

OUR REF: 21442 – S4.55

01 June 2023

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**Attention:** Peter Robinson – Executive Manager Development Assessment

Dear Peter,

**RE: SECTION 4.55 MODIFICATION FOR DEVELOPMENT APPLICATION (DA NO. MOD2022/0544)  
NO. 121 PACIFIC ROAD, PALM BEACH**

This Section 4.55 Modification has been prepared for Kede Carboni by George Karavanas Planning Pty Ltd – (hereafter referred to as GSA Planning). On behalf of the applicant, we hereby seek Council approval for a Section 4.55 modification of a development consent (DA No. 2022/0544) at No. 121 Pacific Road, Palm Beach. This application seeks to modify Condition No. 1A of that consent to reflect the revised plans.

Condition No. 1A was imposed as part of a recent Section 4.55 modification application to DA No. 2021/2364), which was approved on 14 April 2023. The proposed modifications include the construction of a new external spiral stair connecting the ground floor balcony to the lower ground level terrace, and the reduction in swimming pool length by 1.5m. The proposal will not alter the overall building height, building envelope or landscape provision as approved under DA Nos. 2021/2364 or Mod 2022/0544.

This report includes a substantially the same assessment, brief site analysis, brief background, requested modifications, description and rationale, environmental planning assessment and conclusion.

## 1.0 SUBSTANTIALLY THE SAME ASSESSMENT

An application can be considered a modification under Section 4.55 if it is 'substantially the same' 'qualitatively', 'quantitatively' and 'essentially'. This is in accordance with relevant case law, including:

- *Moto Projects (No. 2) Pty Ltd v North Sydney Council* [1999] NSWLEC 280; and
- *Chidiac v Canterbury City Council* [2012] NSWLEC 1335

In **quantitative terms**, the proposed modifications will retain the number of dwellings, levels, storeys and car spaces. The building height and setbacks will also be retained in accordance with the approval.

In **qualitative terms**, the proposed modifications will not increase the bulk and scale when viewed from the streetscape or alter the overall building type. The modification will not result in any view impacts, nor will they lead to any additional privacy impacts.

The proposal will also remain the same '**essentially**' or '**materially**', being a two-storey dwelling house. Accordingly, in our opinion, the proposed modified development is substantially the same as the approval.

## 2.0 SITE ANALYSIS

The subject site is located on the eastern side of Pacific Road, between Barrenjoey Road and Florida Road and is known as No. 121 Pacific Road, Palm Beach, described as Lot 17 in DP 8595. The site is occupied by a part one part two storey timber clad dwelling house with a hipped tiled roof.

Development in the surrounding area comprises predominately one, two and three storey dwelling houses of varying architectural styles and ages. There are a large number of contemporary dwellings in the vicinity of the subject site.

## 3.0 BACKGROUND

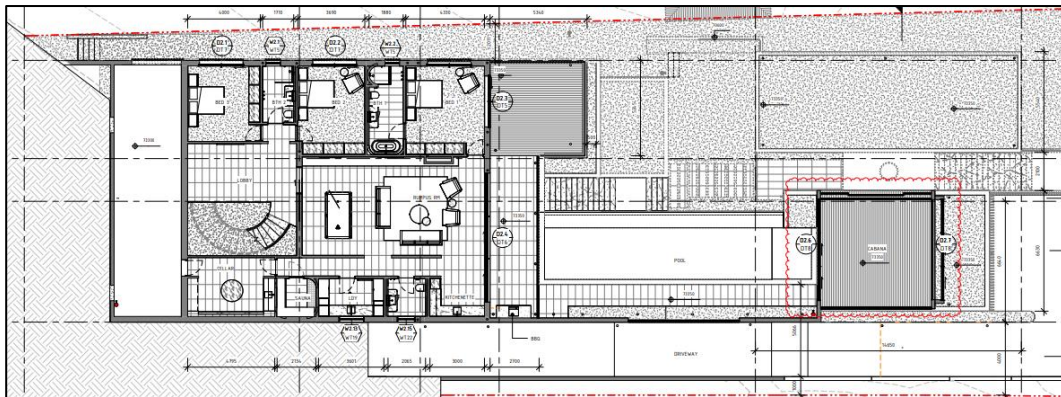
The site has been the subject of a number of development applications and modifications lodged with Northern Beaches Council, as outlined below:

Application No.	Description	Determination
DA 2020/0133	demolition of the existing structures on the site, and construction of a new dwelling, driveway, swimming pool and landscape works	Deferred development consent 28 July 2020
DA 2021/2364	Demolition works and construction of a dwelling house including a swimming pool and cabana	Approval 29 April 2022
MOD 2022/0544	Section 4.55 (1a) modification to DA2021/2364, for retention of the cabana and removal of Tree No. 4	Approval 14 April 2023 (includes condition to retain Tree No. 4)

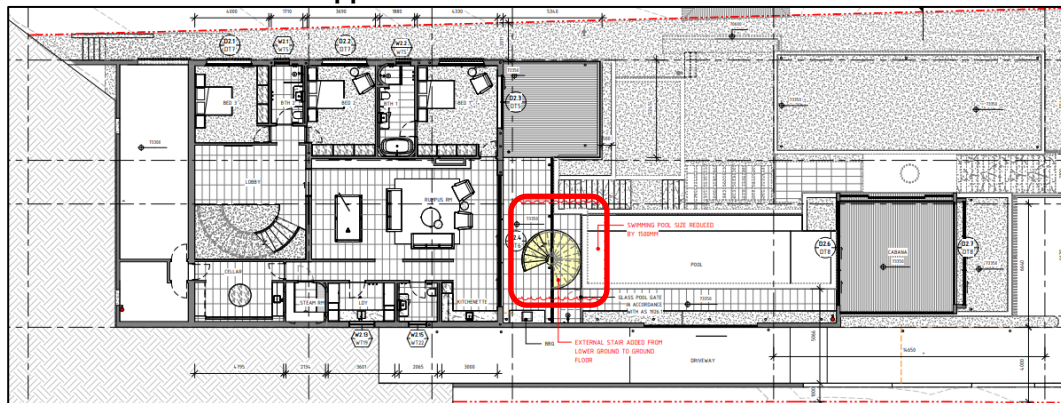
## 4.0 REQUESTED MODIFICATIONS, DESCRIPTION & RATIONALE

This Section 4.55 application seeks to modify Condition No. 1A of Mod No. 2022/0544 in order to reflect the amended plans. The proposed modifications include the construction of a new external spiral stair, which has been designed to provide a more direct connection between the ground floor living area balcony and the lower ground floor terrace and swimming pool.

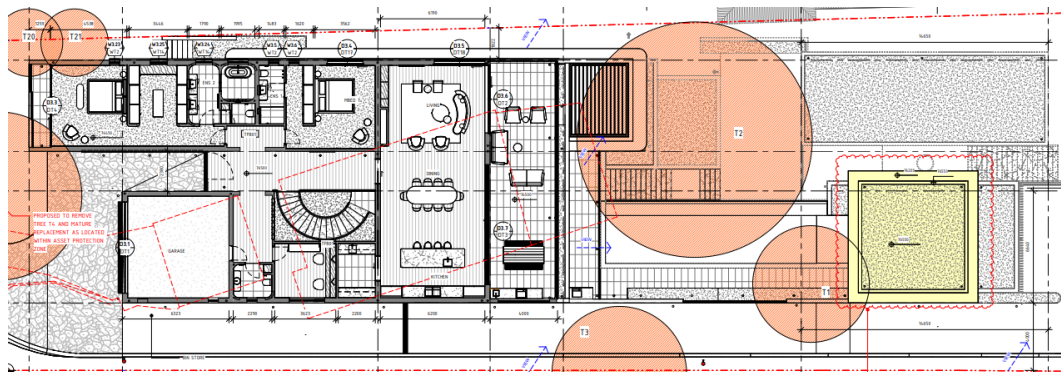
It is also proposed to reduce the length of the swimming pool by 1.5m, as a consequence of the new spiral stair location. The proposed modifications are the result of client driven changes to improve amenity (see **Figure 1** on the following page). Further details are outlined in the architectural plans, submitted separately.



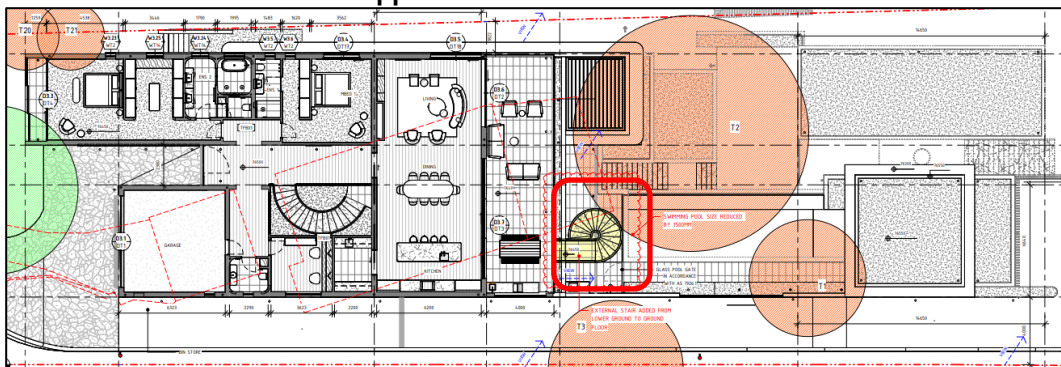
**Approved Lower Ground Floor Plan**



**Modified Lower Ground Floor Plan (changes circled in red)**



**Approved Ground Floor Plan**



**Modified Ground Floor Plan (changes circled in red)**

**Figure 1: Comparison Between the Approved and Proposed Floor Plans**



## **5.0 ENVIRONMENTAL PLANNING ASSESSMENT**

### **5.1 Pittwater Local Environmental Plan (LEP) 2014**

The subject site is zoned C4 Environmental Living under the Pittwater Local Environmental Plan (LEP) 2014. The proposed modifications retain the approved single dwelling use, which is permissible with consent under the LEP. The modifications will also remain consistent with the zone objectives. The site is not identified as a heritage item pursuant to the LEP and is not located within a heritage conservation area. The proposal will not alter the overall building height as approved.

### **5.2 Pittwater Development Control Plan 21 (DCP) 2014**

The proposed modifications do not involve any changes to the approved built form in terms of building height, density, setbacks or landscaping provision. The proposal will therefore retain the same or similar levels of compliance with the Pittwater Development Control Plan 21 (DCP) 2014 as the approval.

### **5.3 Natural and Built Form Impacts, Public Interest and Site Suitability**

The proposed modifications will not be visible from the street as they are located at the rear of the dwelling, and will not create unreasonable visual impacts from surrounding sites. This is because the works occur in the same location as the rear balcony and terrace at the lower ground and ground level and is set back from the leading edges of the approved built form. There will also be no change the extent of landscaped area on the site, as the works occur within approved paved areas.

The proposed works will also not unreasonably affect the amenity of neighbouring development, when compared to the approval. Privacy of adjoining development will be maintained, as the spiral stair is set back from the edge of the approved balcony, and will be used only as a transient space for circulation. Its setback will also enable neighbouring development to maintain more than adequate levels of solar access in mid-winter. Additionally, as the proposed works are well below the height limit, occur at the lower ground and ground level, and are located within compliant setbacks, there will be no adverse impacts in respect of views.

As the proposal retains the approved number of bedrooms and car spaces, traffic generation will not change from that of the approval. The modifications will also be of no consequence for the approved stormwater design and will not increase the likelihood of hazards such as landslip, bushfire or flooding. The proposal maintains resident amenity and makes a positive contribution to Palm Beach generally. The works will continue to provide employment during construction and later as maintenance.

Overall, the proposal will maintain approved levels of compliance with the applicable LEP standards and will generally comply with the relevant DCP controls. It will remain contextually compatible with surrounding development, positively contribute to the streetscape, maintain neighbour amenity, and is substantially similar to the approval.

## **6.0 CONCLUSION**

The proposed modifications to DA No. MOD2022/0544 are the result of design refinements to enhance amenity. The proposed modification of Condition No. 1A will facilitate the construction of an external stair connecting the ground and lower ground floor level at the rear, and the reduction in the swimming pool length.

This submission demonstrates the proposal is substantially the same as the approval. It will generally maintain the approved built form, positively relates to surrounding properties, and will not create adverse amenity impacts when compared to the approval.

For the reasons stated above, Council can be satisfied the proposed modification to DA No. MOD2022/0544 can be assessed as a Section 4.55 modification to consent.

We trust this information if of assistance to you. Should you require further information, please do not hesitate to contact our office on (02) 9362 3364.

Yours faithfully,



George Karavanas  
**MANAGING DIRECTOR**

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