

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0768
Responsible Officer:	Adam Mitchell
Land to be developed (Address):	Lot 103 DP 1247294, 145 Old Pittwater Road BROOKVALE NSW 2100
Proposed Development:	Modification of Development Consent DA2008/1742 for construction of stormwater upgrade works for Warringah Mall and watercourse bank stabilisation works
Zoning:	Warringah LEP2011 - Land zoned B3 Commercial Core Warringah LEP2011 - Land zoned IN1 General Industrial
Development Permissible:	Yes - Zone B3 Commercial Core Yes - Zone IN1 General Industrial
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	AMP Warringah Mall Pty Ltd Scentre Management Ltd
Applicant:	Scentre Management Ltd

Application Lodged:	18/10/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	01/11/2021 to 15/11/2021
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

This Section 4.55(1A) application seeks to amend three conditions outlined in the consent for DA2008/1742, including the rewording of Conditions 57, 61 and 63 to reflect agreed changes to the stormwater covenants.

Condition 57 pertains to the Registration of Encumbrances for the trunk drainage network and the Flood Barrier System.

The applicant seeks to amend the wording of Condition 57 to read as follows (bold being the proposed changes):

- *A copy of the certificate of title demonstrating the creation of a public positive covenant and restriction as to user, for the trunk drainage network and floor barrier system is to be submitted to Council **for approval and execution.***

*Details demonstrating compliance as relevant to each stage of construction as shown on the approved staging plans SW-001-SW-004 (Rev B) are to be submitted to the Certifying Authority prior to the issue of the interim / Occupation certificate **for each stage.***

Condition 61 pertains to the Creation of Public Positive Covenant and Restriction as to User, Positive Covenant and Easement.

The applicant seeks to amend the wording of Condition 57 to read as follows (bold being the proposed changes):

- *Where any conditions of this Consent require the creation of a public positive covenant and/or restriction as to user, **positive covenant and easement, the dealing forms shall be provided to Northern Beaches Council for approval and as necessary, execution.***

*A certified copy of the documents shall be provided to **Northern Beaches Council after final approval and registration has been affected by the NSW Land Registry Services.***

*Details demonstrating compliance as relevant to each stage of construction as shown on the approved staging plans SW001-SW004 (Rev B) are to be submitted to the Principle Certifying Authority prior to the issue of the Interim / Occupation certificate **for each stage.***

Condition 63 pertains to the Public Positive Covenant and Easement.

The applicant seeks to amend the wording of Condition 57 to read as follows (bold being the proposed changes):

- *a) **A Form 13PC Public Positive Covenant approved by Northern Beaches Council is to be registered on the title of Lot 100 DP 1015283C and Lot 100 DP 1015283D to require the owners of Lot 100 DP 1015283C and Lot 100 DP 1015283D to access Lot 30 DP 204107 in order to meet the obligations of conditions 66 and 67 of this Development Consent and to meet the obligations of conditions 66 and 67 of this Development Consent in respect to Lot 2 DP600059.***
- *b) **A Positive Covenant and Easement (under Section 88B of the Conveyancing Act 1919 (NSW)) approved by Council to allow the owners of Lot 100 DP 1015283C and Lot 100 DP 1015283D to access Lot 2 DP 600059 in order to meet the obligations of conditions 66 and 67 of this Development Consent.***
- *c) **Northern Beaches Council shall be nominated as the sole authority empowered to release, vary or modify the Form 13PC Public Positive Covenant referred to in condition 63(a) and the Positive Covenant and Easement referred to on condition 63(b).***
- *d) **All reasonable costs related to the review and approval of the positive covenant by Council shall be borne by the applicant.***
- *e) **Details demonstrating compliance with this condition is to be submitted to the satisfaction of the Principal Certifying Authority prior to the release of the final occupation certificate.***

Herein this report these changes are referred to 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

There are no assessment issues.

SITE DESCRIPTION

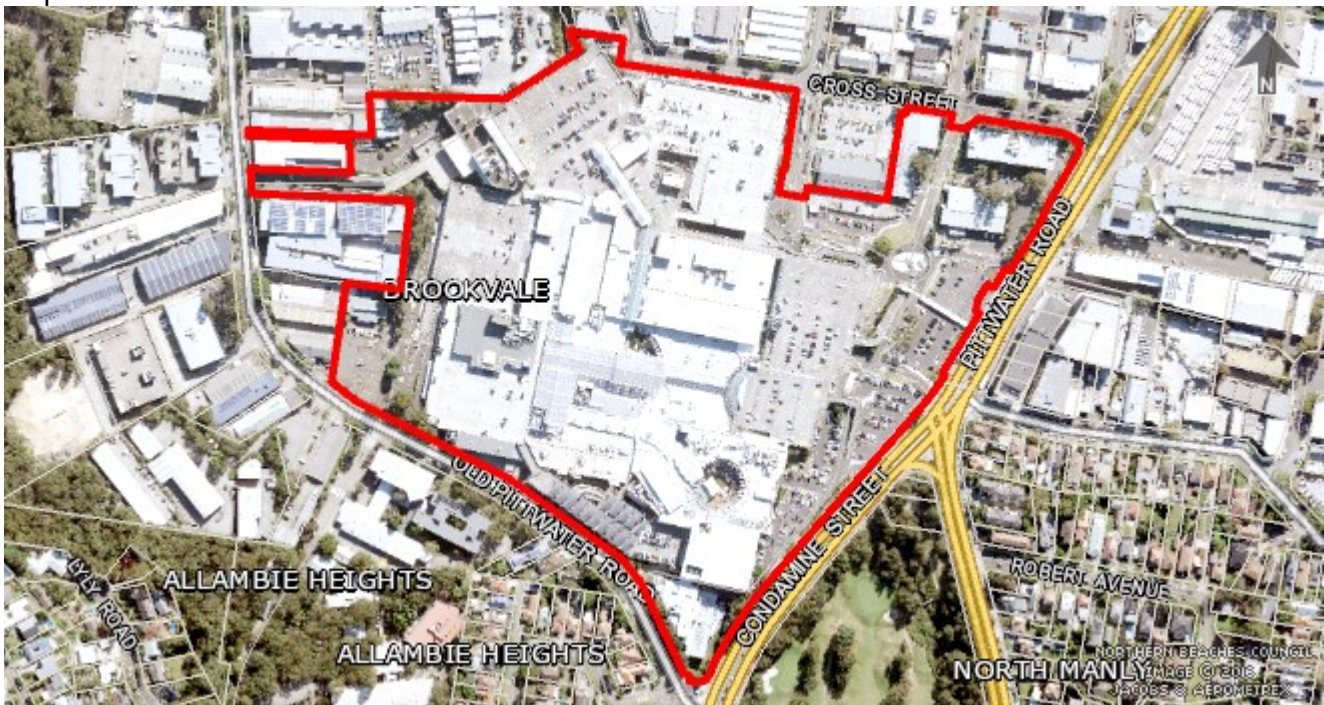
Property Description:	Lot 103 DP 1247294 , 145 Old Pittwater Road BROOKVALE NSW 2100
Detailed Site Description:	<p>The site is described as Lot 100, DP 1015283, No. 145 Old Pittwater Road, Brookvale. The site is occupied by the Westfield Warringah Mall Shopping Centre which is commonly known as '<i>Warringah Mall</i>'.</p> <p>The site has an area of 170,600m². It is bound to the north by Cross Street, to the south by Old Pittwater Road and to the East by Condamine Street/Pittwater Road. The principal street frontage is to Condamine/Pittwater Road and secondary street frontages are to Old Pittwater Road and Cross Street.</p> <p>Warringah Mall has a total floor area of approximately 133,500m² with 4,652 car parking spaces and includes an entertainment precinct incorporating a Hoyts Cinema Complex as well as fitness facilities and some other non-retail facilities.</p> <p>The site is extensively built upon with concrete hard surface</p>

areas located around the perimeter of the buildings to facilitate car parking and traffic flow.

Topographically, the site has a gradual natural slope that falls from the north-west to the south-east of the site.

Vehicular access to the site is currently available at various locations along Pittwater Road, Old Pittwater Road, Green Street, Dale Street and Cross Streets.

Map:



SITE HISTORY

The history of the site relevant to this modification application is as follows:

Development Application No. DA2008/1742

Development consent (DA2008/1742) was granted by Council on 24 April 2010 for the construction of drainage works through the Warringah Mall site. The drainage works included:

- *Alterations to the existing head wall located within the site where Brookvale Creek intersects with the Mall*
- *The construction of two 3.6m x 1.5m culverts running underground through the shopping centre site.*
- *The construction of culverts under Condamine Street and works within the Warringah Mall Golf Club site to connect into the existing drainage infrastructure located in this area.*
- *Removal of existing landscaping along the frontage to Cross Street*
- *Minor demolition works to facilitate the construction of the stormwater drainage system.*
- *Other drainage works around the western side of the centre including new inlets and pipes.*

This consent has been modified a number of times to address design refinements and the works have been completed.

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 DA2008/1742, 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 modifications are limited to wording amendments only and exist only to enable the securing of a final Occupation Certificate for the approved (and constructed) stormwater works.</p> <p>The modifications do not necessitate any built form changes nor discernible changes to the operation of Warringah Mall.</p>
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2008/1742 for the following reasons:</p> <ul style="list-style-type: none"> • The built form is not changing. • The density of Warringah Mall is not changing. • The approved ratios of floor area and car parking are not changing. • The approved land use is not changing.

Section 4.55(1A) - Other Modifications	Comments
	<ul style="list-style-type: none"> The internal and external appearance of the building is not changing.
<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 of a development consent, and</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan.</p>
<p>(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.</p>	<p>No submissions were received in relation to this application.</p>

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 commercial purposes for an extended period of time. The proposed development retains the commercial use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(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)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.

Section 4.15 'Matters for Consideration'	Comments
	<p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&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&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
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 01/11/2021 to 15/11/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	<p>Supported <u>Comments: 22 March 2022</u></p> <p>It can now be confirmed that the modification application proposed amendments to conditions 57,61 and 63 of the DA 2008/1742 consent, are as agreed between Council and Scentre Group. No objections to the modification .</p> <p><u>Superseded Comments: 18 February 2022</u> The proposed modification to conditions 57, 61 and 63 are not supported for the following reasons:</p> <p>Condition 57: <u>Proposed changes:</u> <i>“A copy of the certificate of title demonstrating the creation of a public positive covenant and restriction as to user, for the trunk drainage network and floor barrier system is to be submitted to Council for approval and execution.</i></p> <p><i>Details demonstrating compliance as relevant to each stage of construction as shown on the approved staging plans SW-001-SW-004 (Rev B) are to be submitted to the Certifying Authority prior to the issue of the interim / Occupation certificate for each stage.”</i></p> <p>Response: Council requires a positive covenant for to ensure the safe operation of the flood mitigation devices located within the site. It is not clear by staging this condition when the Positive covenant will be endorsed by Council and registered on title. Council requires the covenant to be in place for all flood mitigation devices/structures located with the site.</p> <p>Condition 61: Some above concerns apply to this proposed condition modification.</p> <p>Condition 63.</p>

Internal Referral Body	Comments
	Response : The proposed modification of this condition has been an ongoing matter between Councils Legal office and Scentre Groups representatives for a extended period . Background history including the final agreed version is to be provided by the applicant to support the current proposed wording change.
NECC (Stormwater and Floodplain Engineering – Flood risk)	The proposal is to amend Conditions 57, 61 and 63 of DA2008/1742, which relate to the positive covenant relevant to drainage works. Please refer to development engineering comments.

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)

Nil

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

The application is limited to the modification of conditions pertaining to administrative and operational requirements of stormwater covenants and does not alter the developments adherence to any Principal Development Standards. Given this, no further assessment against the Principal Development Standards is required.

Compliance Assessment

Clause	Compliance with Requirements
5.3 Development near zone boundaries	Yes
5.21 Flood planning	Yes

Warringah Development Control Plan

Built Form Controls

The application is limited to the modification of conditions pertaining to administrative and operational requirements of stormwater covenants and does not alter the developments adherence to any Built Form Controls. Given this, no further assessment against the Built Form Controls is required.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
E11 Flood Prone Land	Yes	Yes
G4 Warringah Mall	Yes	Yes

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. Mod2021/0768 for Modification of Development Consent DA2008/1742 for construction of stormwater upgrade works for Warringah Mall and watercourse bank stabilisation works on land at Lot 103 DP 1247294, 145 Old Pittwater Road, BROOKVALE, subject to the conditions printed below:

A. Modify Condition No. 57 - Registration of Encumbrances for Trunk Drainage network and Flood Barrier - to read as follows:

A copy of the certificate of title demonstrating the creation of a public positive covenant and restriction as to user, for the trunk drainage network and floor barrier system is to be submitted to Council for approval and execution.

Details demonstrating compliance as relevant to each stage of construction as shown on the approved staging plans SW-001-SW-004 (Rev B) are to be submitted to the Certifying Authority prior to the issue of the interim / Occupation certificate for each stage.

Reason: To identify encumbrances on land.

B. Modify Condition No. 61 - Creation of Positive Covenant and Restriction as a User - to read as follows:

Where any conditions of this Consent require the creation of a public positive covenant and/or restriction as to user, positive covenant and easement, the dealing forms shall be provided to Northern Beaches Council for approval and as necessary, execution.

A certified copy of the documents shall be provided to Northern Beaches Council after final approval and registration has been affected by the NSW Land Registry Services.

Details demonstrating compliance as relevant to each stage of construction as shown on the approved staging plans SW001-SW004 (Rev B) are to be submitted to the Principle Certifying Authority prior to the issue of the Interim / Occupation certificate for each stage.

Reason: To identify encumbrances on land.

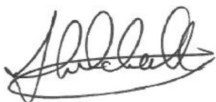
C. Modify Condition No. 63 - Positive Covenant to Allow Access for Maintenance and Rectification - to read as follows:

- a) A Form 13PC Public Positive Covenant approved by Northern Beaches Council is to be registered on the title of Lot 100 DP 1015283C and Lot 100 DP 1015283D to require the owners of Lot 100 DP 1015283C and Lot 100 DP 1015283D to access Lot 30 DP 204107 in order to meet the obligations of conditions 66 and 67 of this Development Consent and to meet the obligations of conditions 66 and 67 of this Development Consent in respect to Lot 2 DP600059.
- b) A Positive Covenant and Easement (under Section 88B of the Conveyancing Act 1919 (NSW)) approved by Council to allow the owners of Lot 100 DP 1015283C and Lot 100 DP 1015283D to access Lot 2 DP 600059 in order to meet the obligations of conditions 66 and 67 of this Development Consent.
- c) Northern Beaches Council shall be nominated as the sole authority empowered to release, vary or modify the Form 13PC Public Positive Covenant referred to in condition 63(a) and the Positive Covenant and Easement referred to on condition 63(b).
- (d) All reasonable costs related to the review and approval of the positive covenant by Council shall be borne by the applicant.
- e) Details demonstrating compliance with this condition is to be submitted to the satisfaction of the Principal Certifying Authority prior to the release of the final occupation certificate.

Reason: To ensure unimpeded access and to ensure the conditions of this consent are met.

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 29/03/2022, under the delegated authority of:



Steven Findlay, Manager Development Assessments