

**SECTION 4.55(1A)**  
**MODIFICATION TO CONSENT DA 2019/0649**



**3 Bynya Road, Whale Beach**

**Mirabelle and Mozell Family**

**January 2021**

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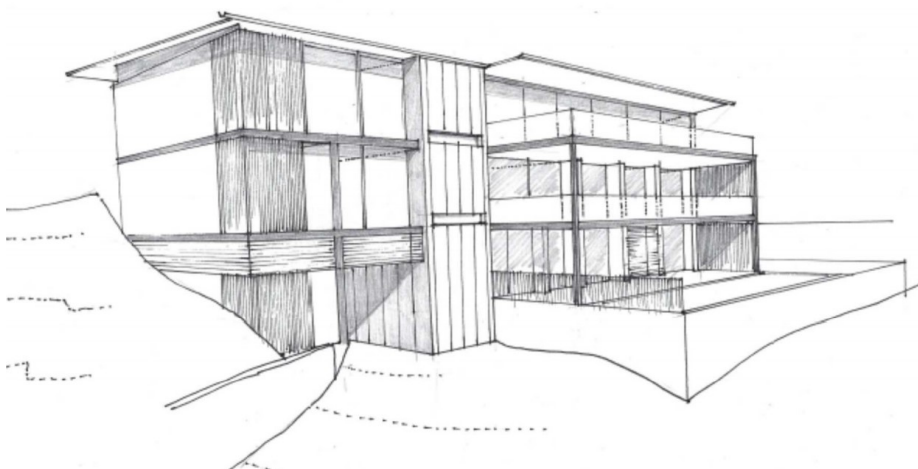
# 1 Introduction/Proposed Modifications

This statement has been prepared in support of a Section 4.55(1A) application for modifications to the consent granted in August 2019 for alterations and additions to 3 Bynya Road, Whale Beach (DA 2019/0649). It responds to the requirements of the Pittwater Local Environmental Plan (PLEP) 2009, Pittwater21 Development Control Plan (PDCP), and other relevant environmental planning provisions.

The property is zoned E4 Environmental Living. The property is not identified as a heritage item, in the vicinity of any items and the property is not located within a heritage conservation area. Additionally, the property is not identified as bushfire prone land.

The changes to the existing dwelling approved under DA 2019/0649 can be summarised as follows:

- **Roof Level:** new Colourbond (ultra) tray style insulated roof and half round gutter with new chimney flue and two new skylights (2.9m x 3.05m and 1.1m x 7m); and,
- **First Floor Level (Entry Level):** internal reconfiguration and enlargement of the first floor to consist of dining room, living room, kitchen, study, master bedroom and en-suite. The changes at this level also included enlarging the east facing balcony to 3x15m. Enlarging the garage and a new terrace 3mx12m on the western side (Bynya Road); and,
- **Ground Floor Level:** internal reconfiguration and enlargement of the ground floor level (FFL as existing), to consist of three bedrooms, 2 x bathrooms, storage, kitchenette, rumpus, laundry, wet room and enlargement of the east facing terrace; and,
- **Undercroft Level:** Formalisation of the undercroft level (FFL 57.25) to comprise 2 x guest bedrooms, shower, toilet, bar and pool house and southern entry point from carport and store; and,
- A new 3.5m x 8.167m swimming pool and timber / tiled terrace surrounds, including a circular spa and pool fencing to AS 1926 directly accessible from the pool house / studio undercroft level; and,
- **Site Works:** landscaping and other required site works including concrete terraces and retaining walls with render finish and stepping-stones (varying design and shapes) and rainwater tank (RWT).



*Figure 1 – A sketch of the dwelling's Surf Road frontage (DA 2019/0649 - excludes landscaping)*

Through this application the owner is seeking relatively minor modifications to the consent:  
The modifications sought include: -

**Roof Level:** - Drawing 105A

- Solar panels to the roof
- Two smaller skylights instead of two as approved under DA 2019/0649. The existing roof has three.
- Roof extended over parking area as carport.

**First Floor – Entry/Garage Level:** – Drawing 106A

- An interior entry door from the garage to the house,
- An altered swing to the west terrace gate,
- Retaining more of the existing structure to reduce demolition.
- Retain the existing garage, replace windows
- New 600mm retaining wall to the parking area, retain existing concrete parking area.
- A door (D.1a) between the kitchen and study.
- A re-design of the kitchen (the size of the pantry has been increased and the size of the powder room has been decreased)
- A reduction in the size of the ensuite, a double vanity and increasing the privacy of the toilet.
- A corner view window to the master bedroom.
- A gas fire pit / BBQ on the western terrace
- A gas fireplace with media over to replace the existing fireplace in the sitting room.
- A spa for two is proposed off the southern end of the east facing balcony.

**Ground Floor:** - Drawing 107A

- Relocating the shower room next to the kitchenette and moving the walls and W15,16 & 17 to establish 3 bedrooms.
- Relocating storage area to west of the bedroom hallway.
- Altering the approved guest ensuite and wetroom into 2 bathrooms.
- Retaining more of the existing structure to reduce demolition.
- New stairs off the eastern balcony, connecting down to the pool level and fire exit.

**Lower Ground Floor:** – Drawing 108A

- A re-design of the bunk room.
- Relocation of the laundry cupboard.
- Wetbar/ kitchenette/ laundry cupboard relocated to the hallway
- New media joinery in the studio/pool house
- A new separate powder room under the stairs.
- New exterior stairs from the pool level to the carport area (fire exit).
- A pool redesign to include an attached square spa instead of the approved separate circular spa. The pool size does not alter, however the pool fence is re-aligned to increase circulation space around the western edge of the pool.
- New timber deck on ground to allow access under the pool deck to equipment.
- New level concrete flooring in exterior storage area with ramp.
- Replace existing exterior timber staircase from ground to lower ground in metal.

## 2 Supporting Documents

This report should be read in conjunction with following amended drawings and other documents:

- **Architectural Drawings by DBCF Pty Ltd**  
DWG 100A-118A, dated 11.01.21
- **Report by Jack Williams of UrbanArbor**
- **Geotech report**
- **Basix Certificate**

## 3 Description of Site, Existing Dwelling and Built Context

The site is a corner allotment with frontage to Bynya Road along its western boundary and Surf Road along its eastern boundary. The site is legally described as Lot 1 in DP 450305. A Survey Plan by Detailed Surveys shows the site has an area of 1,060m<sup>2</sup>. The site's frontage to Bynya Road is 50.59m and to Surf Road it is 45.66m.

The site has a steep fall from Bynya Road across the site to the Surf Road frontage. The perimeter of the site consists of canopy tree planting with dense landscaping existing in the southern corner of the site. The area to the east of the building where external modifications are proposed is already built upon area (refer photo below).

Whale Beach and its associated facilities is approximately 300m to the site's east. Pittwater is approximately 210m to the site's west.

The existing dwelling on the site is a substantial two storey dwelling with a large undercroft area at the Surf Road frontage. The existing house is brick with a pitched tiled roof. The site has only one direct adjoining neighbour which is No. 9 Surf Road. A 2-3 storey dwelling is located on this site. The dwelling at No. 9 has large outdoor entertaining decks facing to the north-east away from the subject property.



**Photo 1:** *The dwelling on the sole neighbouring property ( No. 9 Surf Road) is orientated away from the site to the north-east.*

#### *Surrounds*

The surrounding built form is characterised by multi-level elevated dwellings set on steeply sloping sites. A variety of housing types and architectural styles are provided within a relatively consistent subdivision pattern that is influenced by the locality's topographical variations (falling from west to east or front to back). The integrity of individual dwellings varies considerably. There is little architectural, aesthetic, social or cultural built form significance. Dwellings are typically oriented to take advantage of their easterly, north easterly and south easterly views.

## **4 Evaluation**

In assessing a modification application Council is required to consider the matters raised in Section 4.15(1) & Section 4.55 (1A) of the Environmental Planning and Assessment Act, 1979 to establish environmental impact and whether the modified development is substantially the same as the development for which consent was granted. An evaluation of the proposal in accordance with these requirements is provided below.

### **4.1 State Environmental Planning Policy (Remediation of Land) No. 55**

This State Policy applies across NSW and requires the consent authority to consider potential land contamination issues prior to issuing development consent. Although contaminated sites may occur anywhere, they are typically clustered in areas which have been used for heavy industry, mining, chemically intensive agriculture and the storage of chemicals, petroleum based products or waste products. The area of Palm/Whale Beach, has no such history. The land was largely undeveloped until the early 1900s when the area was subdivided and Sydney residents purchased holiday homes. Accordingly, the likelihood of the subject site being contaminated is extremely low.

## 4.2 State Environmental Planning Policy (Basix)

BASIX applies to all of NSW and requires a sustainability assessment certificate to be submitted with the development application. A BASIX certificate has been supplied.

## 4.3 Pittwater Local Environmental Plan 2014

The Pittwater LEP 2014 applies to the subject site the aims of this LEP have been considered, particularly those most relevant to the modifications being:

- (a) to promote development in Pittwater that is economically, environmentally and socially sustainable,*
- (b) to ensure development is consistent with the desired character of Pittwater's localities,*
- (f) to encourage a range of housing in appropriate locations that provides for the needs of the community both now and in the future,*
- (j) to protect and promote the health and well-being of current and future residents of Pittwater.*

It is considered the proposed modifications are consistent with the aims of the LEP as the overall works to the existing house will enhance low-density housing in Pittwater in a manner that is consistent with the desired character for the area as the scenic, natural qualities of the site have been maintained.

The subject site is zoned E4 Environmental Living under the Pittwater LEP 2014. Assessment of the proposed modifications against the objectives for the E4 zone and other relevant clauses/objectives of the LEP are discussed below.

**Table 2: Assessment of modifications against the relevant provisions of Pittwater LEP 2014**

Clause & Objectives	Consistency of Modifications with LEP Provisions
E4 Environmental Living Zone <ul style="list-style-type: none"><li>To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.</li><li>To ensure that residential development does not have an adverse effect on those values.</li><li>To provide for residential development of a low density and scale integrated with the landform and landscape.</li><li>To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.</li></ul>	<b>Consistent</b> DA 2019/0649 was assessed for consistency against these objectives and approved by council. The modifications do alter the height, scale or general aesthetic of the proposal in any way and therefore must also be considered consistent with the zone objectives.
Clause 4.3 Height of buildings 8.5m (Pursuant to clause 4.3 (2D) – 10m maximum	<b>Consistent</b> Yes (the modifications make no change to the overall height of the extensions approved under DA 2019/0649) The roof over the parking area does not breach the 8.5m
Clause 5.10 Heritage Conservation	<b>Not applicable</b>



	The site is not a heritage item or within the vicinity of any items and the site is not located in a heritage conservation area.
Clause 7.1 Acid Sulphate Soils Class 5	<b>Consistent</b> The proposed modifications will not lower the water table below 1m AHD on any land within 500m of a Class 1, 2 and 3 land classification.
Clause 7.2 Earthworks	<b>Consistent</b> The modifications do not involve any material earthworks that will impact on the environment or surrounding neighbours. During construction sedimentation barriers and waste management plans will be implemented to contain works.
Cl. 7.6 Biodiversity	<b>Consistent</b> The modifications do not impact on the landscape area given consent under DA2019/0649. While the modifications include two new external staircases these are located in an existing built-on area. Furthermore, there are no trees in the vicinity of the stairs. The modifications will not impact on the existing landscaped area of the site.
Clause 7.7 Geotechnical hazards	<b>Consistent</b> Jack Hodgson Consultants prepared a Geotechnical Risk Management Policy Report to accompany DA2019/0649. Crozier Consultants have updated that report advising that the modifications will not alter the findings of the initial report.
7.10 Essential Services	<b>Consistent</b> Council undertook an Assessment of essential services with DA2019/0649 and noted in their report that the proposal complied with requirements. The modifications do not involve any alterations that would alter this assessment.

#### 4.4 Pittwater 21 Development Control Plan

The proposed modifications have been considered having regard to the applicable provisions of the Lane Cove Development Control Plan (DCP), with comment in response to these provisions provided as follows:

SECTION A SHAPING DEVELOPMENT IN PITTWATER	
Clause & Objectives	Consistency with Objectives



<b>A4.12 Palm Beach Locality: Desired Character</b>	<p><b>Consistent</b></p> <p>DA2019/0649 was determined as consistent with the desired development objectives for the Palm beach locality. The modifications to the DA do not materially alter the visual presentation of the dwelling from any public viewing locations, as the height, overall bulk and general aesthetic of the building remain the same. While the modifications do include an external staircase on the eastern elevation connecting the ground level to the pool deck, given the scale of the eastern elevation this change will have minimal visual impact on the overall presentation of the building.</p>
<b>SECTION B GENERAL CONTROLS</b>	
<b>Clause &amp; Objectives</b>	<b>Consistency with Objectives</b>
<p><b>B3.1 Landslip Hazard</b></p> <p>Must comply with the requirements of the Pittwater Geotechnical Risk Management Policy.</p>	<p><b>Consistent</b></p> <p>Jack Hodgson Consultants prepared a Geotechnical Risk Management Policy Report to accompany DA2019/0649. Crozier Consultants have updated that report advising that the modifications will not alter the findings of the initial report.</p>
<p><b>B3.2 Bushfire Hazard</b></p>	<p><b>Not applicable</b></p> <p>The site is not bushfire prone land.</p>
<p><b>B3.6 Potentially Contaminated Land</b></p>	<p><b>Consistent</b></p> <p>An assessment of Da 2019/0649 pursuant to the provisions of SEPP No. 55 was made prior to consent being granted. It is considered very unlikely that the site has been exposed to pollutants. The modifications do not involve any major site works.</p>
<p><b>B4.4 Flora and Fauna Habitat</b></p>	<p><b>Consistent</b></p> <p>The modifications do not propose the removal of any vegetation. Part of DA 2019/0649 involved further native vegetation being incorporated onto the site.</p>
<p><b>B5.1 Water Management Plan</b></p>	<p><b>Not applicable</b></p> <p>No intensification of development is occurring. DA 2019/0649 was for improvements to a single dwelling house and the modifications do not alter the land use.</p>
<p><b>B5.10 Stormwater Discharge</b></p>	<p><b>Consistent</b></p> <p>Stormwater management was addressed through the assessment of DA2019/0649. The modifications make no change to the approved stormwater system.</p>
<p><b>B6.3 Off- Street Carparking</b></p> <p>2 off street spaces for 2+ bedroom dwelling</p>	<p><b>Consistent</b></p> <p>Adequate off-street parking is provided on the site. The modifications do not alter the approved parking arrangements.</p>
<p><b>B8.1-8.4 Construction and Demolition</b></p>	<p><b>Consistent</b></p> <p>No significant excavation is proposed in conjunction</p>

	with the modifications. An Environmental Site Management and Waste Management Plan has been submitted with the application which shows the location of sedimentation barriers that will be employed during construction to ensure there is no migration of sediment off site to the ocean.
SECTION C DEVELOPMENT TYPE CONTROL	
Clause & Objectives	Consistency with Objectives
<b>C1.1 Landscaping</b> An analysis of the proposal demonstrating that the built form of the development is to be dominated and complimented by landscaping, or retaining existing vegetation, and the	<b>Consistent – Merit Assessment</b> The site is surrounded by tall tree canopy. The large mature trees frame the existing dwelling and ensure the dwelling presents as a building set within a landscape environment. All existing vegetation on the site is to be retained. The modifications do not increase built footprint as the external staircases are located on existing paved/built area. The modification seeks approval to remove one tree that is supported by the report.
<b>C1.2 Safety &amp; Security</b> A statement demonstrating how the safety and security of people using or visiting the proposed development has been addressed in the design of the proposal	<b>Consistent</b> The safety and security of the site was assessed as acceptable given consent was granted to DA 2019/0649. The modifications do not make alterations to security site measures.
<b>C1.3 View Sharing</b> An analysis of any view loss and explanation of the design features and location of the proposed structure in terms of how the proposal seeks to achieve equitable view sharing and view retention.	<b>Consistent</b> The modifications will not interfere with surrounding neighbours' views. The views of the property to the north (No. 9 Surf Road) are to the north-east and are unimpeded by works at No. 3. There are no properties to the west of the subject site that look across the rear elevation and could be potentially impacted by the proposed spa and external stairs as the site is a corner allotment.
<b>C1.4 Solar Access</b> Windows to the principal living area of the proposal, and windows to the principal living area of adjoining dwellings, are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st (that is, to at least 50% of the glazed area of those windows).	<b>Consistent</b> The modifications are largely internal. The new external spa and stairs will only cast shadow on the subject site. The modifications will not alter the sunlight received to main living spaces of the house. The house faces almost directly east and is not shaded by other buildings or vegetation and therefore it receives more than the minimum of 3 hours of sunlight between 9am and 3pm on June 21 <sup>st</sup> .
<b>C1.5 Visual Privacy</b> The proposal must achieve an acceptable level of privacy for residents and users and protect the privacy of any adjoining development.	<b>Consistent</b> The external modifications proposed are the spa at the first-floor level and the external stairs connecting the ground level to the pool level and the pool level to the carport. The spa and new stairs are located to the southern end of a 15m long balcony and therefore they are well separated from the nearest neighbour to the north (No. 9 Surf Road). Additionally, No. 9 is orientated (away from the spa and stairs) towards the north-east water views.

<b>C1.6</b> <b>Acoustic Privacy</b> An analysis outlining how the proposal achieves an acceptable level of acoustic privacy for residents and users and protects the acoustic privacy of any adjoining development	<b>Consistent</b> Refer above. The distance of the proposed additional two person spa from the neighbouring property will assist with maintaining acoustic privacy. At the pool deck level the proposed modification to the spa increases its separation from No. 9 Surf Road.
<b>C1.7 Private Open Space</b> Minimum 80m <sup>2</sup> of private open space per dwelling at ground level, with no dimension less than 3 metres. No more than 75% of this private open space is to be provided in the front yard.	<b>Consistent</b> Through DA 2019/0649 approval was granted for a new pool and pool deck which effectively becomes the main outdoor private open space for the dwelling. The modifications improve access to this space as they propose a new external staircase from the pool deck to the ground floor of the dwelling.
<b>C1.12 Waste &amp; Recycling Facilities</b>	<b>Consistent</b> A construction waste management plan was approved with DA 2019/0649. The modifications do not interfere with the adoption and implementation of this plan.  The subject dwelling has ample space for waste and recycling bins to be stored in the garage or carport area.
<b>C1.17 Swimming Pool Safety</b>	<b>Consistent</b> The modifications involving the pool relate to the spa and pool fencing and improve pool safety as they increase the circulation space around the western edge of the pool. The pool as per conditions of consent attached to DA 2019/0649 will be constructed and operated in accordance with the relevant regulations.
<b>C5.1 Landscaping</b>	<b>Consistent</b> Refer locality specific controls
<b>SECTION D LOCALITY SPECIFIC DEVELOPMENT CONTROLS (Palm Beach Locality)</b>	
<b>Clause &amp; Objectives</b>	<b>Consistency with Objectives</b>
<b>D12.1 Character as viewed from a public place</b>	<b>Consistent</b> The overall form and aesthetic of the proposed dwelling was approved under DA 2019/0649. The modifications do not materially alter the presentation of the house as the height and bulk remain the same. The adding of an external staircase between the ground and lower ground level will not have a significant impact on the visual appearance of the building. The majority of the modifications are internal changes which will not be visible from the public realm.
<b>D12.3 Building Colours and Materials</b>	<b>Consistent</b> The proposal sits under the ridge line to the west of the site and is surrounded by existing canopy trees. The materials and colours chosen for the alterations and additions approved under DA 2019/0649 were

	chosen for their non-reflective surfaces and colours that blend with the surrounding environment. The modifications adhere to the approved material and colour palette.
<b>D12.5 Front Building Line</b>	<b>Consistent</b> Council's requirement is 6.5m however, under DA2019/0649 a setback from Bynya Road of 4.8m in parts was accepted, the proposed modifications do not reduce this accepted setback.
<b>D12.6 Side and Rear Building Lines</b>	<b>Consistent</b> A 1m side setback to the north is required and this is complied with. A 6.5m rear setback off Surf Road is required. The east facing balcony complies with this, while the pool/new spa does not. However, variations are allowed for pools and as the modified pool/spa does not reduce the approved setback it must be considered acceptable.
<b>D12.8 Building Envelope</b>	<b>Consistent</b> The modifications all fall within the required building envelope. Council's assessment of DA2019/0649 identified that part of the garage near the northern boundary did not comply with the building envelope control. However, it was considered acceptable based on a merit assessment and the modifications do not alter the form of the approved garage.
<b>D12.10 Landscaped Area – Environmentally Sensitive Land</b>	<b>Consistent</b> The modifications do not reduce the approved landscape area; the external stairs and the roof over the existing car parking occur in an area of the site that is paved and not landscaped.
<b>D12.12 Fences – Flora and Fauna</b>	<b>Consistent</b> The modifications do not introduce any fencing into the front or side setback area.
<b>D12.13 Construction, Retaining Walls, Undercroft Areas</b>	<b>Consistent</b> The modifications do not introduce any new undercroft areas but have a new 600mm retaining wall in the car parking area.
<b>D12.14 Scenic Protection Category One Areas</b>	<b>Consistent</b> The proposed modifications incorporate the use of unobtrusive and non-reflective materials in keeping with those approved for DA2019/0649.

## 4.5 The Likely Impacts of the Development

In accordance with section 4.15(1)(b) of the EP&A Act, the likely impacts of the development have been addressed in the preceding parts of section 4. The proposed modifications are largely internal and do not alter the overall height, bulk and general aesthetic of the approved dwelling (DA2019/0649). Furthermore, no cut and fill is involved, no vegetation is to be removed and the privacy, overshadowing and view impacts of the modifications on the sole adjoining neighbour are negligible. The visual impacts of the external modifications (external stair and first floor spa) as viewed from Whale Beach have been assessed. As the dwelling sits below the escarpment within a framework of tall trees and the proposed

waterfront elevation is well modulated, it is considered the visual impact of the external modifications will be minimal.



#### **4.6 The Suitability of the Site**

In accordance with section 4.15(1) (c.) of the EP&A Act, the site's suitability for the subject proposal must be established.

The site is zoned E4 Environmental Living zone and the objectives for this zone are:

- To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.
- To ensure that residential development does not have an adverse effect on those values.
- To provide for residential development of a low density and scale integrated with the landform and landscape.
- To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.

The proposed modifications to DA 2019/2049 which seeks to update a family home are considered consistent with the above objectives. The proposed modifications are largely internal. No significant cut or fill is proposed, and there is no requirement for vegetation removal/pruning, only the one tree removal. The proposal is not located on a ridge and therefore remains subservient to the surrounding existing tall tree canopy that frame the house. Additionally, the waterfront elevation of the dwelling is well articulated, and this helps to reduce the bulk of the house as viewed from Whale Beach. Considering council assessed DA 2019/0649, as achieving the objectives of the zone, the proposed relatively minor modifications must be afforded this same assessment. As the proposal meets the objectives of the zone the site must be suitable for the development.

#### **4.7 Public Interest**

Under section 4.15(1)(e) of the EP&A Act the public interest is to be considered.

- The modifications comply with the provisions of the Pittwater LEP 2014 including the objectives of the relevant zone (E4 Environmental Living).
- The modifications are consistent with the provisions of the Pittwater21 DCP.
- The impacts of the modifications on the adjoining neighbour and environment are minimal and the visual appearance of the modifications as seen from Whale Beach have been assessed as acceptable.

For the reasons listed above the modification application is considered in the public interest because it will facilitate the improvement of a family home, in a manner consistent with the desired future character for the area.

#### **4.8 Substantially the Same**

Section 4.55 (1A) of the Environmental Planning and Assessment Act 1979 requires a consent authority assessing a modification application to be satisfied that the development to which the consent as modified relates will be substantially the same development as the development for which the consent was originally granted.

The proposed modifications do not change or introduce an additional/distinct land use, the modifications do not materially alter the impacts of the approved development and maintain the overall height, scale and general aesthetic of the approved proposal. Accordingly, the proposal as modified will be substantially the same development and therefore if environmental impacts are minimal consent may be granted.

### **5 Conclusion**

This modification application has been assessed against the provisions of Section 4.15 and 4.55 of the Environmental Planning and Assessment Act 1979.

It is considered the modification application is consistent with section 4.55(1A) of the Act, as it has been demonstrated that the modifications will have minimal environmental impact (refer sections 4.1 to 4.7 of this document) and that the development remains substantially the same as that for which consent was originally granted under DA 2019/0649 (refer section 4.8). Therefore, the consent authority may choose to modify the consent for DA 2019/0649.