

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

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| Application Number: | Mod2021/0824 |
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| Responsible Officer: | Clare Costanzo |
| Land to be developed (Address): | Lot 5 DP 23447, 96 Clontarf Street NORTH BALGOWLAH NSW 2093 |
| Proposed Development: | Modification of Development Consent DA2021/0336 granted for construction of a secondary dwelling |
| Zoning: | Warringah LEP2011 - Land zoned R2 Low Density Residential |
| Development Permissible: | Yes |
| Existing Use Rights: | No |
| Consent Authority: | Northern Beaches Council |
| Land and Environment Court Action: | No |
| Owner: | Maldwyn John Davies Janette Joy Davies |
| Applicant: | Maldwyn John Davies |

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|----------------------------------|------------------------------------|
| Application Lodged: | 28/10/2021 |
| Integrated Development: | No |
| Designated Development: | No |
| State Reporting Category: | Residential - New second occupancy |
| Notified: | 09/11/2021 to 23/11/2021 |
| Advertised: | Not Advertised |
| Submissions Received: | 0 |
| Clause 4.6 Variation: | Nil |
| Recommendation: | Approval |

PROPOSED DEVELOPMENT IN DETAIL

The proposal comprises of a modification to development application DA2021/0336 for the construction of a secondary dwelling. The following modifications are proposed:

- Delete retaining wall adjacent to eastern (rear) boundary
- New window to eastern elevation servicing kitchen and study
- Alter retaining to the north of the secondary dwelling

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

Warringah Development Control Plan - B9 Rear Boundary Setbacks

Warringah Development Control Plan - C9 Waste Management

SITE DESCRIPTION

| | |
|-----------------------------------|--|
| Property Description: | Lot 5 DP 23447 , 96 Clontarf Street NORTH BALGOWLAH NSW 2093 |
| Detailed Site Description: | <p>The subject site consists of one (1) allotment located on the eastern side of Clontarf Street, North Balgowlah.</p> <p>The site is irregular in shape with a frontage of 15.24m along Clontarf Street and a depth of 54.865m. The site has a surveyed area of 836.1m².</p> <p>The site is located within the R2 Low Density Residential zone from WLEP 2011 and accommodates a part two part three storey brick dwelling with a tiled roof. An attached garage is located within the front setback. A swimming pool is under construction in the rear yard.</p> <p>The site falls steeply from the rear north east corner (RL85.97) towards Clontarf Street (RL73.5), creating a fall of approximately 12m.</p> <p>The rear of the site consists of a turfed lawn, rocky outcrops and garden beds.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> |

Adjoining and surrounding development is characterised by dwellings of a similar size and scale of the subject dwelling. It is not uncommon for sites to have a secondary dwelling within their rear.

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:

- DA2019/1307 for alterations and additions to a dwelling house including a swimming pool was approved on the 9 January 2020
- Mod2020/0287 for modification of development consent 2019/1307 granted for alterations and additions to a dwelling house including a swimming pool was approved on the 10 August 2020
- Mod2021/0370 for modification of development consent 2019/1307 granted for alterations and additions to a dwelling house including a swimming pool was approved on 2 August 2021

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 DA2021/0336, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

| Section 4.55(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 regulations, modify the consent if: | |
| (a) it is satisfied that the proposed modification is of minimal environmental impact, and | <p>Yes</p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <ul style="list-style-type: none"> • The built form of the approved secondary dwelling remains unchanged and is within the approved envelope • No adverse amenity impacts expected • Works are substantially the same as approved |
| (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 | <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 DA2021/0336 for the following reasons:</p> <ul style="list-style-type: none"> • The modification seeks to amend the approved plans generally within the existing building envelope. • The removal of the retaining wall will not alter the intention of the original approval |
| <p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require, 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>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan.</p> |
| (d) it has considered any submissions made concerning the proposed modification within | <p>See discussion on "Notification & Submissions Received" in this report.</p> |

| Section 4.55(1A) - Other Modifications | Comments |
|---|----------|
| any period prescribed by the regulations or provided by the development control plan, as the case may be. | |

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 | 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. |
| Section 4.15 (1) (a)(iii) – Provisions of any development control plan | Warringah 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 Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000) | <p><u>Division 8A</u> of the EP&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&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&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&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&A Regulation 2000 requires the</p> |

| Section 4.15 'Matters for Consideration' | Comments |
|---|--|
| | <p>consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&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&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&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> |
| <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> | <p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p> |
| <p>Section 4.15 (1) (c) – the suitability of the site for the development</p> | <p>The site is considered suitable for the proposed development.</p> |
| <p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p> | <p>See discussion on “Notification & Submissions Received” in this report.</p> |
| <p>Section 4.15 (1) (e) – the public interest</p> | <p>No matters have arisen in this assessment that would justify the refusal of the application in the public interest.</p> |

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 09/11/2021 to 23/11/2021 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 |
|--|--|
| Building Assessment - Fire and Disability upgrades | <p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no concerns with the application subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p><i><u>Note:</u> The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</i></p> |
| Landscape Officer | <p>The application is to modify development consent DA2021/0336 relating to the construction of a detached secondary dwelling. The modification proposal includes: delete retaining wall adjacent to eastern (rear) boundary and rely on the existing rock face; new window to eastern elevation to serve bathroom; change window size to southern elevation serving kitchen and study; and alter retaining to north of the secondary dwelling.</p> <p>The landscape treatment to the boundaries in proximity to the secondary dwelling remains unaltered and thus no concerns are raised by Landscape Referral.</p> |

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. 1179018S_07 dated 30 August 2021).

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

Warringah Local Environmental Plan 2011

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| 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 | 3.6m | 3.6m (no changes) | N/A | Yes |

Compliance Assessment

| Clause | Compliance with Requirements |
|---|------------------------------|
| 4.3 Height of buildings | Yes |
| 5.4 Controls relating to miscellaneous permissible uses | Yes |
| 6.2 Earthworks | Yes |
| 6.4 Development on sloping land | Yes |

Warringah Development Control Plan

Built Form Controls

| Standard | Requirement | Approved | Proposed | Complies |
|---------------------------|-------------|----------|------------------------|----------|
| B1 Wall height | 7.2m | 3.2m | 3.2m (no changes) | Yes |
| B3 Side Boundary Envelope | 4m | within | within (no changes) | Yes |
| | 4m | within | within | Yes |

| | | | | |
|---|---------|-------------------------------|-------------------------------|-----|
| | | | (no changes) | |
| B5 Side Boundary Setbacks | N: 0.9m | 6.6m | 6.6m (no changes) | Yes |
| | S: 0.9m | 2m | 2m (no changes) | Yes |
| B7 Front Boundary Setbacks | 6.5m | no changes | no changes | Yes |
| B9 Rear Boundary Setbacks | 6m | 2m | 2m (no changes) | No |
| D1 Landscaped Open Space and Bushland Setting | 40% | 354.5m ² or 42% | 354.5m ² or 42% | Yes |

Compliance Assessment

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|---|------------------------------|-----------------------------|
| A.5 Objectives | Yes | Yes |
| B1 Wall Heights | Yes | Yes |
| B3 Side Boundary Envelope | Yes | Yes |
| B5 Side Boundary Setbacks | Yes | Yes |
| B7 Front Boundary Setbacks | Yes | Yes |
| B9 Rear Boundary Setbacks | No | Yes |
| C2 Traffic, Access and Safety | Yes | Yes |
| C3 Parking Facilities | Yes | Yes |
| C4 Stormwater | Yes | Yes |
| C7 Excavation and Landfill | Yes | Yes |
| C8 Demolition and Construction | Yes | Yes |
| C9 Waste Management | No | No |
| D1 Landscaped Open Space and Bushland Setting | Yes | Yes |
| D2 Private Open Space | Yes | Yes |
| D3 Noise | Yes | Yes |
| D6 Access to Sunlight | Yes | Yes |
| D7 Views | Yes | Yes |
| D8 Privacy | Yes | Yes |
| D9 Building Bulk | Yes | Yes |
| D10 Building Colours and Materials | Yes | Yes |
| D11 Roofs | Yes | Yes |
| D12 Glare and Reflection | Yes | Yes |
| D14 Site Facilities | Yes | Yes |

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|---|------------------------------|-----------------------------|
| D20 Safety and Security | Yes | Yes |
| D21 Provision and Location of Utility Services | Yes | Yes |
| D22 Conservation of Energy and Water | Yes | Yes |
| E1 Preservation of Trees or Bushland Vegetation | Yes | Yes |
| E2 Prescribed Vegetation | Yes | Yes |
| E6 Retaining unique environmental features | Yes | Yes |
| E10 Landslip Risk | Yes | Yes |

Detailed Assessment

B9 Rear Boundary Setbacks

The location of the approved secondary dwelling remains and therefore findings of the assessment in the development application remain applicable. The modification will continue to achieve the objectives of the control as outlined in the original development application.

C9 Waste Management

A detailed waste management plan has not been submitted with the application. To ensure proper disposal of demolition and builders' wastes, a condition has been included in the original consent requiring details prior to the issue of a construction certificate.

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;
- Warringah Local Environment Plan;
- Warringah 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. Mod2021/0824 for Modification of Development Consent DA2021/0336 granted for construction of a secondary dwelling on land at Lot 5 DP 23447,96 Clontarf Street, NORTH BALGOWLAH, 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 |
| L-01 Site Plan/Analysis/Stormwater Concept Issue H | 26 July 2021 | Site Design + Studios |
| L-02 Rear Yard Plan Issue H | 26 July 2021 | Site Design + Studios |
| L-03 Elevation A Issue H | 26 July 2021 | Site Design + Studios |
| L-04 Elevation B Issue H | 26 July 2021 | Site Design + Studios |
| L-05 Elevation C Issue H | 26 July 2021 | Site Design + Studios |
| L-06 Elevation D Issue H | 26 July 2021 | Site Design + Studios |
| L-10 Landscape Area Calculations Issue H | 26 July 2021 | Site Design + Studios |

| Reports / Documentation – All recommendations and requirements contained within: | | |
|--|--|--|
| | | |

| Report No. / Page No. / Section No. | Dated | Prepared By |
|-------------------------------------|----------------|--------------------------|
| BASIX Certificate No. 1179018S_07 | 30 August 2021 | Efficient Living Pty Ltd |

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

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

Signed



Clare Costanzo, Planner

The application is determined on 01/12/2021, under the delegated authority of:



Rodney Piggott, Manager Development Assessments