

Statement of Environmental Effects
S4.55 Amendment to
Approved Residential Building
1180 Barrenjoey Road,
Palm Beach

September 2021

Mersonn Pty Ltd
20 Wylde Street
Potts Point NSW 2011

Contents

| | | |
|-----|-----------------------------------|----|
| 1.0 | Introduction | 3 |
| 2.0 | Site and Context | 6 |
| 3.0 | Approved Development | 32 |
| 4.0 | Proposed Amendment | 33 |
| 5.0 | Planning Controls | 47 |
| 6.0 | Environmental Planning Assessment | 79 |
| 7.0 | Section 4.56 Considerations | 83 |
| 8.0 | Conclusion | 87 |

Attachment: Schedule of Amendments

1.0 Introduction

This report has been prepared on behalf of J & L Manning by Mersonn Pty Ltd and is submitted to Northern Beaches Council in support of a S4.55 amendment application to the approval for alterations and additions to the existing dwelling at 1180 Barrenjoey Road, Palm Beach.

The site is regular in shape with an area of approximately 613.2m² with access to Barrenjoey Road on the western boundary. The site has a cross fall of approximately 1.3m from south to north on the street frontage and rises from the road frontage to the rear of the site approximately 1m. The site has a northern orientation with views to Pittwater.

The subject site currently accommodates a single dwelling above car parking. The dwelling is of weatherboard construction with a metal skillion roof. The dwelling is located on a sloping site with the slope providing access to a parking and workshop area on the lower level.

A development application DA No: 379/16 was granted consent by Northern Beaches Council on 1 February 2017 for alterations and additions to the existing dwelling. The application provided a single storey addition to the rear of the existing dwelling containing a sitting room, dining, kitchen and living room with a covered outdoor dining area and northern deck.

A subsequent S4.55 Mod2018/0272 arising from design development which included a timber fence on the northern boundary and a retaining wall 1m setback from the boundary to reduce the slope on the garden was approved by Northern Beaches Council on 22 August 2018.

The construction works have commenced on site and further design development has resulted in an amendment to reduce the extent of the addition and reconfigure the new living space.

Consequently, the proposed amendment comprises:

1. Delete approved 'outdoor dining' - reduce floor slab and roof over by 25m²;
2. Extend approved pavilion over footprint of pre-existing lean-to structure (12m²);
3. Internal reconfiguration & raising of finished floor level by 185mm;
4. Increased tread depth of approved stair;
5. Steel balustrade planter with privacy screen planting;
6. Revised material palette;
7. Change material (steel) to approved timber fence.

The amended proposal generally retains the envelope, layout and orientation of the approved development application DA No: 379/16.

This Statement has been prepared pursuant to Section 4.12 of the Environmental Planning and Assessment Act, 1979 and Clause 50 of the Environmental Planning and Assessment Regulation, 2000. The purpose of this document is to describe the existing improvements on the site, detail the proposed development, review the applicable planning regime relating to the proposal, assess the degree of compliance and examine the environmental effects of the development when measured against the Evaluation Criteria prescribed under Section 4.15(1) of the Environmental Planning and Assessment Act, 1979. In respect of the assessment of the proposal, where impacts are identified, measures proposed to mitigate any harm to environmental amenity have been addressed in this report.

This report should be read in conjunction with:

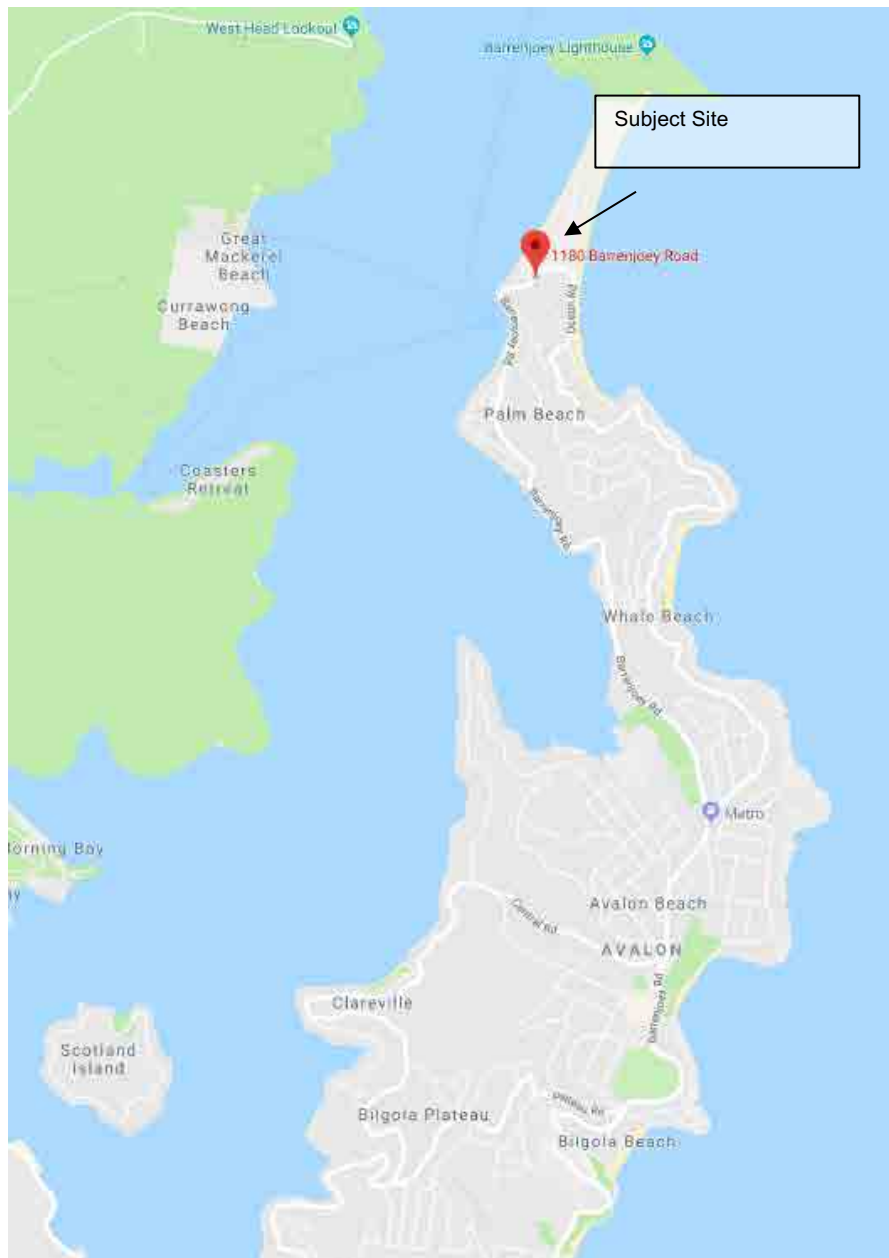
- Amended Architectural plans prepared by James Garvan Architects;
- Amended Shadow diagrams prepared by James Garvan Architects;
- Amended BASIX prepared by Ecoplus Consultants;
- Survey Plan prepared by ESA Survey;



Aerial Photograph

Source: RPData 2021

2.0 The Site and Context



Location Plan

Source: GoogleMaps 2021

The subject site is located on the eastern side of Barrenjoey Road south of its intersection with Beach Road. The site is regular in shape with a western frontage of approximately 13.41m to the Barrenjoey Road and a common eastern boundary of 13.41m. The northern boundary (common)

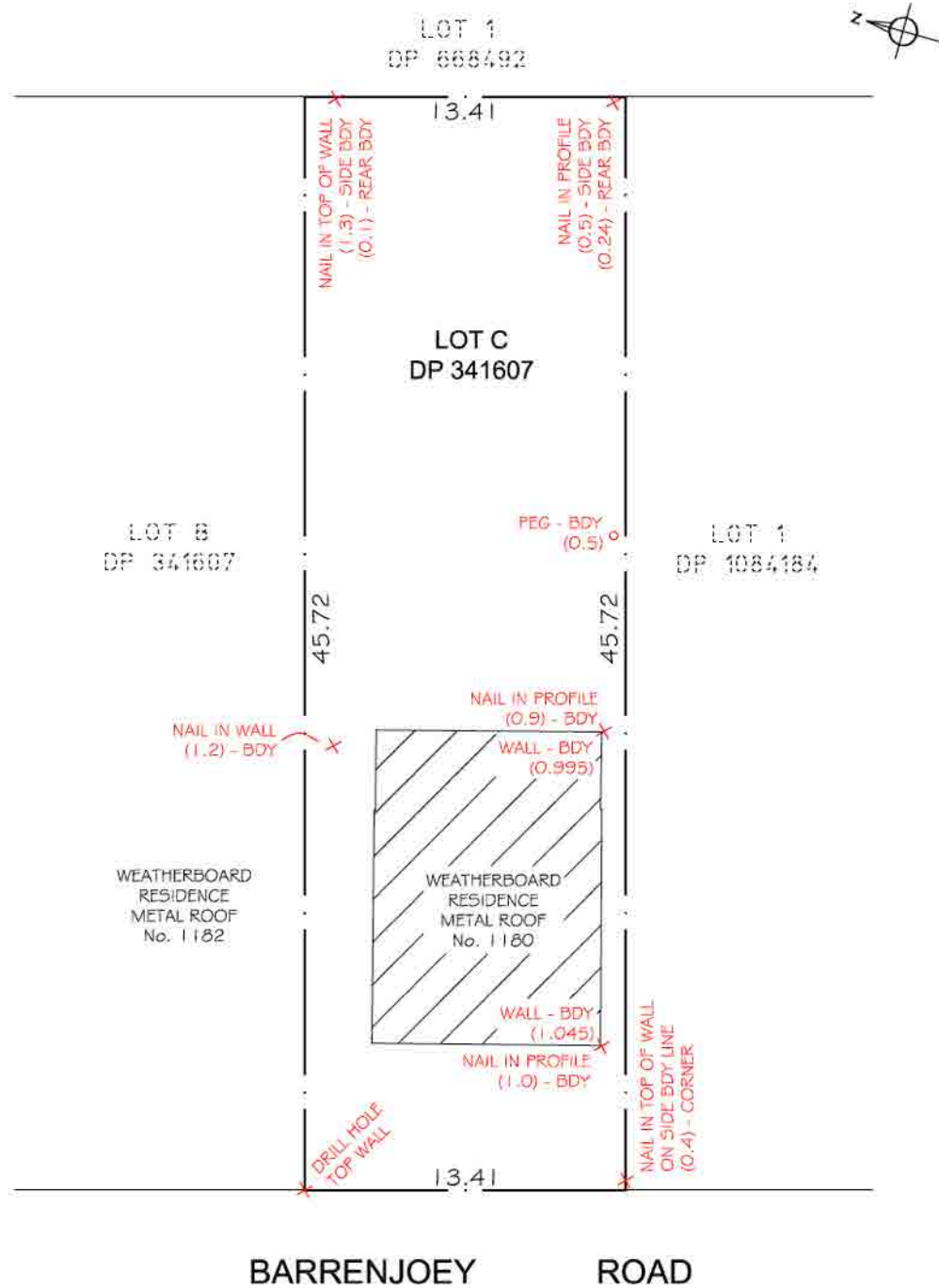
is approximately 45.72m while the southern boundary (common) is approximately 45.72m. The site has a total area of 613.2m².



Aerial photograph Source: RPData 2021

The site slopes across the Barrenjoey Road frontage approximately 1.65m from south (RL6.80) to north (RL5.15) with a change in level of approximately 1m across the length of the site.

This portion of Barrenjoey Road generally runs north-south in the vicinity of the site with a sharp bend to the west generally following the contours and provides the lot with a northern orientation and views to Pittwater.



Extract ESA Survey 2021



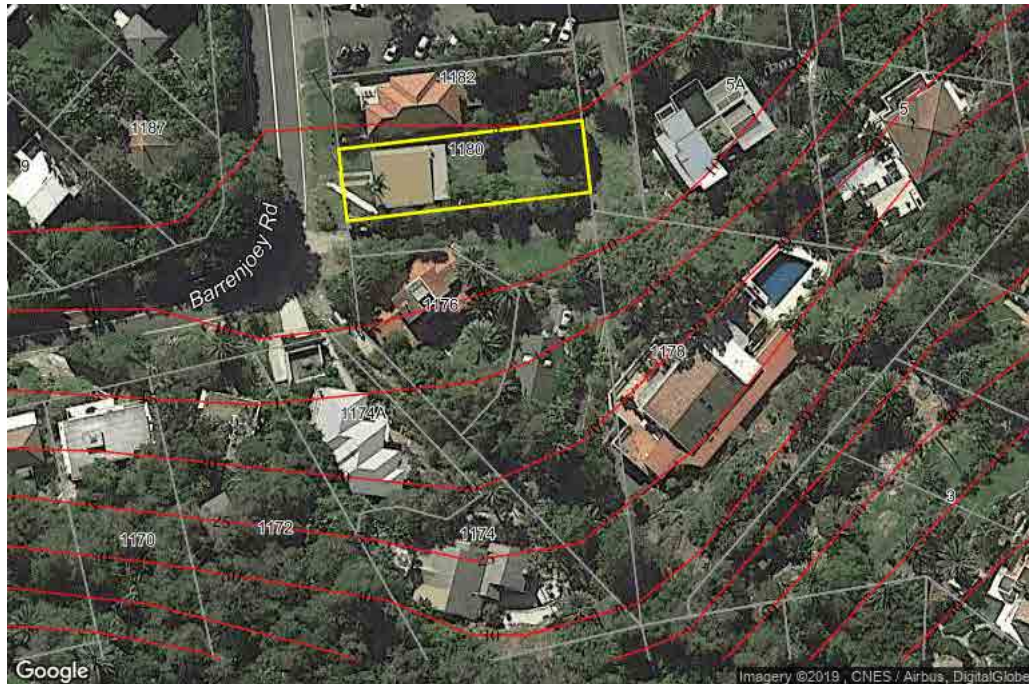
Aerial photograph with 5m contour overlay

Source: RPData 2021



Aerial photograph with 5m contour overlay

Source: RPData 2021

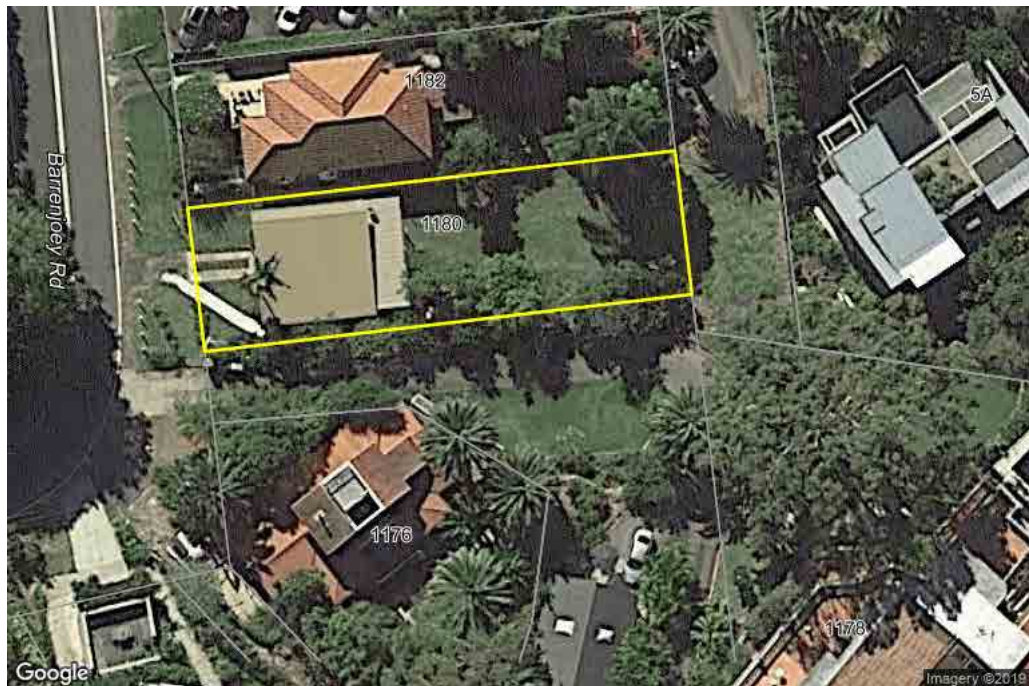


Aerial photograph with 5m contour overlay

Source: RPData 2021

The subject site is centrally located at the foot of the slope with a complex subdivision pattern of dwellings accessed from Barrenjoey Road but located upslope to maximize views. Dwellings are orientated on a curved radius to enjoy expansive views across their front and side boundaries of the Pittwater, the golf course, the beach, headland and ocean beyond. The properties on the east and southern side of Barrenjoey Road are orientated over the dwellings to the view to the west through north-east but are generally set at a significantly higher level.

Views from the sites immediately to the south, east and south-west are mostly obscured by the dense boundary planting and benefit from the topographical changes.



Site Planting and Canopy

Source: RPData 2021

The subject site accommodates a two level dwelling located on the western portion of the land. Most of the site comprises sloping lawns with trees and shrubs on the periphery of the site.

The existing dwelling is accommodated on a brick plinth which is excavated into the site to provide a garage and storage/workshop on the lower level. A weatherboard single dwelling is located at ground level of the southern portion of the site but raised almost a full storey by the slope of the land to the north.



View north along Barrenjoey of the subject site.



View south along Barrenjoey towards the subject site.



Interface with the northern boundary.



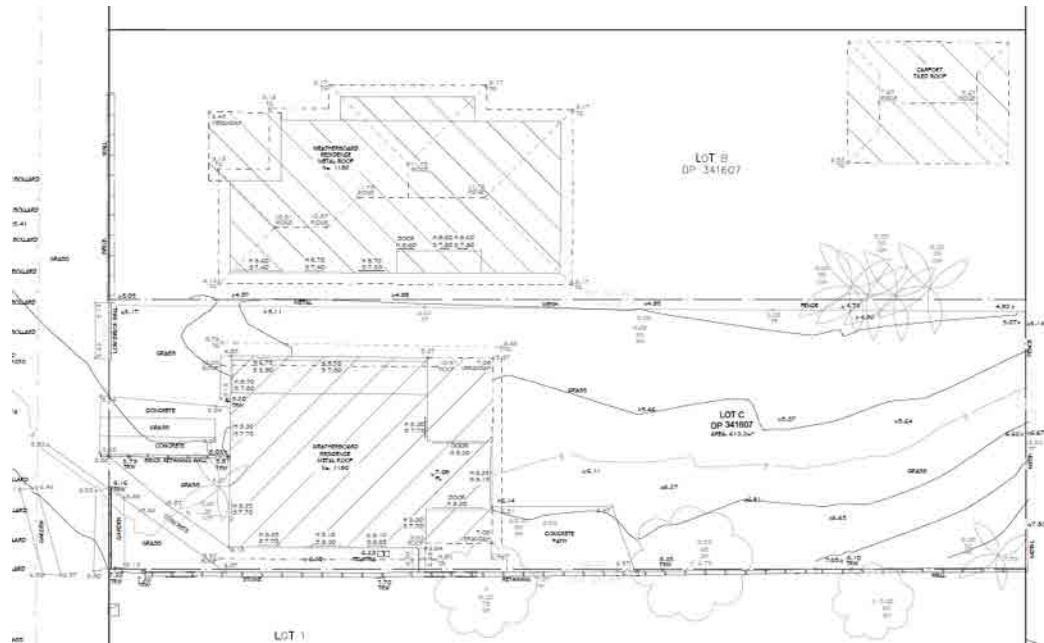
Interface with the southern boundary.

1182 Barrenjoey Road



Source: RPData 2021

The dwelling adjoining the subject site to the north is known as 1182 Barrenjoey Road. It is located to on the western portion of the site and is oriented north to take advantage of the outlook over the adjoining golf club car park and provides private open space to the rear. The dwelling is two storey with a pitched roof and provides separate garaging at the rear of the site accessed by a northern driveway.



Extract Eric Scerri Survey 2016



1182 Barrenjoey Road

Source: RPData 2021



View to the south of 1182 Barrenjoey Road oriented north over the adjoining golf club car park.



1182 Barrenjoey Road frontage



Rear of 1182 Barrenjoey Road view from northern frontage

The front and rear garden of the site is quite visible from the street, adjoining car park and surrounding properties. Substantial boundary planting separates this site and the subject site along the common boundary. The dwelling on 70 Barrenjoey Road is setback approximately 6.5m from the street and 1.2m from the common boundary.

1187 Barrenjoey Road and 3 – 9 Waratah Road



Source: RPData 2021

The dwellings adjacent the subject site to the west across Barrenjoey Road are generally oriented to Waratah Street and heavily screened with landscaping and take advantage of the level change between the properties to have very low levels of interaction with the subject site.

These properties also choose to have very little presence in the streetscape to Barrenjoey Road as can be seen from the aerial photograph detail below.



Barrenjoey Road detail
Source: RPData 2021

1178 Barrenjoey Road



Source: RPData 2021

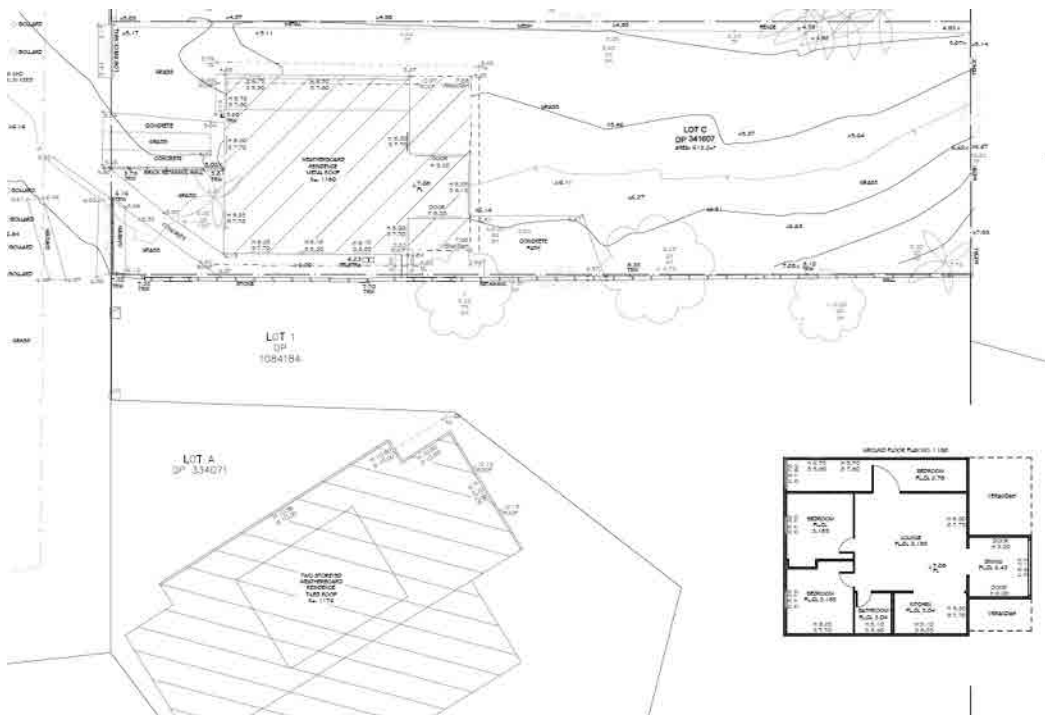
The dwelling adjoining the subject site to the south and south-east is substantial dwelling on 2,824m² and is known as 1182 Barrenjoey Road. The dwelling is located on the eastern portion of the site and is generally located 10 – 15 m higher than the subject site and oriented to the north-west towards the Pittwater views.

The common boundary with the subject site accommodates the driveway access and is heavily planted with screen planting. The dwelling and structures on the site are located between 25 – 30m from the common boundary as can be seen from the aerial photograph below.



Aerial photograph with 5m contour overlay

Source: RPData 2021



Extract Eric Scerri Survey 2016



View of the common boundary and extensive screen planting.



View east along the driveway entry of 1178 Barrenjoey Road.



1178 Barrenjoey Road Separation Distances

Source: RPData 2021

1176 Barrenjoey Road



Source: RPData 2021

The dwelling two to the south of the subject site is known as 1176 Barrenjoey Road. The dwelling is located on the western portion of the site and oriented to the north-west to the bend in Barrenjoey Road and towards the Pittwater views.

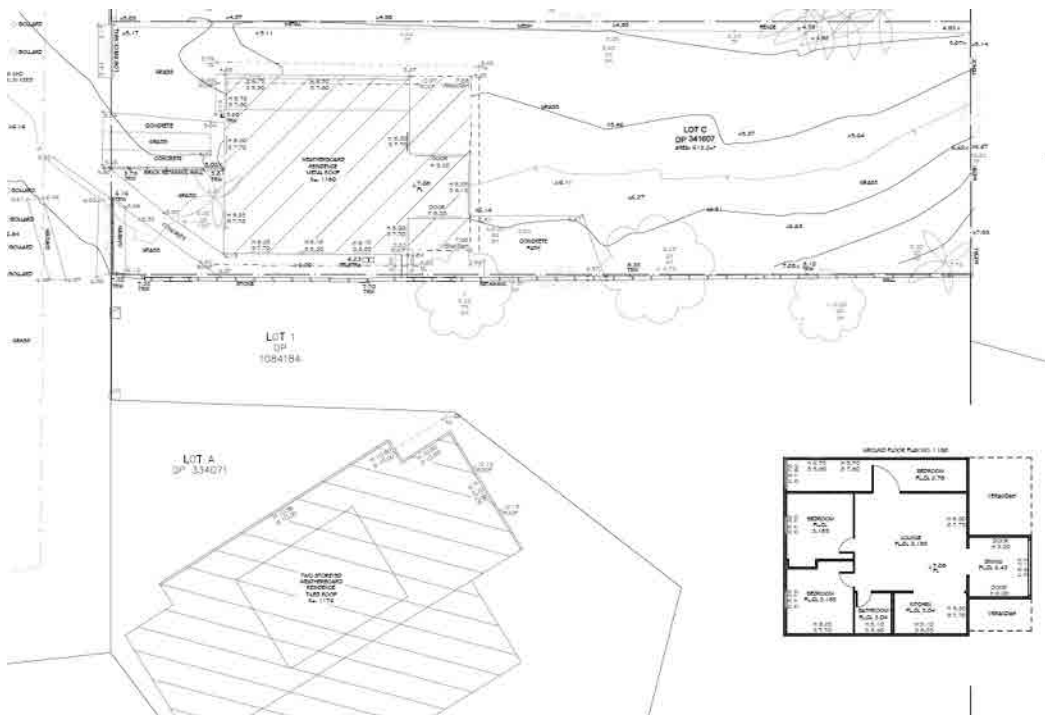
The dwelling is separated from the subject site by the driveway access of 1178 Barrenjoey Road and the heavy boundary screen planting. The dwelling on 1176 Barrenjoey has a similar planted boundary condition and is located between 6-8m from the subject site and at a level approximately 5m higher as can be seen from the aerial photograph below.

The dwelling has an upper level balcony which is oriented north-east over the subject site towards the golf course and Pittwater beyond. An image is included below.



Aerial photograph with 5m contour overlay

Source: RPData 2021



Extract Eric Scerri Survey 2016



View of the common boundary and extensive screen planting.



View south-east of 1176 Barrenjoey Road.



1176 Barrenjoey Road Separation Distances

Source: RPData 2021



1176 Barrenjoey Road Upper Level Balcony

Source: RPData 2021

1174A Barrenjoey Road



Source: RPData 2021

The dwelling two to the south-west of the subject site is known as 1174A Barrenjoey Road. The dwelling is located centrally on the site and oriented to the north-west towards the Pittwater views.

The dwelling is separated from the subject site by 35-40m and at a level approximately 15m higher as can be seen from the aerial photograph below.

The dwelling has an upper level balcony and living areas which are oriented north and north-east over the subject site towards the golf course and Pittwater beyond. An image is included below.



Aerial photograph with 5m contour overlay

Source: RPData 2021



View of 1174A Barrenjoey Road and extensive screen planting between the properties.



View south-east of 1174A Barrenjoey Road.



1174A Barrenjoey Road Upper Level Balcony
Source: RPData 2021



1174A Barrenjoey Road Upper Level Balcony

Source RPData 2019

3.0 Approved Development

A development application DA No: 379/16 was granted consent by Northern Beaches Council on 1 February 2017 for alterations and additions to the existing dwelling. The application provided a single storey addition to the rear of the existing dwelling containing a sitting room, dining, kitchen and living room with a covered outdoor dining area and northern deck.

A subsequent S4.55 Mod2018/0272 arising from design development which included a timber fence on the northern boundary and a retaining wall 1m setback from the boundary to reduce the slope on the garden was approved by Northern Beaches Council on 22 August 2018.

The construction works have commenced on site.

4.0 Proposed Amendments

Further design development has resulted in an amendment to reduce the extent of the addition and reconfigure the new living space.

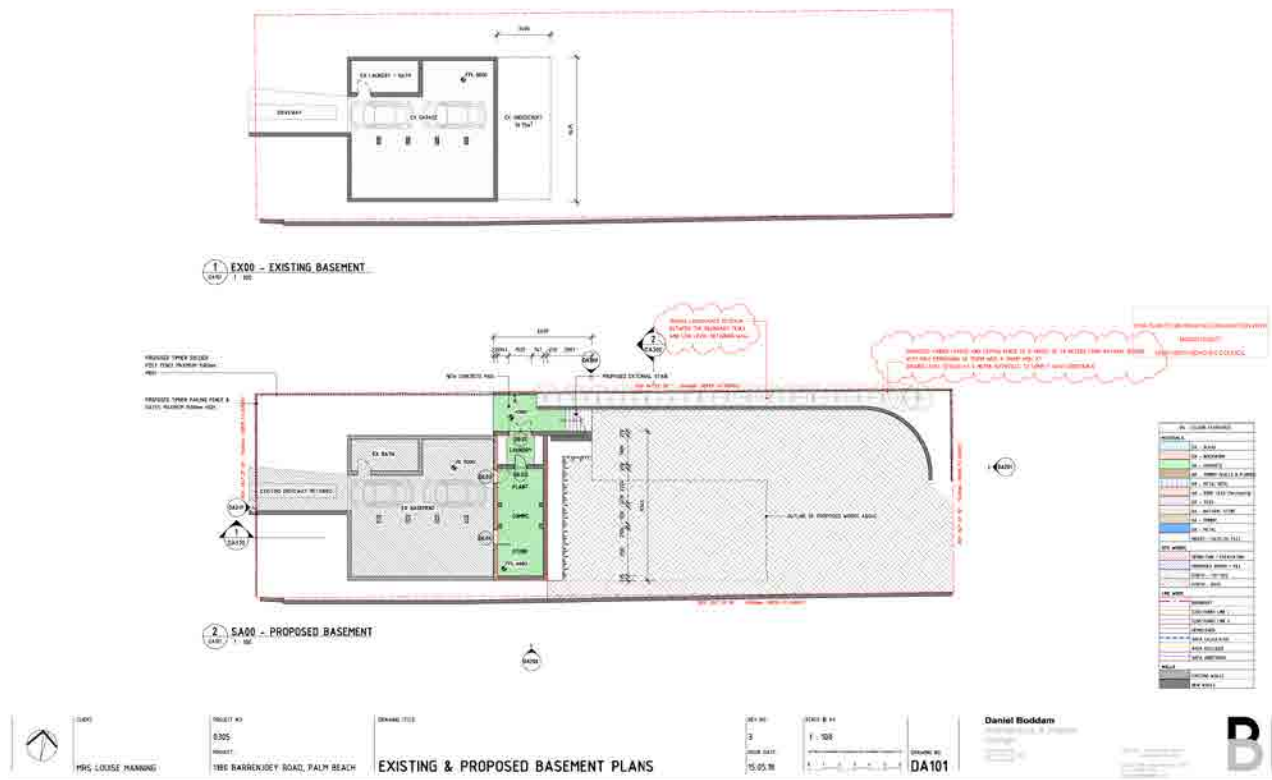
Consequently, the proposed amendment comprises:

1. Delete approved 'outdoor dining' - reduce floor slab and roof over by 25m²;
2. Extend approved pavilion over footprint of pre-existing lean-to structure (12m²);
3. Internal reconfiguration & raising of finished floor level by 185mm;
4. Increased tread depth of approved stair;
5. Steel balustrade planter with privacy screen planting;
6. Revised material palette;
7. Change material (steel) to approved timber fence.

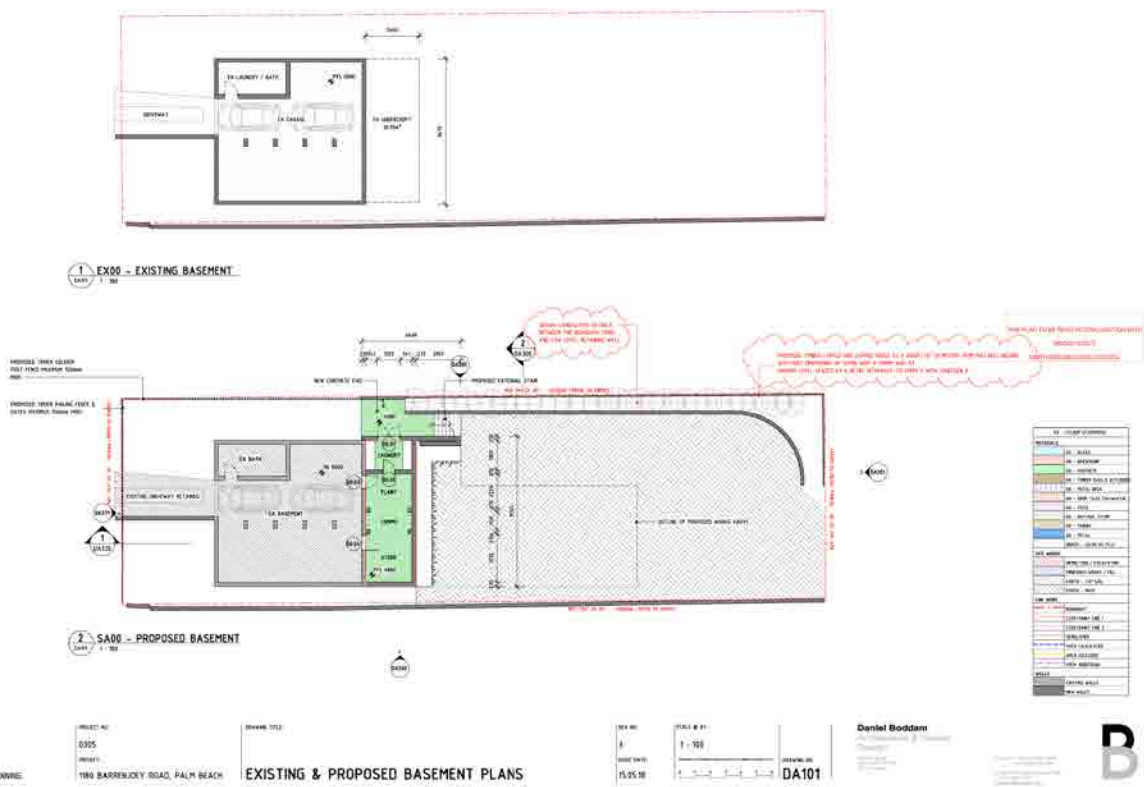
The amended proposal generally retains the envelope, layout and orientation of the approved development application DA No: 379/16.

Detail Description

Basement Level



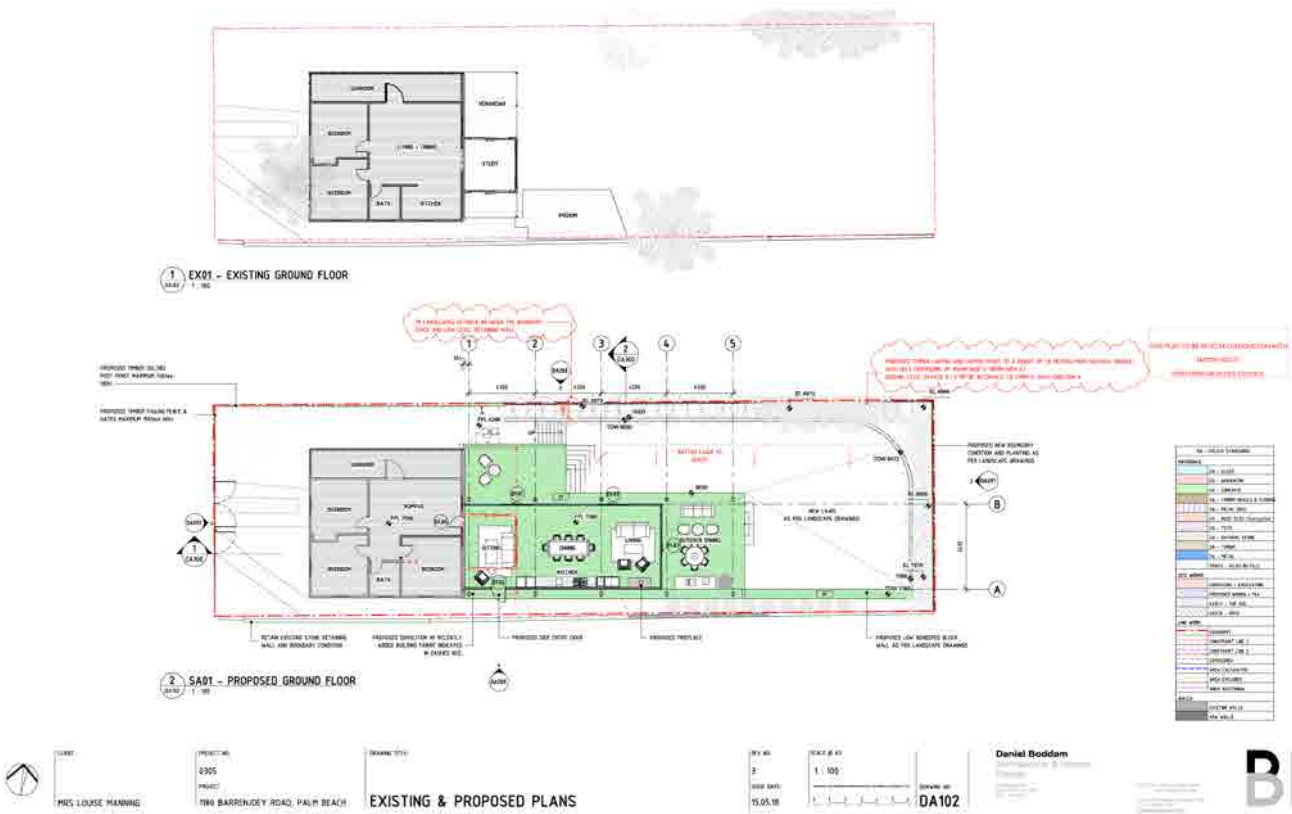
Approved S4.55 Basement Level Plan



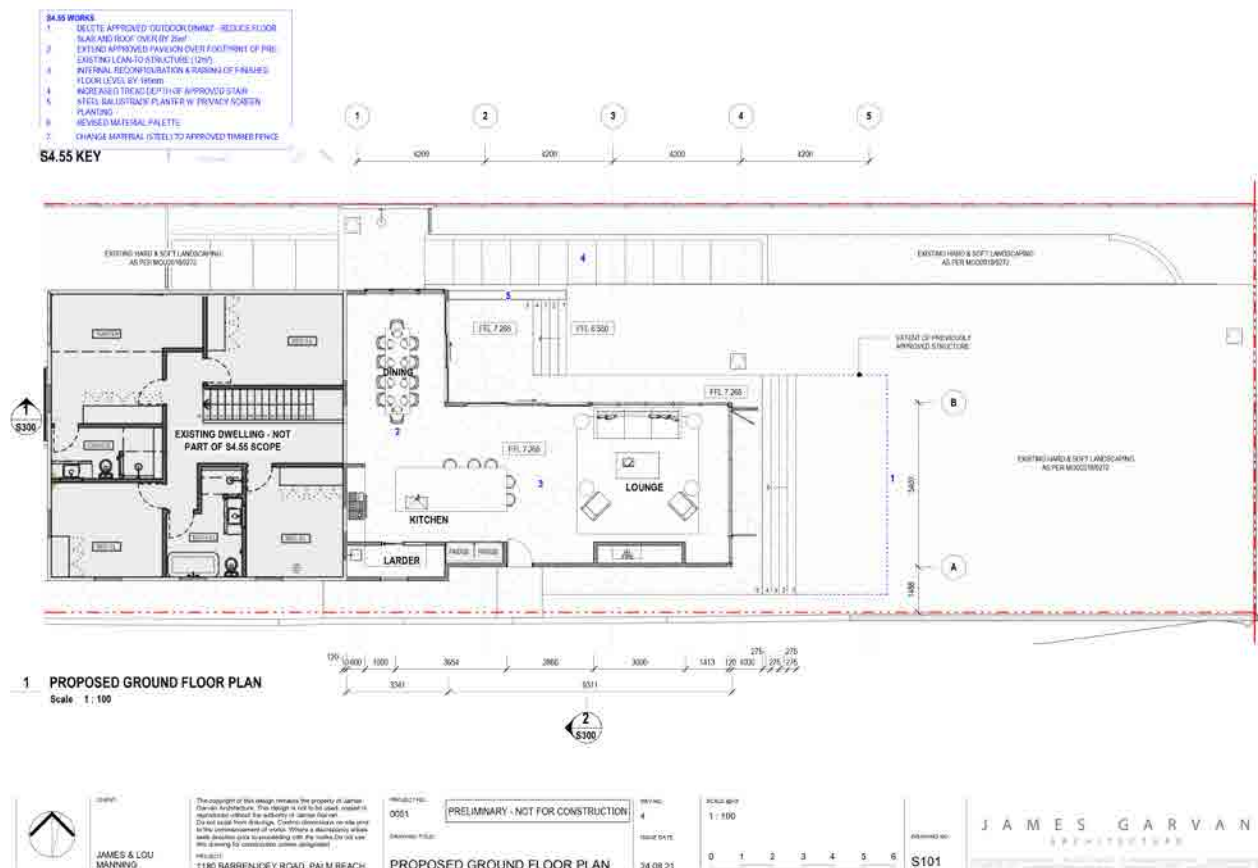
Proposed S4.55 Basement Level Plan

- No change;

Ground Level Plan



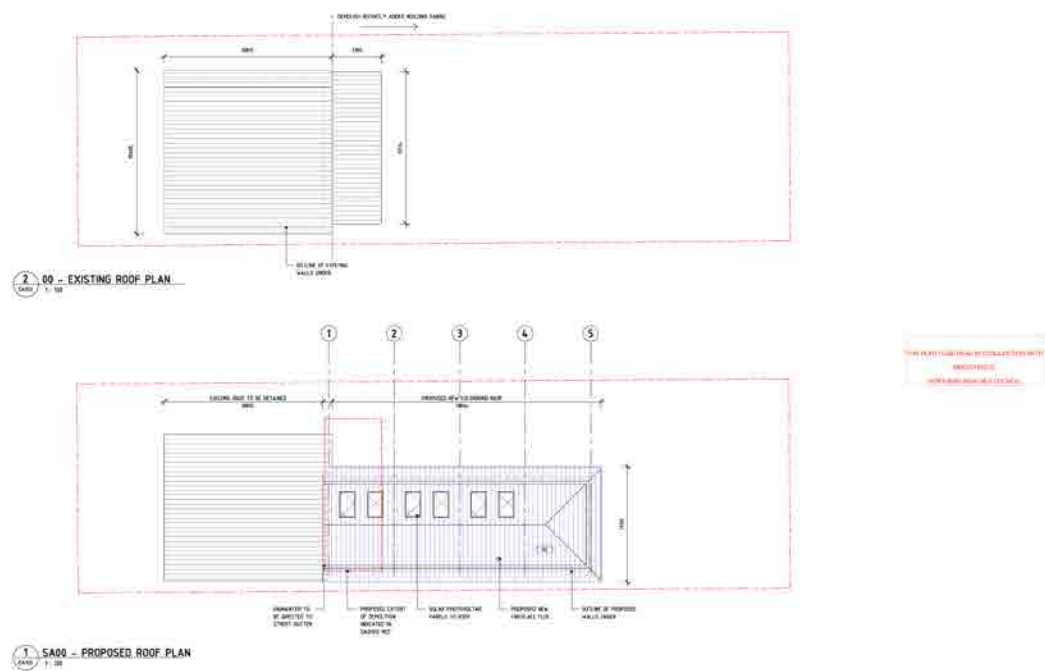
Approved S4.55 Ground Level Plan



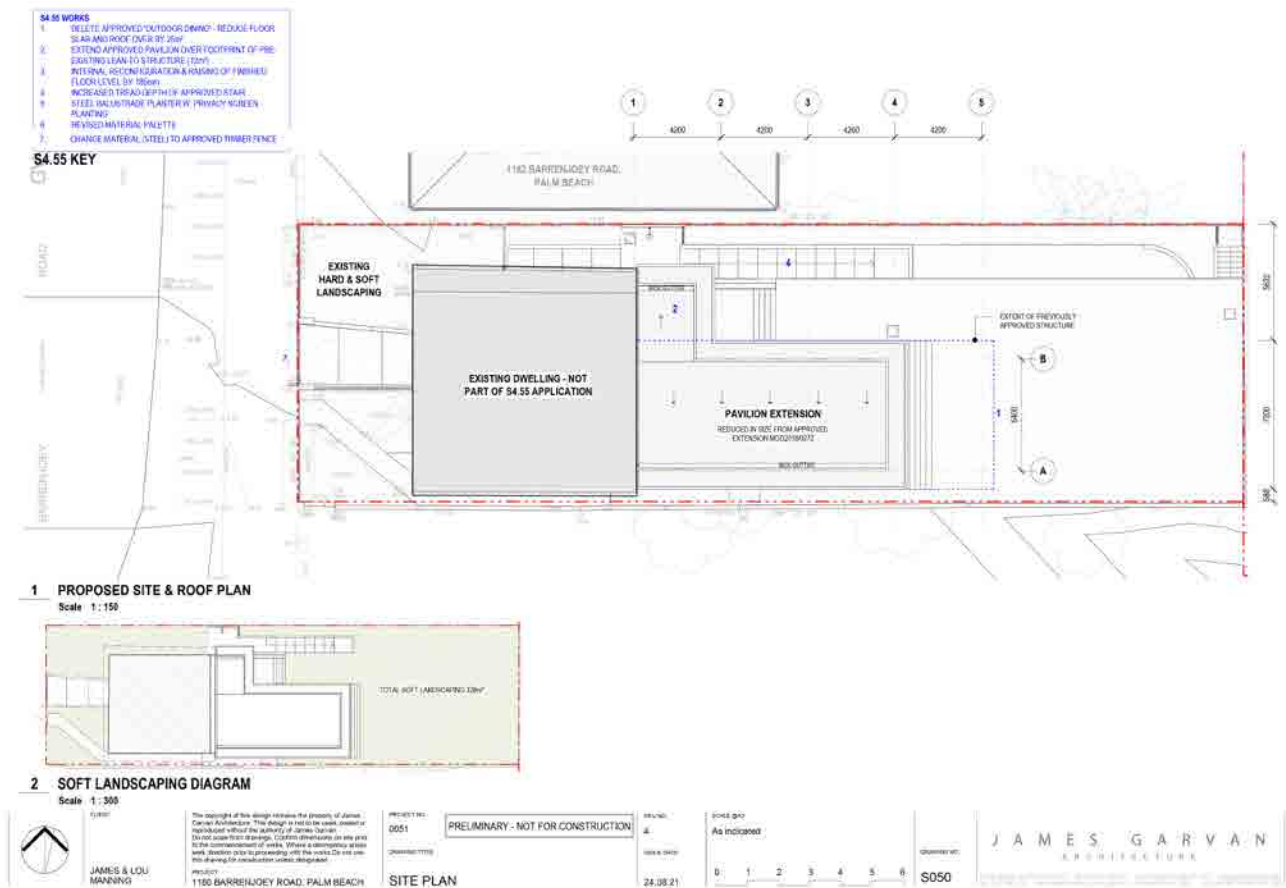
Proposed S4.55 Ground Level Plan

1. Delete approved 'outdoor dining' - reduce floor slab and roof over by 25m²;
2. Extend approved pavilion over footprint of pre-existing lean-to structure (12m²);
3. Internal reconfiguration & raising of finished floor level by 185mm;
4. Increased tread depth of approved stair;
5. Steel balustrade planter with privacy screen planting;
6. Revised material palette.

Roof Plan



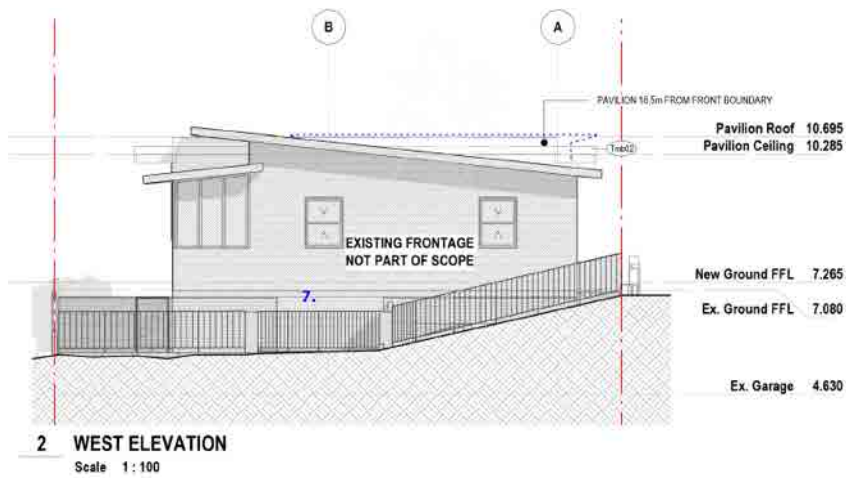
Approved S4.55 Roof Plan



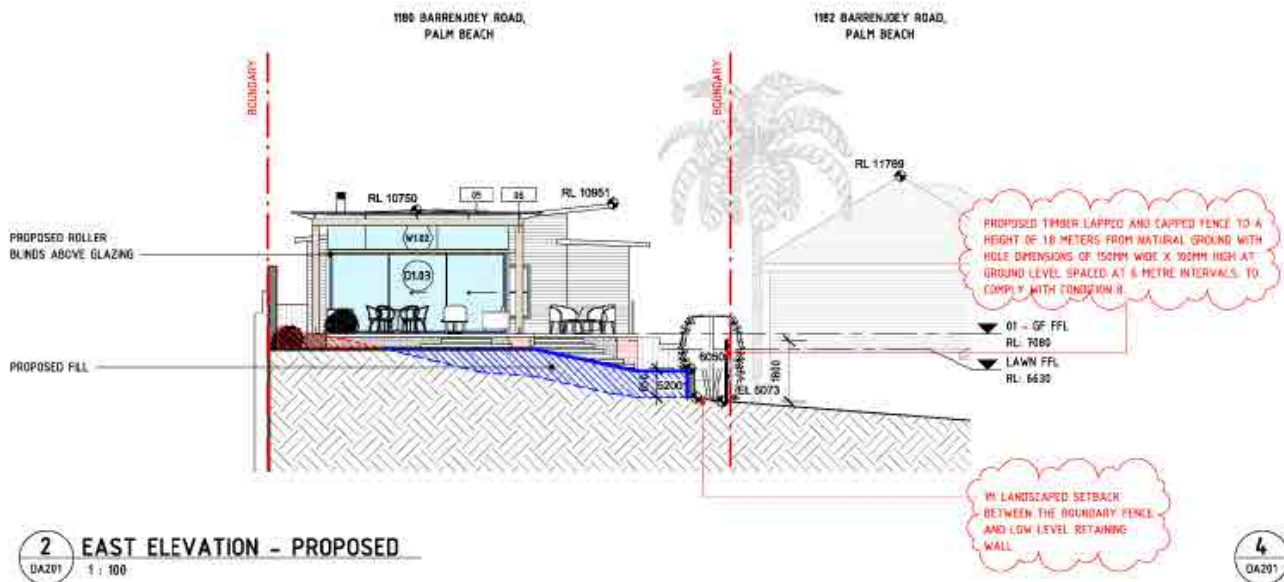
Proposed S4.55 Roof Plan



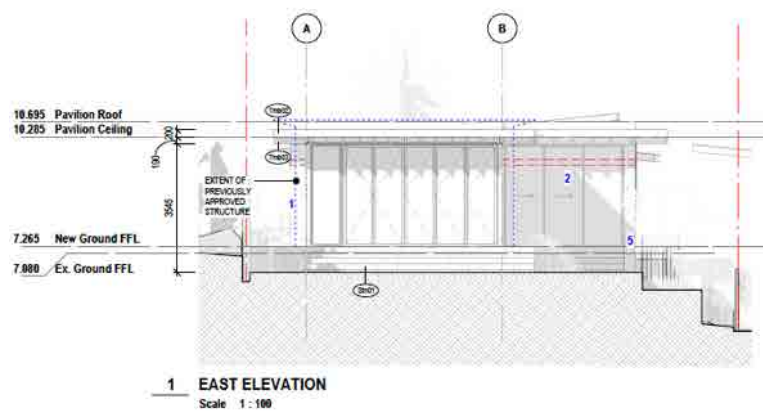
Approved S4.55 West Elevation (Barrenjoey Road)



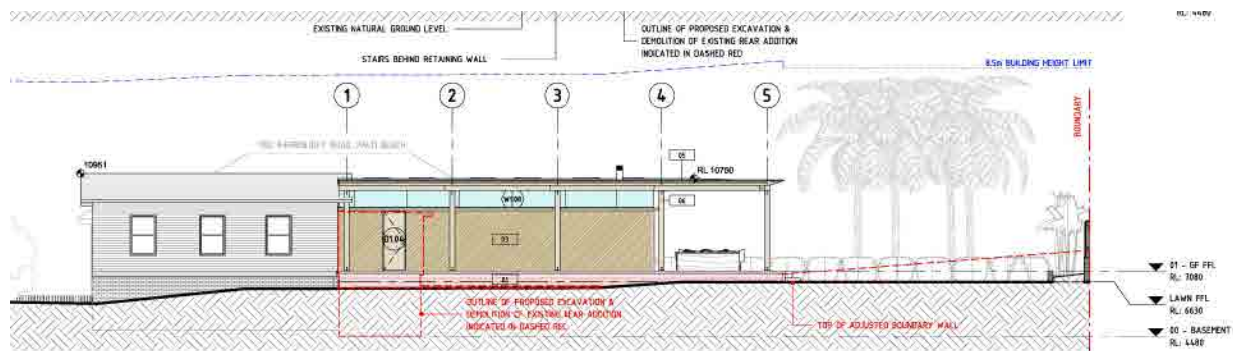
Proposed S4.55 West Elevation (Barrenjoey Road)



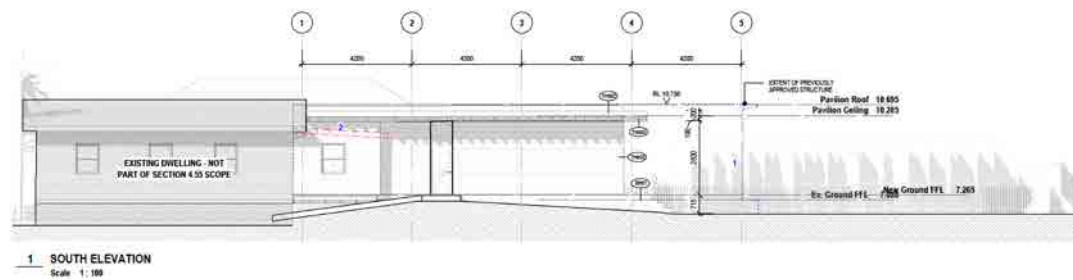
Approved S4.55 East Elevation



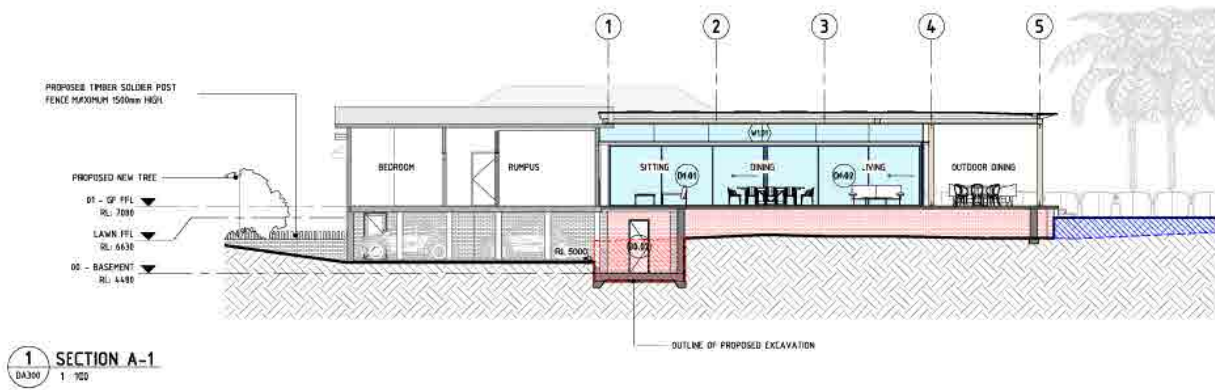
Proposed S4.55 East Elevation



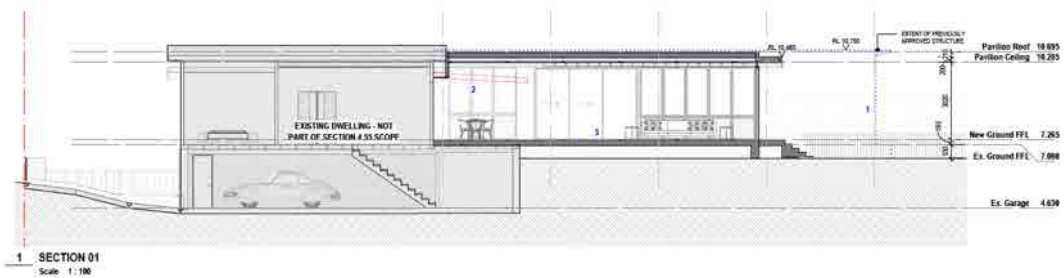
Approved S4.55 South Elevation



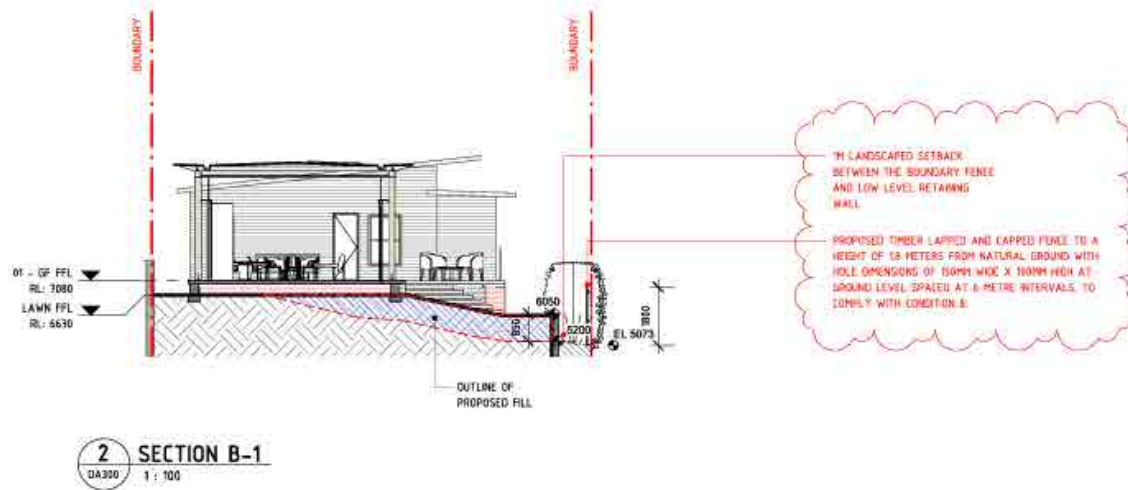
Proposed S4.55 South Elevation



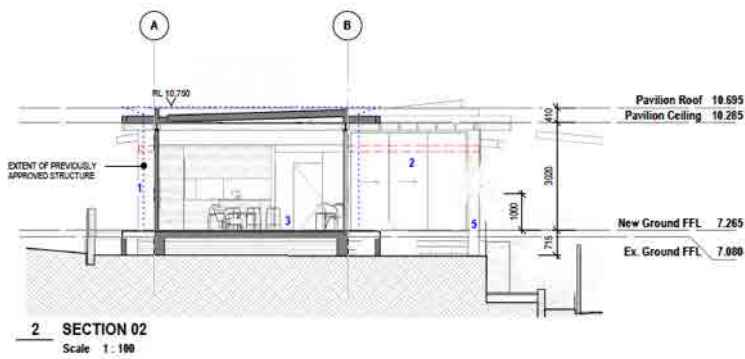
Approved S4.55 Section A-1



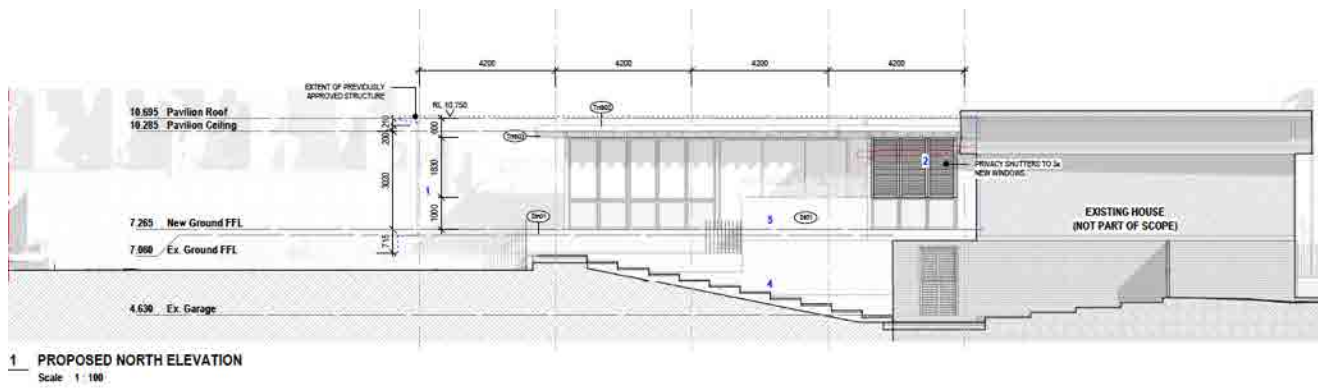
Proposed S4.55 Section A-1



Approved S4.55 Section B-1



Proposed S4.55 Section B-1



ST-01 NATURAL STONE PAVING

Test 82



Timber
EXPOSED HARDWOOD RAFTERS
CLASIFICACION



S491
CORTEN STEEL PLANTER BOX

MATERIAL SCHEDULE

5.0 Planning Controls

The proposed development has been assessed against the relevant requirements and guidelines set by Pittwater Council. These are contained within the:

- SEPP 55 – Remediation of Land
- SEPP (BASIX) 2004
- Pittwater Council Local Environmental Plan (LEP) 2014
- Pittwater Development Control Plan No.21

4.1 SEPP 55 – Remediation of Land

Clause 7 (1) (A) of SEPP 55 requires Council to consider whether the land is contaminated. Notwithstanding that site investigations have not been carried out, the current and previous use of this site and surrounding sites for residential uses would make the possibility of contamination unlikely.

4.2 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

An amended BASIX Assessment is submitted with the DA and confirms that the proposal is committed to environmental sustainability measures.

4.3 Pittwater Local Environmental Plan 2014

The land is zoned Residential E4 Environmental Living. The specific objectives of the zone are:

1 Objectives of zone

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*

-
- *To provide for residential development of a low density and scale integrated with the landform and landscape.*
 - *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

2 Permitted without consent

Home businesses; Home occupations

3 Permitted with consent

Bed and breakfast accommodation; Boat sheds; Building identification signs; Business identification signs; Child care centres; Community facilities; Dwelling houses; Environmental protection works; Group homes; Health consulting rooms; Home-based child care; Home industries; Jetties; Places of public worship; Respite day care centres; Roads; Secondary dwellings; Water recreation structures

4 Prohibited

Industries; Service stations; Warehouse or distribution centres; Any other development not specified in item 2 or 3

The proposed development is permissible as the construction of a new dwelling. The proposed development complies with the objectives providing for residential development of a low density and scale integrated with the landform and landscape.

The proposal is assessed under the relevant clauses of this LEP in the table below.

TABLE 1: Compliance with Pittwater LEP 2014

| |
|---|
| <p>4.3 Height of buildings</p> <p>1. (1) The objectives of this clause are as follows:</p> <ol style="list-style-type: none"> 1. (a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality, 2. (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development, |
|---|

| | |
|----------|---|
| | <ol style="list-style-type: none"> 3. (c) to minimise any overshadowing of neighbouring properties, 4. (d) to allow for the reasonable sharing of views, 5. (e) to encourage buildings that are designed to respond sensitively to the natural topography, 6. (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items. |
| | <ol style="list-style-type: none"> 2. (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. |
| | <ol style="list-style-type: none"> 1. (2A) Despite subclause (2), development on land: <ol style="list-style-type: none"> 1. (a) at or below the flood planning level or identified as “Coastal Erosion/Wave Inundation” on the Coastal Risk Planning Map, and 2. (b) that has a maximum building height of 8.5 metres shown for that land on the Height of Buildings Map, may exceed a height of 8.5 metres, but not be more than 8.0 metres above the flood planning level. 2. (2B) Despite subclause (2), development on land: <ol style="list-style-type: none"> 1. (a) at or below the flood planning level or identified as “Coastal Erosion/Wave Inundation” on the Coastal Risk Planning Map, and 2. (b) that has a maximum building height of 11 metres shown for that land on the Height of Buildings Map, may exceed a height of 11 metres, but not be more than 10.5 metres above the flood planning level. 3. (2C) Despite subclause (2), development on an area of land shown in Column 1 of the table to this subclause and identified as such on the Height of Buildings Map, may exceed the maximum building height shown on the Height of Buildings Map for that land, if the height of the development is not greater than the height shown opposite that area in Column 2. |
| Column 1 | Column 2 |

| Area | Maximum height above the flood planning level |
|---|---|
| Area 1 | 11.5m |
| Area 2 | 8.5 metres on the street frontage and 10.5 metres at the rear |
| Area 3 | 11.5 metres |
| Area 4 | 8.5 metres 7.0 metres |
| <p>4. (2D) Despite subclause (2), development on land that has a maximum building height of 8.5 metres shown for that land on the Height of Buildings Map may exceed a height of 8.5 metres, but not be more than 10.0 metres if:</p> <ol style="list-style-type: none"> 1. (a) the consent authority is satisfied that the portion of the building above the maximum height shown for that land on the Height of Buildings Map is minor, and 2. (b) the objectives of this clause are achieved, and 3. (c) the building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%), and 4. (d) the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope. <p>5. (2E) Despite subclause (2), development for the purposes of shop top housing on land identified as “Area 5” on the Height of Buildings Map may have a height of up to 10 metres if the top floor of the building is setback a minimum of 6 metres from the boundary to the primary street frontage.</p> <p>6. (2F) Despite subclause (2), development on land identified as “Area 6” on the Height of Buildings Map must not exceed 8.5 metres at the street frontage.</p> <p>7. (2G) In this clause:</p> <p>flood planning level means the level of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metres freeboard, or</p> | |

| | |
|---|--|
| <p>other freeboard determined by an adopted floodplain risk management plan.</p> <p>floodplain risk management plan has the same meaning as it has in the Floodplain Development Manual (ISBN 0 7347 5476 0), published in 2005 by the NSW Government.</p> <p>8.5m</p> | |
| The proposal complies with the 8.5m height control with a maximum height of 6.4m. | |
| <p>4.4 Floor space ratio</p> <p>(1) The objectives of this clause are as follows:</p> <p>(a) to ensure that buildings, by virtue of their bulk and scale, are consistent with the desired character of the locality,</p> <p>(b) to minimise adverse environmental effects on the use and enjoyment of adjoining properties and the public domain,</p> <p>(c) to minimise any overshadowing and loss of privacy to neighbouring properties and to reduce the visual impact of any development,</p> <p>(d) to maximise solar access and amenity for public places,</p> <p>(e) to minimise the adverse impact of development on the natural environment, heritage conservation areas and heritage items,</p> <p>(f) to manage the visual impact of development when viewed from public places, including waterways,</p> <p>(g) to allow for the reasonable sharing of views.</p> <p>(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the <u>Floor Space Ratio</u></p> | |
| No floor space ratio applies. | |
| <p>5.9 Preservation of trees or vegetation</p> <p>(1) The objective of this clause is to preserve the amenity of the area, including biodiversity values, through the preservation of trees and other vegetation.</p> <p>(2) This clause applies to species or kinds of trees or other vegetation that are prescribed for the purposes of this clause by a development</p> | |

control plan made by the Council.

Note. A development control plan may prescribe the trees or other vegetation to which this clause applies by reference to species, size, location or other manner.

(3) A person must not ringbark, cut down, top, lop, remove, injure or wilfully destroy any tree or other vegetation to which any such development control plan applies without the authority conferred by:

- (a) development consent, or
- (b) a permit granted by the Council.

(4) The refusal by the Council to grant a permit to a person who has duly applied for the grant of the permit is taken for the purposes of the Act to be a refusal by the Council to grant consent for the carrying out of the activity for which a permit was sought.

(5) This clause does not apply to a tree or other vegetation that the Council is satisfied is dying or dead and is not required as the habitat of native fauna.

(6) This clause does not apply to a tree or other vegetation that the Council is satisfied is a risk to human life or property.

(7) A permit under this clause cannot allow any ringbarking, cutting down, topping, lopping, removal, injuring or destruction of a tree or other vegetation:

- (a) that is or forms part of a heritage item or that is within a heritage conservation area, or
- (b) that is or forms part of an Aboriginal object or that is within an Aboriginal place of heritage significance,
unless the Council is satisfied that the proposed activity:
 - (c) is of a minor nature or is for the maintenance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or heritage conservation area, and
 - (d) would not adversely affect the heritage significance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or heritage conservation area.

Note. As a consequence of this subclause, the activities concerned will require development consent. The heritage provisions of clause 5.10 will be applicable to any such consent.

(8) This clause does not apply to or in respect of:

- (a) the clearing of native vegetation:

| | |
|--|--|
| <p>(i) that is authorised by a development consent or property vegetation plan under the <i>Native Vegetation Act 2003</i>, or</p> <p>(ii) that is otherwise permitted under Division 2 or 3 of Part 3 of that Act, or</p> <p>(b) the clearing of vegetation on State protected land (within the meaning of clause 4 of Schedule 3 to the <i>Native Vegetation Act 2003</i>) that is authorised by a development consent under the provisions of the <i>Native Vegetation Conservation Act 1997</i> as continued in force by that clause, or</p> <p>(c) trees or other vegetation within a State forest, or land reserved from sale as a timber or forest reserve under the <i>Forestry Act 1916</i>, or</p> <p>(d) action required or authorised to be done by or under the <i>Electricity Supply Act 1995</i>, the <i>Roads Act 1993</i> or the <i>Surveying and Spatial Information Act 2002</i>, or</p> <p>(e) plants declared to be noxious weeds under the <i>Noxious Weeds Act 1993</i>.</p> <p>Note. Permissibility may be a matter that is determined by or under any of these Acts.</p> <p>(9) [Not adopted]</p> | <p>The proposal does not require the removal of any significant trees and is compliant with the provisions of this clause.</p> |
| <p>5.10 Heritage conservation</p> <p>Note. Heritage items (if any) are listed and described in Schedule 5. Heritage conservation areas (if any) are shown on the <u>Heritage Map</u> as well as being described in Schedule 5.</p> <p>(1) Objectives</p> <p>The objectives of this clause are as follows:</p> <ul style="list-style-type: none"> (a) to conserve the environmental heritage of Waverley, (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views, (c) to conserve archaeological sites, | |

(d) to conserve Aboriginal objects and Aboriginal places of heritage significance.

(2) Requirement for consent

Development consent is required for any of the following:

(a) demolishing or moving any of the following or altering the exterior of any of the following (including, in the case of a building, making changes to its detail, fabric, finish or appearance):

- (i) a heritage item,
- (ii) an Aboriginal object,
- (iii) a building, work, relic or tree within a heritage conservation area,

(b) altering a heritage item that is a building by making structural changes to its interior or by making changes to anything inside the item that is specified in Schedule 5 in relation to the item,

(c) disturbing or excavating an archaeological site while knowing, or having reasonable cause to suspect, that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed,

(d) disturbing or excavating an Aboriginal place of heritage significance,

(e) erecting a building on land:

- (i) on which a heritage item is located or that is within a heritage conservation area, or
- (ii) on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance,

(f) subdividing land:

- (i) on which a heritage item is located or that is within a heritage conservation area, or
- (ii) on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance.

(3) When consent not required

However, development consent under this clause is not required if:

(a) the applicant has notified the consent authority of the proposed development and the consent authority has advised the applicant in writing before any work is carried out that it is

satisfied that the proposed development:

- (i) is of a minor nature or is for the maintenance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or archaeological site or a building, work, relic, tree or place within the heritage conservation area, and
- (ii) would not adversely affect the heritage significance of the heritage item, Aboriginal object, Aboriginal place, archaeological site or heritage conservation area, or
- (b) the development is in a cemetery or burial ground and the proposed development:
 - (i) is the creation of a new grave or monument, or excavation or disturbance of land for the purpose of conserving or repairing monuments or grave markers, and
 - (ii) would not cause disturbance to human remains, relics, Aboriginal objects in the form of grave goods, or to an Aboriginal place of heritage significance, or
- (c) the development is limited to the removal of a tree or other vegetation that the Council is satisfied is a risk to human life or property, or
- (d) the development is exempt development.

(4) Effect of proposed development on heritage significance

The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned. This subclause applies regardless of whether a heritage management document is prepared under subclause (5) or a heritage conservation management plan is submitted under subclause (6).

(5) Heritage assessment

The consent authority may, before granting consent to any development:

- (a) on land on which a heritage item is located, or
- (b) on land that is within a heritage conservation area, or
- (c) on land that is within the vicinity of land referred to in paragraph (a) or (b), require a heritage management document to be prepared that assesses the extent to which the carrying out

of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.

(6) Heritage conservation management plans

The consent authority may require, after considering the heritage significance of a heritage item and the extent of change proposed to it, the submission of a heritage conservation management plan before granting consent under this clause.

(7) Archaeological sites

The consent authority must, before granting consent under this clause to the carrying out of development on an archaeological site (other than land listed on the State Heritage Register or to which an interim heritage order under the *Heritage Act 1977* applies):

- (a) notify the Heritage Council of its intention to grant consent, and
- (b) take into consideration any response received from the Heritage Council within 28 days after the notice is sent.

(8) Aboriginal places of heritage significance

The consent authority must, before granting consent under this clause to the carrying out of development in an Aboriginal place of heritage significance:

- (a) consider the effect of the proposed development on the heritage significance of the place and any Aboriginal object known or reasonably likely to be located at the place by means of an adequate investigation and assessment (which may involve consideration of a heritage impact statement), and
- (b) notify the local Aboriginal communities, in writing or in such other manner as may be appropriate, about the application and take into consideration any response received within 28 days after the notice is sent.

(9) Demolition of nominated State heritage items

The consent authority must, before granting consent under this clause for the demolition of a nominated State heritage item:

- (a) notify the Heritage Council about the application, and
- (b) take into consideration any response received from the Heritage Council within 28 days after the notice is sent.

(10) Conservation incentives

The consent authority may grant consent to development for any purpose of a building that is a heritage item or of the land on which such a building is erected, or for any purpose on an Aboriginal place of heritage significance, even though development for that purpose would otherwise not be allowed by this Plan, if the consent authority is satisfied that:

- (a) the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent, and
- (b) the proposed development is in accordance with a heritage management document that has been approved by the consent authority, and
- (c) the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out, and
- (d) the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance, and
- (e) the proposed development would not have any significant adverse effect on the amenity of the surrounding area.

The subject site is not identified as being located within a heritage conservation area and is not a heritage item.

7.1 Acid sulfate soils

(1) The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.

(2) Development consent is required for the carrying out of works described in the Table to this subclause on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

(3) Development consent must not be granted under this clause for the carrying out of works unless an acid sulfate soils management plan has been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority.

(4) Despite subclause (2), development consent is not required under this clause for the carrying out of works if:

| | |
|--|---|
| <p>(a) a preliminary assessment of the proposed works prepared in accordance with the Acid Sulfate Soils Manual indicates that an acid sulfate soils management plan is not required for the works, and</p> <p>(b) the preliminary assessment has been provided to the consent authority and the consent authority has confirmed the assessment by notice in writing to the person proposing to carry out the works.</p> <p>(5) Despite subclause (2), development consent is not required under this clause for the carrying out of any of the following works by a public authority (including ancillary work such as excavation, construction of access ways or the supply of power):</p> <p>(a) emergency work, being the repair or replacement of the works of the public authority, required to be carried out urgently because the works have been damaged, have ceased to function or pose a risk to the environment or to public health and safety,</p> <p>(b) routine maintenance work, being the periodic inspection, cleaning, repair or replacement of the works of the public authority (other than work that involves the disturbance of more than 1 tonne of soil),</p> <p>(c) minor work, being work that costs less than \$20,000 (other than drainage work).</p> <p>(6) Despite subclause (2), development consent is not required under this clause to carry out any works if:</p> <p>(a) the works involve the disturbance of less than 1 tonne of soil, and</p> <p>(b) the works are not likely to lower the watertable.</p> | <p>The subject site is as Class 5 Land on the ASS map. An Acid Sulfate Soils Management Plan is not required for the application.</p> |
| <p>7.3 Flood planning</p> <p>(1) The objectives of this clause are as follows:</p> <p>(a) to minimise the flood risk to life and property associated with the use of land,</p> <p>(b) to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a</p> | |

| | |
|---|--|
| <p>result of climate change,</p> <p>(c) to avoid significant adverse impacts on flood behaviour and the environment.</p> <p>(2) This clause applies to:</p> <p>(a) land identified as “Flood planning area” on the <u>Flood Planning Map</u>, and</p> <p>(b) other land at or below the flood planning level.</p> <p>(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:</p> <p>(a) is compatible with the flood hazard of the land, and</p> <p>(b) will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and</p> <p>(c) incorporates appropriate measures to manage risk to life from flood, and</p> <p>(d) will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and</p> <p>(e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.</p> <p>(4) A word or expression used in this clause has the same meaning as it has in the <i>Floodplain Development Manual</i> (ISBN 0 7347 5476 0) published by the NSW Government in April 2005, unless it is otherwise defined in this clause.</p> <p>(5) In this clause:</p> <p><i>land at or below the flood planning level</i> means land at or below the level of a 1:100 ARI (average recurrent interval) flood event plus 0.3 metre freeboard.</p> | <p>No change</p> <p>7.6 Biodiversity</p> <p>(1) The objective of this clause is to maintain terrestrial, riparian and aquatic biodiversity by:</p> <p>(a) protecting native fauna and flora, and</p> |
|---|--|

-
- (b) protecting the ecological processes necessary for their continued existence, and
 - (c) encouraging the conservation and recovery of native fauna and flora and their habitats.
 - (2) This clause applies to land identified as “Biodiversity” on the Biodiversity Map.
 - (3) Before determining a development application for development on land to which this clause applies, the consent authority must consider:
 - (a) whether the development is likely to have:
 - (i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and
 - (ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and
 - (iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and
 - (iv) any adverse impact on the habitat elements providing connectivity on the land, and
 - (b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.
 - (4) 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 any significant adverse environmental impact, or
 - (b) if that impact cannot be reasonably avoided by adopting feasible alternatives—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.

The site is identified on the Biodiversity Map.

The proposal is not considered to give rise to any adverse impact on the condition, ecological value and significance of the fauna and flora on the land given the extent of the land and vegetation corridor which is retained on the slopes of the site.

The conditions of the original approval relating to this provision remain in force.

7.5 Coastal risk planning

(1) The objectives of this clause are as follows:

- (a) to avoid significant adverse impacts from coastal hazards,
- (b) to ensure uses of land identified as coastal risk are compatible with the risks presented by coastal hazards,
- (c) to enable the evacuation of land identified as coastal risk in an emergency,
- (d) to avoid development that increases the severity of coastal hazards.

(2) This clause applies to land identified on the Coastal Risk Planning Map as:

- (a) Wave Inundation, or
- (b) Coastal Erosion/Wave Inundation, or
- (c) Bluff/Cliff Instability.

(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:

- (a) is not likely to cause detrimental increases in coastal risks to other development or properties, and
- (b) is not likely to alter coastal processes and the impacts of coastal hazards to the detriment of the environment, and
- (c) incorporates appropriate measures to manage risk to life from coastal risks, and
- (d) is likely to avoid or minimise adverse effects from the impact of coastal processes and the exposure to coastal hazards, particularly if the development is located seaward of the immediate hazard line, and
- (e) provides for the relocation, modification or removal of the development to adapt to the impact of coastal processes and coastal hazards, and
- (f) has regard to the impacts of sea level rise, and
- (g) will have an acceptable level of risk to both property and life, in relation to all identifiable coastline hazards.

(4) A word or expression used in this clause has the same meaning as it has in the *NSW Coastal Planning Guideline: Adapting to Sea Level Rise* (ISBN 978-1-74263-035-9) published by the NSW Government in August 2010, unless it is otherwise defined in this clause.

(5) In this clause:

coastal hazard has the same meaning as in the *Coastal Protection Act 1979*.

Not applicable to this application site.

7.7 Geotechnical hazards

(1) The objectives of this clause are to ensure that development on land susceptible to geotechnical hazards:

- (a) matches the underlying geotechnical conditions of the land, and
- (b) is restricted on unsuitable land, and
- (c) does not endanger life or property.

(2) This clause applies to land identified as “Geotechnical Hazard H1” and “Geotechnical Hazard H2” on the Geotechnical Hazard Map.

(3) Before determining a development application for development on land to which this clause applies, the consent authority must consider the following matters to decide whether or not the development takes into account all geotechnical risks:

- (a) site layout, including access,
- (b) the development’s design and construction methods,
- (c) the amount of cut and fill that will be required for the development,
- (d) waste water management, stormwater and drainage across the land,
- (e) the geotechnical constraints of the site,
- (f) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

(4) Development consent must not be granted to development on land to which this clause applies unless:

(a) the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and

(b) the consent authority is satisfied that:

- (i) the development is designed, sited and will be managed to avoid

| |
|---|
| any geotechnical risk or significant adverse impact on the development and the land surrounding the development, or (ii) if that risk or impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that risk or impact, or (iii) if that risk or impact cannot be minimised—the development will be managed to mitigate that risk or impact. |
|---|

| |
|-----------|
| No change |
|-----------|

It can be seen from the table that the proposal either complies with the relevant provisions of the LEP or the objectives of those provisions, where relevant.

4.5 Pittwater Development Control Plan 2014

Table 2: Compliance Under Pittwater Development Control Plan

A4.3 Palm Beach Locality

Desired Character

The Palm Beach locality will remain primarily a low-density residential area with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape. Secondary Dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations. Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport.

The three distinct areas within the Palm Beach locality (as identified in Palm Beach Locality Map 2) will, by their unique differences, require differing and distinct degrees of control to ensure the individual characteristics and essence of each area are maintained and enhanced:

The Palm Beach Beach Area:

Is a visual catchment that is environmentally significant and extremely susceptible to degradation. Its unique local and regional significance requires protection and preservation, and further investigation for listing as an environmental protection and/or conservation area. Strict development controls will apply to this area (including a reduced building height limit to 8m) to ensure that its unique qualities are preserved through development that is sensitive to the area's characteristics. A Visual Protection Area (as identified in Palm Beach Locality Map 3) contains particular controls to minimise the impact of development that is visible from public places. The beach, valley and headlands represent a quiet

uncrowded environment with no formal commercial activity. Its unique natural, unspoilt, non-commercial character makes it attractive to local residents and visitors alike and reflects the relaxed beach lifestyle. The local topography and natural features, notably the beachfront, headlands and stands of cabbage tree palms in the valley demand different sets of constraints on building design.

The site is located within the Palm Beach Area and the proposal has been designed in consideration of the scenic quality of the locality. The proposal ensures that its unique qualities are preserved through development that is sensitive to the area's characteristics in terms of siting, massing, choice of materials and plantings.

SECTION B GENERAL CONTROLS

B3.1 Landslip hazard

The development must not adversely affect or be adversely affected by geotechnical processes nor must it increase the level of risk for any people, assets and infrastructure in the vicinity due to geotechnical processes.

No change is proposed relevant to this provision.

B3.2 Bushfire Hazard

All development is to be designed and constructed so as to manage risk due to the effects of bushfire throughout the life of the development.

Development land to which this control applies must comply with the requirements of:

- Planning for Bushfire Protection (2006)
- AS 3959 - Construction of a Building in a Bushfire Prone Area

The site is not within a Bushfire Prone Area.

B3.5 Acid Sulphate Soils

The subject site is as Class 5 Land on the ASS map. An Acid Sulfate Soils Management Plan is not required for the application.

B3.6 Contaminated Land and Potentially Contaminated Land

Council shall not consent to the carrying out of any development on land unless it has considered SEPP No. 55 Remediation of Land.

In particular, Council shall consider:

- whether the land is contaminated; and
- if the land is contaminated, whether the land is suitable in its contaminated state (or will be suitable after remediation) for the purpose for which the development is proposed to be carried out; and
- if the land requires remediation, whether the land will be remediated before the land is used for that purpose.

Where a development would involve a change of use on land listed below, Council must consider a preliminary investigation report prepared in accordance with the contaminated land planning guidelines.

No change is proposed relevant to this provision.

B3.22 Flood Hazard - Flood Category 3 - All Development

No change is proposed relevant to this provision.

B4.6 Wildlife Corridors

Development shall not directly impact on / or significantly reduce / degrade habitat for locally native species, threatened species, endangered populations or endangered ecological communities.

Development shall retain, and provide an adequate buffer to, wildlife corridors.

Development shall provide wildlife corridors via creation, restoration, and / or regeneration of habitat.

Development shall not result in a significant loss of canopy cover or a net loss in native canopy trees.

Development shall ensure 60% of the area that is not covered by

buildings or associated structures, is native vegetation either through retention of existing bushland or planting with locally native plant species (as per species listed in Native Plants for Your Garden available on the Pittwater web page). Landscaping is to be outside areas of existing bushland and not include environmental weeds.

Fencing, where permitted, shall be passable by native wildlife.

Containing the development footprint to the western portion of the site provides appropriate measures to avoid, minimise and mitigate the impacts of the development the importance of the vegetation on the land to the habitat and survival of native fauna, and for any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land. The proposal retains the habitat elements providing connectivity on the land, and minimizes and mitigates the impacts of the development.

No change is proposed relevant to this provision.

B5 WATER MANAGEMENT

B5.2 Wastewater Disposal

All premises shall be connected to the centralised sewage waste disposal system operated by Sydney Water where available.

A stormwater concept plan has been approved which addresses these provisions.

No change is proposed relevant to this provision.

B5.7 Stormwater Management – On-site SAn On-Site Detention (OSD) facility is to be installed where the development results in additional hard (impervious) surface area of greater than 50m² (on a cumulative basis since February 1996) and on land designated through mapping as requiring OSD facility.

Additional hard surface of >50-75sqm requires a minimum capacity on-site detention tank of 4,500 litres with a discharge rate of 2 litres per second.

A stormwater concept plan has been approved which addresses these provisions.

No change is proposed relevant to this provision.

B6 ACCESS AND PARKING

B6.1 Access Driveways and Works on the Public Road Reserve - Dwelling House and Dual Occupancy

An access driveway must be provided for all dwellings or any development where vehicular parking is provided on the development site.

An appropriate driveway is provided from Barrenjoey Road. No change is proposed relevant to this provision.

The driveway shall have a stable surface of all weather construction. Pervious materials are preferred

A concrete slab is proposed. No change is proposed relevant to this provision.

Areas of driveways that are visible from a public road or public place are to be constructed of materials that blend with the environment and are of dark earthy tones (not plain concrete).

The driveway will meet these requirements. No change is proposed relevant to this provision.

The area of the all weather surface of the access driveway is to be minimised within a clear access corridor of a maximum width of 3.5m.

The area of the driveway has been minimised. No change is proposed relevant to this provision.

Access driveways shall have gradients less than 20% and the driveway grade should not change by more than 11% for every 1.4m of driveway increased in grades up to 25% for distances up to 25m may be considered on merit.

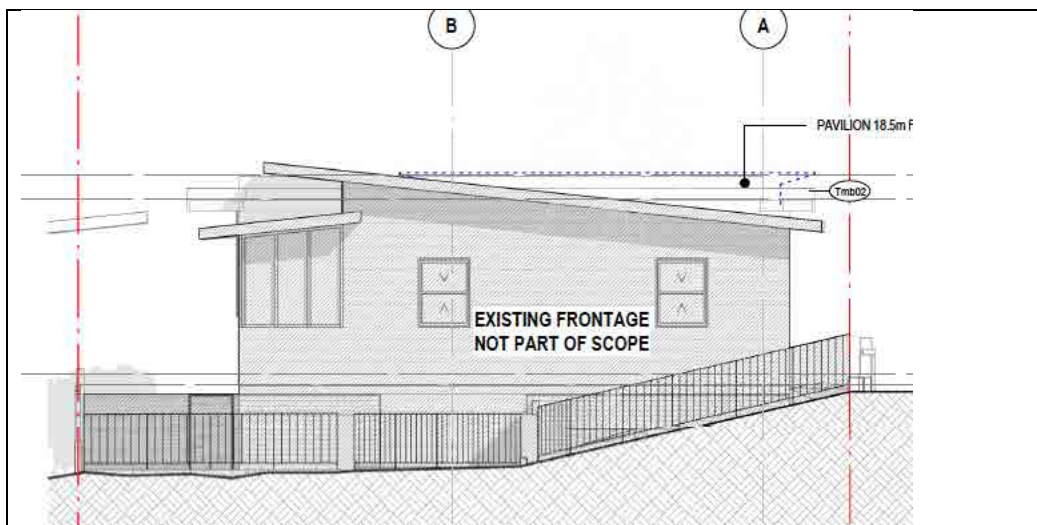
The gradient complies with these provisions. No change is proposed relevant to this provision.

Provision is to be made for vehicles to enter and leave the site in a forward direction.

| |
|--|
| |
| No change is proposed relevant to this provision. |
| Only one driveway access to the public road is permitted. |
| Only one access is provided. No change is proposed relevant to this provision. |
| Driveways shall be located and designed to provide adequate sight distances to maximise pedestrian and vehicular safety |
| Adequate sightlines are provided. No change is proposed relevant to this provision. |
| Maximum width of driveways on the public road is 4m at the kerb and 3m at the property boundary. |
| The driveway will meet these requirements. No change is proposed relevant to this provision. |
| B6.5 Off-Street Vehicle parking Requirements – Residential Development up to 2 dwellings (single dwelling and dual occupancy) Minimum 2 parking spaces are to be provided for each dwelling. |
| 2 spaces are provided. No change is proposed relevant to this provision. |
| B8 – SITE WORKS MANAGEMENT |
| <p>B8.1 Construction and Demolition – Excavation and Landfill</p> <p>Excavated and landfill areas must be constructed to have no adverse impact on any structures, bushland or significant trees to be retained on the site.</p> <p>Excavation and landfill must be constructed to have no adverse impact on any adjoining public or private lands due to settlement or structural instability.</p> <p>Excavation and landfill areas must be constructed so as not to redirect or concentrate stormwater or surface water runoff onto adjoining properties so as to cause a nuisance.</p> <p>All landfill imported to the site must be clean fill and not contain any materials that are contaminated and must comply with the relevant legislation.</p> <p>All excess material excavated from land identified as subject to possible landslide hazard, coastline (bluff) hazard or other</p> |

| |
|---|
| <p>geotechnical constraints must be removed from the site.</p> <p>Excavation and landfill on any site that includes the following:</p> <ul style="list-style-type: none"> . Excavation greater than 1 metre deep, the edge of which is closer to a site boundary or structure to be retained on the site, than the overall depth of the excavation, and/or; . Any excavation greater than 1.5 metres deep below the existing surface, and/or; . Any excavation that has the potential to destabilize a tree capable of collapsing in a way that any part of the tree could fall onto adjoining structures (proposed or existing) or adjoining property, and/or; . Any landfill greater than 1.0 metres in height, and/or; <p>Any works that may be affected by geotechnical processes or which may impact on geotechnical processes including but not limited to constructions on sites with low bearing capacity soils, must comply with the requirements of the Geotechnical Risk Management Policy for Pittwater (see Appendix 5) as adopted by Council and details submitted and certified by a Geotechnical Engineer and/or Structural Engineer with the detail design for the Construction Certificate.</p> |
| <p>Cut and fill is approved in accordance with these provisions. No change is proposed relevant to this provision.</p> |
| <p>Any excavation and landfill greater than 1m deep must comply with the requirements of the Geotechnical Risk Management Policy for Pittwater as adopted by Council.</p> |
| <p>Cut and fill is approved in accordance with these provisions. No change is proposed relevant to this provision.</p> |
| <p>B8.2 Construction and Demolition – Erosion and Sediment Management</p> |
| <p>Appropriate devices are to be in place at all times to prevent the migration of sediment off the site.</p> |
| <p>The proposal will comply with these requirements during construction.</p> |
| <p>B8.3 Construction and Demolition – Waste Minimisation</p> |
| <p>Minimise waste materials generated through demolition, excavation and construction work on development sites.</p> |

| |
|--|
| The proposal will comply with these requirements during construction. |
| SECTION C DEVELOPMENT TYPE CONTROLS |
| C1 DESIGN CRITERIA FOR RESIDENTIAL DEVELOPMENT |
| C1.1 Landscaping |
| All canopy trees, and a majority (more than 50%) of other vegetation, shall be locally native species. |
| Compliance with these provisions is reflected in the approved landscape plan. |
| A range of low-lying shrubs, medium-high shrubs and canopy trees shall be provided to soften the built form. |
| Compliance with these provisions is reflected in the approved landscape plan. |
| Landscaping of the area between the front boundary and any built structures will be 60%. |
| Compliance with these provisions is reflected in the approved landscape plan. |
| Development shall provide for the reasonable retention and protection of existing significant trees, especially near property boundaries, and natural features such as rock outcrops. |
| Compliance with these provisions is reflected in the approved landscape plan. |
| Canopy trees are to be located a minimum of 5 metres from existing and proposed built structures, or minimum of 3 metres where pier and beam footings are used, to prevent interference with the built form. |
| Compliance with these provisions is reflected in the approved landscape plan. |
| C1.2 Safety and Security |
| (i) Surveillance |
| Building design must maximise the ability for casual surveillance from dwellings. |
| The approval provides for appropriate surveillance within the front elevation. |



Building design should allow visitors who approach the front door to be seen without the need to open the door.

The approved entry sequence provides visibility and identity.

(ii) Access - Building entrances are to be clearly visible from the street, easily identifiable and appropriately lit.

Pedestrian access along the street frontage shall not be impeded by landscaping, street furniture or other restrictions.

The approved entry sequence provides visibility and identity.

C1.3 View Sharing

Building lines and height are to be sympathetic to the topography of the site and to maintain a reasonable sharing of views available from surrounding and nearby properties.

De facto building lines are to be maintained to preserve view sharing.

The proposal has been sited to achieve appropriate view sharing with the surrounding dwellings.

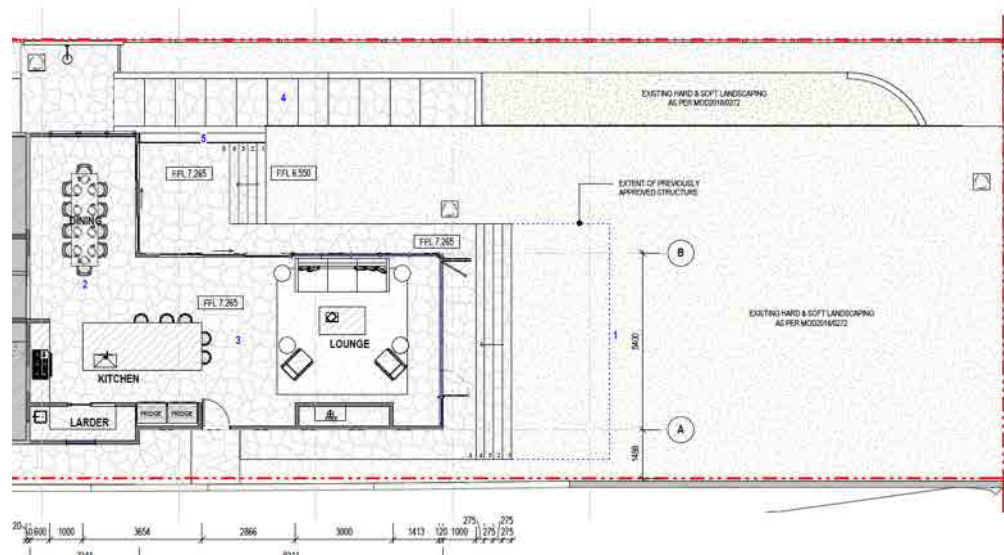
C1.4 Solar Access

The private open space of each dwelling and adjoining property is to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st.

| |
|---|
| Windows to the principal living area of the dwelling and adjoining property are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21 st (that is, to at least 50% of the glazed area of those windows). |
| The amended shadow diagrams demonstrate satisfaction with the controls. |
| C1.5 Visual privacy |
| Private open space, recreation areas and living rooms of proposed and any existing adjoining dwellings are to be protected from direct overlooking within 9m (measured from a height of 1.7m above floor level). |
| The proposal is oriented away from the neighbours and provides for landscape screening from direct overlooking within 9m. |
| C1.6 Acoustic privacy |
| Noise-sensitive rooms to be located away from noise sources. |
| Noise-sensitive rooms are located away from noise sources |
| Noise generating plant including pool/spa motors, air conditioning units and the like shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary. |
| Not applicable. |
| C1.7 Private Open Space |
| Private open space shall be provided as follows:- (a) Dwelling-houses, attached dwellings and dual occupancy: Minimum 80m ² per dwelling at ground level, with no dimension less than 3 metres. No more than 75% of this private open space is to be provided in the front yard. |
| The proposal comfortably meets these requirements. |
| Within the private open space area, a minimum principal area of 16m ² with a minimum dimension of 4m and grade no steeper than 1 in 20 (5%). |
| The proposal comfortably meets these requirements. |

Dwellings should be designed so that private open space is directly accessible from living areas enabling it to function as an extension of internal living areas.

Private open space is directly accessible from living areas.



Private open space areas should have good solar orientation (i.e. orientated to the north-east or north-west where possible). Where site or slope constraints limit optimisation of orientation, the private open space area must have access to some direct sunlight throughout the year (see Solar Access and Natural Light).

The private open space is oriented north for good solar access.

Private open space should be located to the rear of the dwelling to maximise privacy for occupants.

The private open space is located at the rear of the dwelling.

C1.11 Energy and Water conservation

Buildings shall be designed to be energy and water efficient. To maximise winter solar access and minimise summer heat gains.

An amended BASIX assessment is provided confirming these provisions.

Face living areas to the north, sleeping areas to the east or south, and utility areas to the west or south; and

An amended BASIX assessment is provided confirming these provisions.

| |
|--|
| Windows are to be sized, located and shaded (by structures or vegetation) to reduce summer heat and allow entry of winter sun. |
| An amended BASIX assessment is provided confirming these provisions. |
| Buildings are to be designed to maximise ventilation in summer. This can be achieved by positioning openings (windows and doors) to prevailing summer winds to encourage cross ventilation, and the installation of fans, roof vents and high level windows. |
| The building has been sited to take advantage of the prevailing winds. |
| Buildings are to be constructed of materials which best minimise winter heat loss and summer heat gain. Insulation is a vital component of energy-efficient design in all climates and is to be incorporated, conforming to relevant Australian Standards. |
| An amended BASIX assessment is provided confirming these provisions. |
| C1.12 Waste and Recycling Facilities |
| Waste and recycling receptacles are to be stored within the property boundaries. |
| A waste storage is provided in the basement parking area. |
| Section D Locality Specific Development Controls D3 Palm Beach Locality |
| D3.1 Character As Viewed From A Public Place Buildings which front the street must have a street presence and incorporate design that are compatible with any design themes for the locality. |
| The building has an appropriate street presence. Care has been taken in an appropriate presentation and the use of timber cladding and metal roof consistent with the design themes for the locality. |
| The bulkiness of buildings must be minimised. |
| The building steps with the land and is broken into two elements to minimise bulkiness. |
| Garages, carports and other parking structures must not be the dominant site feature when viewed from a public place. The |
| The approved garage is not dominant from a public place. |

D3.2 Scenic protection

Development shall minimise any visual impact on the natural environment when viewed from any waterway, road or public reserve.

The building steps with the land and minimises visual impact.

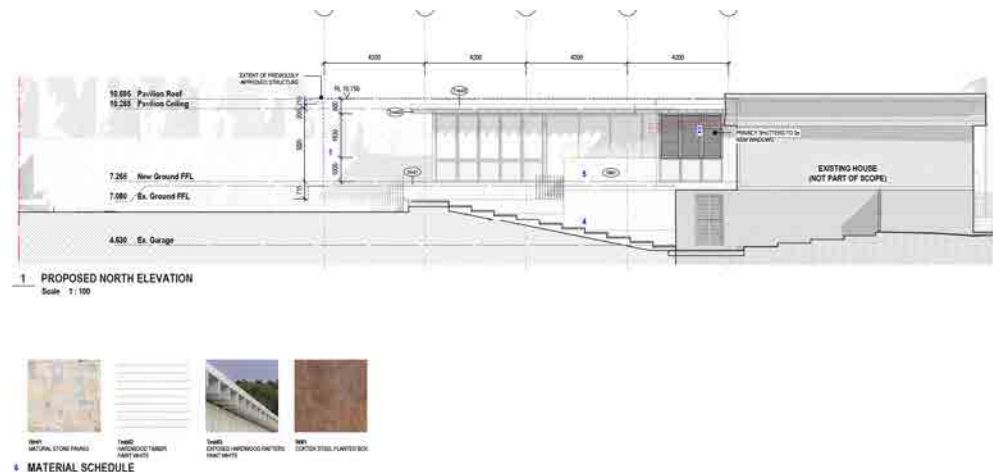
D3.3 Building Colours, Materials and Construction

External colours and materials shall be dark and earthy tones.

White, light coloured, red or orange roofs and walls are not permitted.

Finishes are to be of a low reflectivity.

Appropriate tones have been selected.



13.6 Front Building Line

Follow the established building line.

The approval adopts the established building line and this is unchanged.

D12.7 Side and Rear Building Line

1m one side and
2.5m the other
6.5m rear setback

The proposed side and rear setbacks satisfy these requirements.

D12.9 Building envelope

Buildings are to be sited within the following envelope:

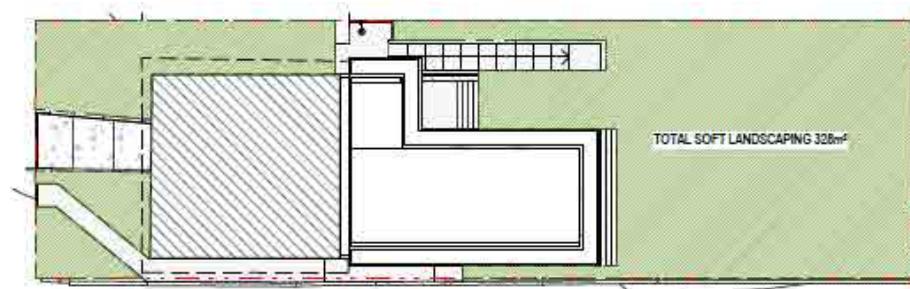
Planes are to be projected at 45 degrees from a height of 3.5 metres above natural ground level at the side boundaries to the maximum height (refer to relevant height under Part D Localities).

The proposal complies with the building envelope provisions.

D12.11 Landscaped Area

Minimum landscaped area: 60%

The proposal is comfortably compliant with these controls.



2 SOFT LANDSCAPING DIAGRAM

D12.12 Fences - General

Front fences and side fences (within the front building setback) shall not exceed a maximum height of 1 metre above existing ground level, and shall be compatible with the streetscape character and not obstruct views available from the road.

It is proposed to change the approved fence to steel. The proposal is consistent with these requirements.

D12.13 Retaining walls, terracing and undercroft areas

Retaining walls and terracing shall be kept to a minimum. Where retaining walls and terracing are visible from a public place, preference is given to the use of sandstone or sandstone like materials.

The proposal is consistent with these requirements.

D12.14 Scenic protection Areas

The approval demonstrates the retention and regeneration of existing native vegetation outside of the immediate area required to carry out the development.

The development incorporates measures for planting and maintenance

of native vegetation within those areas which are not required to be cleared to allow for the development.

The siting, building form, orientation and scale of the development does not compromise the visual integrity of the site by retaining canopy trees and screen planting along the boundaries.

The development incorporate the use of unobtrusive and non-reflective materials and the colours of exterior surfaces to blend structures into the natural environment with the proposed colours and materials dark and earthy.

The proposal is consistent with these requirements.

6.0 Environmental Planning Assessment

Section 4.15(1) of the Environmental Planning and Assessment Act 1979 as amended specifies the matters which a consent authority must consider when determining a development application.

6.1 s.4.15(1)(a)(i) the provision of any Environmental Planning Instrument (EPI)

Consideration of SEPP 55, SEPP (BASIX) 2004 and Pittwater Local Environmental Plan 1993 are discussed under Section 4.

6.2 s.4.15(1)(a)(ii) the provision of any draft Environmental Planning Instruments

Not applicable to this application.

6.3 s.4.15(1)(a)(iii) any development control plan

Consideration of Pittwater Development Control Plan 21 is discussed under Section 4.

6.4 s.4.15(1)(a)(iv) any matters prescribed by the regulations

Not applicable to this application.

6.5 s.4.15(1)(b) the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

- Context and Setting

The locality is characterised by a mix of architectural styles in landscaped garden settings taking advantage of views. The proposal responds to its context.

- Access, Transport and Traffic

A double garage is contained within the overall building envelope. No change is proposed.

- Public Domain

Not applicable to this application.

- Utilities

The existing utilities are considered appropriate for the proposed development.

- Heritage

N/A

- Other Land Resources

Not applicable to this application.

- Water

The water requirements of the proposal are considered appropriate given the location and current access to services.

- Soils

No significant excavation is proposed.

- Air and Microclimate

It is considered that the proposal will not give rise to any significant air or microclimate impacts.

- Flora and Fauna

There is no significant flora or fauna on the site which will be affected by the proposal.

- Waste

The garbage/recycling storage area is proposed to be located in the garage and will enable easy access to the street collection point.

- Energy

The proposal includes a number of energy saving design features. The design enables cross ventilation and natural daylight to penetrate all levels. (see BASIX Assessment).

- Noise and Vibration

Construction will be conducted in a manner that will minimise the impact of noise and vibration. After construction the development is not expected to have any noise or vibration impacts.

- Natural Hazards

The proposal appropriately addresses the flood hazards.

- Technological Hazards

Not applicable to this application.

- Safety, Security and Crime Prevention

Casual surveillance to the street is possible from habitable rooms located at the front of the dwelling. Appropriate security devices will be installed throughout the dwelling.

- Social Impact in the Locality

The proposal is not expected to have an adverse social impact on the locality, as the proposal will upgrade the existing dwelling.

- Economic Impact in the Locality

Employment opportunities will be provided during the construction phase to the benefit of the local building sector, and the proposal will increase the value of the subject site.

- Site Design and Internal Design

The proposal draws on guidelines set out in the planning instruments to reinforce positive elements of urban form. The proposal incorporates open plan living, where the primary living areas of the dwelling open up to outdoor areas of private open space. The proposal has been designed in keeping with the orientation of the site, and measures have been taken in order to create the best possible outcome within the constraints of the site. Therefore it is considered that the proposal is an appropriate development solution to the use of the site.

- Construction

The building process will be managed to minimise disruption to the local community and the environment. However some noise is inevitable during

the construction phase and this will be managed in accordance with Council's standards. The design of the development proposal has focused on durable renewable materials with low maintenance requirements.

- Cumulative Impacts

The subject allotment is generously sized, shaped and orientated to accommodate the proposed development. It is anticipated that the proposed alterations and additions to the existing dwelling will have a negligible cumulative effects.

6.6 s.4.15(1)(c) suitability of the site for development

Having regard to the location of the proposal, the site will adequately accommodate the development of the additions to the dwelling.

6.7 s.4.15(1)(d) submissions made in accordance with the Act or the Regulations

The Consent authority will need to consider the submissions received in response to the public exhibition of the proposed development.

6.8 s.4.15(1)(e) the public interest

There are no known Federal and/or state Government policy statements and/or strategies other than those discussed in this report that are of relevance to this particular case. We are not aware of any other circumstances that are relevant to the consideration of this development application.

7. Matters For Consideration Under Section 4.55.

Section 4.55 of the Environmental Planning and Assessment Act, 1979 (the Act) confers on a consent authority the power and discretion to modify a consent granted under the Act.

The relevant provisions of the Act state:

“Modification of consents

(2) Other modifications

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the 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*
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in 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 that requires the notification or advertising of applications for modification of a development consent, and*

(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

Subsections (1) and (1A) do not apply to such a modification.

(3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

(4) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.

(5) (Repealed)

The relevant provisions of Section 4.55(2) to the current proposal are Sub-clauses (a), (b), (c) and (d).

It is acknowledged that Section 4.55 prescribes a distinct test to be applied and if a development as modified fails the test, which the development, as modified is not substantially the same as the original development (as subsequently amended), then the modification application must fail.

The matters prescribed under Section 4.55(2) are addressed below.

Section 4.55(2)(a)- Substantially the Same Development

The nature of Section 4.55 of the Act anticipates that there is likely to be some change between an originally proposed (and approved) development and a modified one.

The decision of *North Sydney Council – v – Michael Standley & Associates Pty Ltd*, (97 LGERA 433, 12 May 1998, Mason P), added to the understanding of the appropriateness of permitting modification as follows:

“Parliament has therefore made it plain that a consent is not set in concrete – it has chosen to facilitate the modifications of consents, conscious that such modifications may involve beneficial cost savings and / or improvements to amenity.”

In contemplating a consent for modification, it is the degree of change, which determines whether the consent authority has the power to approve a modification or whether there is no such power where the application fails to pass the threshold test under Section 4.55(2)(a) of the Act.

The main consideration under Section 4.55(2)(a) is what constitutes “*the same development*” and what are the parameters defining “*substantially*”.

In the case of *Vacik Pty Limited and Penrith Council* (unreported 24 February 1992, Stein J), the Court held that substantially means “*essentially or materially or having the same essence*” and that the substance of determining these matters rests with a comparative analysis between the consent being varied and the modification and this approach is supported by the decision of Bignold J in *Moto Projects (No 2) Pty Ltd and North Sydney Council* (NSWLEC 280, Appeal 10741A of 1997, 17/12/99).

The subject S4.55 modification seeks to reduce the extent of the addition and reconfigure the new living space.

The proposal clearly indicate the retention of the “*essential*” form, character, design, height, footprint, and use of the development. Further, it is evident that the implications of the modified proposal are such that the development is unlikely to result in any adverse impact upon any adjoining property or the locality generally. There will be no increase in overshadowing, loss of views or privacy.

In summary, it is concluded that there is no basis for not characterising the modified development as one, which is substantially the same as that approved.

Section 4.55(2)(c) and (d)-Notification

The provisions of Section 4.55(2)(c) and (d) require that the application for modification should be notified (in accordance with the regulations) and that any submission made should be considered.

Accordingly, it is requested that the Council, as the consent authority, notify the modified application if required and address any submissions received during the notification period.

In summary, it is concluded that there is no basis for not characterising the modified development as one, which is substantially the same as that approved. The amendment to the approved proposal have been designed to ensure no adverse impacts on surrounding properties and furthermore given its general compliance with the relevant controls it is considered that no detrimental effects will result in terms of the public interest.

8.0 Conclusion

The proposal comprises a S4.55 amendment application to the approval for alterations and additions to the existing dwelling at 1180 Barrenjoey Road, Palm Beach.

The site is regular in shape with an area of approximately 613.2m² with access to Barrenjoey Road on the western boundary. The site has a cross fall of approximately 1.3m from south to north on the street frontage and rises from the road frontage to the rear of the site approximately 1m. The site has a northern orientation with views to Pittwater.

The subject site currently accommodates a single dwelling above car parking. The dwelling is of weatherboard construction with a metal skillion roof. The dwelling is located on a sloping site with the slope providing access to a parking and workshop area on the lower level.

A development application DA No: 379/16 was granted consent by Northern Beaches Council on 1 February 2017 for alterations and additions to the existing dwelling. The application provided a single storey addition to the rear of the existing dwelling containing a sitting room, dining, kitchen and living room with a covered outdoor dining area and northern deck.

A subsequent S4.55 Mod2018/0272 arising from design development which included a timber fence on the northern boundary and a retaining wall 1m setback from the boundary to reduce the slope on the garden was approved by Northern Beaches Council on 22 August 2018.

The construction works have commenced on site and further design development has resulted in an amendment to reduce the extent of the addition and reconfigure the new living space.

Consequently, the proposed amendment comprises:

-
1. Delete approved 'outdoor dining' - reduce floor slab and roof over by 25m²;
 2. Extend approved pavilion over footprint of pre-existing lean-to structure (12m²);
 3. Internal reconfiguration & raising of finished floor level by 185mm;
 4. Increased tread depth of approved stair;
 5. Steel balustrade planter with privacy screen planting;
 6. Revised material palette;
 7. Change material (steel) to approved timber fence.

The amended proposal generally retains the envelope, layout and orientation of the approved development application DA No: 379/16.

The proposal has generally been designed in accordance with Council's policies and planning instruments and will make a positive contribution to the locality by maintaining the relationship of the approved building which enhances the character of the streetscape. Where non-compliances with the controls have occurred they have been designed so as not to adversely impact the amenity of surrounding residents.

The proposal also addresses the matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979. It will deliver a suitable and appropriate development and is worthy of approval.

Statement of Environmental Effects prepared by:

Name: Andrew Darroch of Mersonn Pty Ltd
Qualification: BA (Enviro. Sc.) Master City and Regional
Planning Grad. Dip Urban Estate
Management MPIA, MEPLA, MPCA
Address: 6/20 Wylde Street, Potts Point

In respect of the following S4.55 Application:

Land to be developed: 1180 Barrenjoey Road, Palm Beach
Proposed development: S4.55 Application to DA No: 379/16 to
reduce the extent of the addition and replan
the living areas.

Declaration: I declare that I have prepared this
Statement and to the best of my knowledge:

1. The Statement has been prepared in
accordance with clause 4.12 of the EP &
A Act and Clause 50 of the EP & A
Regulations.
2. The Statement contains all available
information that is relevant to the
environmental assessment of the
development to which this Statement
relates, and
3. That the information contained in the
Statement is neither false nor
misleading.



Signature:

Name: Andrew Darroch
Date: September 2021

Schedule of Amendments

1. Delete approved 'outdoor dining' - reduce floor slab and roof over by 25m²;
2. Extend approved pavilion over footprint of pre-existing lean-to structure (12m²);
3. Internal reconfiguration & raising of finished floor level by 185mm;
4. Increased tread depth of approved stair;
5. Steel balustrade planter with privacy screen planting;
6. Revised material palette;
7. Change material (steel) to approved timber fence.