

PENRITH CITY COUNCIL

FAST TRACK ASSESSMENT REPORT

Application number:	DA15/0439.01
Proposed development:	Modification - to Reduce the Size of the Swimming Pool
Property address:	191 - 201 Chain-O-Ponds Road, MULGOA NSW 2745
Property description:	Lot 14 DP 243554
Date received:	29 October 2015
Assessing officer	Christopher Hawkins
Zoning:	E3 Environmental Management - LEP 2010
Class of building:	Class 10a , Class 10b
Recommendations:	Approve

Executive Summary

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

Site & Surrounds

The subject site is situated on the northern side of Chain-o-ponds Road approximately 2km west from the intersection with The Northern Road. It is 10.12 Ha in area, is orientated in a north south direction and has a slope from the dwelling to the rear boundary.

An inspection of the site was undertaken on 17/7/2015 and the site is currently occupied by a dwelling.

The surrounding area is characterised by residential development.

Proposal

The proposed development involves:

- Modification to reduce the size of the in-ground swimming pool.

Plans that apply

• **Section 79BA - Bushfire prone land assessment**

The development has been assessed in accordance with the matters for consideration under Section 79BA (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 subject site is identified as bushfire prone land.
- A site inspection has shown the site to be managed land for a distance of 100m to the north east.
- Vegetation to the north east is approximately 75m and classified as dry sclerophyll forest with an upslope angle.
- The development is required to comply with BAL 12.5 construction in accordance with AS3959-2009.

• **Section 79C - Evaluation**

The development has been assessed in accordance with the matters for consideration under Section 79C of the Environmental Planning and Assessment Act 1979, and having regard to those matters, the following issues have been identified for further consideration:

• **Section 96(1A) - Modifications involving minimal environmental impact**

The development has been assessed in accordance with the matters for consideration Section 96(1A) of the Environmental Planning and Assessment Act 1979, and having regard to those matters, the following issues have been considered:

Pursuant to Section 96(1A) 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 proposed modification is of minimal environmental impact.

The matter being modified will not create an environmental impact.

(b) 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.

(c) The application has been notified where required.

The application was originally notified in accordance with Penrith Development Control Plan 2014. As the modification is to reduce the size of the pool and move it closer to the dwelling it is likely the application will have a reduced impact on adjoining properties and re-notification and is not required.

(d) Any submissions made concerning the proposed modification within the period prescribed by the Regulations or provided by the Development Control Plan, have been considered.

The application was not re-notified as the development is reducing in size and moving closer to the existing dwelling.

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

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

Development Control Plan 2010

Provision	Compliance
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Conclusion

The site is suitable for the proposed development, the proposal is in the public interest, 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 DA15/0439.01 for modification to reduce pool size at Lot 14 DP 243554 (191-201 Chain-O-Ponds Road Mulgoa, be approved subject to the attached conditions (Development Assessment Report Part B)

Modify condition 1 (A001) as follows to reflect the amended plans:

The development must be implemented substantially in accordance with the plans numbered 191 COP-P-1 Revision 7, drawn by Comtech Design Pty Limited and dated 16/10/15, and 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 14 January 2016 under Section 96 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 numbered 191 COP-P-1 Revision 5, drawn by Comtech Design Pty Limited and dated 1/8/2015, and 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 [A020 - Use of building](#)

The shed shall not be used under any circumstances for any commercial, industrial or habitable residential activity.

5 [A041 - CONSTRUCTION IN BUSHFIRE AREAS](#)

The awnings shall be constructed in accordance with the provisions of the "Planning for Bushfire Protection" December 2006, and:

- to a BAL 12.5 construction under AS3959-2009 "Construction of buildings in bushfire-prone area"

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

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

7 [A Special \(BLANK\)](#)

The shed is incorporates drop edge beams in its construction ensuring any associated filling is contained within the sheds footprint.

8 [A Special \(BLANK\)](#)

All boundary fences are to be low profile, open style and rural in character and comply with the requirements of Key Precinct E9 Mulgoa Valley in Volume 2 of Penrith Development Control Plan 2014.

Environmental Matters

9 [D001 - Implement approved sediment& erosion control measures](#)

Erosion and sediment control measures shall be installed **prior to the commencement of works on site** including approved clearing of site vegetation. The erosion and sediment control measures are to be maintained in accordance with the approved erosion and sediment control plan(s) for the development and the Department of Housing's "Managing Urban Stormwater: Soils and Construction" 2004.

The approved sediment and erosion control measures are to be installed **prior to and maintained throughout the construction phase of the development until the land, that was subject to the works, have been stabilised and grass cover established.** These measures shall ensure that mud and soil from vehicular movements to and from the site does not occur during the construction of the development.

10 [D005 – No filling without prior approval \(may need to add D006\)](#)

No fill material is to be imported to the site without the prior approval of Penrith City Council in accordance with Sydney Regional Environmental Plan No.20 (Hawkesbury- Nepean River) (No.2-1997). No recycling of material for use as fill material shall be carried out on the site without the prior approval of Council.

11 **D007 - Cut and fill of land requiring Validation Certificate –limited to footprint**

Cut and fill operation on the property are only permitted in conjunction with the construction of the swimming pool, awnings and shed on the approved plans and specifications, and shall not extend more than 3 metres past the defined building footprint of the individual structures.

Before any fill material is imported to site, a validation certificate issued by an appropriately qualified person is to be provided to the Principal Certifying Authority. The validation certificate must demonstrate that the fill material is free from contaminants and weeds, that it is suitable for its intended purpose and land use, and that it will not pose an unacceptable risk to human health or the environment.

If Penrith City Council is not the Principal Certifying Authority, a copy of the validation certificate is to be submitted to Council for their reference.

{Note: Penrith Contaminated Land Development Control Plan defines an appropriately qualified person as “a person who, in the opinion of Council, has a demonstrated experience, or access to experience in hydrology, environmental chemistry, soil science, eco-toxicology, sampling and analytical procedures, risk evaluation and remediation technologies. In addition, the person will be required to have appropriate professional indemnity and public risk insurance.”}

12 **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.

13 **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.

14 **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

15 **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).

Health Matters and OSSM installations

16 F006 - Water tank & nuisance

The rainwater tank must be maintained so as not to create a nuisance and it must be protected against mosquito infestation.

Construction

17 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.

18 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.

19 H Special - Fence

The fence is to be located wholly within the property boundary. All associated gates are to open within the property boundary and shall not encroach on Council land.

Swimming Pools

20 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.

21 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".

22 [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.

23 [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).

24 [J Special \(BLANK\)](#)

The swimming pool is to be provided with filtration equipment that does not require a backwash facility i.e. cartridge filtration system.

Engineering

25 [K041](#)

An Infrastructure Restoration Bond is to be lodged with Penrith City Council for development involving works around Council's Public Infrastructure Assets. The bond is to be lodged with Council prior to the issue of a Construction Certificate. The bond is based upon the estimated value of the works with a bond of \$500 payable for the subject development.

The bond is refundable once a final inspection has been carried out by Council's Works Department and the works have been completed to Council's satisfaction. The bond may be used to repair or reinstate any damage that occurs to Council's Public Infrastructure Assets as a result of the development works.

Contact Council's City Works Department on 4732 7777 or visit website to obtain the form and request for final inspection.

Landscaping

26 [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

27 [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

28 **Q01F - Notice of Commencement & Appointment of PCA2 (use for Fast Light only)**

Prior to the commencement of any earthworks or construction works on site, the proponent is to:

- (a) employ a Principal Certifying Authority to oversee that the said works carried out on the site are in accordance with the development consent and related Construction Certificate issued for the approved development, and with the relevant provisions of the Environmental Planning and Assessment Act and accompanying Regulation, and
- (b) submit a Notice of Commencement to Penrith City Council.

The Principal Certifying Authority shall submit to Council an "Appointment of Principal Certifying Authority" in accordance with Section 81A of the Environmental Planning and Assessment Act 1979.

Information to accompany the Notice of Commencement

Two (2) days before any earthworks or construction/demolition works are to commence on site (including the clearing site vegetation), the proponent shall submit a "Notice of Commencement" to Council in accordance with Section 81A of the Environmental Planning and Assessment Act 1979.

29 **Q05F - Occupation Certificate for Class10**

An Occupation Certificate is to be obtained from the Principal Certifying Authority on completion of all works and prior to the occupation/use of the swimming pool, shed, front entry and awnings.

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.