

PENRITH CITY COUNCIL

FAST LIGHT ASSESSMENT REPORT

Application number:	DA19/0536
Proposed development:	Swimming Pool
Property address:	88 a Nepean Gorge Drive, MULGOA NSW 2745
Property description:	Lot 31 DP 237163
Date received:	12 August 2019
Assessing officer	Matthew Warbrick
Zoning:	E2 Environmental Conservation - LEP 2010
Class of building:	Class 10b
Recommendation:	Approve

Executive Summary

Council is in receipt of a development application for the subject development on the subject site and the proposal is a permissible land use with Council consent.

Site & Surrounds

The subject site is situated on the western side of Nepean Gorge Drive. It is 66.905Ha in area, is orientated in a north west to south east direction and has a slope of the site is from east to west direction.

An inspection of the site was undertaken on 11th September 20 19 and the site is currently occupied by a single storey dwellings and associated structures.

The surrounding area is characterised by residential rural development.

Proposal

The proposed development involves:

- Construction of in ground concrete swimming pool associated drainage works

Plans that apply

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River
Penrith Local Environmental Plan 2010
Development Control Plan 2014

• **Section 4.14 - Bushfire prone land assessment**

The development has been assessed in accordance with the matters for consideration under Section 4.14 (Consultation and development consent—certain bush fire prone land) of the Environmental Planning and Assessment Act 1979, and having regard to those matters, the following points are made:

- The construction of the in- ground swimming pool conforms with the requirements with the document ' Planning for Bush Fire Protection' prepared by the NSW Rural Fire
- The Class 10b structure (in-ground swimming pool) is considered to be non-combustible in this instance and therefore complies with the requirements of PBP 2006

• **Section 4.15 - Evaluation**

The development has been assessed in accordance with the matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979, and having regard to those matters, the following issues have been identified for further consideration:

Section 79C(1)(a)(i) The provisions of any environmental planning instrument

Is the development permissible in the zone?	Complies
---	-----------------

Is the development consistent with any requirements of environmental planning instruments relevant to this proposal (including any applicable SEPP's, SREP's and LEP's)?	Complies
--	-----------------

Section 79C(1)(a)(ii) The provisions of any draft environmental planning instrument

Is the development consistent with any draft planning instruments relevant to this proposal	N/A
---	------------

Section 79C (1)(a)(iii) Any development control plan

Is the development consistent with the provisions of any development control plan relevant to this proposal?	Complies
--	-----------------

Section 79C (1)(a)(iv) Any applicable regulations

Is the development consistent the provisions of any regulations relevant to this proposal?	Complies
--	-----------------

Section 79C (1)(b) The likely impacts of the development

Context and setting

Is the development consistent with the bulk, scale colour and design of other development in the locality?	Complies
Will the development have only a minor impact of the amenity of the area and the streetscape?	Complies
Is the development compatible with surrounding and adjacent land uses	Complies
Will the development have no or minimal impact on the amenity of the area in terms of:	
Sunlight (overshadowing):	Complies
Visual and acoustic privacy:	Complies
Views or vista:	Complies

Access and Transport

Will the development have no or minimal impact on the local road system	Complies
Is the existing and any proposed access arrangements and car parking on site adequate for the development?	Complies

Heritage

The property is not subject to any heritage order or is identified as heritage under a planning instrument.	Complies
---	-----------------

Soil

The development will have minimal impact on soil erosion and sedimentation	Complies - See discussion
--	----------------------------------

Natural and Technological Hazards

The development is not subject to flooding, subsidence or slip	Complies - See discussion
Land is not considered to be contaminated:	Complies
Bushfire requirements provided for the development	Complies
Acoustic requirements provided for the development	Complies

Site design

The development is sensitive to environmental conditions and site attributes.	Complies
Does the development safe guard the health and safety of the occupants	Complies

Section 79C (1)(c) The suitability of the site for development

Was the site inspected?	Yes
Does the proposal fit locality?	Yes
Are the site attributes conducive to development?	Yes
Will the proposal have minimal social and economic impacts on the locality?	Yes
Has any applicable 88b instrument been considered?	Yes
Does the development propose the removal of trees?	No
Have the plans been checked by any relevant developer groups?	N/A
Has a BASIX certificate been provided?	Yes

Section 79C (1)(d) Any submissions made in accordance with the EPA Act and Regulations?

Was the application required to be publicly notified?	No
Were any submissions received during the public notification period?	N/A

Section 79C (1)(e)Public Interest

The application will have minimal impacts on public interest	Complies
--	-----------------

Conclusion/Summary

In assessing this application against the relevant environmental planning policies, being Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River, Penrith Local Environmental Plan 2010, Development Control Plan 2014 and Biobank agreement 190 - 88a Nepean Gorge Dr Mulgoa, the proposal satisfies the aims, objectives and provisions of these policies.

In its current form, the proposal will have a positive impact on the surrounding character of the area as an in-ground concrete swimming pool.

The proposed design is site responsive, complies with key development standards.

The site is suitable for the proposed development, and there is unlikely to be negative impacts arising from the proposed development.

Therefore, the application is worthy of support, subject to recommended conditions.

Recommendation

1. That DA19/0536 for an in-ground concrete swimming pool at 88-89 Nepean Gorge Drive Mulgoa, be approved subject to the attached conditions (Development Assessment Report Part B).

General

1 [A001 - Approved plans that are architecturally drawn](#)

The development must be implemented substantially in accordance with the plans numbered D3.19.26835.2-S-01 (Site Plan & Pool Notes, Plans and Details), drawn by Structerre Consulting dated 19/08/ 2019 as stamped approved by Council, the application form, the BASIX Certificate and any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions.

2 [A008 - Works to BCA requirements \(Always apply to building works\)](#)

The work must be carried out in accordance with the requirements of the Building Code of Australia. If the work relates to a residential building and is valued in excess of \$20,000, then a contract of insurance for the residential development shall be in force in accordance with Part 6 of the Home Building Act 1989.

{Note: Residential building includes alterations and additions to a dwelling, and structures associated with a dwelling house/dwelling such as a carport, garage, shed, rural shed, swimming pool and the like}.

3 [A019 - OCCUPATION CERTIFICATE \(ALWAYS APPLY\)](#)

The development shall not be used or occupied until an Occupation Certificate has been issued.

4 [A046 - Obtain Construction Certificate before commencement of works](#)

A **Construction Certificate** shall be obtained prior to commencement of any building works.

Environmental Matters

5 [D009 - Covering of waste storage area](#)

All waste materials stored on-site are to be contained within a designated area such as a waste bay or bin to ensure that no waste materials are allowed to enter the stormwater system or neighbouring properties. The designated waste storage areas shall provide at least two waste bays / bins so as to allow for the separation of wastes, and are to be fully enclosed when the site is unattended.

6 [D010 – Appropriate disposal of excavated or other waste](#)

All excavated material and other wastes generated as a result of the development are to be re-used, recycled or disposed of in accordance with the approved waste management plan.

Waste materials not specified in the approved waste management plan are to be disposed of at a lawful waste management facility. Where the disposal location or waste materials have not been identified in the waste management plan, details shall be provided to the Certifying Authority as part of the waste management documentation accompanying the Construction Certificate application.

All receipts and supporting documentation must be retained in order to verify lawful disposal of materials and are to be made available to Penrith City Council on request.

7 [D014 - Plant and equipment noise](#)

The operating noise level of the swimming pool filter and equipment shall not exceed 5dB(A) above the background noise level when measured at the boundaries of the premises. The provisions of the Protection of the Environment Operation Act 1997 apply to the development, in the terms of regulating offensive noise.

BCA Issues

8 E001 - BCA compliance

All aspects of the building design shall comply with the applicable performance requirements of the Building Code of Australia so as to achieve and maintain acceptable standards of structural sufficiency, safety (including fire safety), health and amenity for the on-going benefit of the community. Compliance with the performance requirements can only be achieved by:

(a) complying with the deemed to satisfy provisions, or

(b) formulating an alternative solution which:

- complies with the performance requirements, or
- is shown to be at least equivalent to the deemed to satisfy provision, or
- (c) a combination of (a) and (b).

Construction

9 H001 - Stamped plans and erection of site notice

Stamped plans, specifications, a copy of the development consent, the Construction Certificate and any other Certificates to be relied upon shall be available on site at all times during construction.

The following details are to be displayed in a maximum of 2 signs to be erected on the site:

- the name of the Principal Certifying Authority, their address and telephone number,
- the name of the person in charge of the work site and telephone number at which that person may be contacted during work hours,
- that unauthorised entry to the work site is prohibited,
- the designated waste storage area must be covered when the site is unattended, and
- all sediment and erosion control measures shall be fully maintained until completion of the construction phase.

Signage but no more than 2 signs stating the above details is to be erected:

- at the commencement of, and for the full length of the, construction works onsite, and
- in a prominent position on the work site and in a manner that can be easily read by pedestrian traffic.

All construction signage is to be removed when the Occupation Certificate has been issued for the development.

10 H041 - Hours of work (other devt)

Construction works or subdivision works that are carried out in accordance with an approved consent that involve the use of heavy vehicles, heavy machinery and other equipment likely to cause offence to adjoining properties shall be restricted to the following hours in accordance with the NSW Environment Protection Authority Noise Control Guidelines:

- Mondays to Fridays, 7am to 6pm
- Saturdays, 7am to 1pm (if inaudible on neighbouring residential premises), otherwise 8am to 1pm
- No work is permitted on Sundays and Public Holidays.

Other construction works carried out inside a building/tenancy and do not involve the use of equipment that emits noise are not restricted to the construction hours stated above.

The provisions of the Protection of the Environment Operations Act, 1997 in regulating offensive noise also apply to all construction works.

Swimming Pools

11 J002 - Fencing when water in pool

When the swimming pool construction has reached a stage where the pool is capable of holding water, the pool area shall be restricted from access in accordance with AS1926 "Swimming Pool Safety". Restriction of access to the pool area shall also comply with the Swimming Pools Act, 1992.

12 J004 - Pool fence (residential)

At all times, the swimming pool is to be surrounded by a child-resistant barrier that:

- separates the swimming pool from any residential building situated on the premises and from any place (whether public or private) adjoining the premises, and
- is designed, constructed, installed and maintained in accordance with the standards prescribed by AS 1926 "Swimming Pool Safety".

13 J005 - Doors and windows

The following means of access to the swimming pool shall be restricted to:

(a) For each window giving access to the swimming pool (but does not apply to a child-safe window or to a window that is totally enclosed by a child -safe grille):

- the bottom of the lowest opening panel of the window must (when measured in the closed position) be at least 1.2 metres above finished floor level, and
- there must not be any footholds wider than 10 millimetres between the bottom of the lowest opening panel of the window and any point within 1.1 metres below the bottom of that panel.

14 J006 - Window grilles

The child-safe window grilles marked on the approved plan are required under the requirements of the Swimming Pools Act 1992 as an alternative means of restricting access from the dwelling to the swimming pool area. The child-safe window grilles are to remain as approved for the life of the swimming pool.

15 J007 - Boundary fencing

If a common boundary fence forms part of the pool enclosure, the provision, maintenance and effectiveness of the said boundary fence is the responsibility of the pool owner whilst ever the pool exists. Alternatively, the pool shall be fully enclosed by isolation fencing.

16 J008 - Smooth faced barrier

A smooth faced barrier is to be fixed to the existing boundary fence at a width of 1200mm externally and 300mm internally from the junction of the pool fence and shall extend to the height of the boundary fence. This is required so as to restrict holds for climbing in accordance with AS 1926 "Swimming Pool Safety".

17 J010 - Pool board/ sign (add J009)

A sign must be erected in a prominent position in the immediate vicinity of the swimming pool and must:

- be erected in accordance with the provisions relating to instructional posters of the document entitled "Policy Statement No. 9.4.1: Guidelines for the Preparation of Posters on Resuscitation" published by the Resuscitation Council. (A copy may be purchased from Penrith City Council's Civic Centre, 601 High Street, Penrith), and
- bear a notice that contains the words "YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS SWIMMING POOL", together with details of resuscitation techniques (for adults, children and infants) set out in the relevant provisions of the document entitled "CardioPulmonary Resuscitation" published by the Australian Resuscitation Council. (A copy may be purchased from Penrith City Council's Civic Centre, 601 High Street, Penrith).

18 J011 - NSW Swimming Pool Register

The swimming pool must be registered on the NSW Swimming Pool Register when it is capable of holding water and before the issue of an Occupation Certificate. The swimming pool is to be registered at www.swimmingpoolregister.nsw.gov.au or in person at Penrith City Council (\$10 fee applies when registering at Council).

19 J012 - Backwash and Overflow

All backwash from the swimming pool shall be directed into the mains sewer.

In areas where sewer is not available, the following requirements apply -

- The swimming pool shall be provided with filtration equipment that does not require a backwash facility (eg. a cartridge filtration system).
- Overspill water shall be diverted away from the swimming pool and not directed onto adjoining properties.
- The frequency of emptying of the swimming pool water shall be minimised. Water resulting from the emptying of the pool shall be collected and disposed of by a private wastewater disposal contractor. Disposal by other means is not permitted.

Engineering

20 [K201 - Infrastructure Bond](#)

An Infrastructure Restoration Bond is to be lodged with Penrith City Council for development involving works around Penrith City Council's Public Infrastructure Assets. The bond is to be lodged with Penrith City Council prior to the issue of any Construction Certificate. The bond and applicable fees are in accordance with Council's adopted fees and charges.

An application form together with an information sheet and conditions are available on Council's website.

Contact Penrith City Council's City Works Department on 4732 7777 or visit Penrith City Council's website for more information.

Landscaping

21 [L008 - Tree Preservation Order](#)

No trees are to be removed, ringbarked, cut, topped or lopped or wilfully destroyed (other than those within the proposed building footprint or as shown on the approved plans) without the prior consent of Penrith City Council and in accordance with Council's Tree Preservation Order and Policy.

Payment of Fees

22 [P002 - Fees associated with Council land \(Applies to all works & add K019\)](#)

Prior to the commencement of any works on site, all fees associated with Penrith City Council-owned land and infrastructure shall be paid to Council. These fees include Road Opening fees and Infrastructure Restoration fees.

Certification

23 [Q05F - Occupation Certificate for Class 10](#)

An Occupation Certificate is to be obtained from the Principal Certifying Authority on completion of all works and prior to the use of the concrete in-ground swimming pool.

The Certificate shall not be issued if any conditions of this consent, but not the conditions relating to the operation of the development, are outstanding.

A copy of the Occupation Certificate and all necessary documentation supporting the issue of the Certificate is to be submitted to Penrith City Council, if Council is not the Principal Certifying Authority.

Appendix - Development Control Plan Compliance

D2	Residential Development – Single Dwellings	Complies Y/N	Comments
2.1.2	Front setback – Minimum 5.5m or average of adjoining properties. – Minimum 5.5m or average of adjoining properties.	N/A	
	Secondary Street (where applicable) – Minimum 3m to external walls and minimum 5.5m to garage entrances – Minimum 3m to external walls and minimum 5.5m to garage entrances	N/A	
	Encroachments - Verandahs and pergolas are permitted to encroach 1.5m beyond the setback - Verandahs and pergolas are permitted to encroach 1.5m beyond the setback	N/A	
	Side setback – minimum 900mm	N/A	
	Rear setback – minimum 4m for single storey component or 6m for 2 storey component – minimum 4m for single storey component or 6m for 2 storey component	N/A	
	(non-habitable building or structure can be closer if minimal adverse impact on the subject property or any adjoining property)	Yes	
	Building envelope compliance (encroachments permitted if improved design, appearance or utility and minimal impact)	N/A	<i>In ground concrete swimming pool</i>
U2.1.3	Cut and fill does not exceed 600mm measured from NGL.	N/A	<i>In ground concrete swimming pool</i>
	Ground floor levels max 800mm above NGL	N/A	
	Retaining wall forward of garage are masonry	N/A	
	Lots with a side cross slope exceeding 5%, must respond to the slope of the land with either split level, drop edge beam, or bearer and joist design (or a combination of these)	N/A	<i>In ground concrete swimming pool</i>
	Where front to back slopes are steep (i.e. approximately greater than 9%) house designs must respond to the topography of the land with either split level, dropped edge beam, or timber frame floor (bearer and joist) design - or a combination of these. .	N/A	<i>In ground concrete swimming pool</i>
	Garden retaining walls within lots are not to exceed 0.9m in height. Any remaining slope is to be graded out.	N/A	<i>No retaining walls form part of this DA</i>

	Driveway gradient to not exceed 20%	N/A	In ground concrete swimming pool proposed
	On lots sloping downhill from the street, the privacy of adjoining dwellings down slope should be preserved by providing screening vegetation between observable platforms and adjoining private open space areas, or integrating features such as timber screens to decks, or partially opaque windows where privacy is essential and screening vegetation is impractical.	N/A	
2.1.4	The minimum landscaped area of a site is of a site is Zone Minimum landscaped area % of the site R2 50%	Yes	
2.1.5	Articulate all building forms and facades	N/A	In ground concrete swimming pool proposed
	Two storey buildings to be designed as a combination of one and two storey elements with a variety of setbacks from boundaries	N/A	In ground concrete swimming pool proposed
	External walls are not to be longer than 8m between distinct corners or features such as projecting verandahs and awnings or banks of windows.	N/A	In ground concrete swimming pool proposed
	All balconies and decks higher than 800mm above existing ground level shall incorporate privacy measures such as screening or landscape planting.	N/A	<i>In ground concrete swimming pool proposed</i>
	Garage setback at least 1m behind the building line of the dwelling	N/A	<i>In ground concrete swimming pool proposed</i>
	Total width of all garage doors facing a primary or secondary road frontage must not exceed; facing a primary or secondary road frontage must not exceed; i) If the lot has a width less than 15m measured at the building line – 4.8m ii) If the lot has a width of more than 15m measured at the building line – 6m.	N/A	In ground concrete swimming pool proposed
	Corner lot is to be designed and orientated so as to address both street frontages and include appropriate design features and articulation	N/A	In ground concrete swimming pool proposed

	<p>Parking is to be provided at the rate of:</p> <p>s to be provided at the rate of:</p> <p>i) A minimum of one space behind the building alignment</p> <p>ii) Two spaces for each dwelling with two or more bedrooms, at least one of which is located behind the building alignment. Stacked parking is acceptable for additional spaces.</p>	N/A	
2.1.6	Ensure that the proposed development provides a minimum of 3 hours sunlight between 9am and 3pm on 21 June, to living zones of the dwelling, and the living zones of any adjoining dwellings;	N/A	
	Ensure that the proposed development provides a minimum of 3 hours sunlight between 9am and 3pm on 21 June, to 40% of the main private open spaces of the dwelling and main private open spaces of any adjoining dwellings	N/A	
	Where existing overshadowing by buildings and fences reduces sunlight to less than this, sunlight is not further reduced by more than 20%	N/A	
2.1.7	<p>Retaining walls:</p> <p>:</p> <p>a) generally should be no taller than 600mm;</p> <p>b) should be separated from any associated fence by a planter-bed at least 500mm wide, minimising the apparent overall height of fencing;</p> <p>c) should be separated from any driveway by a landscaped verge at least 500m wide, to prevent impact damage from vehicles.</p>	N/A	
	Fences should be generally no taller than 1.8m or up to 2.4m on sloping sites, including the height of any retaining wall.	N/A	
	Fences along boundaries forward of the front building alignment should not be taller than 1.2m and consist of see-through construction	N/A	

2.1.8	<p><i>This Section only applies only to:</i></p> <ul style="list-style-type: none"> <i>a) frontages to the Nepean River;</i> <i>b) escarpment footslopes in Leonay and Emu Heights;</i> <i>c) the Cranebrook escarpment;</i> <i>d) Glenmore Park, adjacent to the Mulgoa Nature Reserve;</i> <i>e) wooded hillsides in South St Marys;</i> <i>f) individual streetblocks identified by Council's Register of Significant Trees and Gardens; and</i> <i>g) in Kingswood: Werrington Creek.</i> <p>Development must:</p> <ul style="list-style-type: none"> 1) maintain natural topography and features such as rock outcrops; 2) preserve established trees, preferably as blocks or corridors of several trees; 3) ensure that long term survival of established trees is not affected by the location of buildings and pavements or construction works; 4) preserve clusters of established trees as blocks or corridors; 5) consider a wider side boundary setback as landscaped corridor to preserve trees and provide vistas between neighbouring buildings; 6) on sloping sites garages may be located at street-level within the front setback, subject to an "open" design similar to a screened carport; 7) on sloping sites dwellings should be split-level designs, with the lowest floor level no higher than 1m above natural ground level; 8) in general, new plantings should be species indigenous to the local soil type, reinforcing visual and habitat values. 	N/A	
2.6	<p>Principles of urban form and urban design that apply to permissible residential development should be adopted for non-residential development.</p> <p>The development site including front setbacks, rear setbacks dual frontage situations.</p>	N/A	

	<p>a) Urban form including:</p> <ul style="list-style-type: none"> i) traditional building design features; ii) traditional garden frontages; iii) orientation of building entrances; iv) continuously occupied rooms facing the street; v) detailed consideration of significant townscapes or landscapes; vi) signs. vii) driveways and parking including: <ul style="list-style-type: none"> · provision of on-site parking appropriate to the proposed use, and in accordance with the parking requirements of this DCP; · minimise site coverage by paved areas; · conceal garages from views available from public parks and streets; · locate driveways and parking areas away from any neighbouring residential development 	N/A	
	<p>b) landscaped area- provision and design of the required minimum area with detailed design of gardens and paving;</p> <p>c) side setbacks to provide for effective landscaped separation from adjacent developments;</p> <p>d) solar planning and energy efficiency - minimised overshadowing of adjacent properties and minimise requirements for mechanical heating and cooling of interiors;</p> <p>e) privacy - protect the amenity of adjacent properties;</p> <p>f) storage and building services - sufficient to meet requirements generated by the proposed development and located to protect the amenity of adjacent developments.</p> <p>g) privacy – protect the amenity of adjacent properties;</p> <p>h) storage and building services – sufficient to meet requirements generated by the proposed development and located to protect the amenity of adjacent residents.</p>	N/A	