

# PENRITH CITY COUNCIL

## FAST TRACK ASSESSMENT REPORT

<b>Application number:</b>	DA19/0536.01
<b>Proposed development:</b>	Modification - Swimming Pool
<b>Property address:</b>	88 a Nepean Gorge Drive, MULGOA NSW 2745
<b>Property description:</b>	Lot 31 DP 237163
<b>Date received:</b>	12 November 2019
<b>Assessing officer</b>	Matthew Warbrick
<b>Zoning:</b>	E2 Environmental Conservation - LEP 2010
<b>Class of building:</b>	Class 10b
<b>Recommendations:</b>	Approve

### Executive Summary

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Council is in receipt of a Section 4.55 application that proposes to increase the size of the inground swimming pool.

### Site & Surrounds

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The subject site is situated on the western side of Nepean Gorge Drive. It is 66.905Ha in area and has significant cross slope across the site.

An inspection of the site was undertaken on 20th November 2019 and the site is currently occupied by two single storey dwellings and associated structures.

The surrounding area is characterised by residential rural development.

### Proposal

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The proposed development involves:

- Construction of in ground concrete swimming pool

**The proposed S4.55 modification involves:**

- Increasing the size of the swimming pool.

### Plans that apply

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- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

### • **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 Service (RFS).
- 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 4.55 (2) and Section 4.15 of the Environmental Planning and Assessment Act 1979, and having regard to those matters, the following issues have been considered:

*In determining an application for modification of a consent under this section, the 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.*

The likely impacts of the proposed modification application have been considered in accordance with Section 4.15 of the Act. Consideration is also given to relevant provisions of the Penrith LEP and DCP that are of relevance to the development the subject of this application.

The modification is to increase the size of the swimming pool. The location and general design of the pool remains unchanged.

### • **Section 4.55(2) - Other modifications**

The development has been assessed in accordance with the matters for consideration under Section 4.15 and Section 4.55(2) of the Environmental Planning and Assessment Act 1979, and having regard to those matters, the following issues have been considered:

Pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* Council may modify a development consent provided several prerequisites are satisfied. The prerequisites are briefly discussed below.

*(a) The development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted.*

The development is considered to be “substantially” the same as the original proposal.

*(b) Consultation with the relevant minister, public authority or approval body*

N/A

*(c) The application has been notified where required.*

N/A

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

### **Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River**

An assessment has been undertaken of the application against relevant criteria with Sydney Regional Environmental Plan No 20—Hawkesbury-Nepean River (No 2—1997) and the application is satisfactory subject to recommended conditions of consent.

**Section 79C(1)(a)(iii) The provisions of any development control plan**

## Conclusion

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The proposed development as modified is considered to be substantially the same development as that originally approved. The application has been considered with regard to the matters raised in section 4.15 of the Act. On balance, it is considered that the proposed development as modified is acceptable and is recommended for approval.

## Recommendation

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1. That DA19/0536.01 for the construction an inground concrete swimming pool at 88a Nepean Gorge Drive Mulgoa, be approved subject to the attached conditions (Development Assessment Report Part B).

- ***Modify condition (A001) as follows:***

The development must be implemented substantially in accordance with the plans drawn by Structerre Consulting numbered D3.19.26835.5-S-01, Revision D (Site Plan & Pool Notes, Plans and Section Plans), dated 07/11/ 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.

***As amended on 21st November 2019 under Section 4.55 of the Environmental Planning and Assessment Act 1979.***

- ***All other conditions remain the same***

## General

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

The development must be implemented substantially in accordance with the plans drawn by Structerre Consulting numbered D3.19.26835.5-S-01, Revision D (Site Plan & Pool Notes, Plans and Section Plans), dated 07/11/ 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.

***As amended on 21st November 2019 under Section 4.55 of the Environmental Planning and Assessment Act 1979.***

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](http://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.