

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2020/0704
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<b>Responsible Officer:</b>	Kent Bull
<b>Land to be developed (Address):</b>	Lot 20 DP 16081, 30 Lancaster Crescent COLLAROY NSW 2097
<b>Proposed Development:</b>	Modification of Development Consent DA2019/0092 granted for alterations and additions to a dwelling house including conversion of an existing garage into a secondary dwelling
<b>Zoning:</b>	Warringah LEP2011 - Land zoned R2 Low Density Residential
<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>	Christopher James Kelly Susan Elizabeth Kelly
<b>Applicant:</b>	Christopher James Kelly

<b>Application Lodged:</b>	06/01/2021
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	18/01/2021 to 01/02/2021
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### PROPOSED DEVELOPMENT IN DETAIL

The application seeks to modify Development Consent No. **DA2019/0092** for the Alterations and additions to a dwelling house including conversion of an existing garage into secondary dwelling.

The modification application seeks approval for the following changes:

- Amending Conditions 2 & 11 which both currently read:

#### **Amendments to the approved plans**

The following amendments are to be made to the approved plans:

- a) Window W13 on the western elevation of the first floor, adjoining the walk in robe, is to be translucent (frosted) glazing.
- b) The privacy screen on the western elevation of the the first floor, is not approved and is to be removed from the approved plans.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

As the modification seeks to retain a privacy screen installed along the western elevation of the

### **Amendments to the approved plans**

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Reason: To ensure development minimises unreasonable impacts upon surrounding land.

- Increase area of the Ground Floor rear deck and move the location of stair from laundry onto deck.
- Increase area of the front garden deck with front stairs.

## **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 - D1 Landscaped Open Space and Bushland Setting

Warringah Development Control Plan - D7 Views

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 20 DP 16081 , 30 Lancaster Crescent COLLAROY NSW 2097
<b>Detailed Site Description:</b>	<p>The subject site is known as 30 Lancaster Crescent, Collaroy and is legally referred to as Lot 20 DP16081.</p> <p>The site is irregular in shape with a frontage of 18.29m along Lancaster Crescent and a depth of 34.085m. The site has a surveyed area of 550.1m<sup>2</sup>.</p> <p>The site is located within the R2 Low Density Residential Zone and accomodates a two storey dwelling house (undergoing construction) and a secondary dwelling (undergoing construction). Pedestrian and vehicular access is gained via the Lancaster Crescent frontage.</p> <p>The slope of the site is measured at 22.5%, falling approximately 8m from the rear boundary to the road frontage.</p> <p>The site contains sandstone rock outcrops, with landscaping being largely limited with no established native trees being identified on site.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by dwelling houses of varying age and scale, within landscaped settings.</p>

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:

### 30 August 2000

Development Application No. DA2000/4494 for alterations additions was approved by Council.

### 20 September 2018

A pre-lodgement meeting, PLM2018/0196 was held for the alterations and additions to the primary dwelling house and for the conversion of the existing garage to a secondary dwelling.

### 19 June 2019

Development Application No. DA2019/0092 for the alterations and additions to a dwelling house including conversion of an existing garage into secondary dwelling was approved by Council.

## **APPLICATION HISTORY**

### 19 January 2021

Applicant provides photo evidence of the notification sign in place on site.

### 18 February 2021

Site inspection undertaken by the assessing officer.

### 26 February 2021

View impact inspection undertaken by the assessing officer from No. 3 Lincoln Avenue, Collaroy.

## 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 DA2019/0092, 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><b>Yes</b></p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <p>The application seeks approval for proposed design amendments and retrospective approval for works that have been completed. As a result, the modification includes amendments to two conditions requiring the removal of a privacy screen as well as increases to size of decked areas on site. These changes are not seen to result in result in any unreasonable environmental or amenity impacts for neighbouring properties subject to compliance with the conditions of consent.</p>
(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 DA2019/0092 for the following reasons:</p> <p>The application does not seek an increase to the overall building height of the dwelling house and the changes to the building footprint are largely to increase the size of decked areas that are near ground level (existing). The retention of the privacy screen along the western elevation of the first floor which was required to be deleted as a condition of DA2019/0092 is not seen to result in unreasonable view impacts for neighbouring dwellings. To ensure the environmental amenity of the site is preserved as a result of the increased decked</p>



Section 4.55(1A) - Other Modifications	Comments
	areas, a condition has been placed for a native tree to be planted on site prior to the issuance of an Occupation Certificate. Subject to compliance with this condition of consent, the application is seen to be substantailly the same as DA2019/0092.
(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, Warringah Local Environment Plan 2011 and Warringah 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.	No submissions were received in relation to this application.

#### 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

Section 4.15 'Matters for Consideration'	Comments
	risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah/Manly/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 Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;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 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. 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 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>
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 Warringah 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> <p>(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.</p>
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 “Notification & Submissions Received” 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.

## 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 18/01/2021 to 01/02/2021 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 of the application Council received no submissions.

## REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	Council's Natural Environmental Unit - Biodiversity referral team has no objections to the proposed modification subject to the conditions provided for the previous DA consent (DA2019/0092).
NECC (Development Engineering)	The proposed modification does not alter the original assessment and approval by Development Engineering.  No objection to approval with no additional or modified conditions of consent 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)

### 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 (Coastal Management) 2018

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

### 13 Development on land within the coastal environment area

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
  - (b) *coastal environmental values and natural coastal processes,*
  - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
  - (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
  - (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
  - (f) *Aboriginal cultural heritage, practices and places,*
  - (g) *the use of the surf zone.*

#### Comment:

The proposed development is unlikely to cause adverse impact to the integrity and resilience of the biophysical, hydrological (surface and ground water) and ecological environment, coastal environmental values and natural coastal process, the water quality of the marine estate, or to marine vegetation, native vegetation and fauna and their habitats, underdeveloped lands and rock platforms. The proposed development does not restrict any existing public open space or safe access along the foreshore for members of the public, including persons with a disability. The proposal is not likely to impact upon any aboriginal engravings or relics. The proposed development is not likely to cause an adverse impact to the use of the surf zone.

- (2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
- (a) *the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*
  - (b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
  - (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

#### Comment:

The application has been referred to Council's NECC (Bushland & Biodiversity) division that have raised no objections to the proposed development. As detailed above, the proposed development has been designed, sited and will be managed to avoid an adverse impact on the cultural and environmental aspects referred to in Subclause (1).

### 14 Development on land within the coastal use area

- (1)
- (a) has considered whether the proposed development is likely to cause an adverse impact on the following:
    - (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
    - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
    - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
    - (iv) Aboriginal cultural heritage, practices and places,
    - (v) cultural and built environment heritage, and
  - (b) is satisfied that:
    - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
    - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
    - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
  - (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The proposed development is not likely to cause an impact on the existing access along the foreshore for members of the public, including persons with a disability and will not cause any overshadowing, wind tunneling or unreasonable impact on the loss of views from public places to foreshores. The visual amenity and scenic qualities of the coast, including the coastal headlands will be preserved. The proposed development will also not have an adverse impact on the cultural and built environment heritage. It is considered that the proposed development has satisfied the requirement to be designed, sited and will be managed to avoid an adverse impact to the above mentioned cultural and environmental aspects. Furthermore, the proposed development is considered to be of an acceptable bulk, scale and size that is generally compatible with the surrounding coastal and built environment, which consist of low-density residential dwellings.

**15 Development in coastal zone generally—development not to increase risk of coastal hazards**

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

The development is not considered to increase coastal risks.

As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

**Warringah Local Environmental Plan 2011**

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	8.5m	Unchanged	-	Yes

#### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.3 Development near zone boundaries	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
5.8 Conversion of fire alarms	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	7.9m Dwelling House 3.4m Secondary Dwelling	Unchanged Unchanged	Yes Yes
B3 Side Boundary Envelope	4m (East)	No encroachment	Unchanged	Yes
	4m (West)	No encroachment	Unchanged	Yes
B5 Side Boundary Setbacks	0.9m (East)	1.084m Ground floor pantry 5m First Floor 5.9m - 6.3m Secondary Dwelling	Unchanged Unchanged Unchanged	Yes Yes Yes
	0.9m (West)	3.3m First Floor 6.5m - 6m Secondary Dwelling	Unchanged Unchanged	Yes Yes
B7 Front Boundary Setbacks	6.5m	12.9m First Floor Balcony 14.5m First Floor 10.5m Retaining Wall 1.9m -2.7m Secondary Dwelling	Unchanged Unchanged Unchanged Unchanged	Yes Yes Yes No, but unchanged from DA2019/0092
B9 Rear Boundary Setbacks	6m	1.5m - 9.3m Ground Floor 5.4m - 11.5m First Floor	0.7m Ground Floor deck Unchanged	<b>No</b> No, but unchanged from DA2019/0092
D1 Landscaped Open	40%	40.5% (207.6sqm)	29% (159.4m <sup>2</sup> )	<b>No</b>

Space and Bushland Setting				
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#### 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
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	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
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

#### Detailed Assessment

#### **B9 Rear Boundary Setbacks**

### Description of non-compliance

The proposed rear deck extension is measured at 0.7m from the rear boundary and is therefore non-compliant with the 6m control requirement.

### Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To ensure opportunities for deep soil landscape areas are maintained.*

#### Comment:

Whilst the resultant deck extension is seen to reduce areas deep soil landscape areas, consideration has been given that the rear yard is somewhat constained with a sandstone rock outcrop towards the north-western corner of the site. Despite this, there are still opportunities for native plantings within both the front and rear yards.

- *To create a sense of openness in rear yards.*

#### Comment:

With the works associated with this application being limited to the ground floor decking and no roofing or extensions to the first floor being proposed, a sense of openness is maintained within the rear yard.

- *To preserve the amenity of adjacent land, particularly relating to privacy between buildings.*

#### Comment:

The proposed extension of the ground floor decking is not seen to result in any unreasonable impacts such as overlooking towards neighbouring properties.

- *To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.*

#### Comment:

Notwithstanding the irregular subdivision pattern applicable to the subject site and those adjoining, the proposal is largely seen to maintain a visual continuity of landscaped rear gardens.

- *To provide opportunities to maintain privacy between dwellings.*

#### Comment:

Whilst further privacy measures such as fixed screens would not be necessary for the proposed works, consideration has been given that there are opportunities for landscaping within the rear

yard to improve privacy between adjoining properties.

Based on the above, the modifications are seen to meet the objectives of this clause and the proposal is supported on merit.

## **D1 Landscaped Open Space and Bushland Setting**

### Description of non-compliance

Requirement: 40% of site area

Approved under DA2019/0092: 40.5% (207.6m<sup>2</sup>)

Proposed: 29% (159.4m<sup>2</sup>)

The resultant landscaped area for the proposed development has been measured at 29% (159.4m<sup>2</sup>). Whilst this appears as a significant reduction to landscaped area calculated in the assessment of DA2019/0092 (40.5%), it should be noted that the modification is limited to seeking an overall increase in impervious areas of 12.9m<sup>2</sup>.

In accordance with the control requirements, dimension of less than 2 metres are excluded from the landscape calculation. This may also account for the difference seen with the resultant landscaped area.

### Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To enable planting to maintain and enhance the streetscape.*

#### Comment:

The deck extension associated with the secondary dwelling is over an area that has been indicated as lawned turf and therefore does not impact upon areas within the front yard which have been dedicated to native screen plantings. The Lancaster Crescent streetscape can also be further enhance should the native tree required under this consent be planted within the front yard.

- *To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.*

#### Comment:

The proposed modification does not seek the removal of any indigenous vegetation or topographical features such as the sandstone rock outcrops on site. The resultant development is considered to provide for native plantings to further conserve and enhance the area by providing habitat for wildlife.

- *To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.*

#### Comment:



The perceived height, bulk and scale of the building is greatest when viewed from the Lancaster Crescent frontage. Consideration has been given that the landscaping arrangement for the front yard maintains sufficient areas for establishment of shrubs and canopy trees to soften the built form of the development.

- *To enhance privacy between buildings.*

Comment:

The provision for additional screen plantings to that already indicated are not considered necessary to enhance privacy for the occupants of the subject site or those neighbouring.

- *To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.*

Comment:

The modifications are seen to continue accommodating for appropriate outdoor recreational opportunities that meet the needs of the occupants.

- *To provide space for service functions, including clothes drying.*

Comment:

The modifications are seen to continue to provide space for service functions, including clothes drying.

- *To facilitate water management, including on-site detention and infiltration of stormwater.*

Comment:

Whilst the modifications increase impervious areas on site, the provision of native tree as required under this consent assists to reduce the quantity of urban run-off while also playing an important role in removing nutrients and heavy metals from stormwater. The resultant development therefore is seen to facilitate appropriate stormwater management.

Subject to compliance with conditions, the modifications are seen to meet the objectives of this clause and the proposal is supported on merit.

## **D7 Views**

The assessment for development application no. DA2019/0092 deemed that the removal of the western first floor privacy screen would improve views from No. 3 Lincoln Avenue, Collaroy and as such the screen was to be deleted in accordance with conditions of consent.

The modification seeks for these conditions to be removed and for the western first floor privacy screen to remain in place.

Whilst no submissions were received from the property owners of No. 3 Lincoln Avenue, Collaroy, the assessing officer contacted the property owners requesting to undertake view impact assessment. The inspection was undertaken at No. 3 Lincoln Avenue, Collaroy on Friday 26th February 2021.

## Merit consideration

The development is considered against the underlying Objectives of the Control as follows:

- *To allow for the reasonable sharing of views.*

### Comment:

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, are applied to the proposal.

### **1. Nature of the views affected**

*"The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured".*

### Comment to Principle 1:



*Figure 1: Standing image taken from the bottom of the staircase window (Ground Floor).*



*Figure 2: Standing image taken from the top landing of the staircase window (First Floor).*



*Figure 3: Standing image taken from the Ground Floor living room.*



*Figure 4: Standing image taken from the Ground Floor balcony.*



*Figure 5: Standing image taken from the Ground Floor balcony.*

The inspection revealed that No. 3 Lincoln Avenue, Collaroy has views of Dee Why Lagoon, Dee Why headland and Dee Why Beach (land and water interface), and are considered highly valuable in the context of the Tenacity principles.

## **2. What part of the affected property are the views obtained**

*“The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic”.*

Comment to Principle 2:

Views are primarily obtained rear (south-east facing) areas of the dwelling house which include the lower ground terrace, ground floor living areas and terrace, the stairwell and upper floor balcony. Views are obtained at a standing level and when seated.

### 3. Extent of impact

*"The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating".*

#### Comment to Principle 3:

The overall view impact arising from the alterations and additions of the dwelling house at No. 30 Lancaster Crescent is considered a moderate. The extent of impact arising from a retention of the west-facing upper floor privacy screen is considered as minor. Existing views Dee Why Lagoon, Dee Why headland and Dee Why Beach are retained. The view loss as a result of the retention of the privacy screen is ocean views towards the Tasman Sea.

### 4. Reasonableness of the proposal that is causing the impact

*"The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable."*

#### Comment to Principle 4:

The commissioner of *Tenacity Consulting v Warringah Council [2004] NSW LEC 140* indicated that a proposal that complied with all controls is considered more reasonable than one that breaches them. In this regard, the retention of the privacy screen does not breach the building height development standard and is not seen to breach any built form controls relating to the building envelope, the side setback or front setback. Further, the privacy screen does assist the occupants of both properties to minimise overlooking whilst being designed (angled) in such a way to maximise views from No. 3 Lincoln Avenue, Collaroy. The proposal has therefore been seen as being acceptable with regards to its built form in relation to the maintenance of views. When accounting for the extent of the view impact and the level of compliance of this proposal, the development is considered acceptable and the view sharing reasonable.

- *To encourage innovative design solutions to improve the urban environment.*

#### Comment:

The proposed western first floor privacy screen is considered to be appropriately designed to minimise overlooking between No. 30 Lancaster Crescent and No. 3 Lincoln Avenue. The

vertical wooden slats have also been angled in such a way to allow for some views through the screen as demonstrated in Figure 4.

- *To ensure existing canopy trees have priority over views.*

Comment:

The proposed development does not seek the removal of any existing canopy trees on site.

Based on the above, the proposed development is considered acceptable on merit and consistent with the objectives of the clause in this particular instance.

## **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 2019**

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. Mod2020/0704 for Modification of Development Consent DA2019/0092 granted for alterations and additions to a dwelling house including conversion of an existing garage into a secondary dwelling on land at Lot 20 DP 16081,30 Lancaster Crescent, COLLAROY, 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
2.3 (Ground Floor Plan)	15/12/2020	Davis Architects
3.4, Rev. B (Elevations West)	15/12/2020	Davis Architects

#### 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.

### B. Modify Condition 2 Amendments to the approved plans under heading DEVELOPMENT CONSENT OPERATIONAL CONDITIONS to read as follows:

The following amendments are to be made to the approved plans:

#### a) Window W13 on the western elevation of the first floor, adjoining the walk in robe, is to be translucent (frosted) glazing.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

### C. Delete Condition 11 Amendments to the approved plans under heading CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE to read as follows:



The following amendments are to be made to the approved plans:

a) Window W13 on the western elevation of the first floor, adjoining the walk in robe, is to be translucent (frosted) glazing.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

**D. Add Condition 24A Required Planting under heading CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE to read as follows:**

Trees shall be planted in accordance with the following schedule:

Minimum No. of Trees Required.	Species	Location
1	Native tree species capable of attaining a minimum height of 5 metres at maturity	Front or Rear

Tree planting shall be located to minimise significant impacts on neighbours in terms of blocking winter sunlight or where the proposed tree location may impact upon significant views.

Native tree planting species shall be selected from Council's list:  
[www.northernbeaches.nsw.gov.au/environment/native-plants/native-plant-species-guide](http://www.northernbeaches.nsw.gov.au/environment/native-plants/native-plant-species-guide).

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

Reason: To maintain environmental amenity.

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

**Signed**



**Kent Bull, Planner**

The application is determined on 01/03/2021, under the delegated authority of:



**Rodney Piggott, Manager Development Assessments**