

GYDE

Section 4.55(1A) Planning Statement

Modification Application

346 - 352 Whale Beach Road, Palm Beach

submitted to Northern Beaches Council

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Report Version: Final

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APPENDICES

APPENDIX	DOCUMENT	PREPARED BY
A	Architectural Plans	Harry Seidler & Associates
B	Owner's Consent	Applicant

1. INTRODUCTION

This planning statement has been prepared by GYDE Consulting (GYDE) on behalf of the applicant to support a Section 4.55(1A) modification application to Northern Beaches Council (Council). The application is to amend the approved development application DA2021/0268 relating to the redevelopment of 346- 352 Whale Beach Road, Palm Beach.

The original approval, DA2021/0268, relates to demolition of the existing site structures, construction of a new dwelling house, lot consolidation of lots 328-330 of DP 16362, landscaping works and bushfire hazard reductions works on Lot 327 of DP 16362.

The purpose of this report is to describe the proposed amendments, review the applicable planning regime relating to the proposal, assess the degree of compliance and examine the environmental impacts of the development when measured against the relevant requirements of the Environmental Planning and Assessment Act 1979 (EP&A Act).

A detailed description of the proposal is provided in Section 2 and assessment against the matters for consideration under Section 4.55 of the EP&A Act in Section 4.

The proposed modification to DA2021/0268 sought is minor in nature and seeks to:

- Revise internal layout of bathroom, kitchen, sauna and laundry areas
- Integrate a barbeque into the design
- Modify chimney and screen wall heights
- Revise the external landscape pathway and stair design to accommodate site conditions
- Increase the width of the garbage store area
- Convert the wine cellar into a cellar room.

The application has been prepared after taking into account the following key issues:

- Legislative requirements relating to the modification of a consent
- Compliance with environmental planning instruments
- Likely impacts of the development as amended
- Suitability of the site
- The public interest.

This report has been prepared in association with amended architectural plans prepared by Harry Seidler & Associates dated June and July 2023 which accompany this application at Appendix A. It is considered that the proposed amendments result in substantially the same development and do not result in any adverse environmental impacts over and above those that were approved in the original development application.

2. APPROVED DEVELOPMENT

Consent No DA2021/0268 was granted by Northern Beaches Council on 14 July 2021 for:

“Demolition works, lot consolidation and construction of a dwelling house including swimming pool.”

The original consent applies to land legally described as:

- Lot 327 DP 16362 (346 Whale Beach Road)
- Lot 328 DP 16362 (348 Whale Beach Road)
- Lot 329 DP 16362 (350 Whale Beach Road)
- Lot 330 DP 16362 (352 Whale Beach Road)

Consolidation was approved for Lots 328, 329 and 330 and bushfire hazard reduction works on Lot 327 to the south of the development lots.



Figure 1: Aerial photograph with the subject site outlined in red, with Lot 327 outlined in blue (Source: Nearmaps)

3. PROPOSED MODIFICATION

3.1. Overview and Justification of Modifications

The proposed modifications involve minor amendments to the approved development at the site. The proposed changes, which are to improve the functionality of the development and are mostly internal and not visible from the public domain, have resulted from the design finalisation process. Details of the proposed modifications are described below:

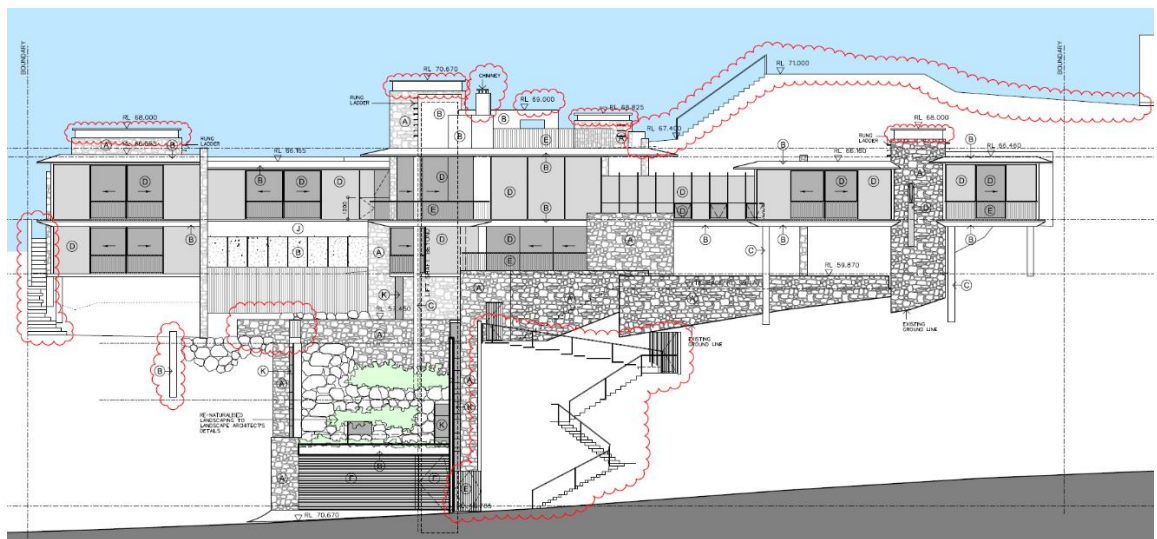
- Revised landscape pathway design at east and north of the site
- Revised external landscape stair design south of the site
- Addition of a set of landscape stairs at west of the site

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- Minor increase in the extent of excavation from 3,293m³ to 3,320m³ (27m³ increase) due to latent conditions
- Addition of a garage access door to the service cavity on Level 0–1
- Increase width of garbage store on Level 0–1
- Conversion of wine cellar to store room on Level 0–2
- Addition of access door from tank room to service cavity on Level 0-3
- Minor increase to length of skylight to bed loft on Level 0–4
- Addition of access door from plant room to service cavity on Level 0–4
- Minor revision to internal layout of bathrooms on levels 0–4, 1 and 2
- Addition of retaining wall to resolve site conditions
- Minor revision sauna layout on Level 1
- Addition of barbecue on Level 1
- Replacement of tiling with carpet in Level 1 hall
- Re-arranged internal layout of two ensuite bathrooms on Level 2
- Addition of window to north ensuite bathroom on Level 2
- Minor revision to internal layout of kitchen and laundry on Level 2
- Addition of small skylight at north-west corner above entry on roof
- Conversion of insulated roof panels to glass
- Removal of roof-top skylight
- Addition of 1.45m flues to the approved chimney
- Minor increase of screen wall height on roof from RL 68.50 to RL 68.75
- Addition of window to ensuite on North Elevation

The proposed amendments are shown in the amended architectural plans prepared by Harry Seidler & Associates accompanying this modification application. Refer to Figure 2 and Figure 3 below showing the proposed modifications clouded in red.

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Refer to the amended architectural plans prepared by Harry Seidler & Associates for detail at Appendix A.

3.2. Conditions to be Modified

Amended Plans

Consent is sought to amend Condition 1(a) Approved Plans of the original consent as shown in Table 1.

Table 1: Modification of condition of consent

APPROVED CONDITION			PROPOSED AMENDMENT		
1. Approved Plans and Supporting Documentation The development must be carried out in compliance (except as amended by any other condition of consent) with the following: a) Approved Plans			1. Approved Plans and Supporting Documentation The development must be carried out in compliance (except as amended by any other condition of consent) with the following: a) Approved Plans		
Drawing No.	Dated	Prepared by	Drawing No.	Dated	Prepared by
005 Issue G – Site Plan (Level 1)	06 Sep 2021	Harry Seidler & Associates	005 Issue H – Site Plan (Level 1)	16 Jun 2023	Harry Seidler & Associates
006 Issue Q – Site Plan (Level 2)	06 Sep 2021		006 Issue R – Site Plan (Level 2)	16 Jun 2023	
008 Issue M – Excavation & Fill Plan	20 Sep 2021		008 Issue N – Excavation & Fill Plan	21 Jul 2023	
010 Issue L – Plan Level 0 -1	06 Sep 2021		010 Issue M – Plan Level 0 -1	16 Jun 2023	
011 Issue K – Plan Level 0 - 2	14 Sep 2021		011 Issue L – Plan Level 0 - 2	16 Jun 2023	
012 Issue K – Plan Level 0 – 3*	14 Sep 2021		012 Issue L – Plan Level 0 - 3	16 Jun 2023	
013 Issue L – Plan Level 0 - 4	14 Sep 2021		013 Issue M – Plan Level 0 - 4	16 Jun 2023	
020 Issue W – Plan Level 1	14 Sep 2021		020 Issue X – Plan Level 1	16 Jun 2023	
030 Issue W – Plan Level 2	14 Sep 2021		030 Issue X – Plan Level 2	16 Jun 2023	
040 Issue U – Plan Roof	14 Sep 2021		040 Issue V – Plan Roof	16 Jun 2023	
050 Issue U – East Elevation	14 Sep 2021		050 Issue V – East Elevation	16 Jun 2023	
051 Issue K – South Elevation	14 Sep 2021		051 Issue M – South Elevation	21 Jul 2023	
052 Issue H – North Elevation	14 Sep 2021		052 Issue J – North Elevation	16 Jun 2023	
060 Issue M – Section A	14 Sep 2021		060 Issue P – Section A	21 Jul 2023	
061 Issue P – Section B	14 Sep 2021		061 Issue Q – Section B	16 Jun 2023	

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062 Issue N – Section C	14 Sep 2021		062 Issue P – Section C	16 Jun 2023	
063 Issue M – Section D	14 Sep 2021		063 Issue P – Section D	21 Jul 2023	
064 Issue L – Section E	14 Sep 2021		064 Issue N – Section E	21 Jul 2023	
065 Issue J – Section F	14 Sep 2021		065 Issue K – Section F	16 Jun 2023	

*We note that the proposed modifications to drawing 012 Issue K were included in the approved modification application MOD2021/0762. However, the drawing was unintentionally omitted from the approved modified drawings and consent. To ensure completeness, we have included drawings 012 Issue K and Issue L in this modification statement.

4. MATTERS FOR CONSIDERATION UNDER SECTION 4.55

4.1. Section 4.55(1A) Modification

Section 4.55(1A) of the EP&A Act outlines the matters that a consent authority must take into consideration when determining an application that seeks to modify an existing consent involving minimal environmental impact.

The matters for consideration under Section 4.55(1A) of the EP&A Act that apply to the modification of DA2021/0268 have been considered in Table 2.

SECTION 4.55(1A) EVALUATION	CONSIDERATION
(a) it is satisfied that the proposed modification is of minimal environmental impact	<p>The modified development remains substantially unchanged from the approved proposal, and no significant alterations have been made to the originally proposed project. However, we have considered the environmental impacts resulting from this modification, and the details are provided below.</p> <p>Visual Impact</p> <p>The majority of the proposed changes are internal and not visible from the public domain. Proposed amendments to skylights, revised configuration of external landscape stairs, and the minor increase in chimney height will result in negligible to minor visual impacts. The proposed increased height of the chimney, as shown in the East Elevation, results in a very minor change to the building's visual appearance and does not result in any adverse visual impact as it is appropriately setback from the roof parapet and thus not visible from the public domain.</p> <p>Views</p> <p>The proposed amendments in this modification application do not cause any additional view loss.</p> <p>Overshadowing</p> <p>The proposed modifications will not lead to adverse overshadowing impacts. Architects, Harry Seidler & Associates, have confirmed that the shadow cast by the modified chimney will marginally increase at noon but remain unchanged during the morning and afternoon with any additional increase in shadow considered negligible as the shadow fall is within the roof. Figure 5 shows a minor increase in shadow fall at 12pm during winter solstice (21 July) as a result of the increase in chimney height. FiguresFigure 4 and Figure 6 show no change in shadow fall at 9 am and 3 pm.</p> <p>Internal Amenity</p> <p>The proposed modifications significantly enhance the internal amenity of the dwelling house. The reconfiguration of the wine cellar into a storage room and the amendments to the bathrooms on levels 0-4, 1, and 2 improve the functionality of these spaces for future residents. Further, the proposed internal rearrangement on Level 2 improves circulation between the open plan dining, kitchen and living areas.</p>

	<p>Landscaping</p> <p>The proposed modifications to landscaping address matters relating to the site conditions which emerged after clearing the site for construction. A detailed Geotechnical assessment conducted after clearing of the site found unstable areas along north to west edge, south below the rock escarpment, and at the location of the original house and outbuilding. These areas require alternate methods of engineering to enable the execution of the design. A new retaining wall is proposed to retain infill and maintain the originally designed site levels. Additionally, landscape modifications to north of the site were made eliminating the need for the approved retaining walls. The proposed addition of a set of landscape stairs located along the western boundary of the site will provide access to rear of the building during emergencies, which is one of the requirements of the Bushfire Report. The proposed changes to landscape design marginally affects the quantum of approved landscaped area by 16.24m² providing 1,070.57m², representing 64.30% of Lots 328- 330. The proposed minor reduction in landscaped area for the site maintains compliance with the DCP's minimum 60% requirement.</p> <p>Conclusion</p> <p>Based on the above assessments, we conclude that the proposed modification will not result in any significant environmental impacts.</p>
(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	The proposed modifications aim to maintain the nature and substance of the approved development. The overall use, scale, and intensity of the project on the site will remain unchanged. Therefore, we believe that the development in its modified form will largely retain the same characteristics as the originally approved version.
(c) the application has been notified in accordance with the regulations	The modification application may be notified in accordance with the Environmental Planning and Assessment Regulation 2000.
(d) any submission made concerning the proposed modification has been considered	Council will consider any submissions received as a result of the notification process, if required.



Figure 4: Extract of shadow diagram at 9 AM showing no increase in shadow fall (Source: Harry Seidler & Associates)



Figure 5: Extract of shadow diagram at 12 PM minor change in shadow fall due to increased chimney height shown in blue (Source: Harry Seidler & Associates)



Figure 6: Extract of shadow diagram at 3 PM showing no increase in shadow fall (Source: Harry Seidler & Associates)

Subsection (1), (2) and (5) under Section 4.55 of the EP&A Act do not apply to modifications involving minimal environmental impact as is proposed by this application. Subsection (4) is an advisory matter and does not require further matters to be considered.

Section 4.55(3) of the EP&A Act, however, requires that:

“(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 environmental assessment matters relevant to addressed in Section 4.2 below the proposed modified development under Section 4.15(1) (a), (b), (c), (d) and (e) of the EP&A Act are.

4.2. 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 EP&A Act are addressed below.

Environmental Planning Controls

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

- State Environmental Planning Policy (Coastal Management) 2018
- Pittwater Local Environment Plan 2014
- Pittwater Development Control Plan 2014

State Environmental Planning Policy (Coastal Management) 2018

The Policy aims to promote an integrated and coordinated approach to land use planning in the coastal zone in a manner consistent with the objectives of the Coastal Management Act 2016. The site is within a coastal environmental area and coastal use area. The proposed modification is consistent with clauses 13, 14, 15 and 16 of the SEPP:

- The risk of coastal hazards is not increased at the site; and
- The site is not subject to a coastal management program.

Pittwater Local Environmental Plan 2014

The proposal remains consistent with the relevant provisions of the Pittwater Local Environmental Plan 2014 (PLEP).

- **Land use zoning** – E4 Environmental Living – dwelling houses are permissible with consent – modification involves minor amendments to the approved dwelling house.
- **Height of buildings** – pursuant to PLEP building height excludes chimneys and flues. Thus, the proposed extension of the flues to the approved chimney does not alter the approved height of the building. The extension of the chimney does not lead to any adverse visual impact, view loss, or overshadowing, as discussed earlier in this statement. Please refer to the updated height plane diagram provided below.

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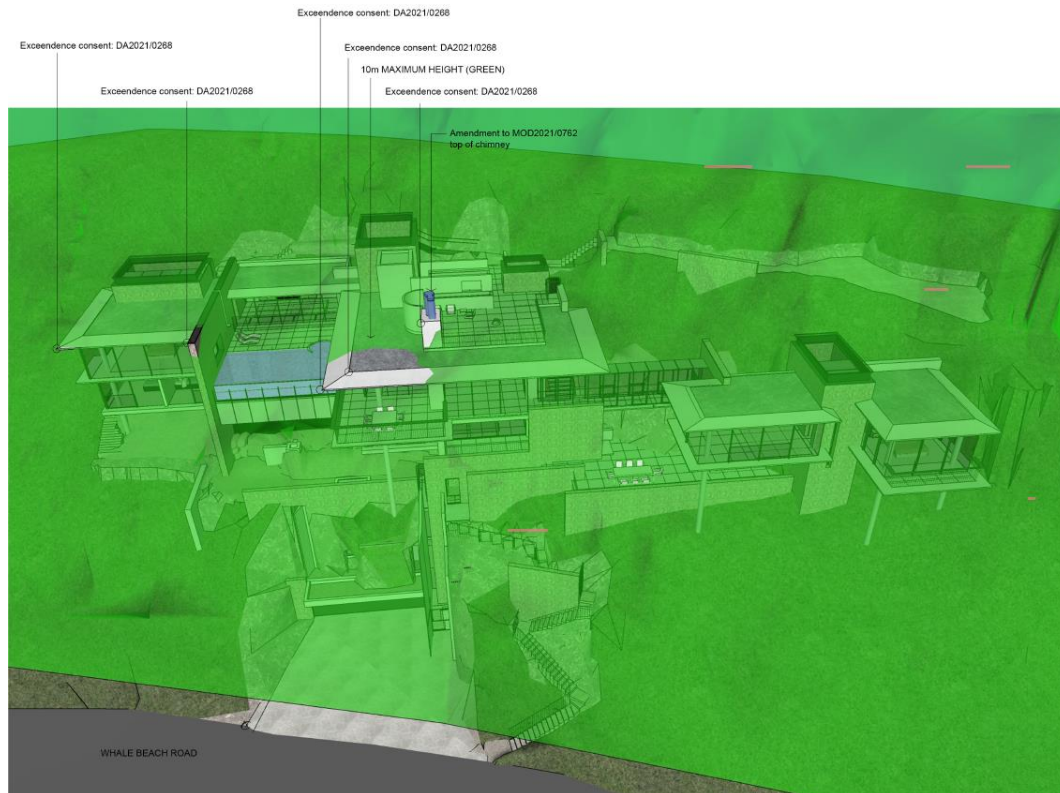


Figure 7: Amended 10 metre height plane diagram (Source: Harry Seidler & Associates)

Other proposed changes do not amend the approved building height.

- Floor space ratio – the site is not subject to a maximum FSR.
- Heritage conservation – the dwelling as modified does not cause any material impacts on local heritage item 'Cox House'.
- Geotechnical hazards – the proposed changes do not increase geotechnical hazard risks.

In summary, the subject modification application is consistent with the relevant provisions of the PLEP.

Pittwater Development Control Plan 2014

An assessment of the proposed modification against the relevant provisions of the Pittwater Development Control Plan 2014 (PDCP) is provided in Table 2 below.

Table 2: Consistency with PDCP

PROVISION	RESPONSE
<p>D12.1 Character as viewed from a public place Buildings which front the street must have a street presence and incorporate design elements (such as roof forms, textures, materials, the arrangement of windows, modulation, spatial separation, landscaping etc) that are compatible with any design themes for the locality. Blank street frontage facades without windows shall not be permitted.</p>	<p>The minor design adjustments that are visible from Whale Beach Road are compatible with the approved dwelling house in DA2020/0268 and maintain the design characteristics of the locality.</p>
<p>D12.10 Landscaped Area – Environmentally Sensitive Land The total landscaped area on land zoned E4 Environmental Living shall be 60% of the site area. The use of porous materials and finishes is encouraged where appropriate.</p>	<p>The proposed changes to landscape design marginally affect the quantum of approved landscaped area by 16.24m² providing 1,070.57m², representing 64.30% of Lots 328-330. The proposed minor reduction in landscaped area for the site maintains compliance with the DCP's minimum 60% requirement. Proposed modifications to landscaping are a result of unstable ground discovered after clearing of the site. A retaining wall was added to maintain site levels and hold infill at south of the site. Additional information revealed stable areas at north of the site, removing the need for the previously proposed retaining walls.</p>

Environmental Impacts and Site Suitability

The proposed modification will not result in any adverse environmental impact, as detailed in Section 4.1 and 4.2 regarding visual impact and overshadowing. Furthermore, the suitability of the site for the development, both as originally approved and as proposed to be modified, remains unaffected. In fact, the proposed modification is expected to have positive environmental impacts, particularly through the redesign of landscaping and outdoor areas which address the site conditions and result in a more structurally sound and responsive development.

The Public Interest

No public interest issues arise as a consequence of the proposed modifications. Council's intentions in imposing conditions to preserve the public interest are not affected, since the proposed modifications continue to give effect to those general intentions, simply in a more practical and achievable way.

5. CONCLUSION

This application seeks consent to modify approved architectural plans in Condition 1(a) of the existing development consent DA2021/0268. The proposed modifications are minor in nature and relate principally to design improvements to the internal layout, landscaping and improved structural integrity of the development which have come about as part of the detailed design development process.

The overall modifications are considered to positively enhance the internal amenity and functionality of the dwelling house without resulting any adverse environmental impacts. It is important to note that the modifications do not entail any significant alterations to the physical form or intensity of use of the originally approved dwelling house.

As a result of the considered changes, we consider that the proposed modified development remains substantially consistent with the approved DA2021/0268 application. The impacts of the modifications are, on balance, positive, and the development will continue to align with the parameters established in the original application. These proposed changes preserve the integrity of the approved development and adhere to the intent of the initial conditions, with no discernible environmental impacts.