

STATEMENT OF ENVIRONMENTAL EFFECTS

S4.55(2) MODIFICATION APPLICATION
RESIDENTIAL FLAT BUILDING
96 NORTH STEYNE, MANLY

1.0 INTRODUCTION

An application is submitted to Northern Beaches Council pursuant to section 4.55(2) of the *Environmental Planning and Assessment Act 1979* to carry out modifications to the approved residential flat building at No. 96 North Steyne, Manly.

Reference is made to Development Approval DA272/2017 (the 'consent'), approved by the Northern Beaches Council (the Council'), on 4 April 2018. A comprehensive list of modifications is provided in Section 2 of this Statement.

This application is submitted as a s4.55(2) rather than 4.55(1A) primarily due to the change in the external appearance of the approved building arising from the modification change to the privacy screens and louvres on each elevation, the extension of the Level 4 terrace on the northern side of the building and the modification of the landscaping along the North Steyne frontage (removal and/or relocation of the palms trees).

This application is not a review of the approved land use or previously approved works on the site. The application is submitted pursuant to the provisions of Manly Local Environmental Plan 2013. This statement of environmental effects has been undertaken to assess the proposal in terms of section 4.15 and 4.55(2) of the *Environmental Planning and Assessment Act 1979* and concludes that the application is worthy of approval on its merits.

2.0 PROPOSED S4.55(2) AMENDMENTS

The proposal seeks approval to modify the existing consent pursuant to section 4.55(2) of the *EP&A Act 1979*, as shown on the submitted plans prepared by Squillace Architects, Project No. KOU1610, Issue P1, dated 30 April 2021.

2.1 List of Modifications

The proposed changes are as follows:

Ground Floor:

- Larger waste room.
- Reconfiguration of entry stairs.
- Additional outdoor shower at the entry.
- Additional privacy screens and gate at unit 2&3.
- Demolish existing terrace wall & replace with new wall & stone cladding
- Reconfiguration/extension of wall on the east side.
- Unit 3: new pool/spa and new glazed pool fence in terrace
- Unit 4: Extend ensuite and reconfigure glazing line

Level 1 & 2:

- Reconfigure new vertical privacy screens along the balcony in three different types, fixed, sliding, and bi fold (refer to elevation plans).
- Reshape / curved small portion of edge of the balcony to match the existing building shape.
- Reconfigure southern balcony area and privacy screens - curved edge removed and rationalised to straight edge.
- Unit 8 & 14: reconfigure external southern wall.
- Units 8, 10, 14 & 16: additional new condenser units and screen in west balcony.
- Unit 9& 15: Laundry area removed and the area added to Units 8 & 14.
- Unit 10 & 16: extension of northern external wall/windows into bedroom 1.

Level 3:

- Reconfigure new vertical privacy screens along the balcony in three different types, fixed, sliding, and bi fold. (refer to elevation plans).
- Reshape / curved small portion of edge of the balcony to match the existing building shape.
- Reconfigure southern balcony area and privacy screens - remove curved edge removed and rationalise to straight edge.
- Unit 20: reconfigure external southern wall.

- Units 21 & 22: additional new condenser units and screen in west balcony.

Level 4:

- Units 21 & 22: extension of external eastern wall by 1m.
- Units 18, 19: additional new spa units to balcony.
- Units 17 & 22: extend terrace area.

Roof:

- Reduce extent of new roof at south west corner.
- Roof overhang reduced generally.
- Relocate skylights to maximise solar access.
- New roof plant with acoustic screen.

Landscaping:

- Removal / relocation of palm trees (refer to Landscape plan & Arborist report)
- Modification of front landscaped area

2.2 Accompanying Plans and Reports

The following plans and reports are submitted as part of the s4.55 application to Council:

- Architectural Plans, prepared by *Squillace Architects*, Issue, 13 July 2021.
- Statement of Environmental Effects, prepared by *JV Urban*, dated August 2021.
- Landscape plans, prepared by *Site Image*, Proj No. SS21-4696, Issue B, dated 20 July 2021.
- Arborist Report, prepared by *All Arbor Solutions*, dated 13 July 2021.
- Acoustic Report, prepared by *Acoustic Logic*, dated 5 May 2021.
- Computer Generated Images by *Squillace Architects*.

2.3 List of s4.55 Plans

The amendment will update the list of plans, being Condition 1 General Conditions of DA272/2017.

The updated drawings comprising the following:

Plan No. / Title	Issue/Revision & Date	Prepared By
DA1003 Demolition / Proposed Ground Floor Plan	Issue B 11 July 2021	Squillace Architects
DA1004 Demolition / Proposed Levels 1&2 Floor Plan	Issue B 11 July 2021	Squillace Architects
DA1005 Demolition / Proposed Level 3 Floor Plan	Issue B 11 July 2021	Squillace Architects
DA1006 Demolition / Proposed Level 4 Plan	Issue B 11 July 2021	Squillace Architects
DA1007 Demolition / Proposed Roof Plan	Issue B 11 July 2021	Squillace Architects
DA2000 Proposed Elevations West & North Elevations	Issue B 11 July 2021	Squillace Architects
DA2001 Proposed Elevations East & South Elevations	Issue B 11 July 2021	Squillace Architects
DA3000 Building Section AA	Issue B 11 July 2021	Squillace Architects

2.4 S4.55 Plans

The following drawings are an extract of the modified floor plans with the location of the changes shown within the red clouds and circled on each drawing (refer to the Architectural Plan set submitted with the application for full details):

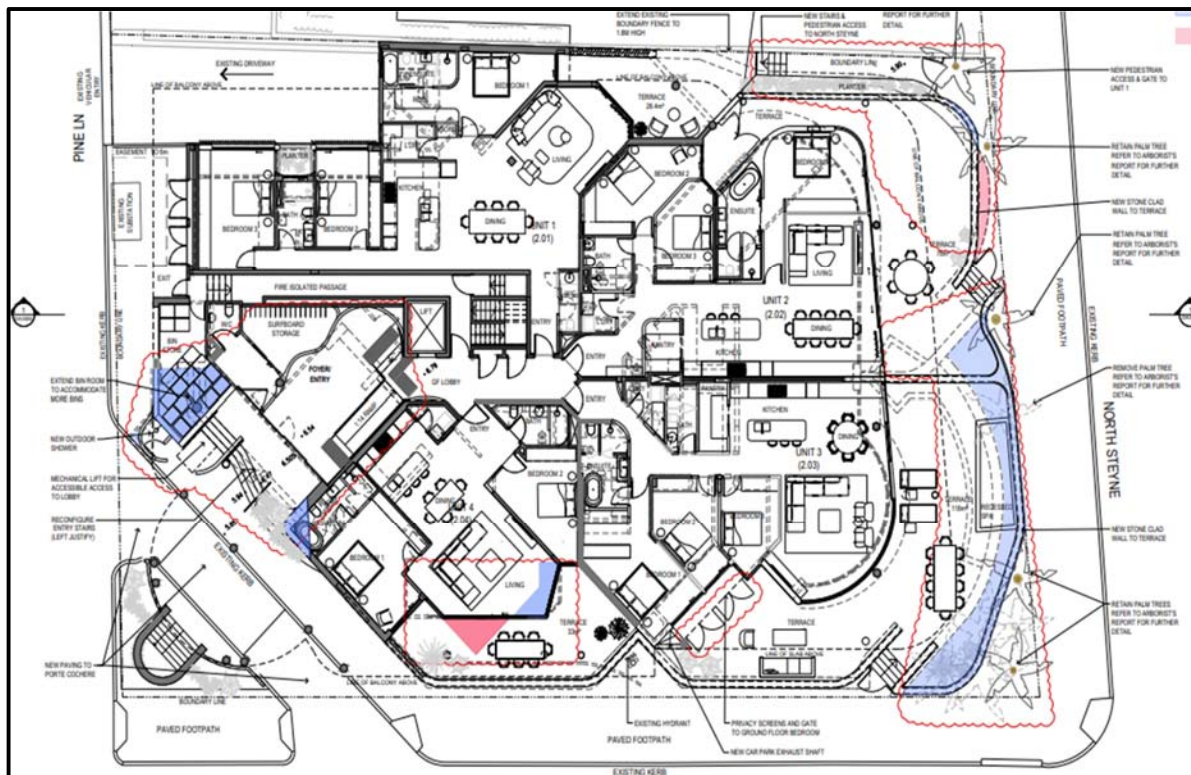


Figure 1: s4.55 Ground Floor (amendment in red clouds); Squillace Issue B, August 2021

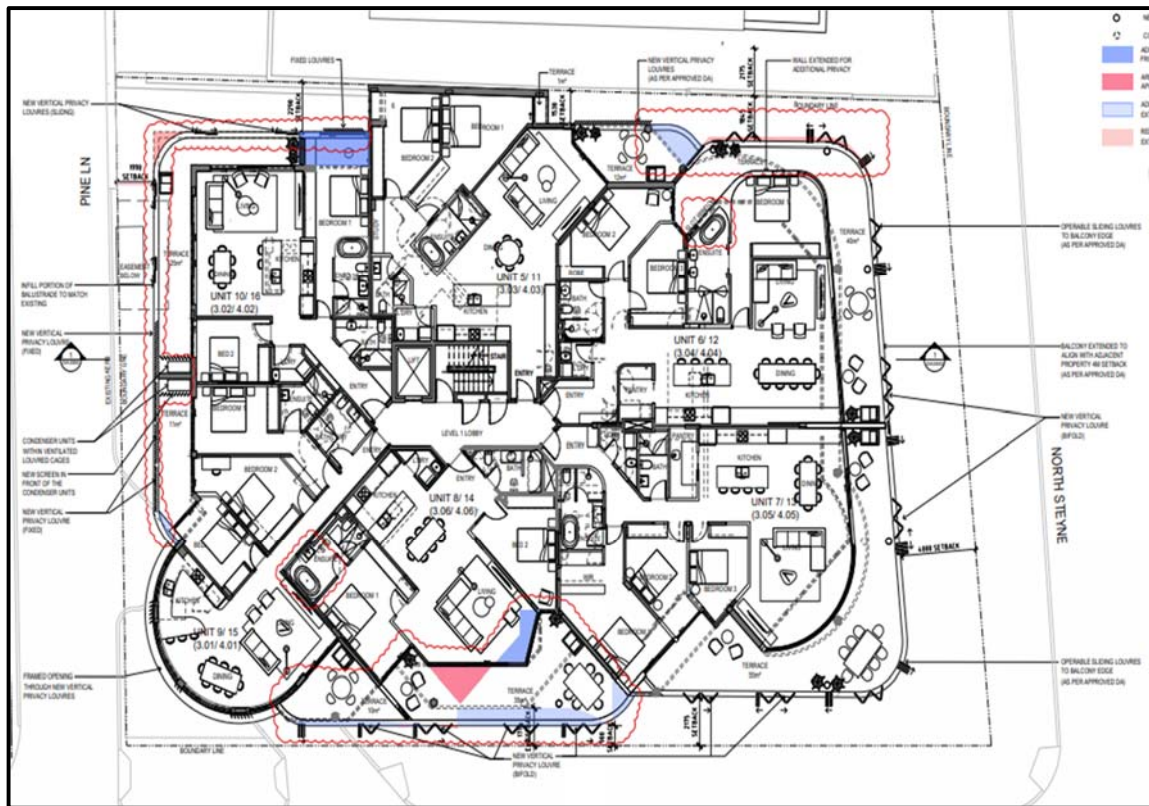


Figure 2: s4.55 Level 1 & 2; Squillace Issue B, August 2021

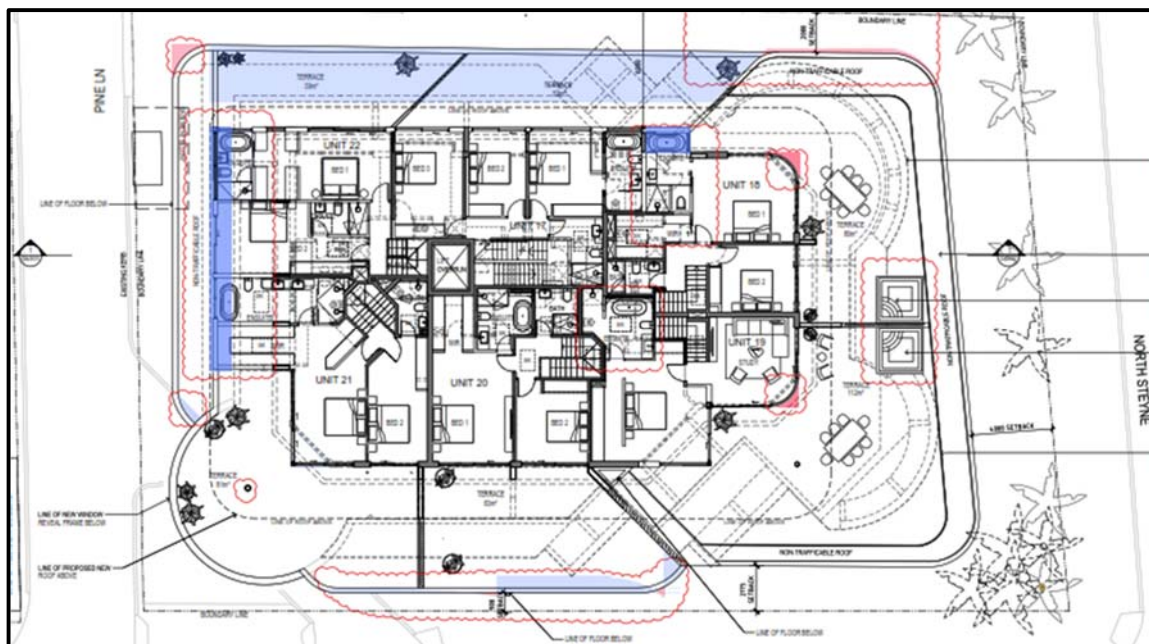


Figure 3: s4.55 Level 3 Floor Plan; Squillace Issue B, August 2021

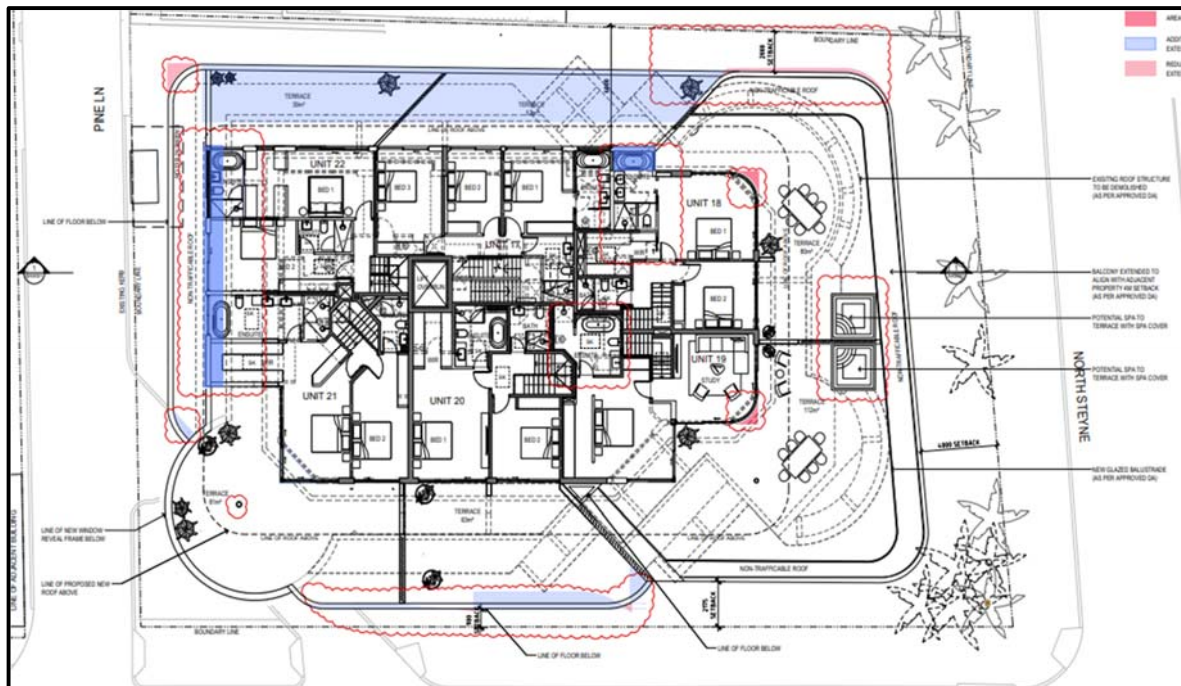


Figure 4: Level 4 Floor Plan; Squillace Issue B, August 2021

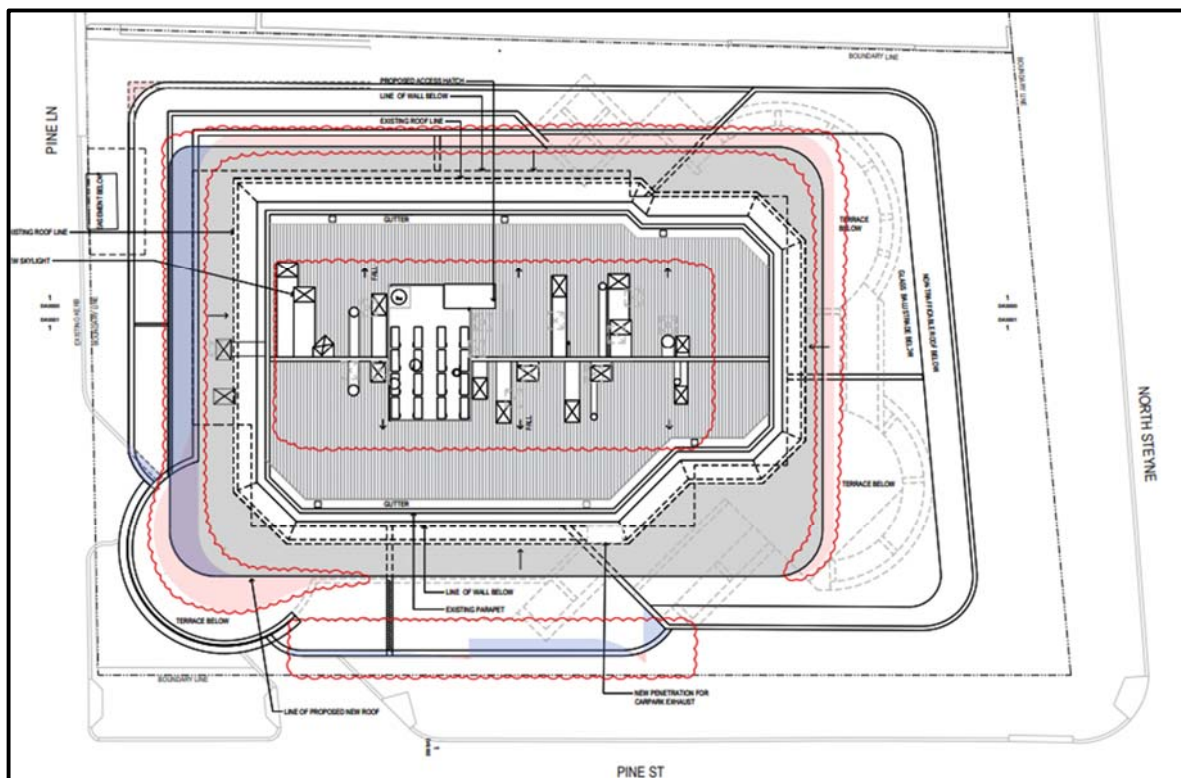


Figure 5: s4.55 Roof Plan; Squillace, Issue B, August 2021



Figure 6: CGI of building when viewed from SE corner of North Steyne and Pine Streets

3.0 ASSESSMENT – ‘SUBSTANTIALLY THE SAME’

The application is made pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* (EP&A Act 1979), which states the following:

(2) Other modifications

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 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), and*
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, 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 that requires the notification or advertising of applications for modification of a development consent, and

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

Subsections (1) and (1A) do not apply to such a modification.

In respect to the subject section 4.55 application there is no change to the approved land use which is maintained as a residential flat building. Generally, the proposed changes straighten out some of the curved balconies and make internal floor layout changes. There are no major modifications to the apartments that alter the floor areas or their orientation (except Units 21 & 22 where the external wall is moved out and the terraces of Units 17 & 22 are extended on the northern side of the building). There are no substantial changes to the overall building envelope. There are some changes to the overall appearance of the building with a revision of the type of privacy louvre to be installed on each on the northern and southern facades. This alters the external appearance of the building when viewed from Pine Street. The palm trees along the North Steyne are modified comprising removal, relocation and/or retention. Overall, the number and composition of the modification, when viewed from the public domain, substantiates public notification of the application, notwithstanding that the modifications maybe numerous the development is considered to be substantially the same.

The application of the phrase '*substantially the same*' has been the subject of much legal debate. In contemplating consent for a modification, the LEC Court (*Moto Project No 2 Pty Ltd v North Sydney Council [1999] 106 LGERA 298*) has held that it is not only the physical or quantitative components of the modified development that are to be considered, it is both the quantitative and qualitative features of the development which determines whether the modified development is acceptable. The quantitative and qualitative changes to the originally approved development are addressed below.

Overall, the nature of S4.55 of the *EP&A Act 1979* assumes that there is likely to be some change between an originally proposed (and approved) development and a modified one. The decision of *North Sydney Council – v – Michael Standley & Associates Pty Ltd, (97 LGERA 433, 12 May 1998, Mason P)*, added to the understanding of the appropriateness of permitting a modification as follows:

“Parliament has therefore made it plain that a consent is not set in concrete – it has chosen to facilitate the modifications of consents, conscious that such modifications may involve beneficial cost savings and/or improvements to amenity.”

The word to *modify* means ‘to alter without radical transformation’ as confirmed in *Sydney City Council v Ilenace Pty Ltd* (1984) 3 NSWLR 414. In our opinion the changes proposed result in a development that is substantially the same. The changes are not deemed to be *radical* as the overall footprint and envelope remains predominantly unchanged and the extent of additional floor area is within the existing building. The changes to the external appearance of the building is not substantial and the privacy screens, as modified, achieve the same environmental outcome in a more refined manner. The changes are within the overall scope of the original consent and its individual elements. On this basis the Council is well within its power to determine the application under S4.55.

The main consideration under Section 4.55 is what constitutes “*the same development*” and what are the parameters defining “*substantially*”. In the case of *Vacik Pty Limited and Penrith Council (unreported 24 February 1992, Stein J)*, the Court held that substantially means “essentially or materially or having the same essence” and that the substance of determining these matters rests with a comparative analysis between the consent being varied and the modification and this approach is supported by the decision of Bignold J in *Moto Projects (No 2) Pty Ltd and North Sydney Council (NSWLEC 280, Appeal 10741A of 1997, 17/12/99)*. This is reiterated in the more recent case of *Arrage v Inner West Council [2019] NSWLEC 85* and again in *Trinvass Pty Ltd v City of Sydney Council [2018] NSWLEC 1691* involving changes to the basement level and façade changes of a mixed use development, where Commissioner Walsh C found that the changes were modest in scope and did not alter the substance of the proposal when considered in both quantitative and qualitative terms (*Moto Project No 2 Pty Ltd v North Sydney Council [1999] 106 LGERA 298*). This same approach to the assessment of substantially the same development was applied in *Progress East Pty Ltd v Randwick City Council [2019] NSWLEC 1029*.

When considering material impact, it is our opinion that the proposed modifications are not of such significance to warrant a new application. By way of assistance, the Macquarie Concise Dictionary defines material to mean, amongst other things: *of such significance to be likely to influence the determination*

of a cause. Other common meanings of material in relation to impacts would include *real, not incidental or slight*.

By way of other relevant examples of the Court:

In the matter of *Wang v Wollahra MC* [2006] NSWLEC 106, the Court approved the addition of an additional storey at “*lower ground floor level (containing pool, sauna, pool plant area, ac area and bathroom*” such that the approved two storey building was now a 3-storey building and still deemed the proposal to be substantially the same.

In the matter of *258 Crows Nest Development Pty Ltd v North Sydney Council* [2006] NSWLEC 420, the Court approved an additional residential unit on the approved roof terrace level and still deemed the proposal to be substantially the same.

In the matter of *McKirdy v Hunters Hill Council* [2005] NSWLEC 200, the Court approved a section 96 to increase a basement area by some 28%, notwithstanding it was contrary to a specific condition of consent.

In *Tipalea Watson Pty Ltd v Ku-Ring-Gai Council* [2003] NSWLEC 253 the Commissioner confirmed that external changes to an approved building are acceptable under a Section 96 application given that external appearance is only but one aspect of a development that makes a whole entity. In that case Councils expert considered the overall external changes to result in a “*significantly different architectural appearance and character*” of the development offering a “*different presentation*” to the streetscape and neighbouring properties; however, the Court did not agree with this position.

As stated above there is no change to the approved land use, it remains a residential flat building. In our opinion the proposed modifications may be considered under the provisions of s4.55(2)(a) as the development remains substantially the same development. Numerically the change to the GFA is a 1.4% GFA increase. Qualitatively, the proposed changes straighten out some of the curved balconies, make minor changes to external walls, modifies the type and extent of louvres on the facades and modifies the

front landscaping along the North Steyne frontage. There are no major changes to the apartments that alter the floor areas or their orientation, no changes to the overall building envelope and the overall appearance of the building, when viewed from the public domain is essentially the same. Overall, the number of small changes seek to either improve the functionality and efficacy of the development or are consequential to internal changes to living rooms or enhancements of outdoor living areas.

There are no known Ministers, public authority or approval body concurrences required per s4.55(2)(b) and therefore no referrals required. In accordance with s4.55(2)(c) Council will undertake to publicly notify the application and take into consideration any public comments received as a consequence of that notification.

Overall, it is our opinion that the proposed modification satisfies the s4.55 principles adopted by the LEC Court for assessment of the modifications to the site and accordingly, Council may proceed to a merit assessment so as to satisfy s.4.55(3) of the Act given the amended development results in a development that is substantially the same as the original approval and as such the proposed changes subject of this application may be granted under section 4.55 of the *EP&A Act 1979*.

4.0 ASSESSMENT – SECTION 4.15 OF THE EP&A ACT 1979

In accordance with s.4.15(1) of the *EP&A Act, 1979* Council, in determining a development application must take into consideration provisions of any EPI's. The following assessment relates to the proposed amendments and is not a reassessment of the whole development.

4.1 State Environmental Planning Policy BASIX

The commitments of the original BASIX Certificate remain valid for the s4.55 development.

4.2 SEPP 65 – Design Quality of Residential Flat Development

SEPP 65 – Design Quality of Residential Flat Development aims to 'improve the design quality of residential flat development throughout NSW'. It recognises that the design quality of residential flats is of state significance due to the economic, environmental, cultural and social benefits of high-quality design'.

In this case it is argued that the proposal entails largely cosmetic changes to the building façade and appearance, which assessed forensically do not comprise substantial redevelopment or the substantial refurbishment of an existing building.

The proposed modifications are aimed at further enhancing the creation of a building of high architectural design quality and improved amenity. Therefore, the intent of the SEPP is considered to be satisfied.

Having regard to the above and noting the retention of the building in its entirety with the works being limited principally to cosmetic upgrade and rationalisation of interiors, many of the ADG controls are aimed at new buildings or wholesale redevelopment/alteration. The principal objective of the design is to achieve better compliance with the controls and no element of works results in a reduction of performance.

4.3 Manly Local Environmental Plan 2013 (MLEP 2013)

The subject site is zoned R3 Medium Density Residential under Manly LEP 2013. The various changes, as outlined in this Statement, are incidental to the approved residential flat building and therefore permissible with consent and consistent with the R3 zone objectives.

<p>Cl. 4.3 Building Height</p> <p><i>The site has a maximum building height limit of 13m.</i></p> <p>Objectives</p> <p><i>(a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,</i></p> <p><i>(b) to control the bulk and scale of buildings,</i></p> <p><i>(c) to minimise disruption to the following—</i></p> <p><i>(i) views to nearby residential development from public spaces (including the harbour and foreshores),</i></p> <p><i>(ii) views from nearby residential development to public spaces (including the harbour and foreshores),</i></p> <p><i>(iii) views between public spaces (including the harbour and foreshores),</i></p>	<p>The proposal does not alter the approved building height of the existing building envelope. The only change to the overall height, from a technical perspective, is the addition of the condenser units (plant) on the roof.</p> <p>The existing height of the building exceeds the LEP height control. The new plant is 1.55m high, 6.3m long and 3.6m wide, enclosed within in an acoustic screen. The plant is centrally located within the building envelope. The additional height does result in any shadow impacts and will not be visible from street level and barely discernible from adjoining properties as this building is already higher than the habitable floor levels of adjoining buildings.</p> <p>As a s4.55 application, the exceedance of the height control does not require the submission of a clause 4.6 variation with the application.</p>
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<p><i>(d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,</i></p> <p><i>(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.</i></p>	<p>Notwithstanding, to assist with the assessment of application, the proposed is considered to achieve the objectives of the clause:</p> <ul style="list-style-type: none"> • The proposal does not impact the existing or desired future streetscape when viewed from North Steyne, Pine Street, Pine Lane or from the ocean front public domain areas; • The overall bulk and scale of the building is not increased by the rooftop plant as the structure is centrally located within the existing building envelop and will be barely visible from private or public places around the building or from the foreshore; • There is no impact on solar access or sunlight to private or public places attributable to rooftop plant structure. <p>Further to the above the structure is neutral in terms of the R3 zone objectives as the building is a longstanding, existing medium density development that provides residential accommodation within the tourist hub of Manly and the proposal seeks to improve and enhance that accommodation.</p> <p>There are no adverse impacts associated with the additional height that is the result of the rooftop plant. As such, the variation is a considered to be reasonable as it is function of the height of the existing building and cannot be avoided in order to achieve the improvements associated with the installation of the proposed plant for the existing apartments.</p>
<p>Cl. 4.4 Floor Space Ratio</p> <p><i>The site has a maximum floor space ratio of 1.5:1.</i></p>	<p>The FSR calculation for the site is summarised as:</p> <p>Site area: 1,135sqm Allowable GFA based on 1.5:1 FSR: 1,702.5m²</p> <p>Existing GFA: 2,885.9m² Existing FSR: 2.54:1</p> <p>Proposed additional GFA: 41m² Total GFA: 2,926.9m² Proposed FSR: 2.58:1 (change of 0.04:1)</p>

	<p>The above figures show that the existing building, as amended is non-compliant with the numerical development standard. Council staff have confirmed, via the previous approvals since 2017, that they acknowledge this non-compliance and are 'supportive of the proposed non-compliance with the FSR development standard as the development has been assessed and deemed to achieve the objectives and principles of SEPP 65 and the ADG.</p>
Cl. 4.6 Exceptions to development standards	<p>A clause 4.6 variation request is not required with a s4.55 application. Notwithstanding, the minor modifications to the building do not significantly alter the bulk and scale of the building when viewed from various vantage points outside the site. The building remains consistent and complementary to other development along North Steyne and within the locality. The existing variation has been supported previously and the changes resulting from the proposed modification are generally minor. The ongoing variation to the FSR for the development is able to be supported on environmental planning grounds and is considered reasonable in this case.</p>
Cl. 5.5 Development within the coastal zone	<p>No change to the existing, approved development.</p>
Cl. 5.10 Heritage Conservation	<p>The proposed (being in the vicinity of two listed heritage items):</p> <ul style="list-style-type: none"> i) does not detract or significantly alter the heritage significance of the heritage items or their surrounds; ii) does not impact on heritage values or character of the locality; iii) respects the heritage character of surf club and is able to complement the heritage building in respect to its building form, proportions, scale, style, materials, colours and finishes.
<p>Cl. 6.9 Foreshore scenic protection area</p> <p><i>(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters:</i></p>	<p>The proposed works are minor and do not significantly alter the approved (DA 272/2017) modifications to the building.</p> <p>The proposal will not result in any actual or perceivable impact on the foreshore scenic protection area as:</p>

<p><i>(a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,</i></p> <p><i>(b) measures to protect and improve scenic qualities of the coastline,</i></p> <p><i>(c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,</i></p> <p><i>(d) measures to reduce the potential for conflict between land-based and water-based coastal activities.</i></p>	<ul style="list-style-type: none"> • The height, scale and contemporary architectural presentation of the development to each street frontage and the foreshore is contextually appropriate having regard to the built form characteristics established by adjoining and adjacent development. • The development will not give rise to any adverse physical or amenity impacts on the foreshore areas and will enhance the private and public amenity of the area generally.
<p>Cl. 6.15 Tourist and visitor accommodation</p> <p><i>(1A) Development consent must not be granted to development for tourist and visitor accommodation unless the consent authority is satisfied that the development will not provide accommodation to the same person for a period of more than three consecutive months.</i></p>	<p>No change to the current approved operation of the development.</p>

There is no change to the heritage considerations of the site, not alterations to the earthworks proposed and clause 6.12 Residential Flat Buildings has been previously resolved in the original application.

The proposed modifications do not alter the overall building envelope of the building. There is no view loss across the external facades of the building, including along the rear laneway where Unit 22 is extended on Level 4.

4.4 Relevant Non-Statutory Development – Manly DCP 2013 (MDCP 2013)

The Manly DCP applies to this site. It is noted also that many of the DCP controls apply to the construction of new development and are not appropriate in this case. Only those matters relevant to the proposed modifications are addressed. In this regard it is noted that the overall height of the building is not altered, the building footprint does not change, the amount of landscaping is already limited onsite and not impacted by the proposed modifications to the building.

Manly DCP 2013	Proposal
Part 3 General Principles of Development	
Issues	Consistent with Principle
Streetscape	✓
Heritage	✓
Landscape Design	✓ Refer to Landscape plan
Landscape/Tree Preservation	✓ Refer to Arborist Report
Sunlight Access and Overshadowing	✓
Privacy and Security	✓
Maintenance of Views	✓
3.1 Streetscapes and Townscapes <i>Objective 1) To minimise any negative visual impact of walls, fences and carparking on the street frontage.</i> <i>Objective 2) To ensure development generally viewed from the street complements the identified streetscape.</i> <i>Objective 3) To encourage soft landscape alternatives when front fences and walls may not be appropriate.</i>	<p>Satisfactory. The changes to the external appearance of the building removes the number and type of louvres utilised to provide ongoing privacy to residents on each level of the building. The heavy, fixed louvres that were to be installed on the northern and southern facades are modified. Privacy screens and louvres are to be either operable, fixed or bi-fold screens. The changes reduce the dominant appearance of the screening that created a heavy, overbearing vertical element to the building when viewed from the public domain. The modified facades utilise the louvres for their intended purpose – privacy, rather than as an architectural feature of the façade. The louvres are vertical but integrate into the separate view of each floor level.</p> <p>The changes visible from the street or adjacent properties will enhance the view of the building, not detract from its overall contribution to the coastal streetscape.</p> <p>The North Steyne frontage is modified, particularly by the removal or relocation of some of the palm trees along the boundary line. The changes are detailed in the s4.55 Landscape Plan submitted with the s4.55 application. While reduced in number, the established coastal theme of this frontage, highlighted by the use of palm trees is satisfactorily retained.</p>

<p>3.3.1 Landscaping Design</p> <p><i>Objective 1) To encourage appropriate tree planting and maintenance of existing vegetation.</i></p> <p>3.3.2 Landscape/Tree Preservation</p> <p><i>Objective 1) To ensure that development protects and conserves the natural environment.</i></p>	<p>The proposal includes some modification to the North Steyne existing landscaping. An Arborist Report and Landscape Plans are submitted with the S4.55 package outlining where the palm trees are proposed to be relocated or removed. The proposed change satisfactorily maintains the coastal appearance of the building when viewed from the beach front.</p>
<p>3.4.1 Sunlight Access and Overshadowing</p>	<p>Solar access to units will remain relatively unchanged by the balcony realignments.</p>
<p>3.4.2 Privacy and Security</p>	<p>Unit 22 - there is one bedroom window on Level 4 moved closer to the rear laneway. This is a low traffic room and remains sufficiently setback from the boundary line and roadway.</p> <p>Level 4 northern terrace: this terrace is extended along the northern side of Units 17 & 22. An inspection of views across the northern side boundary reveals that there are no windows or outdoor areas on the adjoining property that will be impacted by the terraces that are not currently visible or experience cross views between buildings. Appendix 1 contains a series of photos taken from Level 4 of the subject building that serve to demonstrate this point.</p>
<p>3.4.3 Maintenance of Views</p>	<p>The building envelope is largely unchanged. Therefore, view lines to and from the development are not significantly modified or where impacted would not be of such significance to deny views to neighbouring properties.</p>

Part 4 - Development Controls

The SEPP 65—Design Quality of Residential Apartment Development and the Apartment Design Guide prevail over the Manly DCP 2013. The design principles of SEPP 65 have been adequately addressed in previous approvals. The proposed minor and generally cosmetic amendments do not alter that assessment. An assessment of the relevant development controls at Part 4 of the MDCP 2013 is provided below.

Site Area	1,335sqm.
Residential Density – Area D1	No change to existing.
Wall height – all sides	No change to existing.
Number of Storeys	No change to existing.
Roof height	No change to existing.
Setback Front	No change to existing.
North setback side	<p>The north- western corner of Level 4 of the building is curved with new vertical privacy louvres installed facing the northern boundary.</p> <p>Units 17 & 22: northern terraces extended along northern side. Setback 2m to northern boundary. Refer to Appendix 1 – Photos showing that the terraces will not impact on any of the units in the property adjoining the site to the north.</p> <p>The vertical louvres that dominant the northern façade are removed or modified. Refer to the s4.55 plan set.</p> <p>The proposed privacy screens adequately maintain privacy in this case.</p>
South setback side (Pine Street frontage)	<p>The southern balconies, approved with curved edges, are straightened with associated minor changes to boundary setbacks.</p> <p>Privacy louvres are altered to align with the edges of the straight balconies. The line of the balconies does not protrude further than the existing building envelope and remain articulated along this façade of the building.</p> <p>The dominant vertical louvres are removed as a feature of this elevation. The proposed privacy screens are integrated in each floor level and will retain adequate privacy and security for residents of these units.</p>

Western setback (Pine Lane)	Units 21 & 22 (Level 4) are marginally extended to towards the laneway. There is no impact on privacy or overlooking as only one bedroom window faces west and the remaining window openings are bathrooms or a WIR.
Wall on boundary height	No change to existing.
Wall on boundary length	No change to existing.
Setback Rear	N/A – three road frontages.
Setback to RE1, RE2, E1 and E2	N/A. All adjoining and adjacent properties are zoned R3.
Private Open Space	<p>One of the main objectives of the proposed works is to improve the function of the outdoor areas of the units by cosmetically straightening the balcony edges. This will make the balconies more useable for residents. The placement of outdoor tables and chairs will be easier with new squarer edges, thus higher amenity.</p> <p>Units 12 & 22 (level 4) have northern terraces extended. This improves their outdoor areas without any undue overlooking of the building to the north (refer to photos in Appendix 1).</p> <p>Units 3, 18 & 19 have spas installed within their private open space areas. These will enhance their amenity and enjoyment of their balconies/terrace.</p> <p>Overall, there will be a positive outcome for occupants. It will also enhance opportunities for increased passive surveillance of the street levels below, adding the security and safety of the area.</p>
Car Parking	Existing parking is provided at basement levels. There is no change to the existing access and parking arrangements for the site.

4.5 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality. Suitability of the site for the development.

The amended development will not result in any unreasonable impact on the natural and built environments or any unreasonable social and economic impacts in the locality. The proposed development, as amended, remains suitable for the site.

4.6 The public interest

Given that the relevant issues have been addressed with regard to the public interest as reflected in the relevant planning policies and codes, the development is unlikely to result in any adverse impact to the public interest in the circumstance of the case. It is not anticipated that the s4.55 application will require public notification.

5.0 CONCLUSION

The proposed application is s4.55(2) modification in accordance with the provisions of the *EP&A Act 1979*. The proposed modifications, as listed in Section 2 of this Statement, result in a development which is substantially the same as the original approval granted by Council under DA272/2017. Pursuant to s4.55(2) the application will be publicly notified and Council will deal with any submissions received. as part of their merit assessment.

Given the amended development results in a development that is substantially the same as the original approval Council will be able to proceed to deal with the merits of the application under s4.55(3) and section 4.15 of the *EP&A Act*.

The amended proposal has been reviewed under the provisions of the Manly LEP 2013 and Manly DCP 2013. The proposed development, as amended will continue to satisfy the zone objectives and provisions of the Manly LEP 2013. There are no undue environmental impacts that arise from the changes to the approved plans that would warrant refusal of the application.

The existing conditions of consent for the development will continue to ensure that an adequate level of environmental performance is achieved. Conditions relevant to the amended plans are proposed to be amended to allow for the modifications.

Based on the discussion in this application Council should support the amended application.



Joe Vescio
August 2021

APPENDIX 1

Photos



Photo 1: View looking north-east



Photo 2: Connects to Photo 1: view looking north over side boundary



Photo 3: Connects to Photo 2: view looking north over side boundary



Photo 4: Connects to Photo 3: view looking north over side boundary along Pine Lane

APPENDIX 2

Approved Elevations -v- s4.55 Elevations

DA272/2017 - Stamped Plans – North Elevation



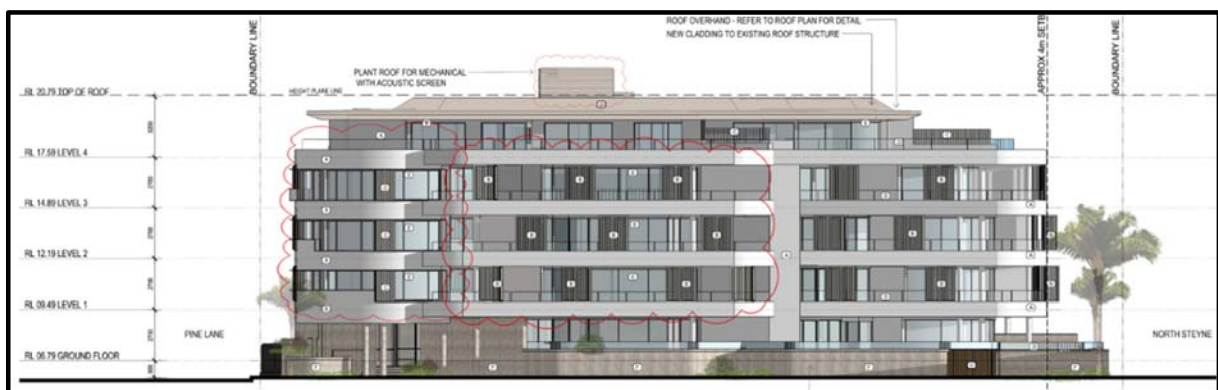
S4.55 – North Elevation



DA272/2017 - Stamped Plans – South Elevation



S4.55 – South Elevation



DA272/2017 - Stamped Plans – East Elevation



S4.55 – East Elevation



DA272/2017 - Stamped Plans – West Elevation



S4.55 – West Elevation

