

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2024/0700
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Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 19 DP 12667, 3 Summit Avenue DEE WHY NSW 2099
Proposed Development:	Modification of Development Consent DA2018/0383 granted for Alterations and Additions to an existing Dwelling House
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Applicant:	Grant Trevor Seghers

Application Lodged:	09/01/2025
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	20/01/2025 to 03/02/2025
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks to modify the consent under DA2018/0383 granted for alterations and additions to the existing dwelling. In detail, the proposal seeks to:

- New Security Gate to side path
- Extension of the path to the rear to match the finished level adjacent to the laundry (RL53.50)
- Privacy Screen adjacent to side path
- Deletion to part of front Awning removed.
- Extension of Garage Roof by 250mm
- Timber Screen to outdoor terrace
- Increase to size of W12 larger
- Existing Front Decks to be Tile Finish instead of Timber
- Stone Cladding to Front Facade

- Change to material for garage door (to be vertical slats)
- New planters to front deck
- New landscape wall at the rear to replace existing wall

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

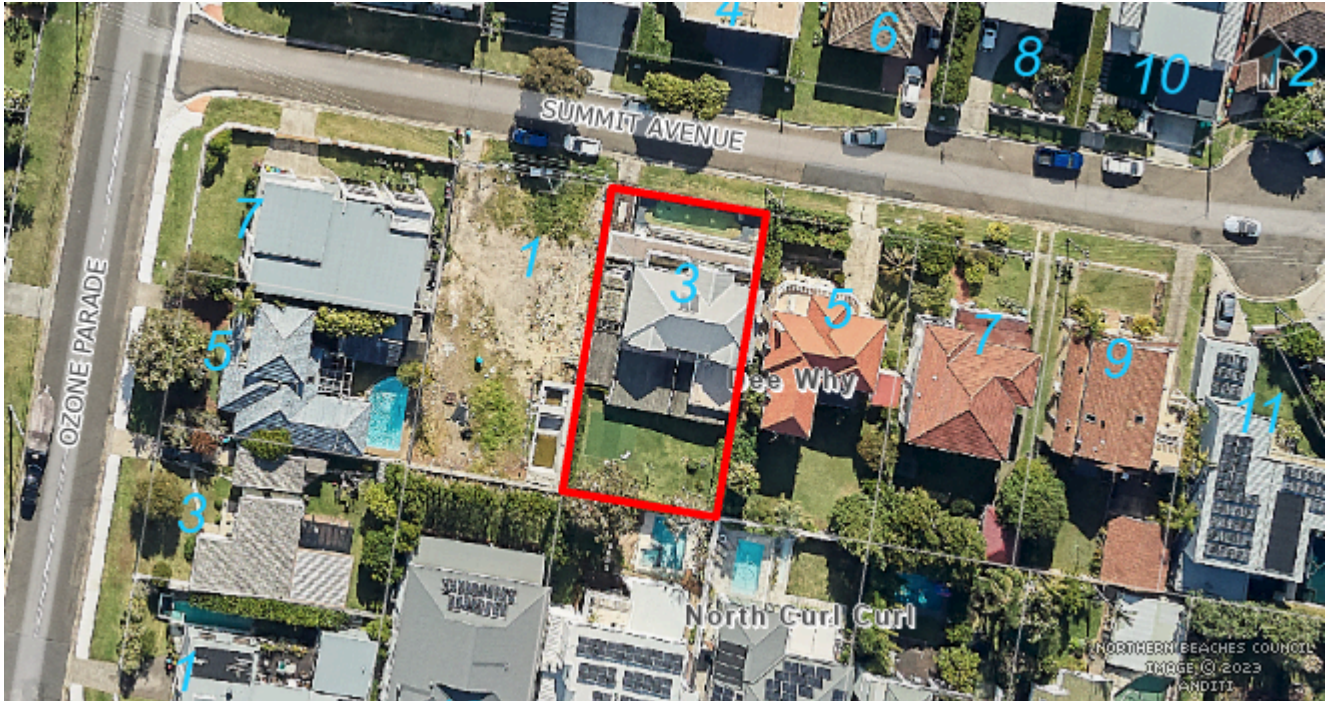
Warringah Development Control Plan - D8 Privacy

SITE DESCRIPTION

Property Description:	Lot 19 DP 12667 , 3 Summit Avenue DEE WHY NSW 2099
Detailed Site Description:	<p>The site is located on the southern side of Summit Avenue, Dee Why and is upon land zoned for R2 Low Density Residential development pursuant to the Warringah Local Environmental Plan 2011.</p> <p>The allotment is regular in shape and has a street frontages of 17.3m, depths of 34m and an overall surveyed area of 593.1m².</p> <p>The site is currently under construction.</p> <p>An existing driveway runs parallel to the western boundary of the site.</p> <p>Topographically the site inclines from north to south (front to rear) by approximately 2.0m.</p>

Other surrounding developments consist of detached dwelling houses of varying age, size and design.

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:

Application **DA2018/0383** for Alterations and Additions to an existing Dwelling House (Approved 24/05/2018).

Application **CDC2024/0209** for Demolition of existing swimming pool and construction of new swimming pool in the rear of the property (27/03/2024).

Application **MOD2024/0094** applied to modify the above consent. This included changes to the driveway crossover, parking, changes to landscaping, changes to paths and changes to material of balustrades.

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 DA2018/0383 and MOD2024/0094, in full, with amendments detailed and assessed as follows:

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

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	<p>Yes</p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <p>The proposal maintains the general envelope and footprint of the approved dwelling. Conditions are imposed to suitably reduce environmental impact including a condition for a privacy screen that balances protection of overlooking and minimisation of visual impact.</p> <p>Overall, the proposal will be of minimal environmental impact.</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 consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2018/0383 for the following reasons:</p> <p>The proposal maintains the general envelope and footprint of the approved dwelling, and involves minor external changes which do not change the use or overall scale of the development.</p>
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.</p>

Section 4.55(1A) - Other Modifications	Comments
of a development consent, and	
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

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	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 2001: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62</u> and/or 64 of the EP&A Regulation 2021 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 of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home</p>

Section 4.15 'Matters for Consideration'	Comments
	Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of 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	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
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 application has been publicly exhibited from 20/01/2025 to 03/02/2025 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Withheld	FRESHWATER NSW 2096
Apex Law	PO Box 233 FRESHWATER NSW 2096

The above issues are addressed as follows:

- **Privacy impacts caused by eastern side footpath (visual and acoustic)**

The submissions raised concerns that the raised footpath will have an unreasonable impact on privacy. This includes concern raised with overlooking from the front porch and lounge room window of 5 Summit Avenue.

Comment:

The eastern side footpath has been previously approved (under DA2018/0383 and MOD2024/0094) to a level of RL53.50 at the front half of the dwelling. This application seeks to extend the footpath (at a height of RL53.50) to the rear half of the dwelling (see section highlighted in blue in proposed ground floor plan).

An assessment of privacy under *Clause D8 Privacy* in this report has found that there is no unreasonable impact, subject to the requirement for a privacy screen along the eastern boundary. A condition is imposed to require that privacy screen by no higher than 1.6m above the finished level of the footpath (RL53.50).

- **Concern with impact of privacy screen**

The submissions raised concerns with the visual impact of the privacy screen including concern that the privacy screen will reach an overall height of 3m above ground level.

Concern is also raised that the footpath is not wide enough to accommodate a privacy screen.

Comment:

A condition is imposed to require that the privacy screen is no higher than 1.6m above the finished level of the path.

The neighbouring dwelling does not currently have any windows on this elevation, and the dwelling generally orientates away from this boundary. However, having regard to the potential for future development, a 1.6m privacy screen along this boundary provides a reasonable balance between minimising the presentation of building bulk and protection from overlooking. The screen will also restrict opportunity for overlooking between the side paths of each dwelling.

- **Concern with privacy impacts caused by new landscape wall; concern with raised levels; concern with height of the wall and potential impacts of this (including impact on dividing wall between 3 and 5 Summit Avenue)**

A submission raised concerns with privacy impacts caused by the new landscape wall. Concern is also raised that this impact is exacerbated by raised ground levels at the rear.

Comment:

A site inspection revealed the site is currently under construction and the landscape levels have not been finalised.

Council's assessment officer did not find any evidence of completed works that were inconsistent with the existing consent. Any evidence of future works and earthworks that do not comply with any consent should be sent to council@northernbeaches.nsw.gov.au to be investigated by Council's Building Control Team.

This application does not seek to change the ground levels (at the rear of the property) under this modification application.

A condition has been imposed to require that the landscape wall be no higher than 300mm above the approved ground levels. This will ensure the wall is low level so as to cause no unreasonable environmental or other impact.

- **Concern that the deck (adjacent W12 and D11) has been illegally demolished.**

A submission raises concern that a deck has been illegally demolished, and is being built at a level higher than the previous deck.

Comment:

A site visit revealed the deck is being reconstructed in accordance with the changes approved under DA2018/0383 and MO2024/0094.

The reconstruction of the deck has not been finalised. However, the site visit did not reveal any evidence that the deck was being built higher than the approved level.

If the deck were to be built at a level higher than the approved level, this should be reported to Council's Building Control team, with evidence sent to council@northernbeaches.nsw.gov.au.

- **Concern with 250mm overhang at the rear of store**

A submission raises concern with this overhang including that it may encroach on the neighbouring property.

Comment:

The extent and height of the overhang will not cause any unreasonable impact. A condition is imposed to require that the awning is located wholly on the subject property.

- **Unclear with what is proposed for existing awning to the front of the property**

The submissions raised concerns that it is unclear if there are changes to the awning (at the south-eastern corner). This relates to the notation at the western elevation.

Comment:

There are no changes to this section of the awning under this application. The notation referred to by the submission is an existing and approved notation.

REFERRALS

No referrals were sent in relation to this application

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

All, Environmental Planning Instruments (SEPPs 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 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 (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. A307857).

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 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 sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

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	8.35m	8.35m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.3 Development near zone boundaries	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	6.2m	unchanged	Yes
B3 Side Boundary Envelope	5m	Within	Within	Yes
	5m	Within	Within	Yes
B5 Side Boundary Setbacks	0.9m	1m-1.15m	1m-1.15m	Yes
	0.9m	Nil	Nil	No but unchanged
B7 Front Boundary Setbacks	6.5m	4.5m (dwelling) 0m (hardstand)	4.5m (dwelling) 0m (hardstand)	No but unchanged
B9 Rear Boundary Setbacks	6m	10.4m	10.4m	Yes
D1 Landscaped Open Space and Bushland Setting	40%	29.7% (176.3m ²)	Unchanged	No but unchanged

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	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
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
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

D8 Privacy

Concerns were raised in the submissions to the public notification that the raised footpath would result in unreasonable privacy impacts.

A privacy screen (1.8m in height) is proposed along the eastern boundary of the site to minimise overlooking impacts. As the screen is on the boundary of the site and the footpath is raised, a condition is imposed to lower the height of the screen to be 1.6m above existing footpath level to minimise the associated visual impact the height of the screen causes to the neighbouring property.

Subject to providing a screen 1.6m in height, the raising of the footpath will not cause any unreasonable impact. In particular, the areas along the side boundaries of the subject site and neighbouring property are paths that are transitional in nature and likely to be lowly utilised. Private open space and living spaces of the neighbouring property are also suitably separated from the pathway. There also no windows along the elevation of the neighbour that faces the pathway, and there is just one door to access a laundry from the pathway on the subject site.

Overall, the raising of the footpath to the section of footpath toward the rear of the dwelling to match with the raised footpath toward the front of the dwelling will not cause any reasonable privacy impact (subject to the condition for a privacy screen).

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

Refer to Assessment by Council's Natural Environment Unit elsewhere within this report.

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 2024

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 2021;
- 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. Mod2024/0700 for Modification of Development Consent DA2018/0383 granted for Alterations and Additions to an existing Dwelling House on land at Lot 19 DP 12667,3 Summit Avenue, DEE WHY, subject to the conditions printed below:

Modification Summary

The development consent is modified as follows:

MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
PAN-495445 MOD2024/0700	The date of this notice of determination	Modification of Development Consent DA2018/0383 granted for Alterations and Additions to an existing Dwelling House Add Condition 10A Add Condition 10B Add Condition 10C Add Condition 10D
PAN-416350 MOD2024/0094	7 May 2024	Modification of Development Consent DA2018/0383 granted for Alterations and Additions to an existing Dwelling House Add Condition No.1A - Modification of Consent - Approved Plans and supporting documentation Add Condition No.9A - Amendments to the approved plans

Modified conditions

A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting documentation, to read as follows:

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
Mod-02	B	Site Plan	Grant Seghers	Dec 2024
Mod-03	B	Ground Floor Plan	Grant Seghers	Dec 2024
Mod-04	B	First Floor Plan	Grant Seghers	Dec 2024
Mod-05	B	Elevations	Grant Seghers	Dec 2024
Mod-06	B	Elevations	Grant Seghers	Dec 2024
Mod-07	B	Street Elevation	Grant Seghers	Dec 2024
Mod-08	B	Sections	Grant Seghers	Dec 2024

Mod-09	B	Section CC	Grant Seghers	Dec 2024
Mod-10	B	Section DD	Grant Seghers	Dec 2024

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

B. Modify Condition 10A - Boundary Identification Survey to read as follows:

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on a boundary identification survey, prepared by a Registered Surveyor, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of any Construction Certificate.

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

C. Add Condition 10B - Landscape Wall to read as follows:

The proposed landscape wall at the rear is to be no higher than 300mm above the approved ground levels.

Details are to be shown prior to the issue of a Construction Certificate.

Reason: To minimise environmental impact.

D. Add Condition 10C - Privacy Screen to read as follows:

The privacy screen along the eastern boundary is to be 1.6m above the finished level of the path (RL53.50). The screen is to run along the boundary but be contained wholly on the subject site.

Details are to be provided prior to the issue of a Construction Certificate.

Reason: To balance minimisation of privacy impact and visual impact.

E. Add Condition 10D - Confirmation all works to remain wholly on site read as follows:

All proposed works are to be maintained wholly within the boundaries of the site (as identified by the survey under Condition 10A).

Details are to be provided prior to the issue of a Construction Certificate.

Reason: To ensure consistency with legislative requirements.

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

Signed



Thomas Prosser, Principal Planner

The application is determined on 07/04/2025, under the delegated authority of:



Steven Findlay, Manager Development Assessments