

**GR1 - Development Application No.010.2016.00000010.002 - Modification of Consent for Intensive Plant Horticulture at 275 Bargo Road, Bargo**

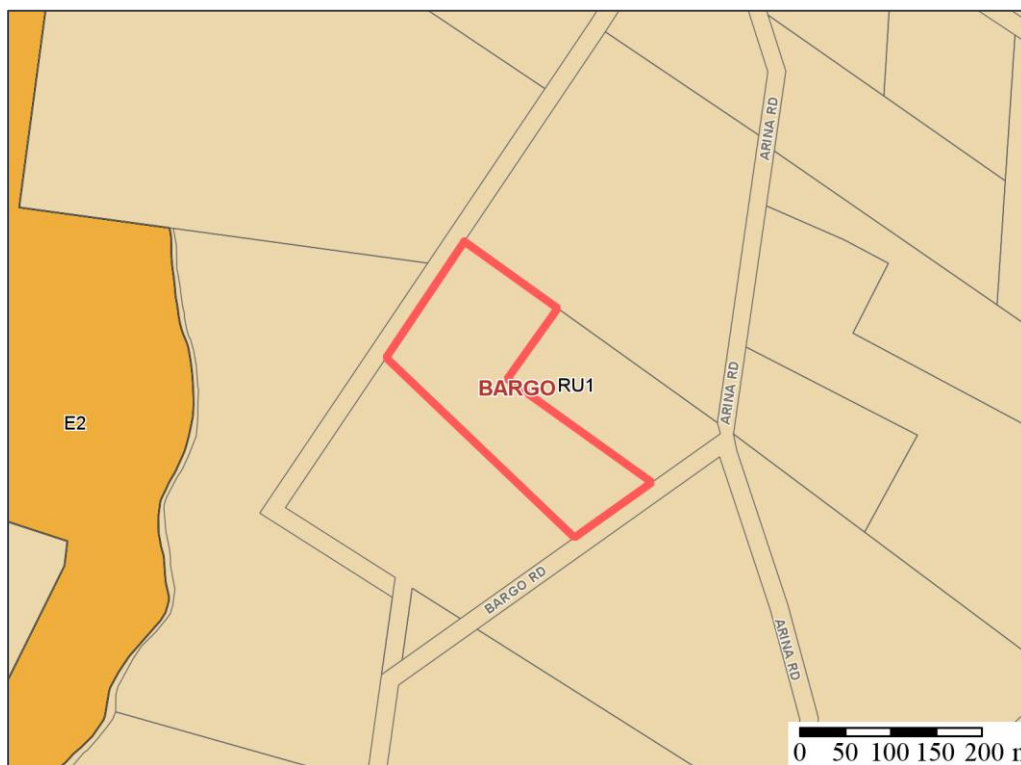
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**Development Application No.010.2016.00000010.002 - Modification of Consent for Intensive Plant Horticulture, Erection of a Hail Net and Farm Building, Demolition of an Outbuilding and Enlargement of Existing Dam at 275 Bargo Road, Bargo**

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010.2016.00000010.002

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LOCATION & ZONING MAP ↑ N

**DEVELOPMENT INFORMATION**

<b>Development Application No:</b>	010.2016.00000010.002
<b>Property Address:</b>	275 Bargo Road, Bargo
<b>Applicant:</b>	Jeff Bulfin – Precise Planning
<b>Owner:</b>	Shi Wen Sui and Hai Min Lai

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**EXECUTIVE SUMMARY**

- The purpose of this report is to inform Council of a proposed modification to a development consent for an intensive horticultural farm at 275 Bargo Road, Bargo.
- In accordance with Council's Development Control Plan, the modification application was notified to those land owners who objected to the original application. Further submissions have been received.
- The modified application was called in by Councillors for determination.
- Under legislation, a person who makes a relevant planning application or public submission is required to disclose any reportable political donations. The disclosure requirements extends to any person with a financial interest in the application or any associate of the person making a public submission. No disclosure of political donation has been made in association with this application.
- It is recommended that the application be approved subject to conditions.

**REPORT**

**BACKGROUND**

At the Council Meeting held 17 October 2016, consent was granted for Intensive Plant Horticulture, erection of Hail Net and Farm Building, Demolition of an Outbuilding and Enlargement of existing Dam. The consent was granted following design changes, including the relocation of the packing shed and imposition of condition 4(7) requiring the growing beds to be setback 20m from the property boundary to 295 Bargo Road, Bargo. A copy of the approved plan is included as Attachment 1.

An application to modify the above consent was lodged 21 February 2017. The application initially sought to:

1. Delete condition 4(7) which requires the 20m setback;
2. Delete condition 21(1) – (15) given it is no longer proposed to enlarge the farm dam; and
3. Amend conditions 1(2) and 1(7) to permit the development to be carried out in stages.

The Applicant's summary of changes form Attachment 2 of this report.

The application was notified for 30 days from 16 March to 19 April 2017. Three formal submissions were received from the adjoining neighbour. A summary of the concerns raised are outlined elsewhere in this report. The formal submissions are included in the separate Submissions Booklet.

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The detailed submission suggest that the Applicant could comply with the 20m setback without reducing the growing area by utilising land elsewhere on site.

On 4 August 2017, the Applicant provided a revised proposal in response to the concerns raised by the submitter and Council. A copy of the Applicant's correspondence and revised plan is included as Attachment 3. The revised proposal demonstrates compliance with Condition 4(7). The utilisation of land elsewhere on site necessitated relocation of the effluent disposal system. An On-site Wastewater Assessment Report was provided with the revised proposal together with an amended Landscape Plan.

**1.1 DESCRIPTION OF SITE AND SURROUNDING AREA**

The subject site is located at 275 Bargo Road, Bargo with the nearest cross street being Arina Road, Bargo. The site is 3.546 hectares in area. The site currently has a dwelling on the property and is zoned RU1 Primary Production. The site partially bushfire prone land and located in Bargo Mine Subsidence District.

**1.2 DESCRIPTION OF PROPOSED MODIFICATION**

Noting that the Applicant no longer seeks to delete Condition 4(7) the following extract from the Statement of Environmental Effects outlines the proposed modification:

*"The original application proposed, as part of the works required, the expansion of the existing dam. Subsequent stormwater runoff calculations undertaken by D and M Consulting (Consulting Engineers) has demonstrated that the existing dam capacity is sufficient to accommodate any additional runoff created by this development, without the need for any further expansion. Subsequently, this application proposes the approved development be modified by deleting the proposal to expand the dam.*

*Lastly, the proponent has indicated that the erection of the shed will not be required until sometime after the setup of the hydroponics facility and therefore this application seeks to modify the approved development so that the earthworks, landscaping, hail net structure and setup of the hydroponics facility is Stage 1 of the development and the erection of the shed and associated vehicle manoeuvring area is Stage 2 of the development".*

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**CONSULTATION WITH INTERNAL STAFF AND STATE AGENCIES**

Section	Comments
Engineer	Consultation and written response by Development Engineer received 21 August 2017. Current capacity of dam considered adequate.
Health Officer	Comments received 24 March 2017: <i>At this stage I am satisfied that there will be minimal impact to neighbouring properties. Should there be issues with pesticides leaving the property in the future, it can always be dealt with by prohibiting specific chemicals or implementing additional controls under the POEO legislation.</i>
DPI Water	Given the proposal no longer seeks to enlarge the dam there is no need to obtain General Terms of Approval from DPI.
Environment Officer	Comments received 5 April 2017: <i>The southern drainage swale does not have any treatment and should either flow into the dam to have a treatment device prior to discharge. The adjoining vegetation is in good condition.</i> <i>The proposal doesn't impact on much existing vegetation, however offsite run off and impacts should be managed.</i> <i>In regards to the chemical use the curtain must be in operation every time the application is applied and manufacturer's instruction followed. Generally there is information regarding chemical use such as not using when the wind is above a certain speed etc. I would recommend that the curtain be down when the application is occurring.</i>

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Section	Comments
	<p><i>The lesser boundary depth along the southern boundary is manageable as long as there is appropriate screening, the curtain is applied to reduce any spray drift from chemical application.</i></p> <p><i>The flora and fauna report is satisfactory and no threatened species or communities will be affected by the proposal.</i></p>

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**1.3 SECTION 79C ASSESSMENT**

The original application DA 010.2016.00000010.001 was comprehensively assessed in accordance with a report presented to Council at its meeting held on Monday 18 July 2016. It is not intended to repeat all of the detail of that assessment in this report.

Assessment in respect of environmental planning instruments will focus the provisions of Section 96(2) Modification of consents of the Environmental Planning and Assessment Act (EPA Act).

**1.3.1 PROVISIONS OF RELEVANT ENVIRONMENTAL PLANNING INSTRUMENTS**

The following table provides an assessment of the provisions of Sections 96(2) and (3) Modification of consents of the EPA Act.

Section 96(2) Provision	Comment
Consent authority 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).	It is considered that the development to which the consent as modified relates is substantially the same development.
Consent authority has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent.	The subject application does not require the concurrence of any state agency.

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Section 96(2) Provision	Comment
Consent authority 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 that requires the notification or advertising of applications for modification of a development consent.	The application has been notified in accordance with the provisions of Council's Development Control Plan. Previous objectors were notified and the exhibition period was for 30 days.
Consent authority has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan.	Multiple submissions were received from one neighbour. The concerns raised are considered elsewhere in this report.
Consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application.	Matters referred to in section 79C (1) as are of relevance to the development the subject of the application have been considered in this report.

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**1.3.2 PROVISIONS OF RELEVANT DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS**

Not applicable.

**1.3.3 PROVISIONS OF RELEVANT DEVELOPMENT CONTROL PLANS (DCP)**

The report to Council's meeting held 18 July 2016 for the original application was assessed under Development Control Plan 2016. Volume 8, 3.4, 3.5 and 3.6 were utilised for assessment. The modification relates to controls 3.4 and 3.6 as per below DCP extract:

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<b>Volume 8 – Primary Agricultural and Rural Uses</b>	
<b>PART 1 – PRELIMINARY</b>	
1.2 - Objective	
a)	To promote and encourage rural and agricultural enterprises,
b)	To encourage development that protects the rural amenity, natural landscape features of significance and scenic qualities of Wollondilly Shire,
c)	To ensure that agricultural activities have a neutral or beneficial effect on water quality,
d)	To ensure that the establishment of new, or expansion of existing farms will not adversely impact on biodiversity, endangered ecological communities and threatened species,
e)	To minimise the potential for land use conflict, and
f)	To ensure that the opportunity for long term sustainable agricultural production is maximised.
Council is unlikely to grant consent to development unless Council is of the opinion that the development is consistent with all of the objectives of this Volume.	
Controls in this Plan can only be varied where there are no viable alternatives due to the physical limitations of the land and it can be demonstrated that the proposed use will still meet the objectives.	
<b>Part 2 – General Requirements for all Development</b>	
None at time of adoption.	
<b>3.4 Intensive plant agriculture</b>	
3.4.1 Siting and design	
<b>Objectives</b>	
a)	To minimise the impacts of horticulture on adjoining properties.
b)	To control the impacts of horticulture by appropriate site buffer or setback distances.
c)	To minimise the impacts of development on the natural environment.
d)	To provide a consistent approach to planning for the development of new horticulture farms and facilitate additions to existing farms.
<b>Controls and comments</b>	
1.	Intensive Plant Agriculture is required to comply with the minimum separation distances outlined below unless the impacts can be mitigated through a Council approved design: (See DCP for further details relating to this control).
	Amended landscape plans indicate that the setbacks for a controlled environment structure have a 20m setback from the front and south eastern boundaries.
<b>Note:</b> Where rural land uses emit odour, the above separation distances are minimums only. Consideration will be given to OEH's policy on 'Assessment and management of odour from stationary sources in NSW' (November 2006) taking into consideration the site characteristics and the merits of each application.	

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<b>3.6 Earth dams</b>	
<b>Objectives</b>	
a)	To ensure that earth dams are constructed to a safe standard, and
b)	To minimise the impact of dam construction on neighbouring properties and on the surrounding natural environmental features.
<b>Controls and comments</b>	
1.	The width of a dam crest must be a minimum of 3 metres for a 3 metre high dam wall. The crest must increase in width 500mm from every metre above a 3 metre high dam wall.
2.	A minimum of 1.0 metre is to be established for freeboard (the distance between the highest water level and the top of the dam wall). This must increase by 10% for every metre over a 3 metre high wall.
3.	Soils predominantly consisting of gravels; organic soils or peat must not be used for dam construction or batters. The material used to construct an embankment should be sufficiently impervious to keep seepage low and ensure that dam walls remain stable. Soils with 25% clay content or greater are ideal to form an impervious barrier.
4.	The dam embankment must contain at least 200mm of compacted top soil and be planted with a good soil holding grass. Trees and shrubs must not be planted on the embankment.
5.	The slope of the embankment batters must conform to the ratio of 3.0 horizontal to 1.0 vertical for both upstream and downstream slopes.
6.	An earth bywash is required on all dams in order to pass surplus runoff around the dam which would otherwise pass over the embankment. The bywash must be a minimum of 6 metres in width.
<p>The Applicant's consulting engineer has certified that the existing dam will have sufficient capacity for stormwater flow. No change to the existing dam is proposed.</p>	

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7.	The width of the outlet from the bywash must not be less than the inlet width and must not direct flow onto the downstream toe. The bywash cut batter must have a maximum steepness of 1.5:1.	
8.	The bywash is to be excavated 75mm below the top water level and backfilled with compacted topsoil and planted with a suitable holding grass such as kikuyu. No trees or shrubs are to be planted in the bywash area.	
9.	In spring fed dams and dams that consistently receive a large amount of surface water, a piped spillway may be required to act as an outlet. The spillway is to have an inlet of at least 100mm below the level of the bywash. Generally a 150mm pipe is suitable for this purpose.	
10.	To avoid erosion and cracking of soil around spillway pipes and movement of water along the pipe line, gypsum should be applied below, above and around the pipe for a minimum distance of 2 metres. The trench for the pipe is to be cut into the natural ground under the earth bank or through a compacted section of bank. The base width of the pipe trench is generally about 300mm wider than the diameter of the pipe. The trench should be cut and the pipe installed as early as possible in the construction process to allow the excavation time to settle and compact as cutting through the completed embankment creates a point of weakness which may result in failure.	
11.	The bywash or spillway water from an earth dam should not have an adverse effect on neighbouring properties. Dams are to be sited so that excess water is contained on	

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	the property on which they are located before meeting with a watercourse downstream.	
12.	All farm dams are required to have a cut-off trench. The cut-off trench is to be constructed along the entire length of the embankment. It does not need to extend across the bywash. The trench must be taken down at least 300mm into the impervious soil and backfilled with impervious material ensuring it is less than 600mm below the natural surface.	
13.	The earth dam must not be located near or adjoining a natural wetland, floodplain or riparian area, and shall be designed and located to avoid any impact on remnant vegetation or threatened species.	

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**1.3.4 DRAFT AND/OR PLANNING AGREEMENTS ENTERED OR OFFERED TO ENTER INTO**

Not applicable

**1.4 IMPACT OF THE DEVELOPMENT**

Head of Consideration	Comment
Natural Environment	Subject to compliance with the draft conditions of consent the impact on the natural environment is not expected to be significant.
Built Environment	The proposed netting is setback between 80 and 100m from the street and will be partially screened by vegetation
Social Impacts	It is considered that there will be minimal social impacts.
Economic Impacts	Economic impacts will be positive with this proposal.

**1.5 SUITABILITY OF THE SITE**

The site is considered to be suitable for the proposed modified development.

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**1.6 SUBMISSIONS**

Three formal submissions were received from the previous objector. An outline of those concerns and staff comments are provided as follows:

Concern	Comment
The land could be better utilised to maintain the 20 m setback.	The Applicant has re-designed the growing bed configuration. It is no longer proposed to reduce the 20m setback required by Condition 4(7).
The increase in growing area should trigger a fresh Development Application.	The growing area under netting has increased from approximately 11,350 m <sup>2</sup> to 12,690m <sup>2</sup> . The Modified application also includes 2,250m <sup>2</sup> in open area growing beds. A qualitative and quantitative assessment of the proposed changes has been undertaken. The increase in growing area under netting is approximately 10.5%. Changes including the 20m setback and three rows of trees has been included to comply with conditions on the original consent. Other changes including staging the development and retaining the dam in its current form are not considered significant.
The growing area encroaches upon the effluent disposal area.	The Applicant has prepared an On-site Wastewater Assessment Report for the relocation of the Effluent Disposal Area. Council's Environmental Health Officer is satisfied with the proposal.
The proposed packing shed will encroach upon the Crown Reserve at the rear of the property.	The Applicant has provided a survey plan which indicates that the existing dam and proposed packing shed will be fully contained within the subject site.
The open air growing beds shown in the north eastern corner of the site should be deleted and the area used for waste disposal.	It is suggested that there is ample space on site to permit small scale composting of vegetative material.

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Concern	Comment
No details of “mature landscaping” has been provided.	The Applicant has amended the Landscape Plan. Approximately 116 Brush Cherry Lillypilly in 45 litre pots will be planted along the neighbour’s boundary. A further 431 Brush Cherry Lillypilly approximately 200mm in height will be planted to form three rows of trees along the neighbour’s boundary.
The details in the Landscaping Plan has changed between plan versions.	These changes have been made to address the neighbour’s concern regarding the lack of mature plant species.
The Landscaping Plan has insufficient spacing for maintenance purposes.	The latest Plan shows the trees planted at 2m intervals and rows. The row closest to the boundary with the neighbour is offset by 750mm. The distance is considered adequate for tree maintenance.
There is no detail of the effectiveness of the tree planting to screen the netting structure. The trees will only grow to 3 metres.	The netting structure is typically 5 m in height. The advanced trees will be approximately 1.5m high when planted. The netting will be visible. The planting is expected to soften any visual impact.
The wire stays supporting the netting will encroach upon the tree planting proposal along the western boundary.	The wire stays may well encroach into the planted area. Given the 2m distance between tree intervals and rows, any encroach is not expected to hamper tree planting / maintenance.
The revised drainage details which suggest the dam has sufficient volume is not supported by a calculation sheet.	The Applicant response dated August 2017 includes an assessment from a consulting engineer which suggest ‘ <i>the proposed development does not change the overall impervious area of the site therefore the runoff from the site is not increased and the existing dam is adequate for the designed stormwater flows</i> ’ (see Attachment 3). The opinion is supported by Council’s Development Engineering Section.

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Concern	Comment
The stormwater swale proposed along the properties western boundary will conflict with the landscaping works and relocated shed.	The Applicant has provided a stormwater drainage concept plan (see Attachment 3). Shallow swales (approximately 250mm deep) will run between hydroponic beds towards the existing dam. Stormwater will be diverted clear of the proposed packing shed.
No structural details of the netting has been provided.	Condition 5(1) of the Development Consent requires the Applicant to obtain a Construction Certificate for the erection of any structures. Structural details will be provided at that stage of the approval process.
There are no plans, in elevations, showing the netting design.	The Applicant has provided photographs of the netting. As suggested above the netting is typically 5 m in height.
No technical detail has been provided that demonstrates that the netting will be effective in reducing spray drift.	See the Health Officer's comments elsewhere in this report.
The requirement for drop down sheets at the end of the growing beds has been replaced with angled netting.	Condition 4(5) of the Development Consent requires the Applicant to install 'spray drift netting'. The Applicant is not seeking to amend this condition.
The proposed seedling storage area should be relocated to the rear of the property.	At this point in time we have no evidence that the location of the seedlings will cause a nuisance. If a nuisance is demonstrated then alternative locations can be considered.

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**1.7 THE PUBLIC INTEREST**

Based on the merits of the case, it is considered that the modified development is within the public interest.

**FINANCIAL IMPLICATIONS**

This matter has no financial impact on Council's adopted budget or forward estimates.

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**ATTACHMENTS INCLUDED IN A SEPARATE BOOKLET**

1. Site Plan approved on 17 October 2016.
2. Applicant's summary of Modified Proposal.
3. Applicant's response to concerns raised and revised proposal.

**RECOMMENDATION**

That in accordance with Section 96(2) of the *Environmental Planning and Assessment Act*, Council grant approval to the Modification Application No.010.2016.00000010.002 to amend Development Consent 010.2016.00000010.001 as follows:

1. Condition 1(2) of the original consent is modified to read:

*“(2) Development shall take place in accordance with the original plans and supporting documents approved by Council in respect of Development Application No. 010.2016.00000010.001 except for those plans replaced by new plans, listed below and submitted to Council in respect of Application to Modify Development Consent No. 010.2016.00000010.002.*

New plan			Superseded plan	
Plan Name	Plan No.	Date	Plan Name	Plan No.
Landscape Plan	L 01F	27/06/2017	Landscape Plan	L 01B
Site Plan and Drainage Plan	DWG No 16997C – Sheets 1 to 5	02/08/2017	Site Plan	17/10/16

*Where there is an inconsistency between an approved plan and any other condition of this consent the other condition shall prevail to the extent of the inconsistency.”*

2. Condition 1(7) of the original consent is modified to read:

*“(7) The proposal shall be redesigned to achieve the following outcomes:*

- *A personal access door(s) shall be provided to the proposed farm building in accordance with the Building Code of Australia.*

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- *Amended plans demonstrating compliance with this Condition shall be submitted to Council or the nominated Accredited Certifier prior to the issue of a Construction Certificate in regard to Stage 2.”*
3. New condition 1(7A) is added and states:
- “(7A) The development shall be staged as follows:*
- *Stage 1: Demolition and all civil earthworks for the driveway and growing areas, landscaping, erection of hail nets and installation of hydroponic growing tables and subsequent use of the land for intensive plant horticulture.*
  - *Stage 2: Erection of Farm Shed. The farm building shall be located wholly within the development lot and shall maintain rear and side setbacks in accordance with the approved site plan. A survey report completed by a registered surveyor shall be submitted to the Principal Certifying Authority at the commencement of work / at slab formwork stage prior to the pouring of concrete to demonstrate compliance with this condition.*
4. Conditions 22(1) – (15) of the original consent be deleted and replaced with the following condition:
- “(1) The existing dam has sufficient capacity to support the proposed development as shown in amended plans by D&M Consulting Pty Ltd. Any future modifications to the existing dam will require a development application submitted to Wollondilly Shire Council.*
5. All other conditions of the original consent remain valid and applicable.