

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2023/0455
<b>Responsible Officer:</b>	Mark Milton
<b>Land to be developed (Address):</b>	Lot 327 DP 16362, 346 Whale Beach Road PALM BEACH NSW 2108
<b>Proposed Development:</b>	Modification of Development Consent DA2021/0268 granted for Demolition works, lot consolidation and construction of a dwelling house including swimming pool.
<b>Zoning:</b>	C4 Environmental Living
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	David Barrett Wade Jennifer Ruth Wade
<b>Applicant:</b>	David Barrett Wade

<b>Application Lodged:</b>	14/09/2023
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	21/09/2023 to 05/10/2023
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### PROPOSED DEVELOPMENT IN DETAIL

This application is comprised of the following works:

- Revised landscape pathway design at east and north of the site
- Addition of a set of landscape stairs at west of the site
- Conversion of wine cellar to store room on Level 0–2
- Minor revision to internal layout of bathrooms on levels 0–4, 1 and 2
- 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
- Minor revision to internal layout of kitchen and laundry on Level 2
- 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

The works listed below are also proposed as part of this modification. However, these works have all commenced to some degree and retrospective approval must be regularised through the Building Information Certificate process and are unable to be determined through this assessment process. The commenced works that cannot be approved as part of this assessment are:

- Revised external landscape stair design south of the site
- Minor increase in the extent of excavation from 3,293m<sup>3</sup> to 3,320m<sup>3</sup> (27m<sup>3</sup> 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
- 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
- Addition of retaining wall to resolve site conditions
- Addition of window to north ensuite bathroom 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 window to ensuite on North Elevation

## ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

## SUMMARY OF ASSESSMENT ISSUES

Pittwater 21 Development Control Plan - A4.12 Palm Beach Locality

### SITE DESCRIPTION

<b>Property Description:</b>	Lot 327 DP 16362 , 346 Whale Beach Road PALM BEACH NSW 2108
<b>Detailed Site Description:</b>	<p>The subject development site consists of four Lots known as 346 - 352 Whale Beach Road, Palm Beach. In ascending order from no. 346 - 352 Whale Beach Road, these Lots are known as Lot 327, 328, 329 and 330 in Deposited Plan 16362.</p> <p>The four Lots are surveyed to have areas of 604.6m<sup>2</sup> (Lot 327), 554.2m<sup>2</sup> (Lot 328), 526.2m<sup>2</sup> (Lot 329) and 584.6m<sup>2</sup> (Lot 330) resulting in a cumulative surveyed area of 2,269.6m<sup>2</sup>.</p> <p>Of these four Lots, Lot 329 accommodates a part one / part two storey detached dwelling house with a series of timber and concrete decks and terraces which sprawl out across the adjoining Lots 328 and 330. Lot 327 is vacant and appears to never have been built upon. The site has one car parking space on Whale Beach Road and an access staircase on Lot 329.</p> <p>Pursuant to the <i>Pittwater Local Environmental Plan 2014</i> (PLEP) the site is zoned E4 Environmental Living.</p> <p>Herein this description, these four Lots are referred to as <b>the site</b>.</p> <p>The site has a 79.385m wide frontage to the south-western side of Whale Beach Road and has an average depth of 29.776m.</p> <p>The site experiences a steep slope of approximately 40 - 60 degrees in a north-easterly direction down towards Whale Beach Road. The slope is made up of rocky contours and significant rock formations and boulders scattered throughout the site. There are no known Aboriginal items on the land, however the northern portion of the site is attributed as having a high probability of heritage items, and the land across Whale Beach Road is recognised as having an extremely high likelihood.</p> <p>Within or immediately adjacent to the site there are a surveyed 74 trees of varying significance and retention value. The vegetation within the site consists of coastal scrub and health with predominantly locally-indigenous</p>

species. Clearances around the dwelling also contain a variety of non-local native and exotic species. The trees generally range between 3m to 18m in height.

The site is not within a Heritage Conservation Area under Schedule 5, Part 2 of the PLEP, but is in proximity to a property at no. 336 Whale Beach Road, listed as Heritage Item No. 2270014 under the PLEP. This property accommodates a dwelling known as 'Cox House' (or 'Chanen Palm Beach House') which is considered to be a good example of contemporary Australian residential architecture.

Works for DA2021/0268 and Mod2021/0762 are in progress on site and nearing completion as at December 2023.

#### Surrounding Development

The general Palm Beach locale is characterised as accommodating large residential properties within a landscaped setting, the majority of which enjoy views of either the Pacific Ocean to the east or Pittwater to the west, or both.

Immediately adjoining the site to the south is a narrow strip of Council-owned land (Lot 356 DP 16362) known as 344A Whale Beach Road, zoned for RE1 Public Recreation purposes. This strip of land does not serve any evident or immediate purpose. Further southeast of that land sits a dwelling house at 344 Whale Beach Road which is zoned E4.

To the north of the site sits part one / part two storey dwelling know at 354 Whale Beach Road.

Adjoining the rear of the site (west) are five Lots each containing dwelling houses known as 2 and 4 Rock Bath Road and 31, 33 and 35 Pacific Road, Palm Beach. Also to the rear and northwards of these five properties lies the Annie Wyatt Reserve (known as 4A Rock Bath Road) which is largely bushland and zoned RE1.

To the east of the site and across Whale Beach Road lies dense bush and scrub across 17 Lots zoned RE1. This bushland is inaccessible and drops steeply to the Pacific Ocean below.

Map:



## SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

- **Development Application No. 2019/0231** for demolition works, construction of a dwelling house including swimming pool and consolidation of 346, 348, 350 and 352 Whale Beach Road, Palm Beach, approved by Council on 14 June 2019.
- **Development Application No. 2021/0268** for granted for Demolition works, lot consolidation and construction of a dwelling house including swimming pool was approved by Council on 14 July 2021. Works for this DA have substantially commenced and are nearing completion.

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;



In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for **DA2021/0268**, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) - Other Modifications	Comments
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	<p><b>Yes</b></p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <ul style="list-style-type: none"> <li>• No additional vegetation is proposed for removal</li> <li>• The proposed works result in minimal to no impact to the amenity of surrounding sites beyond that of the parent application and prior modification Mod2021/0762</li> <li>• No further non-compliances to DCP controls are proposed</li> <li>• The additional works enhance the geotechnical safety and stability of the site</li> </ul>
(b) 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	<p>The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under <b>DA2021/0268</b> for the following reasons:</p> <ul style="list-style-type: none"> <li>• Visually, the dwelling appears substantially the same</li> <li>• The proposed land use and building footprint remain the same</li> <li>• No further unreasonable amenity impacts to neighbours are expected compared to the parent application and prior modification Mod2021/0762</li> </ul>
(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	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.

Section 4.55(1A) - Other Modifications	Comments
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.	See discussion on "Notification & Submissions Received" in this report.

### Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 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 relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to some of the building works having commenced, and to seek a reduction in the bulk and scale of the proposed chimney and encasing structure. The plans have been amended accordingly.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 2001: The Demolition of Structures.</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62</u> and/or 64 of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed modification of the development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.



A Bush Fire Letter was submitted with the application stating that the modified development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 21/09/2023 to 05/10/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Housed Architects	Po Box 275 AVALON BEACH NSW 2107

The following issues were raised in the submissions:

- Proposed height increase of the pavilion on the southern end of the development may obstruct ocean views for properties behind the proposal

The above issues are addressed as follows:

- Proposed height increase of the pavilion on the southern end of the development

The submissions raised concerns that the increased height at the southern end of the development will obstruct ocean views from sites further away from the ocean than the subject site. The submission focusses on the southern skylight as the item of concern.

### Comment:

The proposed rooftop works at the southern end of the site involve the conversion of solid roof panels to glass. No increase in height is proposed, and the item of concern is not expected to cause any additional obstruction of views.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The application is for modification of development consent DA2021/0268 as identified in reports and as illustrated in plans.</p> <p>The proposed modifications to landscape design include: a new retaining wall i to retain infill and maintain the originally designed site levels, due to geotechnical issues; landscape modifications proposed eliminating the need for the approved retaining walls; and the addition of a set of landscape stairs located along the western</p>

Internal Referral Body	Comments
	<p>boundary, which is one of the requirements of the Bushfire Report.</p> <p>The proposed changes to landscape design marginally reduces the landscape area however the calculation remains above the minimum 60% requirement, and thus no concerns are raised. There are no arboricultural impacts as reported in the Arborist letter submitted with the modification application.</p>
NECC (Bushland and Biodiversity)	<p>The application seeks consent to modify Development Consent DA2021/0268.</p> <p>The proposal does not require the removal of any additional trees or native vegetation as confirmed by the Addendum [1] to Arboricultural Impact Assessment Report (August 2023). As there are no additional impacts to biodiversity within the site, Council's Biodiversity Referrals team raise no objections, subject to conditions.</p>
NECC (Coast and Catchments)	<p>The modification application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, State Environmental Planning Policy (Resilience and Hazards) 2021 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP.</p> <p><b>Coastal Management Act 2016</b> The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed modifications are in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p><b>State Environmental Planning Policy (Resilience &amp; Hazards) 2021</b> The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience &amp; Hazards) 2021. Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R &amp; H) apply for this DA.</p> <p>Comment:</p> <p>On internal assessment and as assessed in the submitted Statement of Modifications report prepared by Gyde Consulting dated 18 July 2023, the DA satisfies requirements under clauses 2.10, 2.11 and 2.12 of the SEPP R&amp;H.</p> <p>As such, it is considered that the modification application does comply with the requirements of the State Environmental Planning Policy (Resilience &amp; Hazards) 2021.</p>

Internal Referral Body	Comments
	<p><b>Pittwater LEP 2014 and Pittwater 21 DCP</b></p> <p>No other coastal related issues identified.</p> <p>As such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Pittwater LEP 2014 and Pittwater 21 DCP.</p>
NECC (Development Engineering)	No objections to the proposed modifications there is minimal impacts on Councils road reserve with the partial rebuild of the sandstone stairs. No conditions required.
NECC (Flooding)	<p>The property at 346 Whale Beach Rd is affected by the 1% AEP flood along the south-eastern side.</p> <p>However the properties at 348, 350 and 352 Whale Beach Rd, where the modification is proposed, are not flood affected.</p> <p>No flood related objections.</p>
NECC (Water Management)	<p>Supported</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> <li>• Supplied plans and reports;</li> <li>• Northern Beaches Water Management for Development Policy (WM Policy), and;</li> <li>• Relevant LEP and DCP clauses;</li> </ul> <p>No objections regarding water management (quality and balance)</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	<p>Reference is made to the proposed development at the above area and Aboriginal heritage.</p> <p>No sites are recorded in the current development area and the area of works has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Whilst the area of works does not contain Aboriginal sites or Aboriginal heritage sensitivity other portions of the DA area do. There is a large sandstone overhang on the property. According to the Due Diligence Code of Practice, any land within 20m of or in a rock shelter is considered to have Aboriginal heritage sensitivity and the potential to contain Aboriginal sites. Given the presence of these landscape features in the proposal area there is potential that the works may harm unrecorded Aboriginal sites which are protected</p>

External Referral Body	Comments
	<p>under the NPW Act 1974. Harm to these landscape features should therefore be avoided during the construction phase of the works.</p> <p>Inadvertent impacts is considered harm under the NPW Act (1974). Storing materials, parking vehicles on an Aboriginal site or area likely to contain Aboriginal sites is considered harm. During construction all workers and contractors should be made aware of their obligations to avoid harm to Aboriginal sites and areas of Aboriginal sensitivity.</p> <p>Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.</p>

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

All, Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

## State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

### SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the modification application (see Certificate No. 1243156S\_03, dated 9 September 2023).

A modification condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

### SEPP (Transport and Infrastructure) 2021

#### Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

## **SEPP (Resilience and Hazards) 2021**

### **Chapter 2 – Coastal Management**

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

#### **Division 3 Coastal environment area**

##### **2.10 Development on land within the coastal environment area**

- 1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:
  - a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
  - b) coastal environmental values and natural coastal processes,
  - c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
  - d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
  - e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
  - f) Aboriginal cultural heritage, practices and places,
  - g) the use of the surf zone.

Comment:

The proposed development is not expected to cause adverse impact to the coastal environment area.

- 2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:
  - a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or



- b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
- c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

Council is satisfied that the proposed development is appropriately designed and sited to ensure adverse impact to the items referred to in subsection (1) is avoided.

## **Division 4 Coastal use area**

### **2.11 Development on land within the coastal use area**

- 1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
  - a) has considered whether the proposed development is likely to cause an adverse impact on the following:
    - i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
    - ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
    - iv) foreshores,
    - v) the visual amenity and scenic qualities of the coast, including coastal headlands, Aboriginal cultural heritage, practices and places, cultural and built environment heritage, and
  - b) is satisfied that:
    - i) the development is designed, sited and will be managed to avoid an
    - ii) adverse impact referred to in paragraph (a), or
    - iii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or if that impact cannot be minimised—the development will be managed to mitigate that impact, and
  - c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

Council is satisfied the proposed development is appropriately designed and sited in a manner that avoids adverse impact to the coastal use area.

## **Division 5 General**

### **2.12 Development in coastal zone generally—development not to increase risk of coastal hazards**

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

Council is satisfied the proposed development will not cause an increased risk of coastal hazards on the site or surrounding land.

### **2.13 Development in coastal zone generally—coastal management programs to be considered**

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Comment:

All relevant provisions of applicable certified coastal management programs have been considered as part of the assessment of the application.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

**Chapter 4 – Remediation of Land**

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

**Pittwater Local Environmental Plan 2014**

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	11.08m	Unchanged	30.35% (2.58m)	No, as approved*

\*The works proposed under this modification do not alter the previously approved maximum height of buildings. Any increases in building height proposed under this application are materially minor and are not thought to generate any adverse impact upon the findings of the original assessment, DA2021/0268.

No further assessment on the increased height against the provisions of Cl. 4.3 or 4.6 of the PLEP 2014 is required.

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes

Clause	Compliance with Requirements
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

## Pittwater 21 Development Control Plan

### Built Form Controls

Built Form Control	Requirement	Approved	Proposed	% Variation*	Complies
Front building line	6.5 metres (m)	Minimum - 1.543m	Unchanged	76%	No, as approved
Rear building line	6.5m	6.479 - 12.559m	Unchanged	0.4%	No, as approved
Side building line	(northwest) 2.5m	1.488 - 2.031m	Unchanged	40.5%	No, as approved
	(southeast) 1.0m	1.0 - 2.4m	Unchanged	-	Yes
Building envelope	(northwest) 3.5m	One encroachment at a height of 1.8m and for a length of 1.8m	Unchanged	51.4%	No, as approved
	(southeast) 3.5m	Two encroachments at heights of 1.6m and 2m and for lengths of 4.2m and 4.5m	Unchanged	57%	No, as approved
Landscaped area	60% of Lots 328, 329 and 330 (999.06m <sup>2</sup> ) Including Lot 327 (1,361.76m <sup>2</sup> )	65.27% (1,086.81m <sup>2</sup> ) Inc. Lot 327: 74.52% (1,691.41m <sup>2</sup> )	64.3% (1,070.57m <sup>2</sup> ) Inc. Lot 327: 73.81% (1675.17m <sup>2</sup> )	-	Yes

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B3.1 Landslip Hazard	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.17 Littoral Rainforest - Endangered Ecological Community	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	Yes	Yes
D12.6 Side and rear building line	Yes	Yes
D12.8 Building envelope	Yes	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D12.12 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

## Detailed Assessment

### **A4.12 Palm Beach Locality**

*The Palm Beach locality will remain primarily a low-density residential area with dwelling houses in maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape. Secondary dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations. Any dual occupancy dwellings will be located on the lowlands and lower slopes that have less tree canopy coverage, species and habitat diversity and fewer other constraints to development. Any medium density housing will be located within and around commercial centres, public transport and community facilities. Retail, community and recreational facilities will serve the community.*

#### Comment:

The bulk of the dwelling house is limited to two storeys in height with only the central core exceeding two storeys. This central core accommodates services and access from the garage to the house. To mitigate potential visual impacts caused by the central core, and in efforts to achieve compliance with the desired character of the Palm Beach Locality, natural landform and plantings are to be reinstated in front of the core, thus significantly reducing its appearance from the road. The development achieves a compliant landscaped area ratio and retains the majority of vegetation on site, thus ensuring the house is situated within a landscaped setting.

*Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport.*

#### Comment:

The site is adequately serviced by appropriate infrastructure.

*Future development will maintain a building height limit below the tree canopy and minimise bulk and scale whilst ensuring that future development respects the horizontal massing of the existing built form. Existing and new native vegetation, including canopy trees, will be integrated with the development. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards.*

#### Comment:

Generally the building achieves a height lesser than mature tree canopies and significant horizontal and vertical articulation has been employed in the architecture to ensure that the built form does not come across as a dominant building and remains subordinate to natural features. The facade is well modulated and appropriately screens the total scale of the development. The design includes appropriate materials to help the built form blend in with the natural environment and, over time, these materials will weather appropriately as the landscape matures to further disguise the house when viewed from the street.

*The design, scale and treatment of future development within the commercial centres will reflect a 'seaside-village' character through building design, signage and landscaping, and will reflect principles of good urban design. Landscaping will be incorporated into building design. Outdoor cafe seating will be encouraged.*



Comment:

This outcome is not relevant to the subject site.

*A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, to provide feed trees and undergrowth for koalas and other animals, and to enhance wildlife corridors.*

Comment:

The majority of the works sought are located on existing cleared platforms of the site where the current house sits. Whilst the proposal does necessitate excavation and tree removal, the extent of those works are not found to be detrimental to the buildings ability to blend in with the natural bushland character of the site.

*Heritage items and conservation areas indicative of the Guringai Aboriginal people and of early settlement in the locality will be conserved.*

Comment:

Heritage and Aboriginal Heritage has been considered in the assessment of the application and is conditioned where appropriate.

*Vehicular, pedestrian and cycle access within and through the locality will be maintained and upgraded. The design and construction of roads will manage local traffic needs, minimise harm to people and fauna, and facilitate co-location of services and utilities.*

Comment:

Vehicular, pedestrian and cycle access within and throughout the Palm Beach Locality will be maintained.

*Palm Beach will remain an important link to the offshore communities.*

Comment:

The proposed modification works will not impact on any existing links to offshore communities.

The development is found to be consistent with the desired character of the Palm Beach Locality.

## **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

Refer to Assessment by Council's Natural Environment Unit elsewhere within this report.

## **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

## **POLICY CONTROLS**

### **Northern Beaches Section 7.12 Contributions Plan 2022**

Section 7.12 contributions were levied on the Development Application.

## **CONCLUSION**

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2023/0455 for Modification of Development Consent DA2021/0268 granted for Demolition works, lot consolidation and construction of a dwelling house including swimming pool. on land at Lot 327 DP 16362,346 Whale Beach Road, PALM BEACH, subject to the conditions printed below:

## Modification Summary

The development consent is modified as follows:

### MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
MOD2023/0455 - PAN#361619	The date of this notice of	Modification of Development Consent DA2021/0268 granted for Demolition works, lot consolidation and

	determination	construction of a dwelling house including swimming pool  <b>A. Add Condition No.1B - Modification of Consent - Approved Plans and supporting documentation</b> <b>B. Add Condition No.53A - Modification of Consent - Building Information Certificate</b>
MOD2021/0762 - PAN#148465	3 December 2021	Modification of Development Consent DA2021/0268 for demolition works, lot consolidation and construction of a dwelling house including swimming pool  <b>A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting documentation</b> <b>B. Add Condition No.36A - Civil Works Supervision</b>
MOD2021/0597 - PAN#130036	18 August 2021	Modification of Development Consent DA2021/0268 granted for demolition works, lot consolidation and construction of a dwelling house including swimming pool  <b>A. Modify Condition no. 51 - Consolidation of Lots and Restrictive Covenant</b>
DA2021/0268 - PAN#80345	14 July 2021	Original DA consent for demolition works, lot consolidation and construction of a dwelling house including swimming pool

### **Modified conditions**

**A. Add Condition No.1B - Modification of Consent - Approved Plans and supporting documentation, to read as follows:**

#### **1B. Modification of Consent - Approved Plans and supporting documentation**

a) Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

<b>Approved Plans</b>				
<b>Plan Number</b>	<b>Revision Number</b>	<b>Plan Title</b>	<b>Drawn By</b>	<b>Date of Plan</b>
005	K	Site Plan (Level 1)	Harry Seidler & Associates	22 December 2023
006	T	Site Plan (Level 2)	Harry Seidler & Associates	22 December 2023
010	P	Plan Level 0 - 1	Harry Seidler & Associates	22 December 2023
011	N	Plan Level 0 - 2	Harry Seidler & Associates	22 December 2023
012	N	Plan Level 0 - 3	Harry Seidler & Associates	22 December 2023
013	P	Plan Level 0 - 4	Harry Seidler & Associates	22 December 2023

020	Z	Plan : Level 1	Harry Seidler & Associates	22 December 2023
030	Z	Plan : Level 2	Harry Seidler & Associates	22 December 2023
040	X	Plan: Roof	Harry Seidler & Associates	22 December 2023
050	X	East Elevation	Harry Seidler & Associates	22 December 2023
051	P	South Elevation	Harry Seidler & Associates	22 December 2023
052	L	North Elevation	Harry Seidler & Associates	22 December 2023
060	R	Section A	Harry Seidler & Associates	22 December 2023
061	T	Section B	Harry Seidler & Associates	22 December 2023
062	R	Section C	Harry Seidler & Associates	22 December 2023
063	R	Section D	Harry Seidler & Associates	22 December 2023
064	Q	Section E	Harry Seidler & Associates	22 December 2023
065	M	Section F	Harry Seidler & Associates	22 December 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate #1243156S_03	-	Team Catalyst Pty Ltd	8 September 2023
Addendum [1] to Arboricultural Impact Assessment Report	-	Earthscape Horticultural Services	23 August 2023
RE: HOUSE 346-352 WHALE BEACH ROAD, WHALE BEACH	-	PSM	25 August 2023
Subject: Review of amended proposal plans for s.4.55 submission for 348 – 352 Whale Beach Road, Palm Beach NSW.	-	Abel Bushfire	30 August 2023

b) For the avoidance of doubt, this development consent does not authorise any element identified on the stamped plans as subject to a Building Information Certificate.

c) In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

d) In the event of any inconsistency with the approved plans and a condition of this consent, the

condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

**B. Add Condition No. 53A - Modification of Consent - Building Information Certificate to read as follows:**

**53A. Modification of Consent - Building Information Certificate**

The applicant is required to obtain a Building Information Certificate in relation to the works highlighted as being subject to a Building Information Certificate in the stamped plans in Condition No. 1B.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an occupation certificate.

Reason: To ensure the orderly development of land.

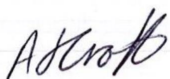
In signing this report, I declare that I do not have a Conflict of Interest.

**Signed**



**Mark Milton, Planner**

The application is determined on 11/01/2024, under the delegated authority of:



**Adam Croft, Acting Development Assessment Manager**