

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0068	
Responsible Officer:	Kent Bull	
Land to be developed (Address):	Lot 41 DP 14630, 82 Bynya Road PALM BEACH NSW 2108	
Proposed Development:	Modification of Development Consent DA2020/0123 granted for construction of a swimming pool	
Zoning:	E4 Environmental Living	
Development Permissible:	Yes	
Existing Use Rights:	No	
Consent Authority:	Northern Beaches Council	
Land and Environment Court Action:	No	
Owner:	Lydia Jane Garside Ian Manovel	
Applicant:	James Mark King	
Application Lodged:	08/03/2021	
Integrated Development:	No	
Designated Development:	No	
State Reporting Category:	Residential - Alterations and additions	
Notified:	Not Notified	
Advertised:	Not Advertised	
Submissions Received:	0	
Clause 4.6 Variation:	Nil	
Recommendation:	Approval	

PROPOSED DEVELOPMENT IN DETAIL

The application seeks to modify Development Consent No. **DA2020/0123** granted for the construction of a swimming pool.

The modification application seeks approval for the following changes:

- Removal of the wet-edge, balance tank and spa;
- Minor adjustments to the dimensions of the swimming (lap pool);
- Reduction in coping (decking) area around the pool; and
- Changes to swimming pool fence/barrier.

Page 11 of Council's Community Participation Plan states the following circumstance where the exhibition of a modification application is not required:

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"modification of consent to correct a minor error, misdescription, miscalculation (e.g. section 4.55(1) applications); or where, in the opinion of Council, such changes would not unreasonably cause an environmental impact, or which result in a lesser or reduction of, environmental impacts (e.g section 4.55(1A) applications)"

The modified proposal is consistent with the above provisions so was not exhibited.

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

Assessment - NO REFERRALS REQUIRED FOR THIS APPLICATION

Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards

Pittwater 21 Development Control Plan - B3.1 Landslip Hazard

Pittwater 21 Development Control Plan - C1.5 Visual Privacy

Pittwater 21 Development Control Plan - D12.10 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 41 DP 14630 , 82 Bynya Road PALM BEACH NSW 2108
Detailed Site Description:	The subject site is known as 82 Bynya Road, Palm Beach and is legally referred to as Lot 41 DP 14630. The site consists of one (1) allotment located on the western side of Bynya Road.
	The site is regular in shape with a frontage of 15.4m along Bynya Road and a depth of 48.8m. The site has a surveyed area of 739.8m².
	The site is located within the E4 Environmental Living zone

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and accommodates a one and two storey dwelling house.

The site has a cross fall from north to south (ie. front to rear) of approximately 3.1m.

The site abuts Mackay Reserve to the west, which is densely vegetated with mature tree canopy.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by similar low density residential development, the rear (western) boundary adjoins Mackay Reserve.

Map:

Cannot find Land No '203182'

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:

2 April 2020

Development Application No. DA2020/0123 for the construction of a swimming pool was granted consent by Council.

APPLICATION HISTORY

30 March 2021

Site inspection undertaken by the assessing officer. Property owner present at the time of the inspection.

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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 DA2020/0123, 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
	being made by the applicant or any other person entitled to tauthority and subject to and in accordance with the
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	Yes The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:
	The changes proposed see a reduction to the overall approved footprint associated with the swimming pool and coping. The location of the swimming pool remains largely unchanged, however the modification seeks to remove the spar and overflow tank. Subject to compliance with the conditions of consent, the application is not considered to impact upon the amenity of neighbouring properties.
(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	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 DA2020/0123 for the following reasons:
and before that consent as originally granted was modified (if at all), and	The modifications are a reduction to the extent of works that were previously approved under the development consent. Whilst the dimensions of the swimming pool is altered slightly, its location is generally the same as that approved. The changes also result in the site providing a greater amount of landscaped area, and subject to compliance with conditions, appropriate landscape amenity and visual privacy will be achieved.
(c) it has notified the application in	The application has been publicly exhibited in accordance

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Section 4.55(1A) - Other Modifications	Comments
accordance with: (i) the regulations, if the regulations so	with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Pittwater Local Environment Plan 2014 an Pittwater
require,	21 Development Control Plan.
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	
(d) it has considered any submissions made concerning the proposed	No submissions were received in relation to this application.
modification within any period prescribed by the regulations or provided by the development control	
plan, as the case may be.	

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 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 2000	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in

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Section 4.15 'Matters for Consideration'	Comments
(EP&A Regulation 2000)	the original consent.
	Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.
	Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.
	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	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.
the locality	(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 classified as bush fire prone land Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled *Planning for Bush Fire Protection*.

A Bush Fire Report was submitted with the previous development application (prepared by The Fire

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Consultants, dated 17 August 2019). The report has been prepared in accordance with Australian Standard AS3959 and recommends that a Bushfire Attack Level (BAL) rating of lame Zone (FZ) be applied to the proposed development.

Whilst the works proposed as part of the current application are minor in nature, no addendum letter has been submitted. As such, certification is to be provided by a suitably qualified consultant confirming that the modified development, as shown on the approved plans, conforms to the specifications and requirements of the current version of the document entitled *Planning for Bushfire Protection* prepared by the NSW Rural Fire Service that are relevant to the development. The certification is to be submitted to the Certifying Authority prior to the issue of a Construction Certificate.

NB. The development application was referred to the NSW Rural Fire Service for further assessment. The NSW RFS raised no objections at the time to the approval, subject to conditions. The recommendations of the Bush Fire Report, along with the conditions from the NSW RFS form part of the development consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application was not notified.

REFERRALS

No referrals were sent in relation to this application

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:

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11 Development on land in proximity to coastal wetlands or littoral rainforest

- (1) Development consent must not be granted to development on land identified as "proximity area for coastal wetlands" or "proximity area for littoral rainforest" on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:
 - (a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or
 - (b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest

Comment:

The development will not significantly impact upon the biophysical, hydrological or ecological intergrity of the adjacent littoral rainforest or the quantity and quality of surface and ground water flows to and from the adjacent littoral rainforest, due to its modest size and resultant minimal site disturbance.

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 likely to cause increased risk of coastal hazards on that land or other land.

As such, it is considered that the application does/does not comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

Pittwater Local Environmental Plan 2014

Is the development permissible?	Yes			
After consideration of the merits of the proposal, is the development consistent with:				
aims of the LEP?				
zone objectives of the LEP?	Yes			

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	2.5m	2.5m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	
1.9A Suspension of covenants, agreements and instruments	Yes	
4.3 Height of buildings	Yes	

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Clause	Compliance with Requirements
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

7.7 Geotechnical hazards

The subject site is on land as "Geotechnical Hazard H1" on the Geotechnical Hazard Map. Consideration has been given that due to the extent of the modified works being within the approved footprint, that an addendum to the Geotechnical Investigation (prepared by White Geotechnical Group, Report Ref. J2629, dated 26 March 2020) would not be necessary for the purposes of this assessment. It should also be noted that in accordance with Condition 6 of the development consent, that a Form 2 - Declarations and Certification made by Part A - Structural Engineer or Civil Engineer and Part B – Geotechnical Engineer or Engineering Geologist in relation to the design plans and structural plans is required prior to the release of a Construction Certificate.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m	17.6m	20.3m (Swimming Pool)	Yes
Rear building line	6.5m	14.4m	16.6m (Swimming Pool)	Yes
Side building line	2.5m (South)	9.2m (Decking)	unaltered	Yes
	1m (North)	1.7m (Decking) 2.7m (Swimming Pool)	- 2.1m (Swimming Pool)	- Yes
Building envelope	3.5m	Within envelope	unaltered	Yes
	3.5m	Within envelope	unaltered	Yes
Landscaped area	60% (443.9m ²)	55.1% (407.9m ²)	57.8% (427.3m ²)	No

Compliance Assessment

Clause		Consistency Aims/Objectives	
A1.7 Considerations before consent is granted	Yes	Yes	
A4.12 Palm Beach Locality	Yes	Yes	
B1.3 Heritage Conservation - General	Yes	Yes	
B1.4 Aboriginal Heritage Significance	Yes	Yes	
B3.1 Landslip Hazard	Yes	Yes	
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes	

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Clause	Compliance with Requirements	Consistency Aims/Objectives
B4.6 Wildlife Corridors	Yes	Yes
B5.15 Stormwater	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C5.21 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	Yes	Yes
D12.6 Side and rear building line	Yes	Yes
D12.8 Building envelope	Yes	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	No	Yes
D12.11 Fences - General	Yes	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

B3.1 Landslip Hazard

Refer to discussion above under Clause 7.7 (Geotechnical Hazards) of the PLEP 2014.

C1.5 Visual Privacy

The assessment for Development Application No. DA2020/0123 identified that the nearest point of the proposed swimming pool to the rear deck of the northern adjoining property was less than 9 metres and was therefore considered non-compliant with the requirements of this clause.

As discussed earlier in this report, the modification seeks a number of changes which include the deletion of the spa and overflow tank as well as a reduction to the extent of coping/decking around the swimming (lap) pool. Whilst the overall extent of proposed works have been reduced, a site inspection (30.03.21) by the assessing officer revealed that existing landscaping between the proposed swimming pool and the northern (side) fence had largely been removed. The property owner and applicant have

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both agreed to the planting of locally native shrub species along the full extent of the inside northern pool fence line. The provision of these plantings (capable of attaining a matuity height of 3m) in addition to the fencing and established vegetation at No. 84 Bynya Road are seen as acceptable to mitigate any direct overlooking.

Subject to compliance with the screen planting condition, the proposal is considered to meet the outcomes of this clause and is supported on merit.

D12.10 Landscaped Area - Environmentally Sensitive Land

Development Application No. DA2020/0123 was approved with an overall landscaped area of 55.1% (407.9m²). The modification seeks to increase the amount of landscaped area on site to 57.8% (427.3m²). As previously discussed, native shrubs are to be planted along inside of the northern pool fence line which will improve the landscape amenity of the site, whilst also providing an additional privacy measure between neighbours.

Based on the above, the modification is considered to continue achieving the outcomes of this clause and is supported on merit.

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;
- Pittwater Local Environment Plan;
- Pittwater 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

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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. Mod2021/0068 for Modification of Development Consent DA2020/0123 granted for construction of a swimming pool on land at Lot 41 DP 14630,82 Bynya Road, PALM BEACH, 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	
Sht-101, Issue. B (Master Landscape Plan)	16/02/21	Jamie King Landscape Design	
Sht-102, Issue. B (Sections)	16/02/21	Jamie King Landscape Design	

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. Add Condition No. 9A 'Amendments to the approved plans' under heading CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE to read as follows:

Amendments to the approved plans

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

- i) Along the full extent of the inside northern pool fence line, the planting of locally native shrub species, consisting of plants capable of attaining a mature height of 3 metres and planted at a minimum 200mm potsize, and planted no more that 1 metre apart,
- ii) plant selection must be non-climbable prescribed by the Swimming Pools Regulation 2008.

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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. Add Condition 9B 'Bushfire Certification' under heading CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE to read as follows:

Bushfire Certification

Certification is to be provided by a suitably qualified consultant confirming that the modified development, as shown on the approved plans, conforms to the specifications and requirements of the current version of the document entitled *Planning for Bushfire Protection* prepared by the NSW Rural Fire Service that are relevant to the development.

The certification is to be submitted to the Certifying Authority prior to the issue of a Construction Certificate.

NB. DA2020/0123 was referred to the NSW Rural Fire Service. The recommendations (Referral - RFS - DA2020/0123 - 82 Bynya Road Palm Beach, dated 30 March 2020) from the NSW RFS form part of the development consent.

Reason: To ensure that the modified development complies with the relevant code and standards for bush fire prone land.

D. Add Condition No.16A "Native Screen Plantings" under heading CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE to read as follows:

Native Screen Plantings

- i) Along the full extent of the inside northern pool fence line, the planting of locally native shrub species, consisting of plants capable of attaining a mature height of 3 metres and planted at a minimum 200mm potsize, and planted no more that 1 metre apart,
- ii) Plant selection must be non-climbable prescribed by the Swimming Pools Regulation 2008,
- iii) prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been completed, inclusive of any conditions of consent.

Reason: to ensure that the landscape treatments are installed to provide landscape amenity.

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

Signed

Kent Bull, Planner

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The application is determined on 08/04/2021, under the delegated authority of:

Rodney Piggott, Manager Development Assessments

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