

10 October 2021

Northern Beaches Council
PO Box 82
MANLY NSW 1655

Dear Sir/Madam,

SECTION 4.55(1a) APPLICATION

Premises:	Lot 5 in DP 23447, No. 96 Clontarf Street, North Balgowlah
Amendments:	Amend Plans
Development Application:	DA2021/0336
Date of Determination:	11/05/2021

INTRODUCTION

On behalf of the Mr John Davies I seek Council consent pursuant to Section 4.55(1a) of the *Environmental Planning & Assessment Act* 1979 to amend Development Consent DA2021/0336 relating to the construction of a detached secondary dwelling.

BACKGROUND

Development Consent was granted for the construction of detached secondary dwelling. The consent was issued on 11 May 2021.

PROPOSED MODIFICATION

This application seeks to amend the plans as depicted in the architectural plans prepared by Site Design & Studios, Drawing No. 1139, Issue H and dated 26/07/2021 and described below:

- Delete retaining wall adjacent to eastern (rear) boundary.
- New window to eastern elevation to serve bathroom.
- Change window size to southern elevation serving kitchen and study.
- Alter retaining to north of the secondary dwelling.

The following documentation is also submitted with the application:

- BASIX Certificate # 1179018S_07 and issued 30 August 2021.
- NatHERS Certificate No. 0005710603-06 and issued 30 August 2021.

LEGISLATION

Section 4.55(1a) of the Act states:

(1a) Modifications involving minimal environmental impact

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

(a) It is satisfied that the proposed modification is of minimal environmental impact, and

Comment: The original consent granted approval for the construction of a detached secondary dwelling. This application seeks to amend the approved plans generally within the existing building envelope. The changes relate to windows and removal of the portion of the retaining wall. This is considered to be 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

Comment: The original consent granted approval for the construction of a new detached secondary dwelling. This application seeks to amend the approved plans generally within the existing building envelope. The changes relate to windows and removal of the portion of the retaining wall. This is considered to be substantially the same development.

(c) it has notified the application in accordance with—

- (i) the regulations, if the regulations so require, or*
- (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

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

Comment: The proposal will be notified in accordance with Council's guidelines.

LEGISLATION

Warringah Local Environmental Plan 2011

The subject site is zoned R2 Low Density Residential under the provisions of the Warringah Local Environmental Plan 2011.

The proposal seeks amendments to the approved dwelling which is permissible in this zone and is considered to be consistent with the objectives of the R2 zone.

The following Development Standards specified in the LEP are relevant to the proposed development:

Clause	Development Standard	Proposal	Compliance
4.3 Height	8.5m	No change approximately 3m	Yes

The following provisions are also relevant:

Clause 5.4 Controls Relating to Miscellaneous Permissible Uses

This clause provides:

- (9) *Secondary dwellings on land other than land in a rural zone. If development for the purposes of a secondary dwelling is permitted under this Plan on land other than land in a rural zone, the total floor area of the dwelling, excluding any area used for parking, must not exceed whichever of the following is the greater—*
- (a) *60 square metres,*
 - (b) *11% of the total floor area of the principal dwelling.*

The proposed modification of the detached secondary dwelling does not increase the approved floor area. The proposal complies with this clause.

Clause 6.4 Development on Sloping Land

The subject site is identified as Area B on Council's Landslip Risk Map. A Preliminary Geotechnical Report had been submitted with the original application and the minor amendments for this modification do not alter the recommendations or outcomes of this Report.

No further information is required in this regard.

There are no other provisions of the Warringah Local Environmental Plan 2011 that apply to the proposed development.

Warringah Development Control Plan 2011

The proposed amendments relate only to stormwater with the building envelope/footprint remaining unchanged. The relevant provisions of the DCP are detailed below:

The following table provides a summary of the relevant controls of the DCP:

Clause	Requirement	Compliance
D8 - Privacy	This clause specifies that development is not to cause unreasonable overlooking of habitable rooms and principle private open space of adjoining properties.	Yes The proposed amendments continue to ensure an appropriate level of privacy is maintained to the adjoining properties. The secondary dwelling is orientated towards the north with ample setback provided to the northern boundary. The proposed screen planting adjacent to the southern and western boundaries will further improve privacy to the adjoining properties. The changes to the windows will not have any impact to the adjoining properties as the structure is single storey and in conjunction with boundary fencing and landscaping ensures there is no opportunity for overlooking.

There are no other provisions of the DCP that apply to the proposed development.

JUSTIFICATION

The proposed amendments to the plans are considered to be justified for the following reasons:

- The proposed modifications are contained within the approved building envelope, with the exception of the alteration to the retaining wall.

- The proposal does not result in any detrimental impacts to the adjoining properties, streetscape or character of the locality.

It is therefore considered appropriate that the request to amend the plans should be supported.

CONCLUSION

For the reasons stated above it is considered that this application to amend the approved plans should be supported. Should you require any further information please do not hesitate to contact me.

Yours faithfully,



Natalie Nolan