

GYDE

Statement of Modification

101, 111 and 121 Dove Lane, Warriewood
Modification Application

submitted to Northern Beaches Council

on behalf of Morehuman Warriewood ATF Morehuman Warriewood Unit Trust

This report was prepared by:

Director: Mark Schofield
Senior Planner: Theo Wilkinson
Project: P-20200
Report Version: Final

Disclaimer

This report has been prepared by Gyde Consulting with input from a number of other expert consultants (if relevant). To the best of our knowledge, the information contained herein is neither false nor misleading and the contents are based on information and facts that were correct at the time of writing. Gyde Consulting accepts no responsibility or liability for any errors, omissions or resultant consequences including any loss or damage arising from reliance in information in this publication.

Copyright © Gyde Consulting
ABN 58 133 501 774

All Rights Reserved. No material may be reproduced without prior permission.

TABLE OF CONTENTS

1. Introduction.....	4
2. The Approved Development.....	4
3. Proposed Modification.....	4
3.1. Details of Modifications	4
3.2. Conditions to be Modified.....	5
4. Matters for consideration under section 4.55	5
4.1. Overview	5
4.2. Minimal Environmental Impact	6
4.3. Substantially the same development (Section 4.55(1A)(b))	6
4.4. Section 4.15(1) Considerations (Section 4.55(3)).....	7
5. CONCLUSION	9

APPENDICES

APPENDIX	REPORT / PLAN	PREPARED BY
1	Amended Subdivision Plans	Craig and Rhodes
2	Amended DA Engineering Plans	Craig and Rhodes
3	Amended Architectural Plans	PopovBass
4	Amended Arboricultural Impact Appraisal and Method Statement	Naturally Trees

1. INTRODUCTION

This statement has been prepared by Gyde Consulting on behalf of Morehuman Warriewood ATF Morehuman Warriewood Unit Trust (the Applicant) to accompany an application under Section 4.55 (1A) of the *Environmental Planning and Assessment Act 1979* (the Act).

2. THE APPROVED DEVELOPMENT

Development Consent No. 2021/0053 was granted by Northern Beaches on 7th September 2021 for:

“Subdivision of land and construction of dwelling houses, semi-detached dwellings and attached dwellings”.

The consent applies to land at 101,111 and 121 Dove Lane, Warriewood. The site is legally described as:

- Lot 7 DP 1251955
- Lot 1 DP 1266557
- Lot 4 DP 1251955.

3. PROPOSED MODIFICATION

3.1. Details of Modifications

Minor boundary adjustments are required to facilitate setbacks that allow compliance with the deemed to satisfy provisions of the Building Code of Australia. The Plan of Proposed Subdivision has been amended to illustrate the updated boundary alignments.

In addition, minor alterations to the dwellings are proposed including:

- Minor changes in levels to ensure compliance with Council's driveway gradient requirements and to simplify construction.
- The removal of lifts from all dwellings (except for Villa 1) and associated minor alterations to internal layouts to improve functionality. This change does not alter the external form of the dwellings.
- The removal of Tree 44 to enable the development of the approved dwelling within Lot 7 DP 1251955 in accordance with DA2022/0550. The Arboricultural Impact Appraisal and Method Statement has updated to assesses the removal.
- The removal of a substation and the consolidation of the land it previously occupied into the lot for Town House 12. The area will landscaped which results in an increase in private open space for this dwelling.
- Amendments to the external finishes to suit the design intent.

To ensure consistency with the updated Plan of Proposed Subdivision and the Amended Architectural Plans the Engineering Plans have been amended.

3.2. Conditions to be Modified

The following conditions are proposed to be modified:

Condition 1

Condition 1 is proposed to be **reworded** to incorporate the updated Architectural Plans, Engineering Plans and the Arboricultural Impact Appraisal and Method Statement. The Landscape Plans are not required to be updated as they remain generally consistent, and in accordance with condition 10, detailed landscape plans are required to be prepared prior to the issue of a Construction Certificate.

Condition 31

Condition 31 relates to tree removal within the property. This condition is proposed to be **reworded** to allow for the removal of Tree 44, to be consistent with the updated Arboricultural Impact Appraisal and Method Statement.

As part of the detailed design process, it became apparent that Tree 44 needs to be removed to enable the development of an approved dwelling within Lot 7 DP 1251955 in accordance with DA2022/0550. Tree 44 is classed as Z1, meaning it is not worthy of being a material constraint as it is a young or insignificant small tree. Accordingly, the Arboricultural Impact Appraisal and Method Statement has been updated to propose the removal of Tree 44.

As discussed in detail in Section 4 of this Statement, the proposed modifications are substantially the same development as originally approved and do not cause any additional adverse environmental impacts.

4. MATTERS FOR CONSIDERATION UNDER SECTION 4.55

4.1. Overview

Section 4.55 of the *Environmental Planning and Assessment Act, 1979* (the Act) confers on a consent authority the power and discretion to modify a consent granted under the Act.

The relevant provisions of the Act state:

“Modification of consents

(1A) Modifications involving minimal environmental impact. 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 proposed modification is of minimal environmental impact, and

(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all) under this section, 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 under section 72 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 any period prescribed by the regulations or provided by the development control plan, as the case may be.

Subsections 4.55 (3) states as follows:

“(3) 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 the development the subject of the application.”

The matters prescribed under Section 4.55 are addressed below.

4.2. Minimal Environmental Impact

The subject Section 4.55 (1A) application does not involve any substantial changes to the approved development. The proposed modifications have been designed to ensure there is no additional adverse environmental impact. In summary, the modifications have positive environmental impacts and no adverse environmental impacts for the following reasons:

- The proposed development remains compatible with the existing and future context as it is substantially the same development as originally approved. No change of use or change of density is proposed as part of the proposed modifications. Accordingly, the proposed modifications will have no additional environmental impacts.
- The removal of Tree 44 is acceptable as it is of low significance as detailed in the Arboricultural Impact Appraisal and Method Statement. It is required to be removed to facilitate the construction of a dwelling as part of DA2022/0550.
- The minor change in levels results in minimal additional overshadowing.

Refer to Section 4.3 and Section 4.4 of this Statement for further assessment of environmental impacts.

4.3. Substantially the same development (Section 4.55(1A)(b))

“Substantially the same development” means *“essentially or materially or having the same essence”* as defined by Pearlman C.J in *Schrodgers Australian Property Management Ltd v Shoalhaven City Council and Anor* (1999) NSWLEC 251. Accordingly, it is the substance of the proposal relative to the substance of the development as originally approved.

As stated, the proposed modifications do not seek to change the nature and substance of the approved development in any way. The development, as modified would essentially and materially have the same essence. The proposed modifications remain substantially the same development in both qualitative and quantitative terms.

Accordingly, the proposed modifications to the approved development are not considered to change the essential features of the approved medium density residential development and constitute to “substantially the same development” for the following reasons:

- No change of use is proposed.
- No change in number of dwellings is proposed.
- No additional GFA is proposed.
- There will be no additional adverse impacts on neighbouring properties, as has been assessed as part of the original application.

We therefore consider that the development (as modified) will remain substantially the same as the development that was originally approved.

4.4. Section 4.15(1) Considerations (Section 4.55(3))

The environmental assessment matters relevant to the proposed modified development under Section 4.15(1) (a), (b), (c), (d) and (e) of the Act are addressed below:

Environmental Planning Controls

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

- *Biodiversity Conservation Act 2016*
- *Rural Fires Act 1997*
- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *Pittwater Local Environmental Plan 2014; and*
- *Pittwater 21 Development Control Plan.*

The principal planning controls applying to the site are addressed in the following sections as relevant to the proposed modifications.

Biodiversity Conservation Act 2016

Since there are no substantive changes to the development proposed, and Tree 44 is a tree of low significance and retention value, the development (as modified) remains consistent with the approved development which was determined to be consistent with the *Biodiversity Conservation Act 2016*.

Rural Fires Act 1997

The original application was assessed as integrated development as the site is mapped as bushfire prone land. The modifications do not alter any bushfire consideration as:

- the proposed boundary adjustments occur between lots within the development and do not change the dwellings setback from the bushfire hazard.
- the adjustments to the dwellings are minor and largely internal. The modification can comply with the

existing requirements of the NSW Rural Fire Service.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Since there are no substantive changes to the development proposed, the modified proposal remains consistent with the relevant provisions of those controls as detailed in the original application and as subsequently addressed by Council in granting the consent.

The land on the northern side of Fern Creek land will in the future be used for public open space. The proposed development will not impact on any vegetation on that land, nor adversely impact its future use. The removal of Tree 44 is acceptable as detailed in the updated Arboricultural Impact Statement and the total clearing of vegetation does not exceed the biodiversity offsets scheme threshold.

Pittwater Local Environmental Plan 2014

Since there are no substantive changes to the development proposed, the modified proposal remains consistent with the relevant provisions of those controls as detailed in the original application and as subsequently addressed by Council in granting the consent. There is no change of use proposed so the proposed development remains permitted with consent within the R3 Medium Density Residential zone. No change is proposed to the number of dwellings, so the proposal remains consistent with the density controls of the PLEP. Minor alterations to dwellings are proposed but this does not impact the proposals compliance with the maximum height of building control.

Pittwater 21 Development Control Plan

Since there are no substantive changes to the development proposed, the modified proposal remains consistent with the relevant provisions of the controls as detailed in the original application and as subsequently assessed by Council in granting the consent. Importantly the approved developments compliance with landscaped area, side setback and garage width controls is not altered.

Environmental impacts and site suitability

There is nothing with respect to the modifications that would result in any environmental impact or affect the suitability of the site for the development as approved or as proposed to be modified.

The public interest

No public interest issues arise because 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. The proposed modifications do not result in any additional adverse impact.

5. CONCLUSION

The proposed modifications will result in no adverse impacts and the development will remain consistent with the approved application.

No changes are proposed to the intensity of the use of the approved development, and there will be no identifiable environmental impacts.

The assessment of the modified proposal pursuant to the relevant Section 4.15(1) evaluation criteria does not alter the assessment undertaken in the SEE and Council's assessment of the original development application. We see no reason therefore why the modifications should not be approved.