

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2024/0449
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Responsible Officer:	Dean Pattalis
Land to be developed (Address):	Lot 5 DP 237417, 5 Lae Place ALLAMBIE HEIGHTS NSW 2100
Proposed Development:	Modification of Development Consent DA2021/2269 granted for alterations and additions to a dwelling house including a swimming pool
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:	Christopher Glen Holloway

Application Lodged:	27/08/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	05/09/2024 to 19/09/2024
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The application proposes to modify the consent under DA2021/2269 which gained approval for alterations and additions to an existing dwelling house.

The proposed modification works include:

Lower Ground Floor

- Deletion of garage extension and associated excavation from proposed works
- Deletion of approved front post and wire structure from proposed works
- New porch structure
- Minor internal reconfiguration works

Ground Floor

- Deletion of approved pool from proposed works
- Deletion of approved roof and planter boxes on new outdoor paved area
- Extension of existing approved privacy screen
- Minor internal reconfiguration works

First Floor

- Minor internal reconfiguration works

Proposed changes to conditions

- Deletion of geotechnical conditions 8, 17, 20 due to the deletion of excavation works from the proposal

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 - B3 Side Boundary Envelope
Warringah Development Control Plan - B7 Front Boundary Setbacks

SITE DESCRIPTION

Property Description:	Lot 5 DP 237417 , 5 Lae Place ALLAMBIE HEIGHTS NSW 2100
Detailed Site Description:	The subject site consists of one allotment located on the western side of Lae Place. The site is irregular in shape with a frontage of 19.54m along Lae Place and a depth of 29.735m. The site has a surveyed area of 557.6m².

The site is located within the R2 Low Density Residential zone and accommodates an existing dwelling house.

The site slopes approximately 12m from rear (west) to front (east), including a sloping rock shelf within the rear yard.

The site does not include any significant vegetation.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by detached dwellings.

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 **DA2021/2269** for Alterations and additions to a dwelling house including a swimming pool (Approved 07/01/2022)

Pre-lodgement Meeting **PLM2021/0180** was held on 03/09/2021 for Alterations and Additions to a dwelling house

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 DA2021/2269, 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	Yes The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons: The proposed modification works generally do not alter the existing approved built form controls of the existing dwelling, with the exception of minor encroachments to the front setback and northern side envelope which are considered acceptable on merit.
(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	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 DA2021/2269 for the following reasons: The proposed modification works generally do not alter the existing approved built form controls of the existing dwelling, with the exception of minor encroachments to the front setback and northern side envelope which are considered acceptable on merit.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising	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.

Section 4.55(1A) - Other Modifications	Comments
of applications for modification 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)	<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. <u>Clause 29</u> of the EP&A Regulation 2021 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. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent

Section 4.15 'Matters for Consideration'	Comments
	authority to consider AS 2601 - 2001: The Demolition of Structures. This matter has been addressed via a condition of consent. <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 clause is not relevant to this application. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home 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 05/09/2024 to 19/09/2024 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 1 submission/s from:

Name:	Address:
Mrs Lynette Lee	7 Lae Place ALLAMBIE HEIGHTS NSW 2100

One submission was received during the community notification period and the following concerns were raised:

- **Acoustic privacy**

Comment

Concern was raised that the proposed modifications to the terrace above the garage, including removing the approved planter boxes and replacing with a privacy screen, shall result in increased noise impacts from the terrace towards the adjoining property to the north.

It is noted the modification works do not result in any relocation or increase in size of the approved terrace, but rather replacement of the approved planter with a privacy screen only. It is also noted that the subject site (No.5) and No.7 Lae Place are separated by a battle-axe driveway, which provides a spatial buffer of approximately 5m between the respective property boundaries. Furthermore, the southern side of No.7 which is closest to the proposed terrace, consists of a driveway and vehicle parking area which therefore provides an additional spatial separation to the principal living areas and private open space areas of No.7. Therefore, the spatial distance between the proposed modified terrace and the private open space or principal living areas of No.7, is considered to be reasonable and typical of a low density residential locality, as well as consistent with the objectives of Clause D3 Noise (Warringah DCP 2011).

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The application is for modification to development consent DA2021/2269 as described in reports and as illustrated on plans, and no concerns are raised by Landscape Referral.
NECC (Development Engineering)	The proposal is the modification to Consent DA2021/2269 to remove the approved pool and associated earthworks. No objections to approval subject to the following amendments to Conditions of Consent Da2021/ 226: Condition 10 to be deleted.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations are included as a condition of consent.

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.A439356_02 dated 8 August 2024).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

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	7.7m	Existing	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
6.2 Earthworks	Yes

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Prop
B1 Wall height	7.2m	7m	Exis
B3 Side Boundary Envelope	4m (north)	Within	Outside env ma
	4m (south)	Existing	Exis
B5 Side Boundary Setbacks	0.9m (north)	Nil (lower ground) Nil (ground) Existing (first)	Existing (lo Nil (g) Existin
	0.9m (south)	Existing (lower ground) Existing (ground) Existing (first)	Existing (lo Existing Existin
B7 Front Boundary Setbacks	6.5m	Existing (lower ground) 5m (ground) Existing (first)	3.8m (low Existing Existin
B9 Rear Boundary Setbacks	6m	13m	13

D1 Landscaped Open Space and Bushland Setting	40%	45.5%	45.07% (
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Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C4 Stormwater	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	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
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

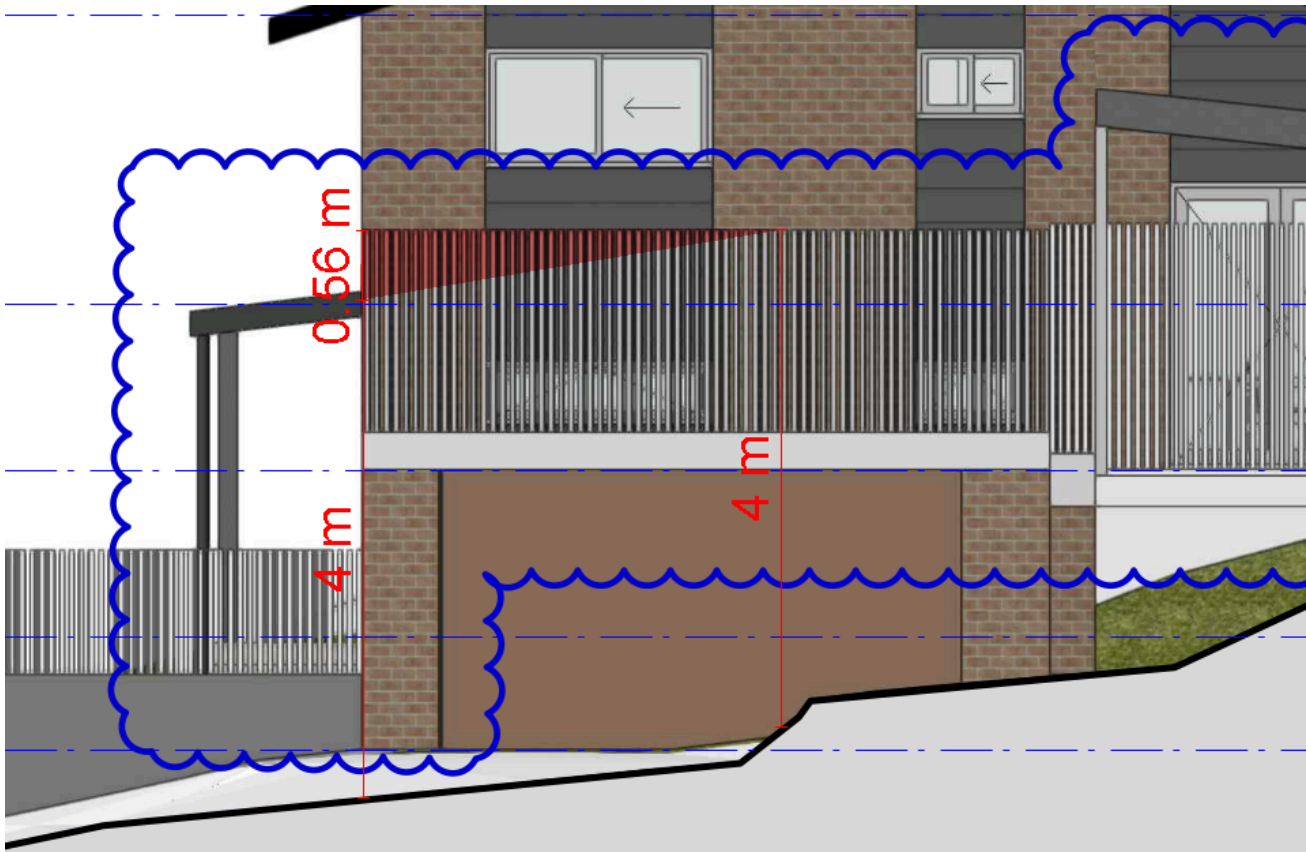
Detailed Assessment

B3 Side Boundary Envelope

Description of non-compliance

The modified privacy screen to the terrace above the garage encroaches the building envelope on the northern elevation by a maximum of 0.56m.

Figure 1



The proposed height of the privacy screen is 1.9m above the FFL of the ground floor which is considered excessive for screening purposes. A suitable condition of consent is therefore recommended to reduce the height of the screen to 1.65m which shall soften the encroachment to a reasonable extent.

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 that development does not become visually dominant by virtue of its height and bulk.*

Comment:

Notwithstanding the encroachment, the dwelling remains consistent and commensurate with the established, low-scale residential character of the surrounding area with a height and bulk that is not unreasonable within the context of the area.

- *To ensure adequate light, solar access and privacy by providing spatial separation between buildings.*

Comment:

The proposal maintains sufficient solar access to adjoining properties. Privacy to neighbouring properties, including areas of private open space and principal living areas, is maintained.

- *To ensure that development responds to the topography of the site.*

Comment:

Minimal cut and fill is required with the proposal responding appropriately to the site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / 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.

B7 Front Boundary Setbacks

Description of non-compliance

The modification proposal includes a new front porch structure with a front setback of 3.8m, which does not comply with the control of 6.5m.

Despite the non-compliance, the porch is an open structure with a post and awning design that is not considered to unreasonably impact the visual outcome of the existing approved front setback area. Furthermore, the existing front boundary is treated with boundary fencing and vegetation and therefore it is considered the porch addition shall be generally indiscernible from the streetscape.

Merit consideration:

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

- *To create a sense of openness.*

Comment:

The proposal will not impact on the sense of openness within the front setback.

- *To maintain the visual continuity and pattern of buildings and landscape elements.*

Comment:

The proposal is not uncharacteristic of the area or adjoining pattern of development.

- *To protect and enhance the visual quality of streetscapes and public spaces.*

Comment:

The proposal maintains a high-quality landscape outcome for the site, therefore enhancing the visual quality of the streetscape.

- *To achieve reasonable view sharing.*

Comment:

Views will not be impacted by the proposal.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / 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.

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 2022

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. Mod2024/0449 for Modification of Development Consent DA2021/2269 granted for alterations and additions to a dwelling house including a swimming pool on land at Lot 5 DP 237417,5 Lae Place, ALLAMBIE HEIGHTS, 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# - PAN-459267 MOD# - Mod2024/0449	The date of this notice of determination	Modification of Development Consent DA2021/2269 granted for alterations and additions to a dwelling house including a swimming pool A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting documentation B. Delete Condition No.8 - Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans C. Delete Condition No.10 - Structural Adequacy and Excavation Work D. Delete Condition No.12 - Screen planting E. Add Condition No.13A - Privacy Screen F. Delete Condition No.17 - Implementation of Geotechnical Recommendations

	G. Delete Condition No.20 - Geotechnical Certification Prior to Occupation Certificate
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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
11.01	1	Site Plan	Envirostructure	8 August 2024
21.01	1	Lower Ground Floor	Envirostructure	8 August 2024
21.02	1	Ground Floor	Envirostructure	8 August 2024
21.03	1	First Floor	Envirostructure	8 August 2024
21.04	1	Roof Plan	Envirostructure	8 August 2024
22.01	1	Deck Plan	Envirostructure	8 August 2024
30.01	1	Elevations	Envirostructure	8 August 2024
30.02	1	Elevations	Envirostructure	8 August 2024
40.01	1	Sections	Envirostructure	8 August 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. Delete Condition No.8 - Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans

C. Delete Condition No.10 - Structural Adequacy and Excavation Work

D. Delete Condition No.12 - Screen planting

E. Add Condition No.13A - Privacy Screen to read as follows:

The proposed privacy screen located along the northern elevation of the "New Outdoor Paved Area" on the Ground Floor plan, shall be 1.65 metres high (measured from finished floor level) and be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the

Construction Certificate.

Reason: In order to maintain privacy to the adjoining / nearby property.

F. Delete Condition No.17 - Implementation of Geotechnical Recommendations

G. Delete Condition No.20 - Geotechnical Certification Prior to Occupation Certificate

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

Signed



Dean Pattalis, Planner

The application is determined on 25/09/2024, under the delegated authority of:



Thomas Prosser, Acting Development Assessment Manager