

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2019/0334
<b>Responsible Officer:</b>	Kent Bull
<b>Land to be developed (Address):</b>	Lot 1 DP 1084184, 1178 Barrenjoey Road PALM BEACH NSW 2108
<b>Proposed Development:</b>	Alterations and additions to an existing studio and change of use to a secondary dwelling
<b>Zoning:</b>	E4 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>	Jan Wagner
<b>Applicant:</b>	Turnbull Planning International Pty Ltd
<b>Application lodged:</b>	08/04/2019
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - New second occupancy
<b>Notified:</b>	17/04/2019 to 01/05/2019
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	2
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 9,000.00

### 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 Local Environmental Plan 2014 - 1.9A Suspension of covenants, agreements and instruments  
 Pittwater Local Environmental Plan 2014 - Zone E4 Environmental Living  
 Pittwater Local Environmental Plan 2014 - 5.4 Controls relating to miscellaneous permissible uses  
 Pittwater 21 Development Control Plan - C1.5 Visual Privacy  
 Pittwater 21 Development Control Plan - C1.23 Eaves  
 Pittwater 21 Development Control Plan - D12.3 Building colours and materials

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 1 DP 1084184 , 1178 Barrenjoey Road PALM BEACH NSW 2108
<b>Detailed Site Description:</b>	<p>The subject site consists of two (2) allotments located on the eastern side of Barrenjoey Road. The site is known as 1178 Barrenjoey Road, Palm Beach and is legally referred to as Lot 1 DP 105986 and Lot 1 DP 1084184.</p> <p>For the purposes of this assessment, the lots have been considered as a single land holding due to the recommended deferred commencement condition requiring the consolidation of Lot 1 in DP 105986 and Lot 1 in DP 1084184 as one lot and the registration of the appropriate survey plan with NSW Land Registry Services.</p> <p>The site is irregular in shape with a frontage of 6.7m along Barrenjoey Road and a depth along the northern boundaries measured at 117.52m. The site has a combined area of 4,416.8m<sup>2</sup>.</p> <p>The site is located within the E4 Environmental Living zone of the Pittwater Local Environment Plan 2014 (PLEP 2014) and currently accommodates a two (2) storey masonry principal dwelling located centrally on Lot 1 DP 105986 including a swimming pool to the front of this dwelling. A driveway intersects both lots and a detached studio is currently located on Lot 1 in DP 1084184. Vehicular and pedestrian access to the site is provided via a driveway from Barrenjoey Road.</p> <p>The slope of the site falls approximately 26m (22.1%) from the rear boundary to the Barrenjoey Road frontage.</p> <p>The landscaping on the site comprises of turfed lawn areas,</p>

terraced areas, palms and established native canopy trees.

### **Detailed Description of Adjoining/Surrounding Development**

Adjoining and surrounding development is characterised by a low density residential dwellings in a landscaped setting. To the east the site adjoins heritage item - Villa D'este at 3 Northview Road, Palm Beach. Palm Beach Golf Club adjoins the north of the site.

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:

4 November 2005

Development Application No. N0266/05 determined by a Deferred Commencement Consent for the demolition of existing garage and construction of a studio in its place on 4 November 2005.

7 December 2005

Modification of Development Consent No. N0266/05 granted on 7 December 2005.

27 March 2007

Building Certificate No. BC0036/07 issued for retaining walls and garage floor slab on 27 March 2007.

12 June 2007

Deferred Commencement Consent conditions for Development Application No. N0266/05 satisfied by

the granting of consent on 12 June 2007.

12 June 2007

Modification of Development Consent No. N0266/05 granted on 12 June 2007.

2 July 2007

Modification of Development Consent No. N0266/05 granted on 2 July 2007.

10 October 2007

Modification of Development Consent No. N0266/05 granted on 10 October 2007.

17 October 2010

Construction Certificate No. CC0036/08 approved on 17 October 2007.

19 September 2018

Application No. Mod2018/0490 for the Modification of Development Consent N0266/05 was withdrawn from Council on 19 September 2018.

11 October 2018

Development Application No. DA2018/1617 was rejected by Council on 11 October 2018.

**APPLICATION HISTORY - DA2019/0334**

8 April 2019

Development Application No. DA2019/0334 for the alterations and addition to an existing studio and change of use to a secondary dwelling was received by Council on 8 April 2019.

10 April 2019

Request for further information letter sent for a Geotechnical Report to be submitted.

12 April 2019

Notification sign confirmation received by the Applicant.

17 April 2019

Neighbour site inspection undertaken at 1176 Barrenjoey Road, Palm Beach. Owners present.

24 April 2019

Geotechnical Report submitted to Council.

15 May 2019

Applicant's letter response to submissions submitted to Council.

17 May 2019

Neighbour site inspection undertaken at 1176 Barrenjoey Road, Palm Beach (owners present).

17 May 2019

Site inspection undertaken (no owners present).

27 May 2019

BASIX Certificate submitted by the Applicant.

12 June 2019 - 21 June 2019

Email and phone correspondence between the Assessment Officer and the Applicant regarding matters relating to the nature of the current title. Concerns raised by the Assessing Officer that the secondary dwelling would not be located on the same lot of land as the principal dwelling.

20 June 2019

A letter was issued to the Applicant requiring that the application be withdrawn due to concerns that the proposed development would not meet the requirements of the the definition of a secondary dwelling under the PLEP 2014.

21 June 2019

Applicant requests that a deferred commencement condition be applied requiring the consolidation of both titles of land in order to address the concern that the proposed would not be on the same title of land as the principal dwelling.

## **PROPOSED DEVELOPMENT IN DETAIL**

The application seeks consent for the alterations and additions to an existing studio and change of use to a secondary dwelling. In particular, the works include:

- Internal alterations to include a kitchen and laundry;
- Installation of two (2) skylights; and
- Privacy screen and gate to the front of the proposed secondary dwelling.

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

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

<b>Section 4.15 Matters for Consideration'</b>	<b>Comments</b>
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	None applicable.



Section 4.15 Matters for Consideration'	Comments
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)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 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 98</u> of the EP&amp;A Regulation 2000 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 98</u> of the EP&amp;A Regulation 2000 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> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</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></p> <p>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>

Section 4.15 Matters for Consideration'	Comments
	<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 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 not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Mrs Lea Maree Gattorna Mr John Lino Gattorna	Po Box 666 MILSONS POINT NSW 1565
Ms Mary Rose Kupferman	90 Avenue Road MOSMAN NSW 2088

The following issues were raised in the submissions and each have been addressed below:

- Bulk and Scale
- Privacy
- Noise
- Traffic
- Potential use for short term holiday letting (e.g. Airbnb)
- Character and Amenity
- Intent of subdivision, change of use, change of title

- Conditions of consent (N0266/05)

The matters raised within the submissions are addressed as follows:

- Bulk and Scale

Comment:

A submission was received by the neighbouring property owners at 1176 Barrenjoey Road, raising concerns regarding the bulk and scale of the proposed secondary dwelling. The proposal consists of a 'change of use' of an existing building with works limited to internal modifications, two (2) skylights and an external privacy screen. It is therefore considered that the extent of additional bulk and scale is minimal and compliant with relevant PLEP 2014 and P21 DCP clauses.

- Privacy

Comment:

A submission was received by the neighbouring property owners at 1176 Barrenjoey Road, raising concerns regarding the privacy impacts resulting from the proposed secondary dwelling. The proposal achieves compliance with privacy through seeking to maintain the existing highlight windows along the western elevation and incorporate a privacy screen along the western edge of the entry hardstand area to the secondary dwelling. See Clause C1.5 Visual Privacy of the P21 DCP for further discussion.

- Noise

Comment:

A submission was received by the neighbouring property owners at 1176 Barrenjoey Road, raising concerns regarding the noise generation resulting from the proposed secondary dwelling. The proposal is not considered to create an unreasonable level of noise and is considered to comply with Clause C1.6 Acoustic Privacy of the P21 DCP.

- Traffic

Comment:

A submission was received by the neighbouring property owners at 1176 Barrenjoey Road, raising concerns regarding the traffic generation resulting from the proposed secondary dwelling. The proposal consists of a one (1) bedroom secondary dwelling and includes the provision of one (1) additional car parking space. The principal dwelling currently accommodates three (3) covered car parking spaces. The proposal is therefore compliant with the Clause B6.3 Off-Street Vehicle Parking Requirements of the P21 DCP.

- Potential use for short term holiday letting (e.g. Airbnb)

Comment:

A submission was received by the neighbouring property owners at 1176 Barrenjoey Road, raising concerns regarding the potential use of the proposed secondary dwelling as an Airbnb (short term holiday rental accommodation). Schedule 2 Exempt development of the PLEP 2014 states that Short-term holiday rental accommodation: "*Must be used for a period of less than 3 months by any individual or group*". It should be noted that exempt development may be carried out without the need for development consent.

- Character and Amenity

Comment:

A submission was received by the neighbouring property owners at 1176 Barrenjoey Road,



raising concerns regarding the character and amenity impacts of the proposed secondary dwelling. The proposal is not considered to create unreasonable character or amenity impacts and is compliant with the relevant clauses within the P21 DCP.

- Intent of Subdivision, Change of Use, Change of Title

Comment:

A submission was received by the neighbouring property owners at 1174a Barrenjoey Road, raising concern as to whether the intent of the proposal is for Subdivision, Change of Use, Change of Title. The proposal is for the change of use from a studio to a secondary dwelling. A deferred commencement condition is to be placed requiring the consolidation of Lot 1 in DP 105986 and Lot 1 in DP 1084184 as one lot and the registration of the appropriate survey plan with NSW Land Registry Services. The reason for this condition is to ensure that the secondary dwelling will be located on the the same lot of land as the principal dwelling.

- Conditions of consent (N0266/05)

Comment:

A submission was received by the neighbouring property owners at 1176 Barrenjoey Road, raising concerns that the conditions of consent, specifically Condition E4 of Development Consent No. N0266/05, requiring that prior to the issue of an occupational certificate, that a covenant is to be created on the title of the land, at the applicants expense, the terms of which clearly denote that the detached habitable studio building is not to be used for separate residential purposes, nor is it ever to be modified so as to incorporate bathroom/toilet/cooking facilities. See Clause 1.9A Suspension of covenants, agreements and instruments of the PLEP 2014 for further discussion.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>
NECC (Bushland and Biodiversity)	No impacts to the existing native vegetation or fauna habitat will occur on site or on adjoining properties. The development is designed, sited and will be managed to avoid any significant adverse biodiversity impact, and satisfies Pittwater LEP 2014 clause 7.6 Biodiversity, and the P21 DCP Flora & Fauna and Wildlife Corridor controls
NECC (Development Engineering)	The proposal is for change of use existing studio to a detached secondary dwelling with minor modification to the existing building. No Development Engineering objection with no conditions.
NECC (Stormwater and Floodplain Engineering –	The proposed development includes change of use of a studio to a secondary dwelling and minor external and internal alterations. Based

Internal Referral Body	Comments		
Flood risk)	on the flood mapping of the Avalon to Palm Beach Floodplain Risk Management Study and Plan (2017), the development is sited outside of the 1% AEP (100 year) flood extent and medium flood risk precinct, therefore the development is not subject to any flood related development controls.		
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS		
	Discussion of reason for referral		
	The proposal has been referred to Heritage as the property adjoins a heritage item		
	<b>Item - Villa D'este</b> - 3 Northview Road, Palm Beach		
	Details of heritage items affected		
	Details of the item as contained within the Pittwater inventory are:		
	<u>Statement of significance:</u> Villa D'este at 3 Northview Road in Palm Beach, was built in 1933 to the design of Fred Verrills as a holiday house, has historic and aesthetic significance as a rare and intact example of Spanish Mission House typical of the early Pittwater subdivisions.		
	<u>Physical Description</u> The house comprises of a rendered brick two-storey building characterised by typical Spanish Mission style features. These include: the asymmetrical facade, shaped gable facade, barley-twist columns, semi-circular arches, rendered brick walls, decorative sunrise motif, wrought-iron door hardware, gabled chimney stack, arched veranda, timber shutters, front steps, timber pergola, stucco finish and decorative parapet.		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
Other	N/A		
Consideration of Application			
	The proposal seeks consent for the conversion of an existing studio into a secondary dwelling. The studio is located in the eastern portion of the site, while Villa D'este is located to the west of the		

Internal Referral Body	Comments
	<p>property. The land rises steeply from the subject property up to the heritage item. Given the distance between the studio and the heritage item as well as the change in elevation, the proposal is considered to not impact upon the heritage item.</p> <p>Therefore Heritage raises no objections and requires no conditions.</p> <p>Consider against the provisions of CL5.10 of PLEP.</p> <p>Is a Conservation Management Plan (CMP) Required? No          Has a CMP been provided? No          Is a Heritage Impact Statement required? No          Has a Heritage Impact Statement been provided? No</p> <p><b>Further Comments</b></p> <p>COMPLETED BY: Brendan Gavin, Strategic Planner</p> <p>DATE: 1 May 2019</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)\*

All, Environmental Planning Instruments (SEPPs, REPs 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, REPs 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 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 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 Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

## SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A349028, dated 27 May 2019).

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

## SEPP (Infrastructure) 2007

### Ausgrid

Clause 45 of the SEPP 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. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

## 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	Proposed	% Variation	Complies
Height of Buildings:	5.5m	4.4m	N/A	Yes

### Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes

Clause	Compliance with Requirements
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.3 Flood planning	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

### Detailed Assessment

#### **1.9A Suspension of covenants, agreements and instruments**

Condition E4 of Development Consent No. N0266/05 stated the following:

*4. Prior to issue of the Occupation Certificate, a covenant is to be created on the title of the land, at the applicants expense, the terms of which clearly denote that the detached studio is not to be used for separate residential purposes, nor is it ever to be modified so as to incorporate cooking or laundry facilities.*

#### *Terms of Covenant*

*1. In this covenant the detached habitable studio building shall mean the detached habitable studio building referred to on Drawing Sheets 1 of 5, 2 of 5, 3 of 5, 4 of 5, 5 of 5 dated March 2005 prepared by Planart.*

*2. The registered proprietor will not use the detached habitable studio building as a separate residence nor will the registered proprietor install cooking facilities within the detached habitable studio building.*

*3. The term registered proprietor shall include the registered proprietors of the land from time to time and all their heirs, executors, assigns and successors in title to the land and where there are two or more registered proprietors of the land the terms of the covenant shall bind all those registered proprietors jointly and severally.*

*With regard to item 1 of the Terms of Positive Covenant the portion in bold will require a reference to an updated survey which must detail and accurate description of the building in question. Councils suggested description would contain habitable studio building within the survey sketch notation to ensure a clear reference is made. Proof of the creation of the covenant is to be provided to the Private Certifying Authority with the Occupation Certificate application.*

As the secondary dwelling land use is currently permissible with consent under the E4 Environmental Living Zone of the Pittwater LEP 2014, should a development consent be granted for this subject proposal, it is considered that it would prevail over Development Consent No. N0266/05.

#### **Zone E4 Environmental Living**

To ensure that the proposed secondary dwelling is located on that the same lot as the principal dwelling, a deferred commencement condition has been applied requiring the consolidation of Lot 1 in

DP 105986 and Lot 1 in DP 1084184 as one lot and the registration of the appropriate survey plan with NSW Land Registry Services.

#### 5.4 Controls relating to miscellaneous permissible uses

The proposed total floor area of the secondary dwelling is measured at 92.1m<sup>2</sup>. The total floor area of the principal dwelling is measured at 546.16m<sup>2</sup>. 25% of the total floor area of the principal dwelling is 136.54m<sup>2</sup>. Therefore, the proposed total floor area of the secondary dwelling satisfies the requirement under Clause 5.4 (9) (b).

#### Pittwater 21 Development Control Plan

##### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	10m	>10m	N/A	Yes
Rear building line	6.5m	>6.5m	N/A	Yes
Side building line	2.5m	>2.5m	N/A	Yes
	1m	1.5m	N/A	Yes
Building envelope	3.5m (East)	Within envelope	N/A	Yes
	3.5m (West)	Within envelope	N/A	Yes
Landscaped area	60%	65% (2,869.3m <sup>2</sup> across both Lot 1 DP 1084184 and Lot 1 DP 105986)	N/A	Yes

**\*Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for Landscaped area - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: 38/40 x 100 = 95 then 100 - 95 = 5% variation)

##### 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
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor	Yes	Yes
B4.6 Wildlife Corridors	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	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
C1.11 Secondary Dwellings and Rural Worker's Dwellings	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.23 Eaves	No	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	No	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
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

#### Detailed Assessment

#### **C1.5 Visual Privacy**

The proposed development is maintains existing highlight windows along the western elevation and proposes a privacy screen to the front of the secondary dwelling that is a minimum height of 1.7m. Therefore, the proposal is considered to comply with the controls and outcomes of this particular clause.

#### **C1.23 Eaves**

The eaves of the proposed secondary dwelling are technically non-compliant with the 450mm

requirement. It should be noted however that the proposal retains the existing roofing of the detached studio structure. The submitted BASIX information further demonstrates that appropriate solar access and shading is achieved.

Based on the above, the proposal in this particular instance, is considered to satisfy the outcomes of this clause and is supported on its merits.

### **D12.3 Building colours and materials**

The proposed secondary dwelling seeks to maintain a non-compliant 'white' colour scheme. While the proposed development will not be visible from the Barrenjoey Road frontage, it will remain visible from neighbouring dwellings. Concerns in a submission made by the owners of 1176 Barrenjoey Road expressing concern with the scale, bulk, design and impacts of the proposal on the amenity of the area. Further concerns were raised with regards to the material and finishes of the proposed privacy screen and gate. A condition of consent is recommended to ensure that the external materials and finishes are consistent with the requirements of this clause.

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

The proposal will not significantly effect threatened species, populations or ecological communities, or their habitats.

### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

### **POLICY CONTROLS**

#### **Pittwater Section 94 Development Contributions Plan**

### **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 2000;
- 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 Development Consent to DA2019/0334 for Alterations and additions to an existing studio and change of use to a secondary dwelling on land at Lot 1 DP 1084184, 1178 Barrenjoey Road, PALM BEACH, subject to the conditions printed below:

### DEFERRED COMMENCEMENT CONDITIONS

#### 1. Consolidation of Lots

The consolidation of Lot 1 in DP 105986 and Lot 1 in DP 1084184 as one lot and the registration of the appropriate survey plan with NSW Land Registry Services. Evidence that the lot have been registered with NSW Land Registry Services in to be provided to Council in order to activate the consent.

Evidence required to satisfy the deferred commencement condition/s must be submitted to Council within five (5) years of the date of this consent, or the consent will lapse in accordance with Section 95 of the Environmental Planning and Assessment Regulation 2000. This evidence is to be submitted along with a completed 'Deferred Commencement Document Review Form' (available on Council's website) and the application fee, as per Council's Schedule of Fees and Charges.

Upon satisfaction of the deferred commencement condition/s, the following conditions apply:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

#### 2. 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

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A101 (Site Plan)	7 February 2019	Blue Sky Building Designs
A102 (Ground Floor Plan)	7 February 2019	Blue Sky Building Designs
A103 (Elevations)	7 February 2019	Blue Sky Building Designs

A104 (Sections)	7 February 2019	Blue Sky Building Designs
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<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Geotechnical Report, J2182	23 April 2019	White Geotechnical Group
BASIX Certificate, A349028	27 May 2019	Certified Energy

b) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

c) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

### 3. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
  - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
  - (i) in the case of work for which a principal contractor is required to be appointed:
    - A. the name and licence number of the principal contractor, and
    - B. the name of the insurer by which the work is insured under Part 6 of that Act,
  - (ii) in the case of work to be done by an owner-builder:
    - A. the name of the owner-builder, and
    - B. if the owner-builder is required to hold an owner-builder permit under

that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
  - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
  - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
  - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative Requirement

#### 4. **General Requirements**

- (a) Unless authorised by Council:  
Building construction and delivery of material hours are restricted to:
- 7.00 am to 5.00 pm inclusive Monday to Friday,
  - 8.00 am to 1.00 pm inclusive on Saturday,
  - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works

commence.

- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (j) Prior to the commencement of any development onsite for:
  - i) Building/s that are to be erected
  - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
  - iii) Building/s that are to be demolished
  - iv) For any work/s that is to be carried out
  - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for



swimming pools.

- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

## FEES / CHARGES / CONTRIBUTIONS

### 5. Security Bond

A bond (determined from cost of works) of \$1,000 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au)).

Reason: To ensure adequate protection of Council's infrastructure.

## CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

### 6. Compliance with Standards

The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards.

### 7. External Colours and Materials

The external colours and materials shall be dark and earthy tones, non-glare and of low reflectivity. White, light coloured, red or orange walls are not permitted.

A satisfactory specification which achieves this shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate in the form of a Schedule of Finishes.

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

**Signed**



**Kent Bull, Planner**

The application is determined on 11/07/2019, under the delegated authority of:



**Matthew Edmonds, Manager Development Assessments**