

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

|                                           |                                                                                                                                                       |
|-------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Application Number:</b>                | Mod2021/0637                                                                                                                                          |
| <b>Responsible Officer:</b>               | Adam Mitchell                                                                                                                                         |
| <b>Land to be developed (Address):</b>    | Lot CP SP 22558, 7 Stuart Street COLLAROY NSW 2097<br>Lot 3 SP 22558, 3 / 7 Stuart Street COLLAROY NSW 2097                                           |
| <b>Proposed Development:</b>              | Modification of Development Consent DA2020/1599 granted for alterations and additions to Unit 3 within an existing multi-dwelling housing development |
| <b>Zoning:</b>                            | Warringah LEP2011 - Land zoned R3 Medium 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>                             | Joshua James Van Raad<br>Sunita Van Raad                                                                                                              |
| <b>Applicant:</b>                         | Tony Robb                                                                                                                                             |

|                                  |                                         |
|----------------------------------|-----------------------------------------|
| <b>Application Lodged:</b>       | 24/08/2021                              |
| <b>Integrated Development:</b>   | No                                      |
| <b>Designated Development:</b>   | No                                      |
| <b>State Reporting Category:</b> | Residential - Alterations and additions |
| <b>Notified:</b>                 | 02/09/2021 to 16/09/2021                |
| <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

This Section 4.55(1A) Modification Application seeks consent to modify Development Consent No. 2020/1599 in the following ways:

- modify two windows on the eastern elevation including size and location;
- modification to one window on the western elevation; and
- replacement of existing brick patio with at-grade timber decking.

Herein this report these works are described as the 'modifications'.

## 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 - B5 Side Boundary Setbacks

Warringah Development Control Plan - B9 Rear Boundary Setbacks

Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting

## SITE DESCRIPTION

|                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|-----------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Property Description:</b>      | Lot CP SP 22558 , 7 Stuart Street COLLAROY NSW 2097<br>Lot 3 SP 22558 , 3 / 7 Stuart Street COLLAROY NSW 2097                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Detailed Site Description:</b> | <p>The subject site is legally identified as Lot 3 SP 22558 and is known as Unit 3, 7 Stuart Street, Collaroy. The site falls within the R3 Medium Density Residential zone pursuant to the Warringah Local Environmental Plan 2011.</p> <p>No. 7 Stuart Street is a one and two storey linear brick building on the northern side of the street on a lot measuring 58.315m in depth by 15.24m in width with an overall area of 888sqm. Unit 3 is the northernmost property in the block and is two storeys with a garage and wrap around paved patio.</p> <p>The site is generally flat and is within mature landscaped grounds. The site is located a 200m walk west of Collaroy Beach.</p> <p>Surrounding properties consist of other residential flat buildings, generally of a similar scale and age, but sometimes varying to new three storey blocks.</p> |

Map:



## SITE HISTORY

- **Development Application No. 2020/1599**  
Alterations and additions to Unit 3 within an existing multi-dwelling housing development.  
Approved 27 January 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 DA2020/1599, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

| Section 4.55 (2) - 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 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 DA2020/1599 for the following reasons:</p> <ul style="list-style-type: none"> <li>the works sought under this modification are minor changes to the proportions and locations of approved windows, and for the erection of timber deck atop of a paved area. These changes do not materially change the previously approved outcome and are thereby deemed to be substantially the same.</li> </ul> |
| (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) 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, and | Development Application DA2020/1599 did not require concurrence from the relevant Minister, public authority or approval body.                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| (c) it has notified the application in accordance with:<br>(i) the regulations, if the regulations so require,<br>or<br>(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, and the Northern Beaches Community Participation 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 96 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 Control Plan applies to this proposal.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| Section 4.15 (1) (a)(iiia) – 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 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation was submitted with the original application/This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;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&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>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the 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&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> |



| Section 4.15 'Matters for Consideration'                                                                                                                                           | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                    | Clause 98 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.                                                                                                                                                                                                                                                                                                                                                                       |
| 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><br/>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><br/>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><br/>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 02/09/2021 to 16/09/2021 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 | The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no |

| Internal Referral Body | Comments                                                                                                                                                                                                                                                                                              |
|------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                        | <p>objections to approval of the development.</p> <p><i>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</i></p>                                                                    |
| Landscape Officer      | <p>The plans provided and the SEE indicate that the modification retains existing planting and no significant landscape features are affected.</p> <p>No objections are raised to approval with regard to landscape issues. Existing conditions are considered to be still relevant and adequate.</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 65 - Design Quality of Residential Apartment Development

Clause 4 of State Environmental Planning Policy No. 65 – Design Quality for Residential Apartment Development (SEPP 65) stipulates that:

(1) This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:

(a) the development consists of any of the following:

- (i) the erection of a new building,
- (ii) the substantial redevelopment or the substantial refurbishment of an existing building,
- (iii) the conversion of an existing building, and

- (b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and
- (c) the building concerned contains at least 4 or more dwellings.

This modification application seeks consent for minor changes to an approved renovation. The scope of works are not of such a magnitude that they are considered 'substantial' and are, at most, a modest extension to a dated building. Further, the building is only two storeys in height and only contains three dwellings, thus precluding the works from the threshold of an ADG assessment.

Accordingly, the provisions of SEPP 65 do not apply to the development.

#### **SEPP (Building Sustainability Index: BASIX) 2004**

A BASIX certificate has been submitted with the application (see Certificate No. A385285\_02 dated 20 July 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**

|                                                                                        |     |
|----------------------------------------------------------------------------------------|-----|
| 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

| Standard             | Requirement | Approved | Proposed  | Complies |
|----------------------|-------------|----------|-----------|----------|
| Height of Buildings: | 11.0m       | 4.3m     | No change | Yes      |

#### Compliance Assessment

| Clause                               | Compliance with Requirements |
|--------------------------------------|------------------------------|
| 4.3 Height of buildings              | Yes                          |
| 5.3 Development near zone boundaries | Yes                          |
| 5.8 Conversion of fire alarms        | Yes                          |
| 6.1 Acid sulfate soils               | Yes                          |
| 6.2 Earthworks                       | Yes                          |
| 6.4 Development on sloping land      | Yes                          |



## Warringah Development Control Plan

### Built Form Controls

| Built Form Control                                  | Requirement     | Approved                                | Proposed                     | Complies                      |
|-----------------------------------------------------|-----------------|-----------------------------------------|------------------------------|-------------------------------|
| B2 Number of storeys                                | 3               | 1                                       | No change                    | Yes                           |
| B3 Side Boundary Envelope                           | East - 4.0m     | No encroachments                        | No change                    | Yes                           |
|                                                     | West - 4.0m     | No encroachments                        | No change                    | Yes                           |
| B5 Side Boundary Setbacks                           | East - 4.5m     | 2.52m                                   | <b>Deck - approx 1m</b>      | <b>No</b>                     |
|                                                     | West - 4.5m     | No change                               | No change                    | Yes                           |
| B7 Front Boundary Setbacks (Stuart Street)          | 6.5m            | 42.9m                                   | No change                    | Yes                           |
| B9 Rear Boundary Setbacks                           | 6.0m            | Building: 5.99m<br>Deck: 2.458 - 2.477m | -<br><b>Deck - approx 1m</b> | No (as approved)<br><b>No</b> |
| D1 Landscaped Open Space (LOS) and Bushland Setting | 50% (444.35sqm) | 30.9% (274.9sqm)                        | No change                    | No (as approved)              |

### Compliance Assessment

| Clause                                                                 | Compliance with Requirements | Consistency Aims/Objectives |
|------------------------------------------------------------------------|------------------------------|-----------------------------|
| A.5 Objectives                                                         | Yes                          | Yes                         |
| B2 Number of Storeys                                                   | Yes                          | Yes                         |
| B3 Side Boundary Envelope                                              | Yes                          | Yes                         |
| B5 Side Boundary Setbacks                                              | No                           | 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                         |
| C9 Waste Management                                                    | 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                         |
|                                                                        |                              |                             |

| Clause                                          | Compliance with Requirements | Consistency Aims/Objectives |
|-------------------------------------------------|------------------------------|-----------------------------|
| 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                         |
| D19 Site Consolidation in the R3 and IN1 Zone   | Yes                          | Yes                         |
| 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

#### **B5 Side Boundary Setbacks**

##### Description of non-compliance

The application seeks to construct a timber deck directly atop of an existing paved area with a surface area of 7.416sqm. This existing paved area, and newly proposed deck area is situated approximately 1m from the eastern side boundary and thus contravenes the required 4.5m setback.

##### Merit consideration

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

- *To provide opportunities for deep soil landscape areas.*

Comment: The modification does not result in the loss of any deep soil landscaped areas as the deck is to be constructed atop of a paved area.

- *To ensure that development does not become visually dominant.*

Comment: The subject area is not readily visible from neighbouring properties given that it is at grade and obscured by existing vegetation.

- *To ensure that the scale and bulk of buildings is minimised.*

Comment: At-grade timber deck.

- *To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.*

Comment: Whilst the proposed deck is closer to the side boundary than that the WDCP 2011 envisages, it retains the same setback as existing structures. Furthermore, the proximate boundary of 5 Stuart Street and 4 and 6 Wetherill Street accommodates driveways and garages and thus the use of the subject area for continued recreation does not harm the amenity of neighbouring spaces.

- *To provide reasonable sharing of views to and from public and private properties.*

Comment: The development result in no view loss.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## **B9 Rear Boundary Setbacks**

Both the parent approval and this modification approval do not comply with the prescribed rear boundary setback requirements, largely due to the fact that the existing building does not comply. The additional portion of space which encroaches the setback area under this application pertains to the existing paved courtyard which is to have a small deck built atop of it.

The assessment of the application against Clause B9 found in the Assessment Report of DA2020/1599 remains applicable and sufficient justification for this contravention, and is extracted below for reference. On the basis of this assessment, the same conclusions are drawn with regard to the new deck and thus the variation is supported.

### Description of non-compliance

Part B9 of the DCP prescribes a 6.0m rear boundary setback for buildings and ancillary structures. The existing residential block attains a rear setback of between 5.978m and 6.0m and is not subject to change. The proposed timber deck attains a setback of between 2.458m - 2.477m from the rear boundary, thereby seeking a variation to the control of up to 58.72%.

### 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: Notwithstanding the variation to the Part B9 requirements, the area surrounding the proposed deck is of adequate widths to accommodate deep soil landscaping.

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

Comment: In consideration of a sense of openness, it is warranted to consider the ratio of built upon area within the rear setback area commensurate to the control requirements. In this case,

the rear setback area is 91.44sqm (15.24mx6m) and the deck measures 27.4sqm (7847mx3495m). The deck therefore represents 29.9% of the total rear setback area.

The proposed deck is slightly elevated off the ground, particularly towards the west, but elevation is not of such a height that it would become unsightly or compromise a sense of openness. The existing mature landscaping is to be retained as are the boundary fences.

Given the ratio of space taken up by the deck, the fact that it is generally at-grade and the fact that landscaping and fencing is to remain as existing, it is considered that the proposed adequate retains a sense of openness.

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

Comment: The proposed development is not considered to be of such a scale or intensity that it would harm the amenity of adjacent land by way of visual privacy, acoustic privacy, overshadowing or perceivable visual bulk.

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

Comment: By virtue of the nature of the existing residential flat buildings along Stuart Street and Wetherill Street, the proposed deck would mostly have an outlook into the subject garden itself, to the boundary fence, and then to car parking and drying yards on surrounding blocks. Most surrounding blocks (including the directly adjoining site to the north and east) have roofed structures built hard-up against the boundary. The presence of an open rear garden area is preferable to an enclosed rear garden and therefore, whilst the pattern of buildings and visual continuity does not strictly match the adjoining sites, it does represent a better outcome overall.

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

Comment: The encroachment of the proposed deck into the rear boundary setback area is not considered to result in any unacceptable loss of privacy between neighbouring dwellings.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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

The modification application does not alter the approved provision of landscaped open space, noted to be approved at 30.9%. The parent assessment justified this variation for the following reasons, which remain valid to this current assessment:

### Description of non-compliance

The site is subjected to a landscaped open space ratio control of 50%, equating to an area of 444.35sqm. The existing site as a whole has a deficient landscaped open space ratio. The development proposed seeks to construct an extension over existing paving and a rear deck. The development requires the removal of the eastern paved courtyard. Pursuant to Part D1 of the DCP, paved areas are

not considered to form part of the calculable landscaped open space area. Therefore, the development results in a marginal (<5sqm) increase to the landscaped area of 279.4sqm or a ratio of 30.9%. Despite this increase, an assessment of the proposal against the control objectives follows.

#### 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 proposed development is located to the rear of the site and is not visible from either Stuart or Wetherill Street. Further, the development is only expected to be readily visible from the rear car park of no. 5 Stuart Street to the east. Accordingly, the existing streetscape presence would remain as existing.

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

Comment: The proposal does not remove any significant or noteworthy vegetation or habitat for wildlife. The portions of landscaping that are being removed are generally limited to low-level shrubbery intersected by pathways and the like.

- *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 proposal provides greater opportunities for larger areas of landscaping than existing by removing pathways. The landscaping along the eastern edge of the site would be provided with an area 2 metres wide where it is currently lesser.

- *To enhance privacy between buildings.*

Comment: The shortfall in landscaped open space does not result in any unreasonable privacy impacts to neighbouring properties.

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

Comment: The proposal would rationalise existing paved pathways and a small courtyard area with one rectangular deck that is of usable dimensions for outdoor recreation (bbq, clothes drying and the like).

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

Comment: Sufficient space for service functions is achieved by the development.

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

Comment: The proposed development satisfactorily facilitates water management including the infiltration of stormwater.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP 2011 and the objectives specified in s1.3 of the Environmental



Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

### **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. Mod2021/0637 for Modification of Development Consent DA2020/1599 granted for alterations and additions to Unit 3

within an existing multi-dwelling housing development on land at Lot CP SP 22558,7 Stuart Street, COLLAROY, Lot 3 SP 22558,3 / 7 Stuart Street, 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

| <b>Architectural Plans - Endorsed with Council's stamp</b> |                   |                    |
|------------------------------------------------------------|-------------------|--------------------|
| <b>Drawing No.</b>                                         | <b>Dated</b>      | <b>Prepared By</b> |
| DA-001A Rev. B                                             | 08 September 2021 | Renee Blyth        |
| DA-100A Rev. B                                             | 08 September 2021 | Renee Blyth        |
| DA-300A Rev. B                                             | 08 September 2021 | Renee Blyth        |
| DA-301A Rev. B                                             | 08 September 2021 | Renee Blyth        |
| DA-400A Rev. B                                             | 08 September 2021 | Renee Blyth        |
| DA-401A Rev. B                                             | 08 September 2021 | Renee Blyth        |
| DA-503                                                     | 20 July 2021      | Renee Blyth        |

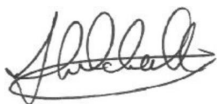
| <b>Reports / Documentation – All recommendations and requirements contained within:</b> |              |                    |
|-----------------------------------------------------------------------------------------|--------------|--------------------|
| <b>Report No. / Page No. / Section No.</b>                                              | <b>Dated</b> | <b>Prepared By</b> |
| BASIX Certificate No. A385285_02                                                        | 20 July 2021 | Renee Blyth        |

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.

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

**Signed**



**Adam Mitchell, Principal Planner**

The application is determined on 17/09/2021, under the delegated authority of:



**Lashta Haidari, Manager Development Assessments**