

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2021/1003
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<b>Responsible Officer:</b>	Clare Costanzo
<b>Land to be developed (Address):</b>	Lot 6 DP 541797, 949 Barrenjoey Road PALM BEACH NSW 2108
<b>Proposed Development:</b>	Modification of Development Consent DA2018/1655 granted for Alterations and additions to a dwelling house
<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>	Pamela Anne Marshall
<b>Applicant:</b>	Walter Barda Design Pty Ltd

<b>Application Lodged:</b>	11/01/2022
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	24/01/2022 to 07/02/2022
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### PROPOSED DEVELOPMENT IN DETAIL

The proposal comprises of a modification to approved development application DA2018/1655 for the construction of a new double car carport, reconfigured house entry & associated landscaping & driveway works.

The following works are proposed as part of the modification:

- Relocation of previously approved carport, bin store and parking structure to the top south east corner of the property
- Formalisation of front pedestrian and vehicular entry gate within the front boundary
- Addition of inclinor car along existing front sandstone wall
- Modification of existing hard driveway into landscape garden entry path
- Modification to entry stairs
- Retention of existing entry door

- Retention of previously proposed demolition of barrel roof
- Addition of solar panels laid flat in carport roof structure
- Retention of existing trees as per Arborist report

## 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 - D12.5 Front building line  
 Pittwater 21 Development Control Plan - D12.6 Side and rear building line  
 Pittwater 21 Development Control Plan - D12.11 Fences - General

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 6 DP 541797 , 949 Barrenjoey Road PALM BEACH NSW 2108
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the southern side of Barrenjoey Road.</p> <p>The site is irregular in shape with a frontage of 43m along Barrenjoey Road and a depth of 25.3m. The site has a surveyed area of 1431.1m<sup>2</sup> with a slope of 67.4% that falls from the north to the south. The site adjoins Pittwater waterway to the rear of the site.</p> <p>The site is located within the C4 Environmental Living zone and accommodates a dwelling house. The site contains an existing heritage listed dwelling "Kumale", also known as Richardson House. Waterway access can be gained via an existing slipway.</p>

The site contains several mature native trees within the front and rear yard.

**Detailed Description of Adjoining/Surrounding Development**

Adjoining and surrounding development is characterised by similar one and two storey dwelling houses.

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 - DA2018/1655 for alterations and additions to a dwelling house was determined on the 1 April 2019.
- Development Application - N0204/16 for the Construction of a new garage, driveway, turntable, front fence and entry list was determined on the 21 September 2016.
- Modification Application - N0175/12/S96/2 for the modification of consent N0175/12 alterations and additions to the existing dwelling including a swimming pool and car parking platform was determined on the 24 February 2015.
- Modification Application - N0175/12/S96/1 for the modification of consent N0175/12 alterations and additions to the existing dwelling including a swimming pool and car parking platform was determined on the 19 June 2014.
- Modification Application - N0050/09/S96/3 for the modification of consent N0050/09 alterations and additions to the existing dwelling and remediation works was determined on the 14 February 2013.
- Development Application - N0175/12 for the alterations and additions to the existing dwelling including a swimming pool and a car parking platform was determined on the 16 October 2012.

**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 DA2018/1655, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

<b>Section 4.55 (2) - Other Modifications</b>	<b>Comments</b>
<p>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:</p>	
<p>(a) 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>	<p>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2018/1655 for the following reasons:</p> <ul style="list-style-type: none"> <li>• The works related to the alterations and additions approved to the existing dwelling and the relocation of the approved carport.</li> <li>• The works generally seek to relocate existing approved structures to a more functional location to increase accessibility and landscaped area.</li> <li>• The approved built form of the carport remains generally unchanged.</li> </ul>
<p>(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in</p>	<p>Development Application DA2018/1655 did not require concurrence from the relevant Minister, public authority or approval body.</p>

<b>Section 4.55 (2) - Other Modifications</b>	<b>Comments</b>
accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	
(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 under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan.
(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.	No submissions were received in relation to this application.

### 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 96 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:

<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	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
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) –	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent

Section 4.15 'Matters for Consideration'	Comments
<p>Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&amp;A Regulation 2000)</p>	<p>authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original 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 allow Council to request additional information. No additional information was requested in this case.</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 matter has been addressed via a condition in the original consent.</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 clause is not relevant to this application.</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 in the original 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 in the original 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>
<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>	<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 'Matters for Consideration'	Comments
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 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 Report was submitted with the application that included a certificate (prepared by Ronald Coffee, dated 1 November 2021) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 24/01/2022 to 07/02/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

## REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulphate)	<p><b>General Comments</b></p> <p>The proposed works do not trigger the need for an Acid Sulfate Soil investigation nor a management plan. The Acid Sulfate Soil Manual (1998) indicates that in Class 5 lands, the water table must be lowered below 1 metre AHD on adjacent Class 1,2,3 or 4 lands. This will not occur due to the proposed works.</p>
Landscape Officer	<p>The application is for modification to development consent DA 2018/1655 including: relocation of previously approved carport, bin store and parking structure to the top south east corner of the property; formalisation of front pedestrian and vehicular entry gate within the front boundary; addition of inclinor car along existing front sandstone wall; modification of existing hard driveway into landscape garden entry path; modification to previously proposed entry stairs; retention of existing entry door; retention of previously proposed</p>

Internal Referral Body	Comments
	<p>demolition of barrel roof; addition of solar panels laid flat in carport roof structure; and retention of existing trees as per Arborist report.</p> <p>The Arborist report includes the assessment that the modification works are considered to be minor and can be undertaken with little or no additional impact upon the existing trees in proximity to the modification works.</p> <p>The landscape outcome remains unaltered by the proposed modifications works. Relevant Landscape Referral conditions under development consent DA2018/1655 remain.</p>
NECC (Bushland and Biodiversity)	<p>The potential impacts of the proposed modifications has been assessed by All Arbour Solutions. They have concluded that the existing trees can be retained and no or little additional impact is likely. A portion of the subject site is mapped as part of the Endangered Ecological Community Pittwater Wagstaff Spotted Gum Forest, although the same area is not mapped on the NSW Biodiversity Values map (Biodiversity Conservation Act 2016).</p> <p>The site is subject to the controls of B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community under the P21 DCP. However the development is proposed in the area of least impact on PSGF there will be no significant net loss of PSGF vegetation. Based on the information provided the proposed development will not significantly impact the biodiversity values of the site, The biodiversity related conditions of consent continue to apply.</p>
NECC (Coast and Catchments)	<p>The development proposal is for modifications to an approved development application (DA2018/1655). The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against the coastal relevant 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 the Coastal Management Act 2016 is applicable to the proposed development. The proposed development is consistent with the objects, as set out under Clause 3 of the Coastal Management Act 2016.</p> <p><b>State Environmental Planning Policy (Coastal Management) 2018</b> The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13, 14 and 15 of the CM SEPP apply to this application. On internal assessment, Council considers that the modification application satisfies the relevant requirements under clauses 13, 14 and 15 of the CM SEPP. As such, it is considered that the application does comply with the requirements of State Environmental Planning Policy (Coastal Management) 2018 subject to conditions.</p>



Internal Referral Body	Comments
	<p><b>Pittwater LEP 2014 and Pittwater 21 DCP</b>            Development on Foreshore Area            The subject property is affected by the foreshore building line and Part 7, Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014 applies for any development within the foreshore area. No modification works are located seaward of the foreshore building line and the development proposal therefore satisfies the objectives and requirements of Clause 7.8 – Limited development on foreshore area of Pittwater LEP 2014.</p> <p>Estuarine Hazard Management            The subject property has been identified as affected by estuarine wave action and tidal inundation on Council’s Estuarine Hazard Mapping. As the modification works are proposed at a level well above Council's adopted Estuarine Planning Level (EPL) the proposed development is considered to satisfy the relevant provisions of the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the B3.7 Estuarine Hazard Controls.</p>
NECC (Development Engineering)	The proposed elevated turn table car parking area located wholly within the property is supported subject to conditions.
NECC (Riparian Lands and Creeks)	<p>This application has been assessed against relevant legislation and policy relating to waterways, riparian areas, and groundwater.</p> <p>As this site drains into Pittwater, the development must not significantly impact on the biophysical, hydrological or ecological integrity of these waters, or on the quantity and quality of surface and ground water flows to the waterway.</p> <p>This application, is supported as it is unlikely to have an adverse effect on the integrity and resilience of the biophysical, ecological and hydrological environment of Pittwater and its surrounding environment if conditions are adhered to.</p>
Parks, reserves, beaches, foreshore	<p>The application is for modification to development consent DA 2018/1655 including: relocation of previously approved carport, bin store and parking structure to the top south east corner of the property; formalisation of front pedestrian and vehicular entry gate within the front boundary; addition of inclinor car along existing front sandstone wall; modification of existing hard driveway into landscape garden entry path; modification to previously proposed entry stairs; retention of existing entry door; retention of previously proposed demolition of barrel roof; addition of solar panels laid flat in carport roof structure; and retention of existing trees as per Arborist report.</p> <p>Parks, Reserves and Foreshores raise no concerns with the modification proposals.</p>
Strategic and Place Planning (Heritage Officer)	<b>HERITAGE COMMENTS</b>
	Discussion of reason for referral
	This proposal is for a s4.55 Modification to DA2018/1655 which gained approval for alterations and additions to a heritage item, the

Internal Referral Body	Comments						
	<p>remarkable house "Kumale" designed for the Richardson family by Peter Muller (<b>Item 2270165 - "Kumale" (house), 949 Barrenjoey Road, Palm Beach</b>).</p> <p>The proposal seeks consent for modifications to the external approach and entry area of the house, as itemised in the HIS. Under its LEP Council must consider the impacts upon the heritage significance of the property, and whether or not the proposed changes can be sustained.</p>						
	<p><b>Details of heritage items affected</b></p>						
	<p>The works will affect only the subject Item, and by their nature will be seen mainly from the front of the property on Barrenjoey Road. Aspects of the work will be prominent and to the extent that views down into the property may be possible, other changes proposed will be visible.</p> <p>Details of the heritage item, as contained within the Heritage Inventory are:  <b>Item 2270165 - "Kumale" (house), 949 Barrenjoey Road, Palm Beach</b>  <u>Statement of Significance</u>            Kumale, at 949 Barrenjoey Road in Palm Beach, built in 1956 to a design by well known Sydney architect Peter Muller, has historic and aesthetic significance as an excellent example of Late Twentieth-Century Organic architecture. Kumale, also known as Richardson House, is one of Peter Muller's earliest and most distinctive commissions. It is a highly individualistic work, deriving its primary inspiration from nature. The house has a high level of aesthetic value, maintained despite some changes to the fabric and its deteriorating condition. It retains sufficient integrity and substantial intactness to illustrate its original design.</p>						
	<p><b>Other relevant heritage listings</b></p>						
	<table border="1"> <thead> <tr> <th data-bbox="518 1520 837 1659"></th> <th data-bbox="837 1520 933 1659">No</th> <th data-bbox="933 1520 1439 1659">Comment if applicable</th> </tr> </thead> <tbody> <tr> <td data-bbox="518 1520 837 1659">Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td> <td data-bbox="837 1520 933 1659"></td> <td data-bbox="933 1520 1439 1659"></td> </tr> </tbody> </table>		No	Comment if applicable	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005		
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Other	No						
	<p><b>Consideration of Application</b></p>						
	<p>The proposed modifications as shown in the submitted plans are</p>						

Internal Referral Body	Comments
	<p>assessed within a Heritage Impact Statement prepared for the Applicant, which concludes that the works can be considered appropriate and consistent with the significance of the property. This conclusion is concurred with through this referral and the program of modified works proposed is considered to have an acceptable level of impact upon the significance of the house, and to be compatible with Council's LEP and DCP controls for the protection of heritage.</p> <p>Owned for many years by the same family and the subject of comprehensive continuing works, the extensive conservation and adaptation efforts at "Kumale" are now close to being completed. The problem of vehicle access and parking for the house has been reviewed several times and most recently consent was given to DA2018/1655 which proposed a circular open 'mushroom-like' carport structure at the lower end of a vehicle ramp sloping down to the house from its street entry. The structure of the ramp was built some time ago, in keeping with previous consents.</p> <p>It is now proposed, through this modification application, to re-site the carport structure to the entry area of the site, just inside its front boundary. Access for vehicles to the site is constrained by virtue of the narrow frontage, site topography, and the location of the property on an external bend of Barrenjoey Road. The key element of the proposal is the concept of limiting car access to the very top of the site – meaning that the constructed ramp is redundant in terms of use by vehicles and available for adaptation within the open areas on the landward side of the dwelling.</p> <p>Details of all proposed modifications are itemised in the HIS. In summary, these modifications include relocation of the approved carport to the driveway entrance off Barrenjoey Road and the addition of solar panels, new landscaping works behind the carport connecting the carport with the main house, as well as a new entrance to the house.</p> <p>Of these works, most are detailed elements which can be seen to be consistent with the works already undertaken at the house – of high quality and intent and considered in their design. The most contentious, in my opinion, are likely to be the form of the proposed carport, given its prominent location, and the intervention with live rock of the site in the formation of part of the new entry stairs. The front door of the house, to be replaced in these works is not original.</p> <p>The dramatic gesture of the carport, in its more prominent location, is responsive to themes in the house, and being remote and distinct from it, is arguably supportable as a new functional element. It follows on other decisions and stages of work implemented in the adaptation of the house. The proposed location and revised access to the house remove the former intrusion of vehicles into the tight</p>

Internal Referral Body	Comments
	<p>foreground space, and have made the ramp available for conversion to an unusual gardened approach to the house.</p> <p>Caution is desirable with proposals to further excavate/intervene with live rock on established, significant sites, although there is a long tradition of cutting in steps and pathways in the rock outcrops on which houses of the Northern Beaches were often built. Those have usually been minimal and utilitarian. Modern equipment makes such work readily possible, quick and efficient, but it should be minimised. The conditions of consent requiring archival recording of works at “Kumale” remain current and important.</p> <p><b>Therefore, no objections are raised on heritage grounds and no new conditions required.</b> It is noted that Condition 11 of consent DA2018/1655 requires photographic archival recording prior to CC and this condition is still relevant and should remain unchanged.</p> <p><u>Consider against the provisions of CL5.10 of Pittwater LEP 2014:</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? N/A Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes</p> <p><b>Further Comments</b></p> <p>COMPLETED BY: Robert Moore, External Heritage Advisor DATE: 11 April 2022</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	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.
NSW Rural Fire Service – local branch (s4.14 EPAA)	The proposal was referred to NSW Rural Fire Service who provided a response stating that the proposal is acceptable subject to compliance with the recommendations provided. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	<p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease</p>

External Referral Body	Comments
	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.

## 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. A329899\_02 dated 14 October 2021).

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 who raised no objections, subject to conditions which have been included in the recommendation of this report.

**SEPP (Coastal Management) 2018**

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

**13 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 works are not likely to cause an adverse impact upon the matters identified in this clause. The proposed modification does not discourage public access or amenity along the foreshore area nor impact on natural foreshore processes.

- (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 subclause (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 the proposed works are designed and can be managed to avoid adverse impacts upon the matters identified in this clause.

**14 Development on land within the coastal use area**

- (1)
- (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,*
    - (iii) *the visual amenity and scenic qualities of the coast, including coastal headlands,*
    - (iv) *Aboriginal cultural heritage, practices and places,*
    - (v) *cultural and built environment heritage, and*
  - (b) *is satisfied that:*
    - (i) *the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*
    - (ii) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
    - (iii) *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:

The proposal does not impact upon the existing and safe access to and along the foreshore. The visual amenity from private and public space is not adversely effected and the surrounding area consists of examples of similar developments. The subject site and adjacent foreshore area is mapped as having a high likelihood of containing Aboriginal heritage sites. The foreshore area is heavily modified and no sites have been identified within the vicinity of the proposed development. The proposed works are not likely to cause an adverse impact upon the matters identified in this clause.

As such, it is considered that the application complies with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

**15 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:

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.

**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
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#### Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	3.5m	3.3m	N/A	Yes

#### Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes
Schedule 5 Environmental heritage	Yes

#### Pittwater 21 Development Control Plan

##### Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m	Nil	Nil	No
Rear building line	6.5m (N/A FBL applies)	N/A	N/A	N/A
Side building line	2.5m (north west)	9.8m	0.8m	No
	1m (south east)	N/A	N/A	N/A
Building envelope	3.5m	Within envelope	Within envelope	Yes
	3.5m	Within envelope	Within envelope	Yes
Landscaped area	50%	38.8%	50% (715.3m <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
B1.1 Heritage Conservation - Heritage items, heritage conservation	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
areas and archaeological sites listed in Pittwater Local Environmental Plan 2014		
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B3.8 Estuarine Hazard - Medium Density Residential	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.15 Saltmarsh Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B5.13 Development on Waterfront Land	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
B6.7 Transport and Traffic Management	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
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D1.21 Masterplan - Careel Bay	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	No	Yes
D12.6 Side and rear building line	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D12.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D12.11 Fences - General	No	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

### Detailed Assessment

#### **D12.5 Front building line**

##### Description of Non-compliance

The proposed development is inconsistent with the 10m minimum front building line prescribed by this development control, with the proposed carport and entry structure having a nil setback from the front boundary.

Pittwater 21 DCP contains a variation clause which reads as follows:

Where carparking is to be provided on steeply sloping sites, reduced or nil setbacks for carparking structures and spaces may be considered, however all other structures on the site must satisfy or exceed the minimum building line applicable

The site is considered to be steep. This is considered to warrant consideration of a reduced setback for the hardstand to enable a parking area that is safe and practical for the resident.

##### Merit Consideration

With regard to the consideration of the variation, the development is considered under the objectives of the control below.

- *Achieve the desired future character of the Locality.*

##### Comment:

The proposed structure is reasonably sited within the context of the site, as well as that of the streetscape. The structure would be over an existing hardstand area and would not facilitate the remove of landscaping. The carport and existing garage will provide for two (2) compliant on-site parking spaces, which is consistent with surrounding development and satisfies the desired character of the locality. The proposal is of a suitable design when considering the site constraints and the nearby development. There are a number of sites within the immediate vicinity with single garages and double carports within the front setback along Barrenjoey Road.

- *Equitable preservation of views and vistas to and/or from public/private places. (S)*

##### Comment:

The proportions and location of the proposed development combined with the positioning of surrounding buildings results in the conclusion that the works would not unreasonably obstruct any existing provision of views from the public domain or private residences. The carport is proposed as a generally open structure with the exception of a battened fence to provided for security purposes.

- *The amenity of residential development adjoining a main road is maintained. (S)*

Comment:

The proposal would not have unreasonable impact upon residential amenity.

- *Vegetation is retained and enhanced to visually reduce the built form. (En)*

Comment:

No vegetation is proposed for removal as part of this application. Landscaping would be retained within the front setback to visually reduce the built form.

- *Vehicle manoeuvring in a forward direction is facilitated. (S)*

Comment:

The proposal comprises of a turntable to allow vehicles to manoeuvre in a forward direction. The proposal has been assessed by Council's Development Engineer who raised no concern in this regard.

- *To preserve and enhance the rural and bushland character of the locality. (En, S)*

Comment:

There is substantial existing landscaping within the front of the site and within the road reserve along the eastern side of Barrenjoey Road. The proposed works would be over an existing hardstand area and would not facilitate the remove of landscaping. The bushland character of the locality is maintained.

- *To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.*

Comment:

The proposal would be of an open design and is of a modest height that does not attribute to excessive bulk or scale. The proposal would be below the canopy of surrounding trees and consistent with the scale of double carports within the immediate vicinity.

- *To encourage attractive street frontages and improve pedestrian amenity.*

Comment:

The bulk and scale of the development would not appear inconsistent with the existing site or surrounding development along the western side of Barrenjoey Road. The proposal will have minimal impact on pedestrian amenity.

- *To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment.*

Comment:

The proposed development responds to, reinforces and sensitively relates to the spatial characteristics

of the existing urban environment by being located in a portion of the site that is already disturbed, contains minimal native vegetation and has been designed with the topographic features of the site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PDCA and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance

## **D12.6 Side and rear building line**

### Description of Non-Compliance

Clause D12.6 Side and Rear Building Line prescribes a side setback of 2.5m to one side and 1.0m to the other, and a rear setback of 6.5m. For this assessment, the 2.5m side building line is applied to the north western boundary and the 1.0m south eastern side building line.

The modification seeks the relocation of the approved carport to within the front setback over an existing hardstand area (part of existing approved driveway) and will result in a south eastern side setback of 800mm, which is a 20% non compliance to the control requiring a setback of 1m. There are no changes to the setback of the existing dwelling.

The modification complies with the north western side setback and the rear setback.

### Merit Consideration

With regard to the consideration of a variation, the proposed development is considered against the underlying outcomes of the control as follows:

- *To achieve the desired future character of the Locality.*

### Comment:

Through the retention of satisfactory articulation and a variety of building elements that enhance and create an aesthetically pleasing design, the carport is considered to maintain consistency with the desired future character of the Palm Beach Locality.

- *The bulk and scale of the built form is minimised.*

### Comment:

The relocation of the carport to the front setback over the existing hardstand (previously approved driveway) is not expected to result in any unreasonable bulk and scale. The carport is of a modest height and generally open form. The proposed flat roof will further reduce the bulk when viewed from the streetscape.

- *Equitable preservation of views and vistas to and/or from public/private places.*

### Comment:

Existing views are retained above and to the side of the proposed carport. Some view loss from Barrenjoey will occur as a result of the carport and gate, however a reasonable level of views and vistas will be retained.

- *To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.*

Comment:

As above, the proposed development is not considered to result in any detrimental view loss from the surrounding private properties or the public domain.

- *To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties*

Comment:

The side boundary encroachment is not considered to unreasonably impede on the amenity to the neighbouring properties or significantly alter solar access to that of what was previously approved.

- *Substantial landscaping, a mature tree canopy and an attractive streetscape.*

Comment:

The proposed modifications maintain a well articulated design which is considered to be visually appealing from the public domain and will enhance the character of the streetscape. The proposed new location of the carport allows for an increased landscape area as the previously approved hard driveway will be converted to landscaping and a garden entry path.

- *Flexibility in the siting of buildings and access.*

Comment:

Flexibility is required for the siting of the carport as a result of the steep sloping topography of the site. The carport location allows for maximisation of soft landscaping on site and reduces hard surface areas required to access compliant carparking.

- *Vegetation is retained and enhanced to visually reduce the built form.*

Comment:

No significant vegetation or established trees are proposed for removal in this modification application. But rather the enhancement of vegetation through an increase of landscaped open space, which will upon maturity, mitigate any perceivable bulk and scale.

- *A landscaped buffer between commercial and residential zones is achieved.*

Comment:

N/A.

Having regard to the above assessment, it is concluded that the outcomes of the clause have been achieved. Therefore, the application is supported on merit in this particular circumstance.

## **D12.11 Fences - General**

The control requires that front fences shall:

- not exceed a maximum height of 1 metre above existing ground level,
- be compatible with the streetscape character, and
- not obstruct views available from the road,
- Be constructed of open, see-through, dark-coloured materials.
- Landscaping is to screen the fence on the road side. Such landscaping is to be trimmed to ensure clear view of pedestrians and vehicles travelling along the roadway, for vehicles and pedestrians exiting the site.
- Original stone fences or stone fence posts shall be conserved.
- Fencing is permitted along the rear and side boundaries (other than within the front building setback) to a maximum height of 1.8 metres.

#### Comment:

The proposed carport comprises of a 1.8m sliding circular battened gate within the front setback and adjoining the Barrenjoey Road frontage. The gate is proposed to provide for increased vehicular security.

Some view corridors are retained through and above the gate, however the height of 1.8m is not supported by Council. A condition has been recommended requiring the gate to be reduced to be a maximum of 1.5m and not to exceed above the approved height of the adjoining pedestrian entry gate.

Although the control requires a maximum height of 1m, Council acknowledges the site is located on a busy main road and a variation in this circumstances is considered.

In summary, the proposal achieves the outcomes of the control and the breach in the height is supported, subject to recommended conditions of consent.

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

The proposal will not significantly affect 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**

#### **Northern Beaches Section 7.12 Contributions Plan 2021**

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 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 approval to Modification Application No. Mod2021/1003 for Modification of Development Consent DA2018/1655 granted for Alterations and additions to a dwelling house on land at Lot 6 DP 541797,949 Barrenjoey Road, PALM BEACH, subject to the conditions printed below:

### A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

#### a) Modification Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
1001 Site Plan RevD	20 December 2021	Walter Barda Design
1002 Floor Plan L6 & Carport RevD	20 December 2021	Walter Barda Design
1301 Elevations RevD	20 Decmeber 2021	Walter Barda Design
A1305 Sections RevF	20 December 2021	Walter Barda Design

<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>
BASIX Certificate No. A329899_02	14 October 2021	Walter Barda Design

Geotechnical Assessment	29 October 2021	Douglas Partners
Bushfire Risk Assessment	1 November 2021	Ron Coffey

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

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

**B. Add Condition 2b) - Amendment to approved plans to read as follows:**

The following amendments are to be made to the approved plans:

- The vehicular gate shall be a maximum height of 1.5m. For the avoidance of doubt the vehicular gate shall be no higher than the adjoining pedestrian gate.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

**C. Add Condition 32 - Certification Elevated Parking Facility Work to Conditions which must be complied with prior to the issue of the occupation certificate to read as follows:**

The applicant shall submit a Structural Engineers certificate certifying that the elevated parking facility was constructed in accordance with this development consent and the provisions of Australian/New Zealand Standard AS/NZ 2980.1:2004 parking facilities - off street car parking, in particular Section 2.4.5 Physical controls. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the final Occupation Certificate.

Reason: Compliance with this consent.

**D. Add Condition 33 - Retaining wall to Conditions which must be complied with prior to the issue of the occupation certificate to read as follows:**

The retaining wall works shall be certified as compliant with all relevant Australian Standards and Codes by a Structural Engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any final Occupation Certificate.

Reason: Public and Private Safety.

**E. Add Condition 34 - Pollution Control to Conditions to be complied with during demolition and building work to read as follows:**

All stockpiles, materials, waste and slurry associated with works (including excavated material) is to be contained at source within the construction area and enclosed in waterproof covering and/or sediment and erosion control while not in use. All waste/debris is to be removed off site and disposed of in accordance with applicable regulations as frequently as required to prevent building waste and debris from entering waters.

Reason: To protect receiving waters and ensure that pollutants and building associated waste do not leave the construction site.



**F. Add Condition 35 - Compliance with Other Department, Authority or Service Requirements to development consent operational conditions to read as follows:**

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

<i>Other Department Authority or Service</i>	<i>EDMS Reference</i>	<i>Dated</i>
Ausgrid Response	Ausgrid Referral	Undated
NSW Rural Fire Service	NSW RFS	3 February 2022

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au))

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

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

**Signed**



**Clare Costanzo, Planner**

The application is determined on 21/04/2022, under the delegated authority of:



**Lashta Haidari, Acting Development Assessment Manager**