



planning consultants

## Section 4.55(2) Planning Report

Modification of Approved Alterations and Additions to a Dwelling House

Lot 100, DP 50980, No. 981 Barrenjoey Road, Palm Beach

Prepared for: Morris Symonds  
August 2020

Printed: 4 August 2020  
File Name: 20928C 981 Barrenjoey Road, Palm Beach/Reports/20928C\_Sec 4.55(2) Planning Report.docx  
Project Manager: Rob Player  
Client: Morris Symonds  
Project Number: 20928C

## Document Control

Version	Prepared By	Reviewed By	Issued To	Date
Rev_1, Draft	Rob Player			27 July 2020
Rev_2, Final	Rob Player	A Cropley	Council	4 August 2020

# Contents

<b>1</b>	<b>Introduction</b>	<b>1</b>
1.1	Commission	1
1.2	Purpose of this Statement	1
1.3	Material Relied Upon	1
<b>2</b>	<b>Background</b>	<b>3</b>
<b>3</b>	<b>Site Context</b>	<b>4</b>
3.1	Location	4
3.2	Site Description	4
3.3	Surrounding Development	7
<b>4</b>	<b>Proposed Modifications</b>	<b>8</b>
4.1	Summary of Proposed Modifications	8
4.2	Building Form and Materials	9
4.3	Landscaping	10
4.4	Vehicular Access, Car Parking and Pedestrian Access	10
4.5	Stormwater Infrastructure	10
4.6	BASIX Certificate	10
4.7	Geotechnical Investigation	10
4.8	Bushfire Hazard Assessment	11
4.9	Waste Management Plan	11
4.10	Development Cost Report	11
4.11	Modifications to the Notice of Determination	11
4.11.1	Condition No. 1 – Approved Plans and Supporting Documentation	11
4.11.2	Condition 4 – Policy Controls Northern Beaches 7.12 Contributions Plan 2019	11
4.11.3	Condition No. 9 – Submission Roads Act Application for Civil Works in the Public Road	11
<b>5</b>	<b>Statutory Provisions</b>	<b>12</b>
5.1	General	12
5.2	Section 4.55 of the Act	12
5.2.1	Substantially the Same Development (section 4.55(2)(a))	12
5.2.2	Consultation with relevant Minister/s, Authorities or Approval Agencies (section 4.55(2)(b))	13
5.2.3	Notification (section 4.55(2)(c))	13
5.2.4	Consideration of Submissions (section 4.55(2)(d))	13
5.2.5	Matters for Consideration and Reasons for Granting Consent	13
5.3	Clause 115 of the EP&A Regulation 2000	14
<b>6</b>	<b>Environmental Planning Assessment</b>	<b>15</b>
6.1	Planning Controls	15
6.1.1	State Environmental Planning Policies	15
6.1.2	Pittwater Local Environmental Plan 2014 (Pittwater LEP)	15

# Contents

---

6.1.3	Pittwater 21 Development Control Plan (Pittwater DCP)	17
6.2	Likely Impacts of the Development	17
6.2.1	Flora and Fauna	18
6.2.2	Existing and/or Future Character	18
6.2.3	Amenity Impacts on Neighbouring Properties	18
6.3	Suitability of the Site for Development	19
6.3.1	Location	19
6.3.2	Land Stability	19
6.3.3	Acid Sulfate Soils	19
6.3.4	Contamination	19
6.3.5	Bushfire Hazard	19
6.3.6	Essential Services and Infrastructure	20
6.4	Public Interest	20
<b>7</b>	<b>Conclusion</b>	<b>21</b>

---

## Figures

Figure 1	Locality Plan	4
Figure 2	Reduced copy of the Site Survey Plan	5
Figure 3	View north of the existing dwelling house and the site from the waterfront pool area	6
Figure 4	View west of the site from Barrenjoey Road	6
Figure 5	Surrounding Development	7
Figure 6	Land Use Zoning Map	16

## Appendices

1.	Council's Notice of Determination of Development Consent No. DA 2020/0130
2.	Site Survey Plan
3.	Revised Architectural Plans
4.	BASIX Certificate Report
5.	Arborist Review Letter
6.	Geotechnical Assessment Advice
7.	Bushfire Assessment Report
8.	Council Cost Summary Report

## Abbreviations

AADT	annual average daily vehicle trips
AHD	Australian Height Datum
AHIP	Aboriginal Heritage Impact Permit
AS	Australian Standard

# Contents

---

## Abbreviations

ASS	acid sulfate soils
BCA	Building Code of Australia
BC Act	Biodiversity Conservation Act 2016
BTA	bushfire threat assessment
CC	construction certificate
CIV	capital investment value
Council	Northern Beaches Council
DA	development application
DCP	development control plan
DECC	former NSW Department of Environment and Climate Change
DET	NSW Department of Education and Training
DFP	DFP Planning Pty Limited
DFCS	NSW Department of Family and Community Services
DGRs	Director General's Requirements
DoCS	former NSW Department of Community Services
DPIE	NSW Department of Planning, Industry and Environment
DoPI	former NSW Department of Planning and Infrastructure
DVT	daily vehicle trip
DWE	NSW Department of Water and Energy
EPA	NSW Environment Protection Authority
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2000</i>
EPI	environmental planning instrument
ESCP	erosion and sedimentation control plan
ESD	ecologically sustainable development
FPL	flood planning level
FSR	floor space ratio
GFA	gross floor area
GSC	Greater Sydney Commission
HIS	heritage impact statement
IPC	Independent Planning Commission
JRPP	Joint Regional Planning Panel
kph	kilometres per hour
LEP	local environmental plan
LGA	local government area
LPP	Local Planning Panel
NGL	natural ground level
NorBE	neutral or beneficial effect
NOW	NSW Office of Water
NPW Act	<i>National Parks and Wildlife Act 1974</i>
NPWS	NSW National Parks and Wildlife Service
PA	planning agreement
OEH	NSW Office of Environment and Heritage
PAD	potential archaeological deposit
PVT	peak hour vehicle trip
REP	regional environmental plan
RFI Act	<i>Rivers and Foreshore Improvement Act 1948</i>
RFS	NSW Rural Fire Service
RF Act	<i>Rural Fires Act 1997</i>
RL	reduced level
RMS	NSW Roads and Maritime Services

# Contents

---

## Abbreviations

RTA	former Roads and Traffic Authority of NSW
SCA	Sydney Catchment Authority
SC	Subdivision Certificate
SCC	site compatibility certificate
SCI	site contamination investigation
SEE	Statement of Environmental Effects
SEPP	state environmental planning policy
SIS	species impact statement
SULE	safe useful life expectancy
TSC Act	<i>Threatened Species Conservation Act 1995</i>
VPA	voluntary planning agreement
vtph	vehicle trips per hour
WM Act	<i>Water Management Act 2000</i>
WSUD	water sensitive urban design

# 1 Introduction

---

## 1.1 Commission

DFP has been commissioned by Morris Symonds to prepare a Planning Report to accompany a section 4.55(2) Modification Application (section 4.55 Application) for the Council approved alterations and additions to the existing dwelling house (the proposal) at Lot 100, DP 509808, No. 981 Barrenjoey Road, Palm Beach (the site).

The site is located on the steeply sloping south-western side of Barrenjoey Road to the south of Iluka Road in the suburb of Palm Beach. The site has a rear south-western boundary at High Water Mark (HWM) which provides a frontage to the Pittwater waterway.

The site is located within the E4 Environmental Living zone under Pittwater Local Environmental Plan 2014 (Pittwater LEP) within which zone a dwelling house including ancillary works such as the new vehicular driveway access, carport and inclinator are permissible with the consent of the Council (the E4 zone).

This application is made pursuant to section 4.55(2) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to modify Development Consent No. DA 2020/0130 issued by Northern Beaches Council (the Council) on 4 June 2020 for “alterations and additions to a dwelling house” (the proposal).

The section 4.55 Application seeks to modify the following conditions of the development consent:

- Condition 1 – Approved plans and supporting documentation – to be amended to reference the revised architectural plans for the proposal (see **Appendix 3**);
- Condition 4 – Policy Controls Northern Beaches 7.12 Contributions Plans 2019 – to be amended as the development cost of the revised proposal has increased to \$2,882,000 resulting in a monetary contribution of \$28,820 to be paid to Council (see **Appendix 8**).
- Condition 9.7 – Submission Roads Act Application for Civil Works in the Public Road – delete point 7. of this Condition to enable pedestrian access via a path and steps at existing ground level on the road reserve and a suspended pedestrian walk-way bridge within the site which is not incorporated wholly within the driveway as shown on the revised architectural plans (see **Appendix 3**).

## 1.2 Purpose of this Statement

The purpose of this report is to provide Council and relevant NSW State Government Agencies with the relevant information necessary to assess the proposed modifications pursuant to Part 4 of the EP&A Act and the *Environmental Planning and Assessment Regulation 2000* (the Regulation) and for Council to determine the application in accordance with section 4.55(2) of the EP&A Act.

## 1.3 Material Relied Upon

This report has been prepared by DFP based on information referred to herein, a site inspection undertaken in July 2020 and/or appended to this report as follows:

- **Appendix 1** – Council’s Notice of Determination of Development Consent DA 2020/0130 issued on 4 June 2020 for the proposed “alterations and additions to a dwelling house” at the site.
- **Appendix 2** – Site Survey Plan prepared by Chadwick Cheng, Consulting Surveyors.
- **Appendix 3** – Revised Architectural Plans (Plans No. 1922 – 1 to 8 Issue K dated 2 July 2020, prepared by Architects Ink).
- **Appendix 4** – BASIX Certificate report for the revised proposal.
- **Appendix 5** – Arborist review letter of the revised proposal prepared by Blue Gum Tree Care and Consultancy dated 7 July 2020.

# 1 Introduction

---

- **Appendix 6** – Geotechnical Assessment email advice, prepared by Assetgeoenviron.
- **Appendix 7** – Bushfire Assessment report prepared by BPAD – Bushfire Planning and Design.
- **Appendix 8** – Council Cost Summary Report for the revised proposal prepared by Geoff Pollock, Builder's Licence No. 286729C.



## 2 Background

---

On 14 February 2020 the land owner/applicant, Morris Symonds, lodged a Development Application No. DA 2020/0130 with the Council for proposed alterations and additions to the existing dwelling house which included the addition of a new upper floor level to the dwelling, new ramp driveway access, pedestrian entry cantilevered bridge and an inclinator, as well as earthworks and landscaping of the site.

On 4 June 2020 Council granted Development Consent No. DA 2020/0130 for the proposed “alterations and additions to a dwelling house” at the site subject to Conditions (see **Appendix 1**).

A pre-application meeting has not been held with Council officers in respect to the revised architectural plans for the proposal due to the COVID-19 pandemic. However, there has been several emails and phone calls with Council officers in respect to the revised architectural plans for the proposal and to confirm the checklist of documents required by Council to assess the Section 4.55(2) Application.

## 3 Site Context

### 3.1 Location

The site is a waterfront, low density residential property comprising an existing two (2) storey dwelling house with established landscaped gardens including mature trees and shrubs, which is located on the steeply sloping, lower, south-western side of Barrenjoey Road to the south of Iluka Road in the suburb of Palm Beach as shown on the locality plan at **Figure 1**.



Figure 1 Locality Plan

### 3.2 Site Description

The site is legally described as Lot 100 in Deposited Plan 509808, being No. 981 Barrenjoey Road, Palm Beach (the site).

The site is a large, irregular shaped allotment with a site area of 1,075m<sup>2</sup> and with an angled north-eastern frontage to Barrenjoey Road of about 36.7 metres. The rear south-western boundary of the site is to the High Water Mark (HWM) of the Pittwater waterway. The south eastern side boundary is about 31 metres in length and the north western side boundary is about 33.5 metres in length.

**Figure 2** is a reduced copy of the site survey plan which is also included as **Appendix 2** to this report.

### 3 Site Context

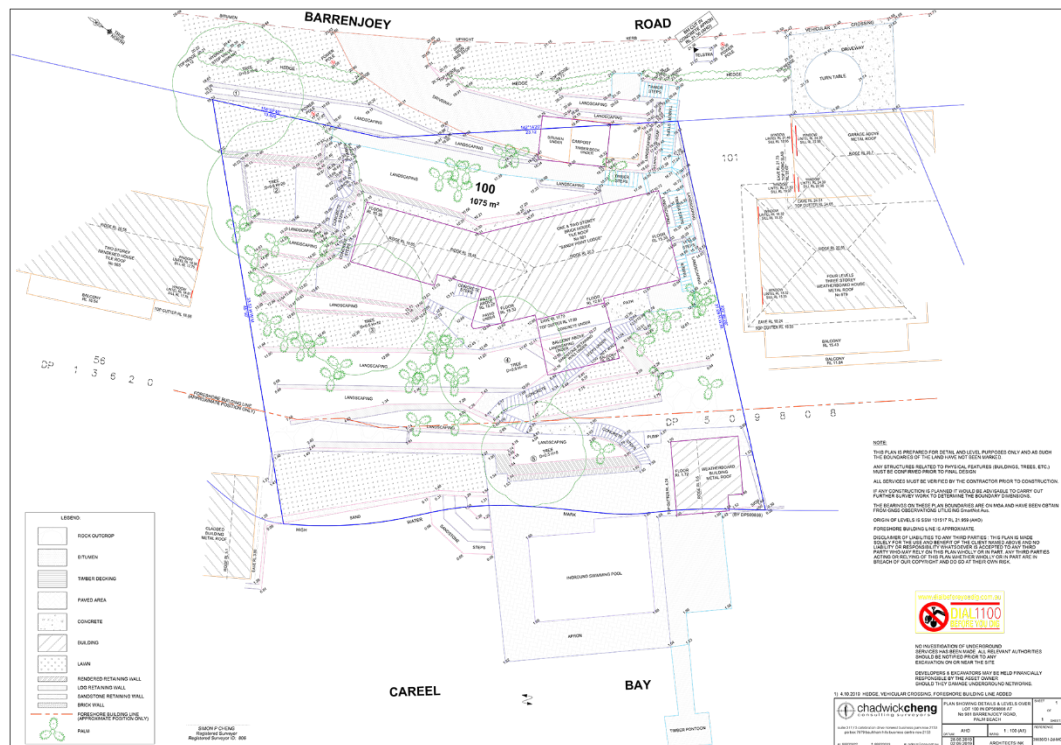


Figure 2 Reduced copy of the Site Survey Plan

The site is developed with a 2 storey masonry dwelling house with a pitched, tiled roof known as “Sandy Point Lodge” (see photo at **Figure 3**). The site has an existing driveway access to Barrenjoey Road with a single storey carport (motor vehicles cannot enter and exit in a forward direction onto Barrenjoey Road).

The existing dwelling house and carport at the site is screened by a mature about 3 metre high hedge planting along the Barrenjoey Road site frontage (see photo at **Figure 4**). A series of paths, steps and terraced landscaped garden and lawn areas with retaining walls extend from the existing carport and dwelling house down to the rear waterfront area of the property.

There is a single storey boatshed/recreation building (located partly below and above HWM); a timber jetty with pontoon and an inground swimming pool and terrace area (located wholly below HWM) which is held under a Crown Lease. The Section 4.55(2) Application in respect to the revised architectural plans does not propose any new development directly above or below the foreshore building line and the HWM in relation to the existing waterfront recreational and boating facilities and the proposed new inclinator, landing area and paths.



### 3 Site Context

---



Figure 3 View north of the existing dwelling house and the site from the waterfront pool area



Figure 4 View west of the site from Barrenjoey Road

The topography of the site is very steep, falling in a south-westerly direction from the Barrenjoey Road frontage to the rear waterfront site boundary (HWM) by about 18-19 metres and with a site slope of well in excess of 16.7° (30%).



## 3 Site Context

The existing vegetation at the site consists of landscaped terraced gardens, lawns and paved terrace areas with retaining walls, several large mature native and exotic trees and shrubs and ground cover planting. There is also an established landscaped 3 to 4 metre high hedge within the nature strip fronting Barrenjoey Road which effectively screens from view most of the Barrenjoey Road site frontage including the existing 2 storey dwelling house, carport and driveway (see photo at **Figure 4**).

### 3.3 Surrounding Development

The site is located within a predominately low density residential area of Palm Beach, which is characterised by a mixture of traditional and modern, mostly 2 and 3 storey, as well as multi-level dwelling houses, nestled within established front, side and rear landscaped garden areas consisting of mature native and exotic trees and shrubs, as well as areas of dense native bushland, particularly on the higher northern and eastern hillslopes and ridgeline areas and which includes McKay Reserve.

The waterfront residential properties on the lower, steeply sloping south-western side of Barrenjoey Road typically have boating and recreational structures such as jetties, ramps, pontoons, boat houses and the like. Some of these residential properties also have inclinators for pedestrian access purposes to the waterfront of the properties (see photo at **Figure 5**).



Figure 5 Surrounding Development

## 4 Proposed Modifications

---

### 4.1 Summary of Proposed Modifications

The revised architectural plans for the proposal prepared by Architects Ink (see **Appendix 3**) show the following design amendments:

#### **Upper floor plan (Plan No. 1922-1 of 8 Issue K)**

- Modified pedestrian path with steps on compacted fill to match existing footpath alignment level within the road reserve connecting with a suspended pedestrian walkway bridge with steps within the site.
- Increase width of fire breast and reduced window sizes.
- Ensuite layout altered.
- Elliptical louvres deleted and horizontal sunshade added.
- Depth of balcony increased by 200mm.

#### **Ground floor plan (Plan No. 1922-2 of 8 Issue K)**

- New air conditioning plant location.
- Kitchen window configuration altered.
- Infill existing window.
- Gas BBQ plinth added.
- Increase size of fire breast.
- New air conditioning plant location.
- External motorised louvres deleted and horizontal sunshade added.

#### **Lower ground floor (Plan No. 1922-3 of 8 Issue K)**

- Laundry/store size increased.
- Bed 5/guest suite size decreased.
- Additional excavation to create additional bedroom guest suite 6.

#### **South western elevation – E1 (Careel Bay) (Plan No. 1922-4 of 8 Issue K)**

- Upper level fenestration head height increased by 2.4 metres.
- External motorised louvres deleted and 750mm deep horizontal sunshade added.
- Fabric awning deleted and fenestration head height increased to 2.4 metres.
- Fenestration added to guest suite 6 addition.

#### **North east elevation – E2 (Barrenjoey Road) (Plan No. 1922-4 of 8 Issue K)**

- No design changes.

#### **North western elevation – E4 (Plan No. 1922-5 of 8 Issue K)**

- Window configuration changed.
- External air conditioning plant location amended.
- New fenestration to guest suite 6 addition.
- New lower ground level of RL 13.15.

#### **North eastern elevation – E3 (Plan No. 1922-5 of 8 Issue K)**

- Operable flat double glazed skylights added.
- Air conditioning plant added.

## 4 Proposed Modifications

---

### **Section – S1 (Plan No. 1922 – 6 of 8 Issue K)**

- Modified pedestrian access to be 2125 minimum clear of kerb.
- Pedestrian path with steps on compacted fill to match existing footpath alignment level.
- New lower ground floor level RL 13.15.
- New access store to guest suite 6 added.
- Motorised louvres deleted and 750 horizontal sunshade added.

### **South eastern elevation – ED6 (Plan No. 1922-6 of 8 Issue K)**

- Window and door configuration altered.
- Infill existing window.
- BBQ plinth added.

### **Section – S2 (Plan No. 1922-7 of 8 Issue K)**

- Upper level fenestration increased to 2.4 metres
- Guest suite 6 added, additional excavation clear of tree 3 structural root zone.
- New lower ground floor level RL 13.15.

### **Section – S3 (Plan No. 1922-7 of 8 Issue K)**

- Upper level awnings deleted, door head height increased to 2.4 metres.

### **Roof and Site Plan (Plan No. 1922-8 of 8 Issue K)**

- Flat profile operable glass skylights to ensuite 2 and 3 added.
- Upper balcony extended 200mm.

## 4.2 Building Form and Materials

The proposed design changes as shown on the revised architectural plans (see **Appendix 3**) are relatively minor in nature and do not change the overall built form and materials as shown on the Council approved original DA plans referred to in Condition 1 of Development Consent No. DA 2020/0130.

The proposed dwelling house alterations and additions are still designed as a part 2 and part 3 storey residential building comprising a 2 storey pavilion wing on the north western side and a 3 storey pavilion wing on the south eastern side connected by a central entry lobby and link-way with stairs and access to a lift. There is also an external pedestrian entry bridge and ramp driveway access connecting to the Barrenjoey Road frontage of the site.

The revised architectural plans for the proposal do not change the building height, front, side and rear building setbacks and deep soil landscape area (56% proposed compared with 55.3% existing site landscaped area).

In particular, the additional small amount of excavation for the new guest bedroom suite on the lower ground floor level is located within the Council approved building envelope/footprint which is shown as a part void area and part “existing underfloor space, a/c plant, water heaters” on the Council approved architectural plans referred to in Condition 1 of the Development Consent No. DA2020/0130.

Most importantly, the revised architectural plans for the proposal will ensure retention of several existing significant native trees at the site and will not result in any potential adverse amenity impacts on neighbouring properties, particularly in respect to view loss, solar access and visual and acoustic privacy.

## 4 Proposed Modifications

---

### 4.3 Landscaping

There are no design changes proposed to the Council approved landscaping plans referred to in Condition 1 of the Development Consent No. DA 2020/0130.

**Appendix 5** is a letter prepared by Blue Gum Tree Care and Consultancy, dated 7 July 2020 which provides an arboricultural impact assessment of the revised architectural plans for the proposal including in respect to the additional excavation for the proposed guest bedroom suite on the lower ground floor level. The Blue Gum Tree letter concludes that the design changes will have negligible additional impact to that outlined in the Arboricultural Assessment Report (January 2020) submitted with the original DA No. 2020/0130. The Blue Gum Tree letter states as follows:

*“The additional proposed excavation is within the same footprint as the previously approved building footprint.*

*The areas of building footings (outside of the existing building footprint) will affect less than 10% of the TPZ area of Tree 3. No pruning of structural roots or major woody transport roots is expected.*

*The retained trees are likely to tolerate the impact of the proposed works (and) remain viable.”*

### 4.4 Vehicular Access, Car Parking and Pedestrian Access

The revised architectural plans (see **Appendix 3**) for the proposal provide for a new ramp driveway access to Barrenjoey Road with an open carport (2 car spaces) and a vehicular turntable located wholly within the site. Provision is also made for a suspended undercover pedestrian bridge walkway connecting with the entry to the dwelling house and the open style carport located within the site. The proposed suspended pedestrian walk-way bridge connects with a pedestrian path with steps on compacted fill to match the existing footpath alignment level within the road reserve.

The proposed separate pedestrian access is considered essential for safe access of the residents and visitors from the road reserve to the dwelling house. The path and steps on compacted fill solution was developed following consultations between the project architect and Council's Engineer (Steve Watson) as referred to in email correspondence dated 8 July 2020.

This Section 4.55(2) Application requests Council's approval to delete Condition 9.7 to permit pedestrian access via the suspended undercover walk-way pedestrian bridge and the modified pedestrian path at grade within the road reserve rather than being incorporated wholly within the driveway.

### 4.5 Stormwater Infrastructure

The revised architectural plans for the proposal do not involve any changes to the stormwater management plans approved by Council under Development Consent No. DA 2020/030.

### 4.6 BASIX Certificate

**Appendix 4** is a BASIX Certificate report for the revised proposal.

### 4.7 Geotechnical Investigation

**Appendix 6** is a Geotechnical Investigation email advice prepared by Assetgeoenviro which makes recommendations in respect to the design and construction of the revised proposal to manage the geotechnical land stability constraints of the site.



## 4 Proposed Modifications

---

### 4.8 Bushfire Hazard Assessment

**Appendix 7** is a Bushfire Hazard Assessment report for the revised proposal prepared by BPAD - Bushfire Planning & Design.

### 4.9 Waste Management Plan

There is no change to the Council's Waste Management Plan report for the demolition and construction of the proposed development.

### 4.10 Development Cost Report

**Appendix 8** is a copy of the Council Cost Summary report for the revised proposal prepared by Geoff Pollock, Builders Licence No. 286729C, which shows the estimated cost of the proposed development based on the revised architectural plans is \$2,882,000 inclusive of GST.

### 4.11 Modifications to the Notice of Determination

#### 4.11.1 Condition No. 1 – Approved Plans and Supporting Documentation

The proposed design modifications, will require a modification to Condition 1 of the Development Consent No. DA 2020/0130 to reference the revised architectural plans (see **Appendix 3**) prepared by Architects Ink and being as follows:

- Upper Floor Plan – Plan No. 1922-1 Issue K
- Ground Floor Plan – Plan No. 1922-2 Issue K
- Lower Ground Floor Plan – Plan No. 1922-3 Issue K
- South West and North East Elevations – Plan No. 1922-4 Issue K
- North West and North East Elevations – Plan No. 1922-5 Issue K
- Section-S1 and South East Elevation - Plan No. 1922-6 Issue K
- Section-S2 and Section-S3 – Plan No. 1922-7 Issue K
- Roof and Site Plan – Plan No. 1922-8 Issue K

#### 4.11.2 Condition 4 – Policy Controls Northern Beaches 7.12 Contributions Plan 2019

It is proposed to amend this Condition as the revised proposal has a higher development cost of \$2,882,000 and, accordingly, a higher monetary contribution of \$28,820 is payable to the Council.

#### 4.11.3 Condition No. 9 – Submission Roads Act Application for Civil Works in the Public Road

Condition No. 9.7 of the Development Consent states as follows:

*“Pedestrian access shall be incorporated within the driveway and any steps required shall be located within the private property.”*

It is proposed to delete this part of Condition No. 9 as the revised architectural plans (see **Appendix 3**) provide for a separate pedestrian walk-way bridge with steps within the site boundaries connecting with a pedestrian path with steps on compacted fill which matches the existing footpath alignment level within the road reserve. Provision is also made for a separate vehicular crossing with a driveway ramp to provide vehicular access to an open carport (2 car spaces) and with a vehicular turntable located within the site.

## 5 Statutory Provisions

---

### 5.1 General

Section 4.55 of the EP&A Act contains the provisions that must be considered by a consent authority in determining an application to modify a Notice of Determination. In this regard, the relevant provision is section 4.55(2) of the EP&A Act.

This application is lodged under section 4.55(2) as, although the amendments proposed are considered to be minor in nature, they require further environmental assessment.

In addition to the EP&A Act, Clause 115 of the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation) contains the information that must be submitted with an application to modify a consent. The requirements under the EP&A Act and EP&A Regulation in the following subsections.

### 5.2 Section 4.55 of the Act

Section 4.55(2) of the Act applies to modifications where, notwithstanding that the amendments proposed are minor in nature, the modifications require further environmental assessment. Specifically, section 4.55(2) provides that:

*"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:"*

#### 5.2.1 Substantially the Same Development (section 4.55(2)(a))

*"(a) It is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all)".*

The proposed design changes as shown on the revised architectural plans for the proposal (see **Appendix 3**) are generally of a minor nature. The most significant design change is the addition of the guest room area on the lower ground floor level which replaces a part void area and existing under floor space area as shown on the Council approved architectural plans referred to in Condition 1 of the Development Consent No. DA 2020/0130.

The proposed addition of the guest room area on the lower ground floor level will not be visible as viewed from the Barrenjoey Road frontage of the site and it will be largely screened from view by existing and proposed landscaping of the site from Pittwater.

The proposed design changes to the ramp driveway with an open carport (2 spaces) and turntable and the separate suspended pedestrian walk-way bridge connecting with a path and steps at grade within the road reserve are considered to be of a minor nature as viewed from the public domain of the Barrenjoey Road site frontage.

The removal of a portion of the existing street frontage hedge to facilitate the separate pedestrian access to the dwelling will improve public sight line views of motor vehicles travelling along Barrenjoey Road as well as provide public domain views of Careel Bay and Pittwater.

Accordingly, the proposed dwelling house alterations and additions are considered to be substantially the same as the original Council approved plans for the proposed development as referred to in Condition 1 of Development Consent No. DA 2020/0130 as it is essentially the same pavilion style part 2 and part 3 storey dwelling house with no changes to the building height, setbacks, building envelopes and minimal change to the external appearance as viewed from neighbouring residential properties as well as the public domain context of the Barrenjoey Road street frontage and from the Pittwater waterway.

## 5 Statutory Provisions

---

### 5.2.2 Consultation with relevant Minister/s, Authorities or Approval Agencies (section 4.55(2)(b))

- (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.*

The original DA No. 2020/0130 was referred by Council to Ausgrid but this public authority did not provide a response.

### 5.2.3 Notification (section 4.55(2)(c))

“(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 modifications of a development consent”.*

It is understood that Council will place the section 4.55(2) Modification Application for the revised proposal on public notification to neighbouring residents and the local community.

It is noted that there were no objections submitted by local residents to the original Development Application No. 2020/0130 for the proposed alterations and additions to the dwelling house at the site.

### 5.2.4 Consideration of Submissions (section 4.55(2)(d))

“(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”.*

Should Council notify the subject application in accordance with section 4.55(2)(d), it must consider any submissions made during a notification period.

### 5.2.5 Matters for Consideration and Reasons for Granting Consent

Section 4.55(3) of the EP&A Act requires that such of the matters referred to in section 4.15(1) of the EP&A Act as are of relevance to the proposed modification must be taken into consideration in determining the application for modification. These relevant matters are addressed in **Section 6.0** of this Report.

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.

The Council Assessment report on the original Development Application No. 2020/0130 for alterations and additions to the existing dwelling house on the site relevantly concluded as follows:

*“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 & Assessment Act 1979*

## 5 Statutory Provisions

---

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

This Section 4.55(2) Modification Application involves minor design changes to the Council approved architectural plans for the proposal (see **Appendix 3**) as well as the modification of Condition No's 1, 4 and 9 of the subject development consent and will not result in any material change to the Council's assessment and conclusions in respect to the revised proposal satisfying the relevant objectives and planning controls under the Pittwater LEP, Pittwater DCP, relevant SEPPs and the EP&A Act 1979 and accompanying Regulation 2000.

### 5.3 Clause 115 of the EP&A Regulation 2000

Subclause 115(1) of the Regulation details the information required to be submitted with an application to modify a Development Consent under section 4.55. These details are contained in this planning report and the accompanying application form.

## 6 Environmental Planning Assessment

---

The following subsections provide an environmental assessment of the proposed modifications in respect of the relevant matters for consideration under section 4.15(1).

The key environmental planning issues associated with the proposed development are:

- Compliance with relevant planning policies and controls
- Flora and Fauna
- Built Form and Streetscape
- Traffic, Parking and Pedestrian access
- Amenity impacts on neighbouring properties

An assessment of these issues is provided in the following subsections.

### 6.1 Planning Controls

The following subsections assess the proposal against the relevant provisions of applicable Environmental Planning Instruments (EPIs), Draft EPIs, Development Control Plans (DCPs), Planning Agreements and matters prescribed by the Regulation in accordance with section 4.15(1)(a) of the EP&A Act.

#### 6.1.1 State Environmental Planning Policies

As noted in Council's assessment report on the original Development Application DA No. 2020/0130, the site has been used for residential purposes for a significant period of time with no prior land uses and, accordingly the site poses minimal (if any) risk of contamination. For the purpose of Clause 7(1)(b) and (c) of SEPP 55, the site is considered to be suitable for the residential land use.

**Appendix 4** to this report is a BASIX Certificate for the revised proposal as required under the SEPP (Buildings Sustainability Index: BASIX (2004)).

The original Development Application No. 2020/0130 for the proposal was referred to Ausgrid under the SEPP (Infrastructure) but no response was received by the Council.

The site is located within the Coastal Use Area and Coastal Environment Area as identified by SEPP (Coastal Management) 2018 and the provisions of this policy are applicable in relation to the revised proposal. It is considered that the revised proposal is consistent with the provisions of the SEPP (Coastal Management) 2018 including the matters prescribed by Clauses 13, 14 and 15 of this policy.

#### 6.1.2 Pittwater Local Environmental Plan 2014 (Pittwater LEP)

The site is located within the E4 Environmental Living zone (the E4 zone) under the Pittwater LEP.

Development for the purposes of a dwelling house is permissible with the consent of the Council on land within the E4 zone. The proposed new carport, driveway, turntable, inclinator, pathways and other proposed development is ancillary to the purpose of a dwelling house and, accordingly, are all permissible with the consent of Council on land within the E4 zone under the Pittwater LEP.

**Figure 6** below is an extract of the Land Use Zoning Map of the Pittwater LEP which shows the site is within the E4 zone.

## 6 Environmental Planning Assessment



Figure 6 Land Use Zoning Map

The revised proposal is considered to be consistent with the objectives of the E4 zone under the Pittwater LEP as the proposed pavilion style dwelling house will have a low-impact and it will maintain a natural landscaped setting, integrated with the landscape and landform of this Palm Beach waterfront residential site.

The revised proposal does not change the building height of the Council approved original Development Application No. DA 2020/0130. It is noted that the Council Assessment report relevantly states as follows:

*“The site is subject to an 8.5m height control which is the vertical distance from Australian Height Datum (AHD) to the highest point of the building pursuant to the definition of building height under Clause 4.3 PLEP 2014. In the circumstances of this assessment, it is important to note that the site has been excavated to a depth of up to approximately 2.5m below AHD.*

...

*As a result, the proposed development is non-compliant with the 8.5m maximum building height prescribed by Clause 4.3(2) of PLEP 2014, as follows:*

- *Maximum overall height of the leading edge of the south-eastern roof line is 9.1m.*
- *Maximum overall height of the south-east pavilion is 9m.*

...

*The maximum overall height of the new carport and associated roofing is compliant at 2.5m – 7.4m, and the maximum overall height of the north-west pavilion is compliant at 8.5m.*

*As a result of the non-compliance with the south-eastern pavilion, the applicant seeks to rely upon a variation, as prescribed by 4.3(2D) of PLEP 2014 which provides that the height of buildings may reach up to 10m in height, subject to consistency with certain criteria.*

...

*The proposed development will be consistent with the criteria of Clause 4.3(2)D of PLEP 2014, and the application of the 10m control is supported. As such, the proposed development is consistent with the maximum building height prescribed for the site.*

The site is identified as Class 5 on the Acid Sulfate Soils Map under the Pittwater LEP. The Acid Sulfate Soils provision under Clause 7.1 of the Pittwater LEP does not apply to the revised proposal.

The site is identified on the Geotechnical Hazard Map as Geotechnical Hazard 1 under the Pittwater LEP. **Appendix 6** is an email from Mark Bartel of Assetgeoenviron dated 31 July 2020

## 6 Environmental Planning Assessment

---

in respect to the revised proposal including in respect of the additional excavation which states:

*"In my opinion, the proposed additional excavation would not impact the engineered retaining wall to be constructed upslope, or the stability of the slope in-between or downslope.*

*We consider that the assessment and recommendations in our previous report 5821-G1 REV 2 dated 17 January 2020 are still valid and may be relied upon for assessment of the proposed amendments."*

A foreshore building line applies to the rear waterfront section of the site as shown on the Foreshore Building Line Map under the Pittwater LEP. The revised architectural plans for the proposal (see **Appendix 3**) do not propose any design changes or additional works within the foreshore building line area of the site.

### 6.1.3 Pittwater 21 Development Control Plan (Pittwater DCP)

The revised architectural plans for the proposal (see **Appendix 3**) involve several minor design changes to the Council approved plans referred to in Condition 1 of the Development Consent DA No. 2020/0130 and do not materially change the Council's assessment of the proposed development which states:

*"Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant outcomes of PLEP 2014/P21 DCP and the objectives specified in S1.3 of the Environmental Planning & Assessment, 1979. Accordingly, the assessment finds that the proposal is supported, in this particular circumstance."*

It is noted that the Council's Assessment report on the original DA plans for the proposed development approved the following variations to planning controls under the Pittwater 21 DCP:

- Clause D12.5 Front Building Line – Variation of the 10 metre minimum front building line for the open carport/turning circle (0.0m-2.6m); roof of board way entry (0.4m-2.7m); and the dwelling house alterations and additions (5.10m-8.4m).  
  
It is noted that the proposed new guest room area on the lower ground floor level will have a 5.10m minimum front building line but this will not be visible from the Barrenjoey Road site frontage due to the steep slope; screen landscaping including the existing hedge planting; and the location of the open carport and vehicular turntable on the upper floor level which will block views of the proposed new guest room area.
- Clause D12.6 Side and Rear Building Line – There is no change to the side and rear building line setbacks of the revised proposal which are compliant with the exception of the proposed inclinor and decked path located within the rear building line which has been approved by Council with the original DA No. 2020/0130.
- Clause D12.8 Building Envelope – There is no change to the building envelope assessment of the revised proposal. Council approved the small triangle encroachment on the upper floor level along the south-eastern site boundary with the assessment of the original DA No. 2020/0130.
- Clause D12.10 – Landscaped Area – Environmentally Sensitive Land – The revised proposal does not change the site landscaped area which is about 56% (60% required under the Pittwater DCP). The landscaped area of the revised proposal will be more compliant than the existing dwelling house at the site (55.3% existing site landscaped area).

## 6.2 Likely Impacts of the Development

The following subsections assess the likely impacts of the development in accordance with section 4.15(1)(b) of the EP&A Act.



## 6 Environmental Planning Assessment

---

### 6.2.1 Flora and Fauna

The site is not identified as being a biodiversity area as shown on the Biodiversity Map of the Pittwater LEP. The revised proposal will have no adverse impacts on existing native flora and fauna habitats and species at the site and in the Palm Beach locality. The revised proposal still involves the retention of the 4 High Retention Value trees and most of the Medium Retention Value trees at the site and will provide 56% site landscaped area, compared with 55.3% of existing site landscaped area.

**Appendix 5** is a letter prepared by Blue Gum Tree Care and Consultancy, dated 7 July 2020 which provides an assessment of the potential impact of the revised proposal on existing trees and states:

*"The additional proposed excavation is within the same footprint as the previously approved building footprint.*

*The areas of building footings (outside of the existing building footprint) will affect less than 10% of the TPZ area of Tree 3. No pruning of structural roots or major woody transport roots is expected.*

*The retained trees are likely to tolerate the impact of the proposed works (and) remain viable."*

### 6.2.2 Existing and/or Future Character

The revised proposal involves minor design changes and maintains the Council approved design as a part 2 and part 3 storey dwelling house comprising a 2 storey pavilion wing on the north western side and a 3 storey pavilion wing on the south eastern side connected by a central entry lobby and link-way with stairs and access to a lift and with an external pedestrian bridge and open carport with ramp driveway connecting to the Barrenjoey Road frontage of the site.

The revised proposal is consistent with the desired future character of the Palm Beach locality. The existing and proposed landscaped treatment of the site will ensure that the visual impact of the proposed development is secondary to the site landscaping as viewed from the public domain of the Barrenjoey Road site frontage, Pittwater waterway and from neighbouring residential properties.

It is further noted that the revised proposal by providing a ramp driveway to access the open carport with a vehicular turntable and the separate pedestrian walk-way bridge within the site connecting to a pedestrian path at-grade within the road reserve will have minimal visual impact. The revised proposal will provide the public with a viewing corridor from Barrenjoey Road towards Careel Bay, Pittwater and the Western Foreshores including Ku-ring-gai National Park.

### 6.2.3 Amenity Impacts on Neighbouring Properties

#### 6.2.3.1 View Sharing

The revised architectural plans for the proposed dwelling house alterations and additions (see **Appendix 3**) have been sited generally within the footprint of the existing dwelling to minimise any potential adverse impacts on views enjoyed by the neighbours from adjoining and adjacent properties. The design changes as shown on the revised architectural plans (see **Appendix 3**) for the proposal will result in no additional impact on westerly views of Careel Bay and Pittwater from the two adjoining residential properties as well as from existing dwellings on the opposite side of Barrenjoey Road.

#### 6.2.3.2 Visual and Acoustic Privacy

The revised proposal will not result in any additional visual or acoustic privacy impacts on neighbouring properties.



## 6 Environmental Planning Assessment

---

### 6.2.3.3 Solar Access

The revised proposal will not result in any additional overshadowing impacts on adjoining residential properties.

### 6.2.3.4 Traffic, Parking and Pedestrian Access

The revised architectural plans for the proposal (see **Appendix 3**) provides a ramp driveway access to an open carport with 2 car spaces and a vehicular turntable so that cars can enter and leave the site in a forward direction.

The revised proposal provides for a separate pedestrian walk-way bridge located within the site connected to a pedestrian path with steps on compacted fill to match the existing footpath alignment level within the public road reserve.

This Section 4.55(2) application is seeking Council's support to the deletion of Condition 9.7 of the Development Consent No. DA 2020/0130 which requires pedestrian access to the proposed dwelling house to be incorporated within the driveway and any steps required to be located within the private property (the site).

It is the opinion of DFP that the provision of the ramp driveway access to the open carport with a separate pedestrian walk-way bridge connecting with a pedestrian path at-grade within the road reserve will provide the best outcome in respect to ensuring safe and convenient access, as well as maintaining the nature strip within the road reserve of Barrenjoey Road at the site frontage.

## 6.3 Suitability of the Site for Development

The following subsections assess the suitability of the site in accordance with section 4.15(1)(c) of the EP&A Act.

### 6.3.1 Location

The revised proposal does not change the existing low-density residential use of the site and it is consistent with the zone objectives and is a permissible development within the E4 zone of the Pittwater LEP.

### 6.3.2 Land Stability

**Appendix 6** to this report is an email from Mark Bartel of Assetgeoenviro, dated 31 July 2020 which comments on the revised architectural plans for the proposal and states:

*"in my opinion, the proposed additional excavation would not impact the engineered retaining wall to be constructed up-slope or the stability of the slope in-between or down-slope."*

*"We consider that the assessment and recommendations in our previous report 5821-G1REV2 dated 17 January 2020 are still valid and may be relied upon for assessment of the proposed amendments."*

### 6.3.3 Acid Sulfate Soils

The revised proposal will involve minor earthworks and is unlikely to result in any potential acid sulfate soils impacts at the site or in the surrounding locality.

### 6.3.4 Contamination

The site has been used for residential purposes for many years and accordingly, the revised proposal is unlikely to be impacted by site contaminants.

### 6.3.5 Bushfire Hazard

**Appendix 7** to this report is a Bushfire Hazard Assessment report for the revised proposal prepared by BPAD Bushfire Planning and Design. The Bushfire report concludes as follows:

*"The project can comply with the construction requirements of AS3959 (2018) and the performance requirements of the BCA. The objectives and performance requirements of PBP (2019) are also achieved."*

## 6 Environmental Planning Assessment

---

### 6.3.6 Essential Services and Infrastructure

All essential public utility and infrastructure services are available for the proposal at the site.

### 6.4 Public Interest

In accordance with section 4.15(1)(e) of the EP&A Act, the revised proposal is considered to be in the public interest as it essentially involves proposed alterations and additions to an existing dwelling house to facilitate the continued low density residential use of the site and is generally consistent with the objectives and the planning controls of the Pittwater LEP, Pittwater DCP and other relevant legislation.

## 7 Conclusion

---

This report accompanies an application under section 4.55(2) of the EP&A Act to modify the following conditions of the Development Consent No. DA 2020/0130 issued by the Council on 4 June 2020 for “alterations and additions to a dwelling house” at No. 981 Barrenjoey Road, Palm Beach:

- Condition 1 – Approved plans and supporting documentation – to be amended to reference the revised architectural plans for the proposal (see **Appendix 3**);
- Condition 4 – Policy Controls Northern Beaches 7.12 Contributions Plans 2019 – to be amended as the development cost of the revised proposal has increased to \$2,882,000 resulting in a monetary contribution of \$28,820 to be paid to Council (see Council’s Cost Summary report for the revised proposal at **Appendix 8**);
- Condition 9 – Submission Roads Act Application for Civil Works in the Public Road – delete point 7 of this Condition to enable pedestrian access via steps and a cantilevered pedestrian bridge which is not incorporated wholly within the driveway and which includes a pedestrian path with steps at grade within the road reserve as shown on the revised architectural plans (see **Appendix 3**).

The proposed modifications are considered to be acceptable in this particular instance and can be approved by Council under Section 4.55(2) of the EP&A Act.