

Northern Beaches Council
725 Pittwater Road
DEE WHY NSW 2099

11 March 2025

Attn: Tom Burns or Jordan Davies

**APPLICATION TO MODIFY DEVELOPMENT CONSENT
SECTION 4.55(1A) ENVIRONMENTAL PLANNING AND ASSESSMENT ACT**

Development application No: DA 2022/1453
Date of determination: 19 January 2023
Premises: 126D Elimatta Road Mona Vale (Lot 3, DP 1274062)
Description: Construction of dwelling house on each lot.
Proposed Modification/s: Floor plan and window revisions to house on Lot 3.

1.0 INTRODUCTION

This application is made on behalf of the owner of the subject land, Mr Richard Mirosevich. The revisions are intended for the improvement of privacy and are therefore of lesser environmental impact than the original application. While the project has commenced, it has been halted in order to receive approval for the modifications and bank finance.

Plan Reference: Justin Croft, Project No. 2021381, as amended 20/08/2024, Sheets 1-8.

2.0 PROPOSED MODIFICATIONS

Lower Ground Floor

1. Increased building setback to the north-eastern boundary from 900mm to 1.2m. This improves building separation with the adjoining property.
2. Utilise the lower ground floor for living space in lieu of a workshop. This involves the relocation the guest bedroom from the mid floor to the lower floor with an ensuite bathroom. The remaining area will be a rumpus/gym room. The lower floor will be internally connected with a stair and is not for separate occupation. FFL lowered from 51.2 to 50.95 (-0.25).
3. Patio added to the rear of the rumpus room.

Mid Floor

4. Relocate the living room deck from the north-western side to the south-western side. This is in response to neighbour's requests which will have the effect of increasing privacy.
5. Internally, rearrange the locations of the laundry, WC, media room and study. This change is inconsequential.

Upper Floor

6. Remove Window W18 and relocate the walk-in-robe (WIR) in Bedroom 2.
7. Reduce WIR's to Bedrooms 3 and 4 to wardrobes.
8. Slightly reconfigure Master Bedroom, WIR and ensuite while maintaining the same location.

South-East Elevation

9. Delete previous workshop window and replace with highlight window to guest bathroom. Privacy is increased in doing so.
10. Delete Windows 1 and 2 (kitchen and pantry) for improved privacy to neighbours.
11. Introduce highlight windows to Bedrooms 3 and 4.
12. Adjust Master Bedroom windows (W21 on S.4.55 plans) and hallway window (W22) to be more consistent.

North-West Elevation

13. Rationalise windows for improved aesthetic consistency: Former deck sliding doors deleted and replaced with two windows; Bedroom 2 highlight window introduced (27A). Allows privacy to neighbouring property.
14. New laundry door.

North-East Elevation

15. Reduce window sizes and make styling consistent for improved aesthetic consistency; Reduce garage window to highlight window.

South-West Elevation

16. Window revisions and introduce sliding door to lower ground floor and mid floor deck. Delete window to Master Bedroom (W12A) and replace with W19 and W20. Former window W16 to upper floor hall deleted.
17. Note relocated deck.

The building height and internal floor levels remain the same other than noted at Item 2 where the lower ground floor FFL is reduced by 250mm. It should be noted that the lower ground floor is not for separate occupation.

3.0 LEGISLATIVE FRAMEWORK

The proposed modification is subject to Section 4.55(1A) of the Environmental Planning and Assessment Act 1979, "*modifications involving minimal environmental impact*". Under Section 4.55(1A) a consent authority may modify the consent if:-

- a) *It is satisfied that the proposed modification is of minimal environmental impact, and*
- b) *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), and*

- c) *It has notified the application in accordance with:*
- (i) *the regulations, if the regulations so require, or*
 - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- d) *It has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

Minimal environmental impact

The modification is of minimal environmental impact as it maintains predominantly the same built form/building envelope and height, however has lesser environmental impact in terms of privacy. This is because rather than the approved deck looking towards the rear yard/swimming pool area of No. 126A Elimatta Road, the deck will face a less sensitive interface with No. 5 Iramir Place to the south east. The relocated deck does not face any active living or private open space areas; there is dense screen vegetation between and there is a difference in levels preventing overlooking.

Additionally, there is an improvement in the north-eastern side boundary setback of the garage. The approved setback is 900mm while the proposed setback will increase to 1.2m

For above reasons the application as modified will be of minimal environmental impact.

The “substantially the same development” test

There are two separate legal tests that apply to any modification application before the consent authority can determine the application on its merits.

Firstly, a proposal can only be regarded a modification if it involves ‘alteration without radical transformation’ (*Sydney City Council v Ilenc Pty Ltd [1984]*).

Secondly, the Council must be satisfied that the modified development will be ‘substantially the same development’ as approved under the original development consent.

The principal purpose of the original application was for the provision of a new dwelling. The purpose of the development remains the same but is to be modified as listed under Section 2. The proposed modifications clearly do not result in ‘alteration without radical transformation’ as the built form is substantially the same. The development as modified can be easily understood as substantially the same development as approved.

Given the nature of the application, there is no doubt that the modifications will satisfy both of the threshold tests outlined above and therefore results in substantially the same development.

Notification

The application may be notified in accordance with Council’s notification policy.

Consideration of submissions

Any public submissions made as a result of the notification process are a matter for the Council in its assessment under Clause 4.55(1A)(d) of the Act.

4.0 SECTION 4.15 MATTERS

Section 4.55(3) of the Act requires that in determining an application for the modification of a consent, the consent authority must take into consideration the matters referred to in Section 4.15(1) as are of relevance to the development forming the subject of the application.

The application remains compliant in terms of permissibility, setbacks, building height and landscaped area.

6.0 CONCLUSION

This report, as submitted in accordance with Section 4.55(1A) of the Act, has demonstrated that the proposed modifications are of minimal environmental impact and result in substantially the same development as that approved for Lot 3 under DA 2022/1453.

Additionally, approval is in the interests of obtaining a better environmental planning outcome in terms of the privacy for adjoining properties and the aesthetic appearance of the development.

Consequently, the proposal is recommended for approval in accordance with staff delegations.



Eugene Sarich

Urbanesque Planning Pty Ltd

Attachments:

1. Amended Architectural Plans, Justin Croft, Project No. 2021381, revised 20/08/24.
2. BASIX Certificate No. 1204866S_06, dated 10/02/25.
3. Geotechnical Report Review, Structerre, dated 18/02/25.
4. Letter of Support, P & K Angel. 126A Elimatta Road Mona Vale, 16/02/25.