

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2018/0272
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<b>Responsible Officer:</b>	Kevin Short
<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>	Daniel Boddam Architecture & Interior Design

<b>Application lodged:</b>	31/05/2018
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	15/06/2018 to 29/06/2018
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	2
<b>Recommendation:</b>	Approval

### 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 - C1.5 Visual Privacy

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

Pittwater 21 Development Control Plan - D12.13 Construction, Retaining walls, terracing and undercroft areas

## SITE DESCRIPTION

<b>Property Description:</b>	Lot C DP 341607 , 1180 Barrenjoey Road PALM BEACH NSW 2108
<b>Detailed Site Description:</b>	The site is known as 1180 Barrenjoey Road, Palm Beach and legally referred to as Lot C DP 341607. The site is rectangular in shape and the total area of the site is 613.2m <sup>2</sup> . The site contains a single dwelling that is located to the front of the site. Adjoining the site are low density residential dwellings.

Map:



## SITE HISTORY

Development Consent DA N0379/16 for for Alterations and additions to an existing dwelling house was granted 1 February 2017.

## PROPOSED DEVELOPMENT IN DETAIL

Modification of Development Consent N0379/16 seeks amendments to the landscaping works and side boundary fence located adjacent and near the northern boundary. Specifically, the modification works propose the following;

- Provision of a 1.8m high timber capped northern boundary dividing fence with holes 150mm wide X 100mm high at ground level spaced at 6m intervals; and
- Provision of a retaining wall, with a maximum height of RL 6050 and 1.0m landscaped side building line to the northern boundary.

The modification works proposed above will require the deletion of the following Conditions of Consent;

- B1: No masonry walls/retaining walls shall be constructed along adjacent to the northern boundary;
- B4: The infill is to be at a maximum height of RL 6630. A battered lawn is to be placed 3.5m from the northern boundary descending towards the northern boundary at a ratio of maximum 1V:2H as indicated on the ground floor plan (DA102); and
- B8: Any new fencing (with the exception of swimming pool fencing) is to be made passable to native wildlife. Hole dimensions are to be a minimum of 150mm wide X 100mm high at ground level spaced at 6 metre intervals. Revised fencing will have Hole dimensions of 150mm

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment C.

## **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 DA N0379/16, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.15(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15(1A) - Other Modifications	Comments
	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

Section 4.15(1A) - Other Modifications	Comments
regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	<b>Yes</b> The modification, as proposed in this application, is considered to be of minimal environmental impact.
(b) 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	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 DA N0379/16.
(c) it has notified the application in accordance with:  (i) the regulations, if the regulations so require, or  (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Pittwater Local Environment Plan 2011 and Pittwater Development Control Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

### 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 4.55 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
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the	<u>Division 8A</u> of the EP&A Regulation 2000 requires the

Section 4.15 'Matters for Consideration'	Comments
Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>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> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No Additional information was requested.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This 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>



Section 4.15 'Matters for Consideration'	Comments
	(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.
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 “Public Exhibition” 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.

## NOTIFICATION & SUBMISSIONS RECEIVED

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

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

Name:	Address:
DFP Planning Pty Ltd	11 Dartford Road THORNLEIGH NSW 2120
Withheld	PALM BEACH NSW 2108

The following issues were raised in the submissions from the property owner of 1182 Barrenjoey Road (the adjoining property) and each relevant issue has been addressed below:

- Alterations to existing natural ground levels and associated impacts

### Comment:

Concern are raised in relation to the impacts of the proposed development and include the following matters;

- existing and previous proposals to change the ground levels between properties;
- subject property owners refusal to acknowledge the raised concerns of the adjoining property with respect to the proposed change to ground levels and related amenity impacts, including practical considerations, a sense of enclosure; the dividing fence; privacy; loss of garden light; and refusal to accept conditions of consent provided by Development Consent N0379/16.

Previous proposals to change the ground levels between properties are not a relevant planning matter for this modification application. The applicant has provided this modification application to modify

conditions of consent provided under Development Consent N0379/16 (the consent). Hence, the relevant matters of consideration, including raised objections, are to relate to this modification application only. In this regard, the relevant concerns raised relate to the change of ground levels and related amenity impacts, including practical considerations, a sense of enclosure; the dividing fence and civil matters; privacy; and loss of garden light.

Having regard to the above, raised matters are addressed as follows;

- The modification works are assessed as being substantially the same as those already approved under Development Consent N0379/16. Refer to Environmental Planning and Assessment Act 1979 - Section 4.55(1A) section of the report for further details.
- The submitted plans provide sufficient details, including dimensions and relative heights, to allow for a complete and proper assessment of the application.
- A condition is included in the recommendation for the fence to be deleted so that any outstanding civil matters in relation to a dividing fence can be resolved between neighbours. It is noted that a dividing fence is a permissible development under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.
- Privacy and overlooking from the modified ground levels is assessed as being reasonable and acceptable as provided under the P21DCP cl. C1.5 Visual Privacy section of the report.
- Visual outlook impacts are satisfactorily mitigated given the relatively low height and location of proposed retaining walls in conjunction with a recommended condition requiring intervening screen planting to a minimum height of 2.5m.
- Loss of property value and loss of light to a garden bed is not a relevant matter of consideration under relevant planning legislation.
- The proposal is assessed as being consistent with the desired character of the Palm Beach Locality and objectives of the E4 zone.
- The proposal is found to be consistent against all relevant requirements and controls PLEP 2014 and P21DCP.
- A condition is included for the retaining wall to not be constructed within 1.0m of the northern side boundary.

Therefore, the matters raised in the submission are not concurred with and do not warrant the refusal or redesign of the development.

## MEDIATION

No requests for mediation have been made in relation to this application.

## REFERRALS

Internal Referral Body	Comments
NECC (Stormwater and Floodplain Engineering – Flood risk)	The proposed modifications are not considered to increase flood risk. No flood related objections.

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

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

### State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

Nil

### 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

#### Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
7.1 Acid sulfate soils	Yes
7.3 Flood planning	Yes
7.6 Biodiversity protection	Yes

### Pittwater 21 Development Control Plan

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A4.12 Palm Beach Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.6 Wildlife Corridors	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.5 Visual Privacy	No	Yes
D12.3 Building colours and materials	Yes	Yes
D12.11 Fences - General	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

#### Detailed Assessment

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

Privacy and overlooking between the subject site and adjoining downslope property to the north, being No. 1182 Barrenjoey Road, from the modification proposal, including the modified ground levels, is assessed as being reasonable and acceptable for the following reasons;

- There is an existing degree of direct and close overlooking between properties given the elevated rear yard of the subject site and absence of a solid dividing fence;
- The proposal will continue to allow for direct and close overlooking between properties, however, a recommended condition requiring intervening screen planting to a minimum height of 2.5m will assist to prevent overlooking between properties and therefore provide a greater level of privacy between properties than that of the current situation; and
- As detailed under the P21DCP cl. D12.11 Fences section of the report, a condition is recommended for the fence to be deleted, however, any future fencing will also assist to improve privacy between neighbours.

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

A condition is included in the recommendation for the fence to be deleted so that any outstanding civil matters in relation to the fence can be resolved between neighbours. It is noted that a dividing fence is a permissible development under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

### **D12.13 Construction, Retaining walls, terracing and undercroft areas**

It is recommended that Condition of Consent No. B1 be amended to stipulate that masonry walls/retaining walls must not be constructed within 1m of the northern boundary.

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

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

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

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

### **POLICY CONTROLS**

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

## CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2018/0272 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

Architectural Plans - Endorsed with Council's stamp		

Drawing No.	Dated	Prepared By
DA000, DA100, DA101, DA102, DA103, DA200, DA201 & DA300	15.05.18	Daniel Boddam Architecture and Interior Design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical letter	28 May 2018	JK Geotechnics

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

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans. (DACPLB01)

#### **B. Delete Condition B4 & B8.**

#### **C. Modify Condition B1 to read as follows;**

**B1.** No masonry walls/retaining walls shall be constructed along or adjacent to the northern boundary. In this regard, any masonry walls/retaining walls and any associated footings must not be constructed within 1.0m of the northern boundary.

Reason: To maintain neighbour amenity.

#### **D. Add Condition E9, E10 and F1 to read as follows:**

**E9.** The timber fence, as shown on the approved plans, is to be deleted and does not form any part of the approved development.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Construction Certificate.

Reason: To maintain neighbour amenity.

**E10.** Screen planting is to be provided between the retaining wall and northern side boundary.

The selected planting is to comprise of native species capable of attaining a minimum height of 2.5m at maturity.

Plants are to be planted at minimum 1.5 metre centres and be of a minimum pot size of 25 litres at planting.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim or final Occupation Certificate.

Reason: Local amenity

**F1.** Any existing landscaping required to be retained together with any additional landscaping required by this Consent is to be maintained for the life of the development.

Landscape works shall be maintained for a minimum period of 12 months following practical completion. If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with

the approved Landscape Plan.

Reason: To maintain local environmental amenity and ensure landscaping continues to soften the built form.

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

**Signed**



**Kevin Short, Planner**

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



**Matthew Edmonds, Manager Development Assessments**

## **ATTACHMENT A**













No notification plan recorded.

## **ATTACHMENT B**

No notification map.



## ATTACHMENT C

Reference Number	Document	Date
 2018/353986	Certification of Shadow Diagrams	17/05/2018
 2018/353967	Report - Statement of Environmental Effects	22/05/2018
 2018/353993	Plans - Master Set	22/05/2018
 2018/353990	Report - Geotechnical	28/05/2018
 MOD2018/0272	1180 Barrenjoey Road PALM BEACH NSW 2108 - Section 96 Modifications - Section 96 (1a) Minor Environmental Impact	31/05/2018
 2018/335944	DA Acknowledgement Letter - Daniel Boddam Architecture and Interior Design	01/06/2018
 2018/353928	Applicant Details	08/06/2018
 2018/353929	Fee Form	08/06/2018
 2018/353926	Development Application Form	08/06/2018
 2018/354017	Plans - External	08/06/2018
 2018/355290	DA Acknowledgement Letter (not integrated) - Daniel Boddam Architecture and Interior Design	12/06/2018
 2018/355363	Notification map for 1180 Barrenjoey Road	12/06/2018
 2018/355356	Notification Letter - Mod	12/06/2018
 2018/396570	Natural Environment Referral Response - Flood	28/06/2018
 2018/396839	Submission - Hejema Pty Limited	28/06/2018
 2018/405311	Submission Acknowledgement Letter - DFP Planning Pty Ltd - SA2018/396839	04/07/2018
 2018/458977	Stamped Plans	19/07/2018
 2018/468343	inspection photos	24/07/2018
 2018/469165	Notification Sign - Mod2018/0272 - 1180 Barrenjoey Road Palm Beach	25/07/2018
 2018/513411	Submission - Conen - details withheld	09/08/2018
 2018/522113	Submission Acknowledgement Letter - Jeffrey Graham Conen - SA2018/513411	16/08/2018