

# 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. 96-97 North Steyne, Manly (Lot 101 DP 11101110).

The site is located on the western side of North Steyne, at the corner of Pine Street. The property is irregular in shape and has a frontage of 29.46m to North Steyne, an average depth of 44m. The site has a surveyed area of 1335m<sup>2</sup>. The site accommodates a five (5) storey residential flat building with vehicular access provided off Pine Street to an existing basement car park. The site is relatively flat and is located within the foreshore scenic protection area.



**Figure 1: Location of the site**

Reference is made to Development Approval DA 272/2017 (the 'consent'), approved by the Northern Beaches Council (the Council'), on 4 April 2018. A comprehensive list of modifications is provided in Section 3 of this Statement.

This application is submitted as a s4.55(2) due to the nature of the changes to the approved building arising from the proposed modifications to the building and the landscaping.

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 HISTORY OF APPLICATIONS**

The original development was approved in 1988 (DA 2653/1988 – 22 units).

The relevant development approval (DA 272/2017 – alterations and additions to the existing RFB) was issued by Council in 2018.

A s4.55 Modification (MOD2021/0647) was approved on 2 February 2022. The determining authority for the s4.55 was the Northern Beaches Local Planning Panel (LPP). The matter was referred to the LPP due to existing variations to the Manly LEP 2013 development standards for height of buildings and floor space ratios.

Appendix 1 of this Statement contains extracts of the elevations of the original stamped plans in 2018, modification approved in February 2022 and the proposed s4.55 elevations that comprise this application.

## **3.0 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 C, dated 29 September 2022.

### **3.1 List of Modifications**

The proposed changes are summarised as follows:

- Change of unit mix on L1 & L2 (each level – 1 x 2br & 2 x 3br; s4.55 each level 1 x 3br + 1 x 4br)
- Reduction overall number of bedrooms by one bedroom
- Reduction in number of units from 22 to 20 (merge previous L1 - 7, 8 & 9 to L1 - 7 & 8 and merge L2 - 13, 14 & 15 to new 12 & 13)
- Reconfiguration of merged unit floor layouts (internal) (Unit 8 & 13)
- Reduction in GFA by 30m<sup>2</sup>; FSR amended from 2.58:1 to 2.55:1.
- Change to south-west windows on the 'barrel' – adjusted to accommodate new unit layout
- Relocation of carpark exhaust – ground to roof levels (as per plans)
- 3 cabbage tree palms added (as per plans)

Level by level the proposed changes are:

#### **Ground Floor (Unit 1, 2, 3, & 4)**

- New car park exhaust shaft
- Glass balustrades added to terrace/boundary wall (dwg 3007)

#### **Level 1 (Unit 5, 6, 7, 8, & 9) & Level 2 (Unit 10, 11, 12, 13, & 14)**

- Merge 3 into 2 units on Level 1 & 2 (22 units reduced to 20)
- Reconfigure southern units post-merger.
- Unit 7 & 12: relocation of car park exhaust
- Unit 8 & 13: new car park exhaust shaft
- Unit 6 & 11: reconfigure entry and bathroom
- Unit 6 & 11: reconfigure WIR n ensuite
- Minor additions and reductions to terraces of merged southern units (shown red and blue on s4.55 plan set)

#### **Level 3: (Unit 15, 16, 17, 18, 19 & 20)**

- Unit 17: relocation of car park exhaust; internal lift + reconfigure internal layout
- Unit 18: reconfigure entry, kitchen, laundry and pantry areas

#### **Level 4: (Upper level of Unit 15, 16, 17, 18, 19 & 20)**

- Units 17: removal of car park exhaust
- Unit 17: reconfigure Bedroom 1 + internal lift
- Unit 18/19: new car park exhaust
- Succulents added to non-trafficable areas

**Roof:**

- New penetration of roof for car park exhaust above Unit 18/19
- Approved access hatch for servicing relocated (as per roof plan)
- Roof plant area reduced

**Landscaping:**

- Additional cabbage tree palm x 2 – corner of Pine Lane (as per conditions of consent – MOD2021/0647)
- Additional cabbage tree palm x 1 – corner of Pine Street (as per conditions of consent – MOD2021/0647)
- New edging to existing landscaping – corner of Pine Street and North Steyne
- Replace bluestone wall with lower stone wall (height to allow views over from sitting position on terraces behind)
- Succulents added to non-trafficable areas

### **3.2 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 C, 26 September 2022.
- Statement of Environmental Effects, prepared by *JV Urban*, dated October 2022.
- Landscape plans, prepared by *Site Image*, Proj No. SS21-4696, Issue C, dated 18 October 2022.
- Photomontage by *Squillace Architects*.

### **3.3 List of s4.55 Plans**

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

The updated drawings comprise the following:

<b>Plan No. / Title</b>	<b>Issue/Revision &amp; Date</b>	<b>Prepared By</b>
DA1001 Location Plan & Photomontage	Issue C 26/09/22	Squillace Architects
DA1003 Demolition / Proposed Ground Floor Plan	Issue D 26/09/22	Squillace Architects
DA1004 Demolition / Proposed Levels 1&2 Floor Plan	Issue D 26/09/22	Squillace Architects
DA1005 Demolition / Proposed Level 3 Floor Plan	Issue D 26/09/22	Squillace Architects
DA1006 Demolition / Proposed Level 4 Plan	Issue D 26/09/22	Squillace Architects
DA1007 Demolition / Proposed Roof Plan	Issue C 26/09/22	Squillace Architects
DA2000 Proposed Elevations West & North Elevations	Issue D 26/09/22	Squillace Architects
DA2001 Proposed Elevations East & South Elevations	Issue D 26/09/22	Squillace Architects
DA3007 Existing vs Proposed Elevation/Section	Issue A 26/09/22	Squillace Architects
Dwg No.000 - Landscape Coversheet (sec 4.55)	Issue C 18/10/22	Site Image
Dwg No. 101 - Landscape Plan - Ground Floor	Issue D 18/10/22	Site Image
Dwg No. 401 - Landscape Plan – Level 4	Issue A 18/10/22	Site Image
Dwg No. 501 - Landscape Details	Issue B 18/10/22	Site Image
Dwg No. 601 - Landscape Character	Issue A 18/10/22	Site Image
BASIX Certificate		

### **3.4 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):

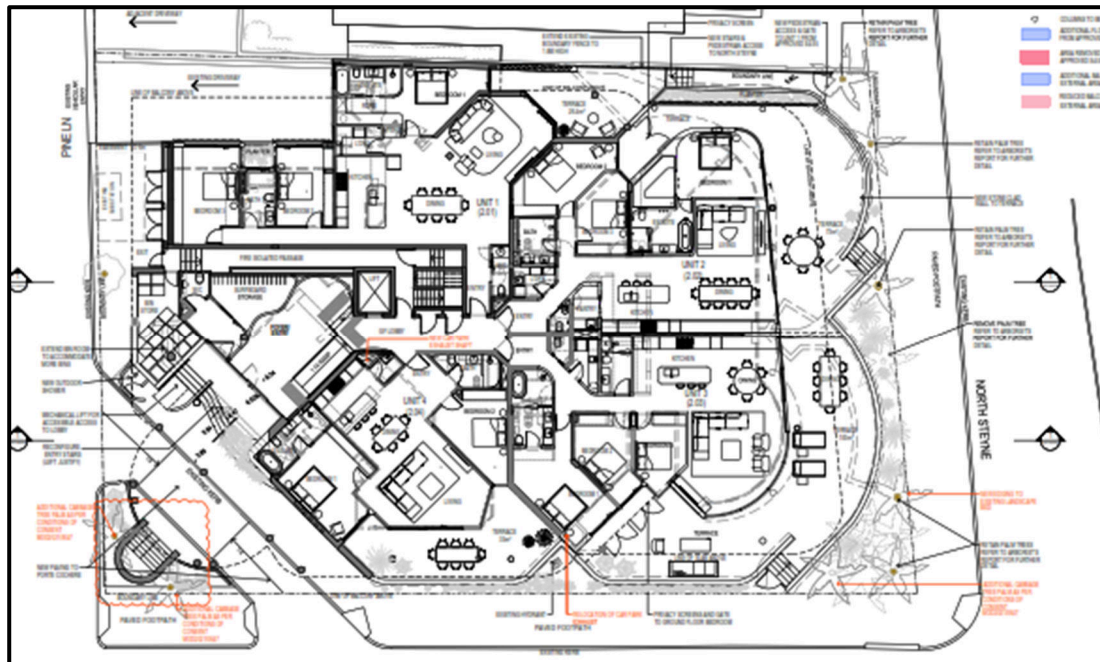


Figure 2: s4.55 Ground Floor (amendment in orange clouds + text); Squillace, September 2022

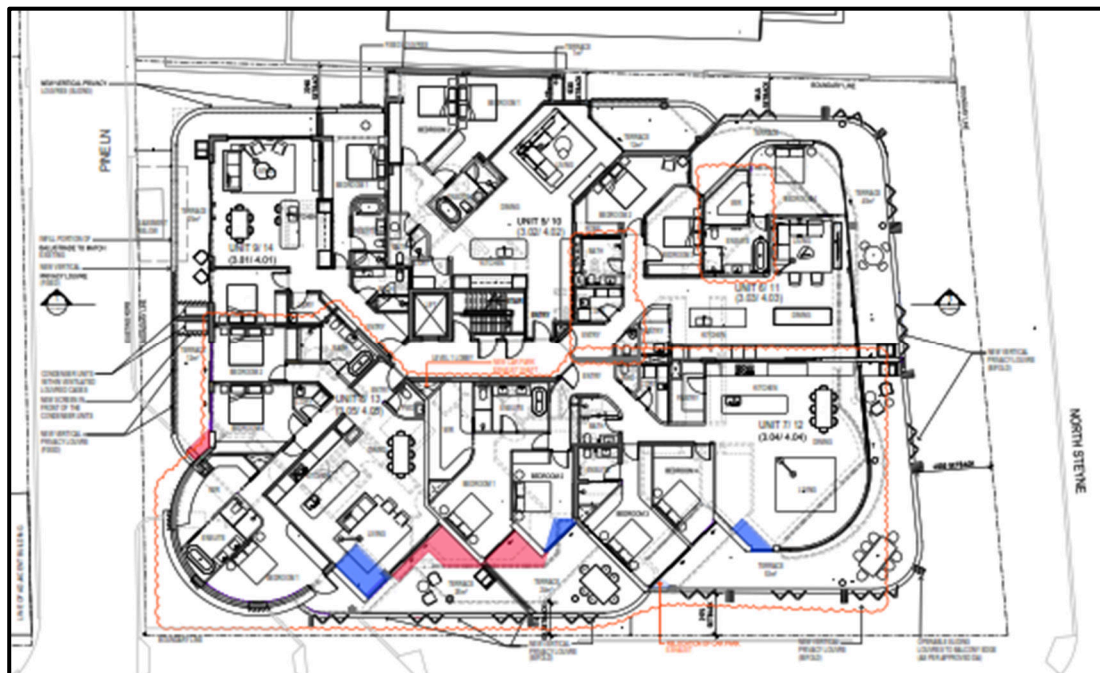


Figure 3: s4.55 Level 1 & 2; (amendment in orange clouds + text); Squillace, September 2022

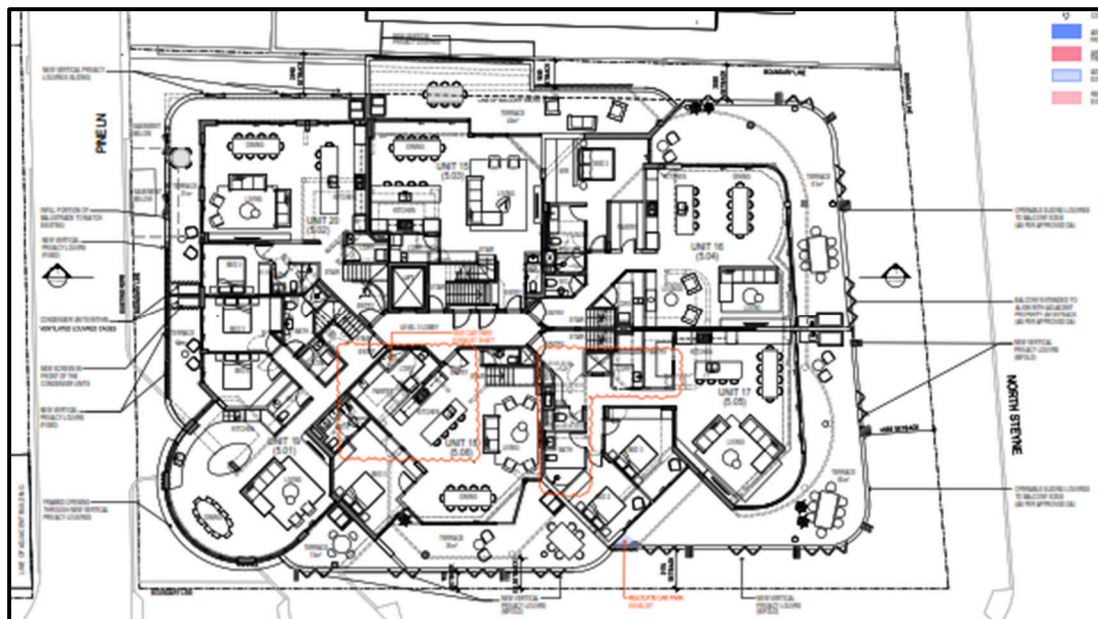


Figure 4: s4.55 Level 3 Floor Plan; (amendment in orange clouds + text); Squillace, September 2022

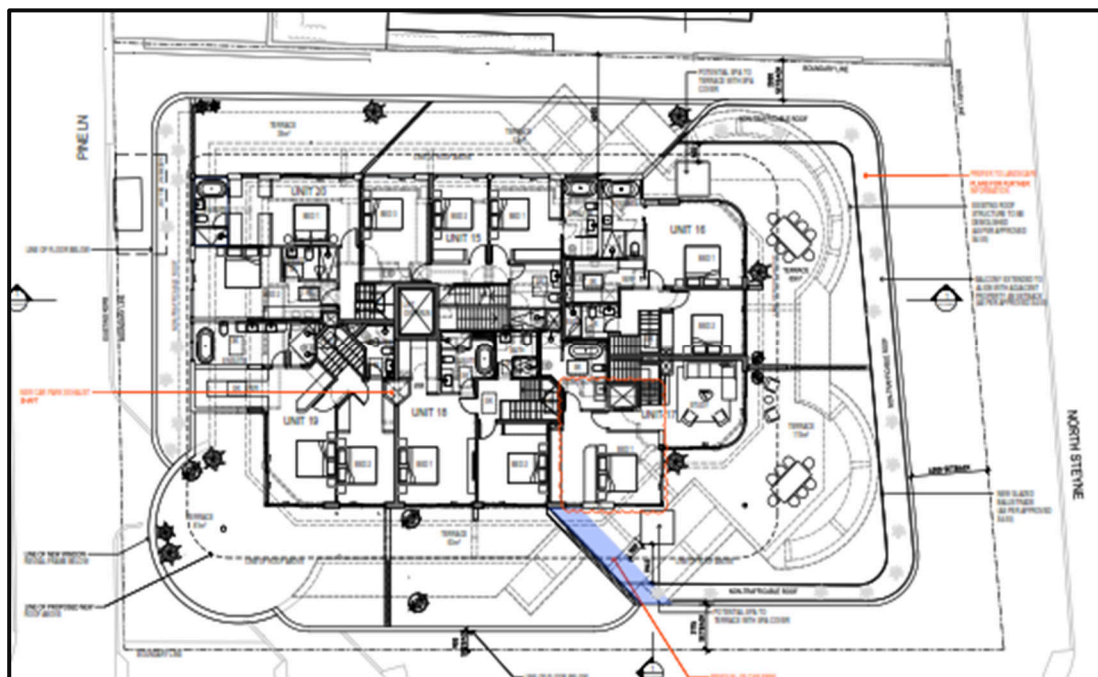


Figure 5: Level 4 Floor Plan; (amendment in orange clouds + text); Squillace, September 2022

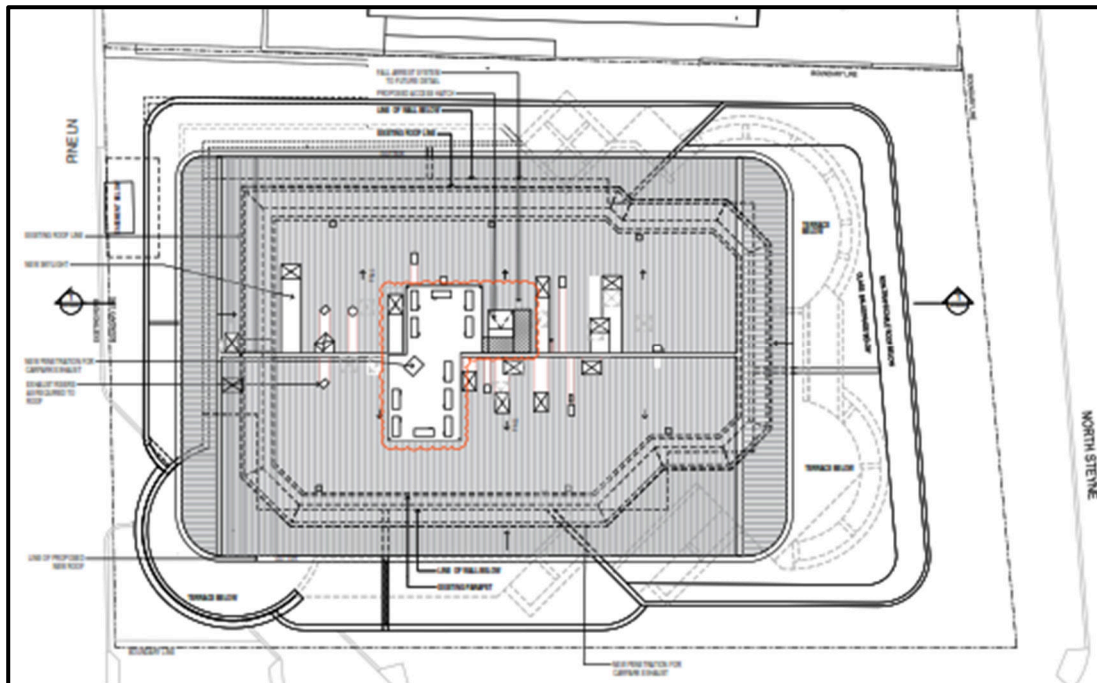


Figure 6: s4.55 Roof Plan; (amendment in orange clouds + text); Squillace, September 2022



Figure 7: s4.55; Squillace, September 2022

**4.0     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 combine two of the units into one on Levels 1 & 2, thereby reducing the total number of units from 22 to 20. This results in internal reconfiguration of the floor layouts of these units with minor modifications to the terraces (facing Pine Street) and a small overall reduction of the GFA and FSR for the development. Consequential changes to the external facades of the building follow the internal modifications (refer to the s4.55 plan set). Three additional Cabbage Tree Palms are added (as per conditions of consent) and the existing bluestone front fencing is replaced with a new, stone look wall on the same alignment. This is extended around the entry from Pine Lane and along part of the Pine Lane external wall. There are no substantial changes to the overall building envelope.

Overall, the number and composition of the proposed modification, when viewed from the public domain, substantiates public notification of the application, notwithstanding that the development is considered to be essentially 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 any changes to the total floor area is within the existing building. The changes to the external appearance of the building are not substantial and achieve the same environmental outcome. 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*.

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, there is no change to the height of the existing building. There is a small reduction in the FSR (from the previous s4.55 FSR of 2.58:1 down to the proposed FSR of 2.55:1, a 30m<sup>2</sup> GFA reduction). Qualitatively, the proposed changes merge two units on Level 1 & 2 with associated façade changes addressing the reconfigured internal layouts. The boundary fences/walls are replaced and modernised with new materials and finishes - on the same alignment and three palm trees are added (in accordance with conditions of consent) to improve the external appearance on the side streets. There is no change to the apartments’ orientation, no changes to the overall building envelope or the overall appearance of the building. When viewed from the public domain the development is refreshed and updated, but essentially the same. Overall, changes seek to

either improve the functionality and efficacy of the development or are consequential to internal changes to apartments and/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*.

#### **5.0 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.

#### **5.1 State Environmental Planning Policy BASIX**

The commitments of the original BASIX Certificate remain valid. A new BASIX Certificate is submitted with the s4.55 application.

#### **5.2 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.

### **5.3 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><b>Cl. 4.3 Building Height</b></p> <p><i>A maximum building height limit of 13m applies.</i></p> <p><b>Objectives</b></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><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>The proposal does not alter the approved building height of the existing building envelope.</p> <p>The existing height of the building exceeds the LEP height control. 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> <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"> <li>• 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;</li> <li>• The overall bulk and scale of the building is not changed as a result of the proposed s4.55 application.</li> <li>• There is no impact on solar access or sunlight to private or public places attributable to s4.55 application.</li> </ul> <p>There are no adverse impacts associated with the existing height variation of the building. It is existing and cannot be avoided in this case. The s4.55 application does not alter the existing building height.</p>
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<p><b>Cl. 4.4 Floor Space Ratio</b></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: 1,702.5m<sup>2</sup></p> <p>Existing GFA (prior to previous s4.55: 2885.9m<sup>2</sup>) FSR 2.54:1</p> <p>Approved GFA (per previous s4.55): 2,926.9m<sup>2</sup> Existing FSR: 2.58:1</p> <p>Proposed s4.55 reduction in GFA: 30m<sup>2</sup> Total GFA: 2,896.9m<sup>2</sup> Proposed FSR: 2.55:1</p> <p>The above figures show that the existing building, as existing, previously amended and currently proposed 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> <p>This s4.55 application results in a small reduction in GFA, within 10m<sup>2</sup> of the approved development prior to MOD2021/0647.</p>
<p><b>Cl. 4.6 Exceptions to development standards</b></p>	<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 floor 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>
<p><b>Cl. 5.5 Development within the coastal zone</b></p>	<p>No change to the existing, approved development.</p>

<p><b>Cl. 5.10 Heritage Conservation</b></p>	<p>The proposed (being in the vicinity of two listed heritage items):</p> <ul style="list-style-type: none"> <li>i) does not detract or significantly alter the heritage significance of the heritage items or their surrounds;</li> <li>ii) does not impact on heritage values or character of the locality;</li> <li>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.</li> </ul>
<p><b>Cl. 6.9 Foreshore scenic protection area</b></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><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>	<p>The proposed works are minor and do not significantly alter the approved (DA272/2017, as amended) 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> <ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> </ul>
<p><b>Cl. 6.15 Tourist and visitor accommodation</b></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 which is understood to have been providing short term letting of various units since its original construction.</p>

There is no change to the heritage considerations of the site, no 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.

#### **5.4 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 new palm trees added as per conditions of consent. The street fences/walls are replaced and modernised but remain on their current alignment and complemented by the planting scheme.

Manly DCP 2013	Proposal
<b>Part 3 General Principles of Development</b>	
<b>Issues</b>	<b>Consistent with Principle</b>
Streetscape	✓
Heritage	✓
Landscape Design	✓ Refer to s4.55 Landscape plan
Landscape/Tree Preservation	✓
Sunlight Access and Overshadowing	✓
Privacy and Security	✓
Maintenance of Views	✓
<b>3.1 Streetscapes and Townscapes</b>  <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 predominantly comprise the front wall along the two street frontages. The bluestone wall is to be replaced and modernised with new entries (which do not provide seating for passers-by) which will improve privacy within the site. The façade changes are minor and incidental to the internal layout changes from merging the L1 &amp; L2 apartments. The materials, finishes and colours of the façade were approved in the previous modification and are unchanged.</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>

	The Pine Street/Pine Lane intersection treatment is enhanced by the addition of the three Cabbage Tree Palms. The changes are detailed in the s4.55 Landscape Plan submitted with the s4.55 application. The established coastal theme of the street frontages, highlighted by the use of palm trees is enhanced.
<p><b>3.3.1 Landscaping Design</b></p> <p><i>Objective 1) To encourage appropriate tree planting and maintenance of existing vegetation.</i></p> <p><b>3.3.2 Landscape/Tree Preservation</b></p> <p><i>Objective 1) To ensure that development protects and conserves the natural environment.</i></p>	<p>The proposal includes three new Cabbage Tree Palms, as per the s4.55 Landscape Plan set.</p> <p>The proposed change addresses the previous conditions of consent and satisfactorily maintains the coastal appearance of the building when viewed from the public domain, particularly along Pine Street and Pine Lane in this case.</p>
<b>3.4.1 Sunlight Access and Overshadowing</b>	Solar access to units will remain relatively unchanged by the s4.55 amendments.
<b>3.4.2 Privacy and Security</b>	<p>Fence/wall – passers-by currently sit on the steps of the bluestone wall. It is proposed to replace it with a light stone wall – on the same alignment. The new wall will be thinner with steel access gates. This will refresh and modernise the fence but also improve internal privacy and security for occupants. The gates will be lockable and secure.</p> <p>New glass balustrading is proposed behind the new wall for the apartments to ensure outlook from the terrace is optimised.</p>
<b>3.4.3 Maintenance of Views</b>	The building envelope is largely unchanged. Therefore, view lines to and from the development are not modified or where impacted would not be of such significant to deny views to neighbouring properties.
<b>Part 4 - Development Controls</b>	
<p>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.</p>	

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	No change to existing/approved.
South setback side (Pine Street frontage)	No change to existing/approved.
Western setback (Pine Lane)	No change to existing/approved.
Wall on boundary height	New wall along North Steyne and Pine Street marginally lower to allow views out of the site from a sitting position on terraces of lower- level units.
Wall on boundary length	No change to existing. New wall on same alignment.
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	Minor changes, as per s4.55 plan set, to outdoor terraces of southern units. Useable POS areas are not impacted by the minor modifications.
Car Parking	Existing parking is provided at basement levels. There is no change to the existing access and parking arrangements for the site.

**5.5 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.

**5.6 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.

**6.0 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, as amended in MOD2021/0647. 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  
October 2022

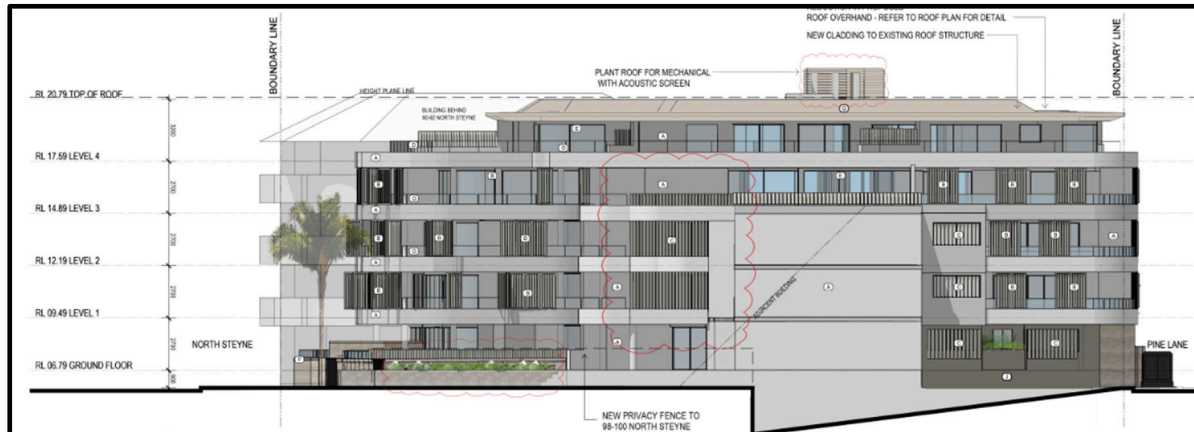
## **APPENDIX 1**

### **Existing -v- Approved Elevations -v- s4.55 Elevations**

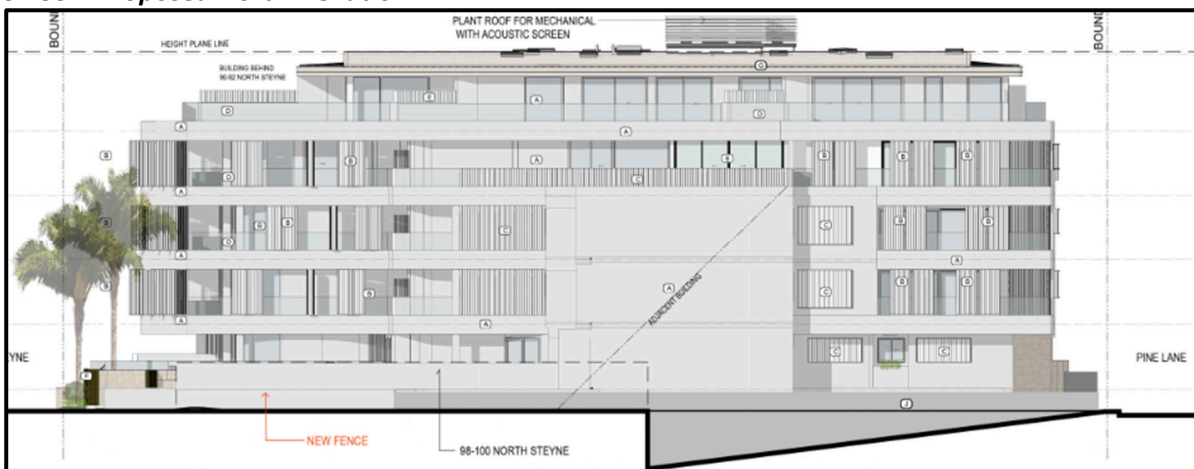
**DA272/2017 - Stamped Plans – North Elevation**



**MOD2021/0647 – North Elevation**



**S4.55 – Proposed North Elevation**



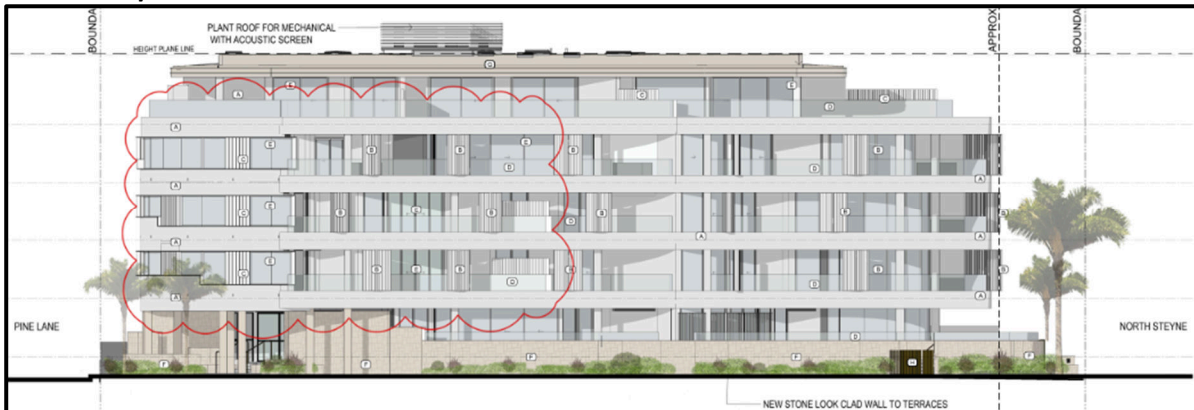
**DA272/2017 - Stamped Plans – South Elevation**



**MOD2021/0647 – South Elevation**



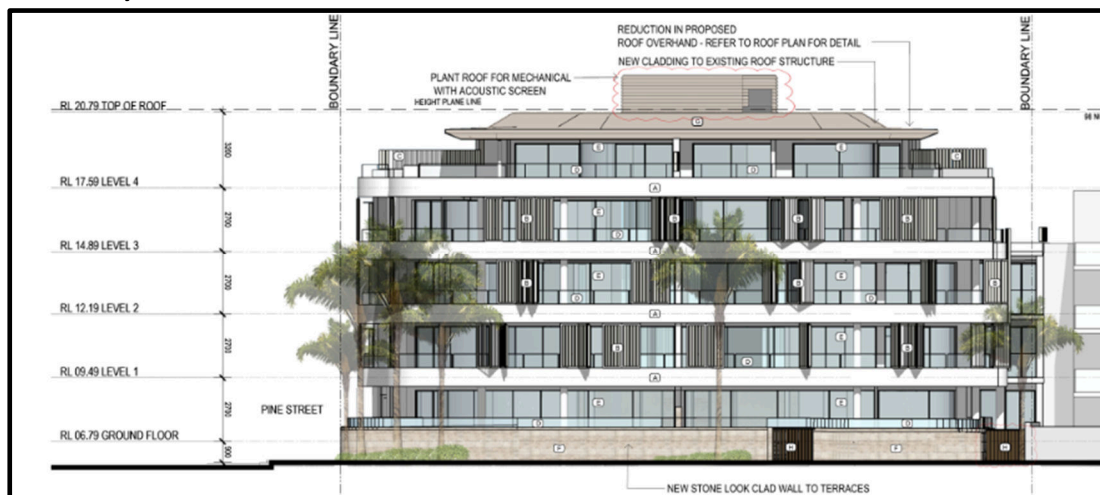
**S4.55 – Proposed South Elevation**



**DA272/2017 - Stamped Plans – East Elevation**



**MOD2021/0647 – East Elevation**



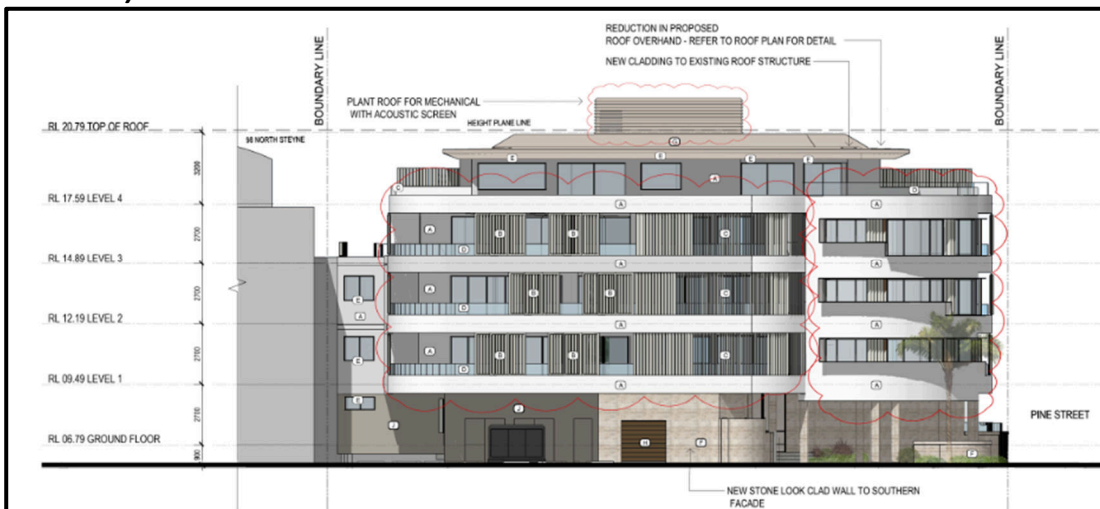
**S4.55 – Proposed East Elevation**



**DA272/2017 - Stamped Plans – West Elevation**



**MOD2021/0647 – West Elevation**



**S4.55 – Proposed West Elevation**

