement by Squillace, dated 1.11.2022.

Refer to the Architectural Plans and Section 2.1 of this Statement for further details on the proposed modifications.

## 1. THE APPROVED DEVELOPMENT

DA 2021/2257 was approved by the Land and Environment Court (LEC No. 2022/00032828) on 20 September 2022. Development consent was granted for:

*Alterations and additions to including the construction of shop top housing and strata subdivision.*

## 2. PROPOSED MODIFICATION

### 2.1 Overview of Modifications

This application seeks to amend the existing consent by installing a pool and spa on the approved terrace of the level 4 apartment. The pool will be located to the rear of the development within the private open space of unit 401 and will only be accessible to residents of unit 401.

The pool will be situated behind the approved 1.4m privacy blades and planter box along the western edge of the balcony.

### 2.2 Conditions to be Modified

To facilitate the modifications in Section 2.1, this application seeks to modify one condition of the consent as follows:

- Condition 1 Approved Plans and Supporting Documentation

The details of and the justification for each proposed modification and an assessment of its impacts, if any, are detailed below:

Condition	Proposed Modification																																																
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Landscape Plans		
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2 of 5/ Issue D	14 July 2022	Paul Scrivener

**Reason for modification:**

The conditions above are proposed to be modified to reflect the changes in the amended Architectural Plans and Landscape Plans.

### 3. STATUTORY CONSIDERATIONS

#### 3.1 Section 4.56 of the Environmental Planning and Assessment Act, 1979

Section 4.56 of the *Environmental Planning and Assessment Act, 1979*, enables a consent authority to modify a development consent upon application being sought by the applicant or any other person entitled to the act on the consent, provided that the consent authority as part of the assessment process take into consideration the following matters:

Table 1: Section 4.56 evaluation

Matters for consideration under Section 4.56	Response
1a) It is satisfied that 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 (if at all)	<p>The term “substantially the same developments” means “essentially or materially or having the same essence” as defined by Pearlman C.J. in <i>Schroders Australian Property Management Ltd v Shoalhaven City Council and Anor</i> (1999) NSWLEC 251. Accordingly, it is the substance of the proposal as modified relative to the substance of the development as originally approved that is required to be considered.</p> <p>The proposed modifications do not seek to change the nature and substance of the approved development. The land use and scale of development on the site will remain consistent with the approved development. The modification is situated on level 4 and will not impact the design and internal layout of any of the approved residential apartments. The pool remains as private open space for unit 401. The development (as modified) will remain substantially the same as the development that was originally approved.</p>
<p>(b) it has notified the application in accordance with—</p> <p>(i) the regulations, if the regulations so require, and</p> <p>(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and</p> <p>4. 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.</p>	<p>Surrounding properties will be notified of the proposed modifications in accordance with Council's notification policy. Consideration of any submissions made will be made during the assessment process.</p>
(1A) 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	<p><b>Height, Bulk and Scale</b></p> <p>The proposed installation of the pool will not result in any changes to the overall height of the approved development. The pool will exceed the MLEP maximum height of buildings of 12m by 1.5m, however it will not result in any changes to the overall maximum height of the approved development (refer to section 3.2 for further discussion on height). The location of the pool above the lift overrun presents an effective use of space which</p>

Matters for consideration under Section 4.56	Response
<p>the development the subject of the application.</p> <p>(a) The likely impacts of the development, including environmental impacts on both the natural and built environments, and the social and economic impacts in the locality.</p>	<p>increases the visual amenity of the approved private open space. Located to the rear of level 4, the changes will have minimal impact on the surrounding locality and presents a design which is considerate of the approved and surrounding developments. Planter boxes align most of the perimeter of the pool to soften any additional bulk caused by the modification.</p> <p><b>Visual Privacy</b></p> <p>The visual privacy measures along the southwestern edge of the development in the approved development remain in place for the proposed modifications. Planting continues to align the southwestern edge of the balcony at a depth of 1m to maintain visual separation from apartments in 9-15 Central Avenue.</p> <p>There is an approximate 10.8m separation between the pool and the adjacent balconies at the neighbouring site 9-15 Central Avenue. It is important to note that these balconies directly opposite the site are positioned adjacent to the site boundary, such that no separation distance is provided. The 1m planter setback ensures that the pool does not dominate the streetscape and provides an additional barrier to ensure that visual privacy is retained to the neighbouring properties.</p> <p><b>Acoustic</b></p> <p>This application is accompanied by an Acoustic Impact Statement.</p> <p>The required pool equipment including the pool pump will be compliant with all mechanical plant equipment requirements. The pool pump will be enclosed in a soundproof pump room and covered with a planter box to maintain acoustic privacy. The pool is located on the southwest elevation of the balcony, adjacent to the roof of the neighbouring commercial and tourist and visitor accommodation premises, Hotel Steyne. Any noise impact will be commensurate with the approved use of the area as private open space.</p> <p>The pool will only be accessible to residents of unit 401 which limits the amount of potential pedestrian traffic and noises associated with the usage.</p>
<p>(b) The suitability of the site for the development.</p>	<p>The suitability of the site has been comprehensively addressed and considered by virtue of the granting of development consent. There is nothing with respect to the modifications that would affect the suitability of the site for the development as approved or as proposed to be modified.</p>
<p>(c) The public interest.</p>	<p>No public interest issues arise as a consequence of the proposed modifications. Council's intentions in imposing conditions to preserve the public interest are not affected, since the proposed modifications continue to give effect to those general intentions, simply in a more practical and achievable way.</p>

### 3.2. Relevant Planning Instruments and Development Controls

The principal planning controls applying to the development are contained in:

- *Manly Local Environmental Plan 2013 (MLEP)*
- *Manly Development Control Plan 2013 (MDCP)*

#### Manly Local Environmental Plan 2013

Since there are no substantive changes to the development proposed, the modified proposal remains consistent with the majority of the relevant provisions of the Manly Local Environmental Plan 2013 as detailed in the original application and as subsequently assessed by the Land and Environment Court in granting the consent.

Notwithstanding, the proposal does seek a 1.5m exceedance to the maximum height of buildings for the subject site. A discussion of this exceedance and its impacts has been provided below.

##### *Height of Buildings*

The surface of the terrace is 12m in height compliant with the MLEP height of building controls, with the planter box and privacy screen (1.4m in height) extending above it. The proposed pool and spa extend a 1.5m above the terrace, having a height of 13.5m in exceedance of the height control.

Despite the breach, the proposal remains consistent with the objectives of the Height of Buildings control as:

- The pool is set behind the privacy screen and will result in minimal change in bulk and scale as viewed from private and public domain. As viewed from the east, the pool and its surrounds will fit within the context of the taller buildings which adjoin it.
- Shadows from the pool will fall within those cast by the privacy screen or onto the subject site.
- The view corridor from the adjacent properties is substantially maintained, with the minor change having a negligible impact.

##### *Floor Space Ratio*

The proposed works do not increase the gross floor area as the outer walls are a maximum of 1.4m in height.

#### Manly Development Control Plan 2013

The proposal remains consistent with the relevant provisions of the Manly Development Control Plan 2013 as detailed in the original application. Section 4.1.9 *Swimming Pools, Spas and Water Features* of the MDCP outlines the development standards required for swimming pools in residential developments. Whilst these provisions refer to swimming pools and spas built on the ground level, these provisions have been considered with this pool design.

As the proposed swimming pool and spa is located more than 1m above natural ground level, the proposal must demonstrate that it will not detract from the amenity or character of the neighbourhood and provide a minimum distance from the side boundary equivalent to the height of the swimming pools and/or spa and their curtilage and/or concourse at any point above existing ground level. The pool has been designed in a way to maintain the character of the surrounding neighbours through providing considerable landscaping to reduce any potential visual impacts. Situated to the rear of the building, the pool will not be visible from the North Steyne frontage, maintaining visual amenity. The pool is built to a height of 1.5m on the balcony and provides a 1m setback from the southwestern boundary of the development.

Section 3.9 *Mechanical Plant Equipment* and section 3.4.2.3 *Acoustical Privacy* refers to the controls relevant to the pool pump system. The pool pump is enclosed and acoustically controlled by a soundproof pump room to limit noise to an appropriate standard. The pump is covered in landscaping to further increase the amenity and not compromise the street character of the site to surrounding neighbours. The pool is located away from neighbouring residential premises and adjacent to the roof of the commercial premises (pub and restaurant) and tourist and visitor accommodation at 75 The Corso.

#### 4. CONCLUSION

The Section 4.56 Modification Application seeks to modify the consent issued on 20 September 2022, under DA 2021/2257 for 75 The Corso 41 and 42 North Steyne, Manly.

The modifications do not result in any adverse impacts and the development will remain consistent with the approved application. In summary, the proposed Section 4.56 application:

- is considered substantially the same development as the development for which consent was originally granted;
- is appropriate when assessed by reference to the relevant matters for consideration under Section 4.15 (1); and
- will have no adverse environmental impacts on the site, the properties in the vicinity of the site, resulting in no discernible change to the overall building envelope, form, scale and function, as originally approved

The proposal as amended under this Section 4.56 application warrants approval by Council.

Should you require any further clarification or information in respect to this application, please contact Mark Schofield (Director) on (02) 9068 7500.

Yours sincerely



**Mark Schofield**  
Director