

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2021/0725
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<b>Responsible Officer:</b>	Dean Pattalis
<b>Land to be developed (Address):</b>	Lot C DP 341607, 1180 Barrenjoey Road PALM BEACH NSW 2108
<b>Proposed Development:</b>	Modification of Development Consent N0379/16 granted for alterations and additions to an existing dwelling house
<b>Zoning:</b>	E4 Environmental Living
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Louise Katrina Manning
<b>Applicant:</b>	Etic Design Studio Pty Ltd

<b>Application Lodged:</b>	20/09/2021
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	28/09/2021 to 12/10/2021
<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 seeks to modify the development consent under N0379/16 including the following works:

- Remove approved 'outdoor dining' - reduce floor slab and roof over by 25m<sup>2</sup> ;
- Extend approved pavilion over footprint of pre-existing lean-to structure (12m<sup>2</sup> );
- Internal reconfiguration & raising of finished floor level by 185mm;
- Increased tread depth of approved stair;
- Steel balustrade planter with privacy screen planting;
- Revised material palette;
- Change material (steel) to approved timber fence.

### 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 - D12.3 Building colours and materials

Pittwater 21 Development Control Plan - D12.10 Landscaped Area - Environmentally Sensitive Land

Pittwater 21 Development Control Plan - D12.11 Fences - General

## SITE DESCRIPTION

<b>Property Description:</b>	Lot C DP 341607 , 1180 Barrenjoey Road PALM BEACH NSW 2108
<b>Detailed Site Description:</b>	<p>The subject site consists of 1 allotment located on the eastern side of Barrenjoey Road, Palm Beach</p> <p>The site is regular in shape with a frontage of 13.41m along Barrenjoey Road and a depth of 45.72m. The site has a surveyed area of 613.2m<sup>2</sup>.</p> <p>The site is located within the E4 Environmental Living zone pursuant to the PLEP 2014 and accommodates an existing residential dwelling.</p> <p>The site experiences a gentle fall of approximately 2m falling in a southerly direction.</p> <p>The site is substantially landscaped with native vegetation predominantly located in the rear yard.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by</p>

low density residential development of varying architectural styles and within a landscaped setting.

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:

**N0379/16** Alterations and additions to an existing dwelling house (Approved 1 February 2017).

**Mod2018/0272** Modification of Development Consent N0379/16 for alterations and additions to an existing dwelling house (Approved 22 August 2018).

**Mod2019/0048** Modification of Development Consent N0379/16 granted for alterations and additions to an existing dwelling house (Approved 29 May 2019).

## 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 N0379/16, 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:

Section 4.55 (2) - Other Modifications	Comments
<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 N0379/16 for the following reasons:</p> <ul style="list-style-type: none"> <li>a) The footprint of the dwelling house is predominantly the same as what has already been approved;</li> <li>b) The proposal does not alter the approved overall building height or built form with the exception of a minor reduction in landscaped area</li> <li>c) There were no submission received, and the changes do not create any additional nor unreasonable amenity impacts to neighbouring sites; and</li> <li>d) The development will stay substantially the same as approved under the original development consent.</li> </ul> <p>The development, as proposed, has been found to be such that Council is not satisfied that the proposed works are substantially the same as those already approved under N0379/16.</p>
<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 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</p>	<p>Development Application N0379/16 did not require concurrence from the relevant Minister, public authority or approval body.</p>
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and</p>



Section 4.55 (2) - Other Modifications	Comments
<p>or</p> <p>(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</p>	<p>Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan.</p>
<p>(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.</p>	<p>No submissions were received in relation to this application.</p>

### 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:

Section 4.15 'Matters for Consideration'	Comments
<p>Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument</p>	<p>See discussion on “Environmental Planning Instruments” in this report.</p>
<p>Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument</p>	<p>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.</p>
<p>Section 4.15 (1) (a)(iii) – Provisions of any development control plan</p>	<p>Pittwater 21 Development Control Plan applies to this proposal.</p>
<p>Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement</p>	<p>None applicable.</p>
<p>Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&amp;A Regulation 2000)</p>	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition 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>

Section 4.15 'Matters for Consideration'	Comments
	<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>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

### BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

### NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 28/09/2021 to 12/10/2021 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
Landscape Officer	The plans indicate that no additional landscape elements are affected by the proposed modification.  No objections are raised to the modification with regard to landscape issues.
NECC (Bushland and Biodiversity)	The plans indicate that no additional biodiversity values are affected by the proposed modification. No objections are raised to the modification with regard to biodiversity planning issues.
NECC (Stormwater and Floodplain Engineering – Flood risk)	The proposed modification is generally outside of the medium flood risk precinct and is compliant with Council's flood prone land development controls.

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.

### 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.A429977 dated 8 September 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 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.

### Pittwater Local Environmental Plan 2014

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



Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	6.27m	Unaltered	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.6 Biodiversity protection	Yes
7.10 Essential services	Yes

**Pittwater 21 Development Control Plan**

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m	Unaltered	Unaltered	Yes
Rear building line	6.5m	12.69m	16.5m	Yes
Side building line	2.5m (north)	2.5m	Unaltered	Yes
	1m (south)	1m	Unaltered	Yes
Building envelope	3.5m (north)	Within envelope	Unaltered	Yes
	3.5m (south)	Within envelope	Unaltered	Yes
Landscaped area	60% (367.9sqm)	58.77% (360.6sqm)	53.49% (328sqm)	<b>No</b>

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.6 Wildlife Corridors	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	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

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.23 Eaves	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	Yes	Yes
D12.6 Side and rear building line	Yes	Yes
D12.8 Building envelope	Yes	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	No	Yes
D12.11 Fences - General	Yes	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

#### Detailed Assessment

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

The proposed modifications include a revised material palette including natural stone paving, hardwood timber and a corten steel planter box. Condition B(16) under the original consent (N0379/16) and which remains relevant to this modification consent, requires the finished surface materials, including colours and texture of any building, to match the detail and materials of the existing building.

#### **D12.10 Landscaped Area - Environmentally Sensitive Land**

The proposed landscaped open space is 53.49% compared to the minimum required landscaped area on E4 – Environmental Living land is 60% as prescribed in the Pittwater 21 DCP. Whilst the numerical control has not been met the landscaped area meets the outcomes of the control.

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

#### Comment

The landscape open space is consistent with the desired future character of the Locality.

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

#### Comment

The bulk and scale of the built form is minimal with the development predominantly located within the approved building footprint.

- *A reasonable level of amenity and solar access is provided and maintained.*

#### Comment

Amenity and solar access is provided and maintained with a reasonable level provided within the site.

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

Comment

Vegetation is retained as the proposed works do not alter the existing vegetation on the site.

- *Conservation of natural vegetation and biodiversity.*

Comment

The natural vegetation and biodiversity will be conserved with the proposed development as the works are predominantly within the existing building footprint.

- *Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels.*

Comment

Stormwater runoff is reduced through the permeable landscape open space.

- *To preserve and enhance the rural and bushland character of the area.*

Comment

The proposed development maintains suitable landscaping, thereby conserving vegetation and the existing biodiversity on site.

- *Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management.*

Comment

The soft surfaces are maximised allowing for infiltration, reduction of run-off to manage stormwater run-off as the works are predominantly within the existing building footprint.

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

The proposed modification works propose to change the material of the approved front boundary paling fence from timber to steel.

In accordance with D12.11 (a) for front and side fences within the front building setback, fences are to be constructed of open, see-through, dark-coloured materials, however the schedule of finishes and materials provided with the application does not include the proposed fence.

The Statement of Environmental Effects (SEE) notes that the proposed development will incorporate the use of 'unobtrusive and nonreflective materials and the colours of exterior surfaces to blend structures into the natural environment with the proposed colours and materials dark and earthy'.

To ensure this, Council shall recommend a condition of consent that will require the proposed external finishes for the front boundary fence will be non-reflective and consistent with the material schedule under D12.3 of P21 DCP to ensure the fence compliments and conserves the visual character of the street and neighbourhood.

## **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. Mod2021/0725 for Modification of Development Consent N0379/16 granted for alterations and additions to an existing dwelling house on land at Lot C DP 341607, 1180 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>
S050-4 (Site Plan)	24 August 2021	James Garvan Architecture
S101-4 (Proposed Ground Floor Plan)	24 August 2021	James Garvan Architecture
S300-4 (Proposed Sections)	24 August 2021	James Garvan Architecture
S400-4 (Elevation - North)	24 August 2021	James Garvan Architecture
S401-4 (Elevation - South)	24 August 2021	James Garvan Architecture
S402-4 (Elevations - East & West)	24 August 2021	James Garvan Architecture

<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 (A429977)	8 September 2021	EPS

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

d) 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 B.18 - Matters to be incorporated into the development and maintained over the life of the development to read as follows:

The external finishes for the proposed front boundary fence shall have a medium to dark range (BCA classification M and D) to minimise reflectivity and ensure the fence compliments and conserves the visual character of the street and neighbourhood.



Reason: To ensure minimal impact upon visual amenity and continuity with the existing streetscape

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

**Signed**



**Dean Pattalis, Planner**

The application is determined on 04/11/2021, under the delegated authority of:



**Rodney Piggott, Manager Development Assessments**