

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2020/0212
<b>Responsible Officer:</b>	Kelsey Wilkes
<b>Land to be developed (Address):</b>	Lot 47 DP 237862, 21 Badcoe Road CROMER NSW 2099
<b>Proposed Development:</b>	Construction of a swimming pool
<b>Zoning:</b>	Warringah LEP2011 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Martin Wallace Kirrilee Siobhan Wallace
<b>Applicant:</b>	Contour Landscape Architecture
<b>Application Lodged:</b>	05/03/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	16/03/2020 to 30/03/2020
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Refusal
<b>Estimated Cost of Works:</b>	\$ 60,000.00

### PROPOSED DEVELOPMENT IN DETAIL

This application seeks consent for the construction of a 3.5 meter by 8 meter in-ground fiberglass swimming pool, associated pool coping, landscaping works and shade sail within the front setback area in the north eastern portion of the site. The works will also include the construction of a 1.8 meter high pool fence set approximately 200mm to 400mm inside the side's front boundary between the eastern side boundary existing driveway.

### ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

## SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land  
 Warringah Development Control Plan - A.5 Objectives  
 Warringah Development Control Plan - B7 Front Boundary Setbacks  
 Warringah Development Control Plan - D16 Swimming Pools and Spa Pools  
 Warringah Development Control Plan - E10 Landslip Risk

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 47 DP 237862 , 21 Badcoe Road CROMER NSW 2099
<b>Detailed Site Description:</b>	<p>The subject site consists of Lot 47 within DP 237862 and is located on the southern side of Badcoe Road, Cromer.</p> <p>The site is irregular in shape with a frontage of 15.9m along Badcoe Road and side boundaries of 40.915m and 39.385m. The site has a surveyed area of 860m<sup>2</sup>.</p> <p>The site is located within the R2 Low Density Residential zone and accommodates an existing two storey rendered dwelling with an attached double garage. Timber decking adjoins the dwelling at the rear of the property and a balcony is located at first floor level at the front of the dwelling overlooking Badcoe Road. The front (north) of the site is characterised by rendered retaining walls, small to medium shrubs and lawn. A rendered wall of varying heights is located along both side boundaries between the front boundary and building line. At the rear of the site, native and non-native vegetation lines the rear boundaries with grass lawn and small to medium shrubs also characterising the rear yard.</p> <p>The natural slope of the site falls from rear to front (south to north) by approximately 7 meters. The site is identified as being located within Landslip Area B under the WDCP 2011.</p>

### Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by one and two storey residential dwellings of similar ages, sizes and architectural designs with large rear yards located within similar sized allotments.

Map:

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## SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

### DA2017/0470

Demolition of a swimming pool - Approved 30 August 2017

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an

Section 4.15 Matters for Consideration'	Comments
	extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to a Geotechnical Report.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built	<p>(i) <b>Environmental Impact</b></p> <p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p>

Section 4.15 Matters for Consideration'	Comments
environment and social and economic impacts in the locality	<p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirement(s) of the Warringah LEP 2011 and Warringah DCP 2011 and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition of the application Council received no submissions.

## REFERRALS

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

### **State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)**

#### **SEPP 55 - Remediation of Land**

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

#### **Warringah Local Environmental Plan 2011**

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	No
zone objectives of the LEP?	No

#### Compliance Assessment

Clause	Compliance with Requirements
6.2 Earthworks	No
6.4 Development on sloping land	No

#### Detailed Assessment

#### **6.4 Development on sloping land**

The subject site is identified as being located within Area B on the Landslip Risk Map.

A Geotechnical Report has not been provided in accordance with the requirements of E10 Landslip Risk of the WDCP 2011. Council therefore cannot be satisfied that the proposal meets the objectives listed under (1) and (3) of this Clause.

#### **Warringah Development Control Plan**

#### Built Form Controls

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Built Form Control	Requirement	Proposed	% Variation*	Complies
B3 Side Boundary Envelope	4m	Within	N/A	Yes
	4m	Within	N/A	Yes
B5 Side Boundary Setbacks	0.9m	1.2m (East)	N/A	Yes
	0.9m	7.3m (West)	N/A	Yes
B7 Front Boundary Setbacks	6.5m	1.3m	80%	No
B9 Rear Boundary Setbacks	6m	35m	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	47%	N/A	Yes

**\*Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example:  $38/40 \times 100 = 95$  then  $100 - 95 = 5\%$  variation)

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	No	No
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	No
B9 Rear Boundary Setbacks	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C7 Excavation and Landfill	No	No
C8 Demolition and Construction	No	No
C9 Waste Management	No	No
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D8 Privacy	Yes	Yes
D16 Swimming Pools and Spa Pools	No	No
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	No	No

#### Detailed Assessment

##### A.5 Objectives

The proposed development is considered to be inconsistent with the following objectives of the Warringah Development Control Plan:

- *To ensure development responds to the characteristics of the site and the qualities of the surrounding*



## *neighbourhood*

### Comment:

The proposed swimming pool is inconsistent with the existing and desired streetscape character and fails to comply with the objectives and requirements under Parts B7 and D16 of the WDCP 2011. The development would result in an undesirable precedent, particularly when compliance with the objectives and requirements can be achieved by siting the proposed swimming pool within the rear yard and therefore ensuring a high level of visual quality and amenity is retained within the neighbourhood. For this reason and that outlined within this report, it is considered that the development does not respond to the characteristics of the site and the qualities of the surrounding neighbourhood.

- *To ensure new development is a good neighbour, creates a unified landscape, contributes to the street, reinforces the importance of pedestrian areas and creates an attractive design outcome*

### Comment:

As mentioned under Part B7 of this report, the proposal in its current form fails to maintain the visual continuity and pattern of building and landscape elements within the existing streetscape. The proposed swimming pool is significantly inconsistent with the requirements and objectives of part B7 due to its location, and therefore fails this objective as it does not create a unified landscape, contribute to the street or result in a preferred design outcome.

## **B7 Front Boundary Setbacks**

### Description of non-compliance

The proposed swimming pool is located entirely within the front setback area and at distances of between 1.3 meters and 1.5 meters from the site's front boundary. This presents a maximum variation to the 6.5 meter requirement of 80%.

### Merit consideration:

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

- *To create a sense of openness.*

### Comment:

While the proposed swimming pool is located entirely in ground, a reduced sense of openness will be created by the 1.8 meter high pool fence which is proposed to be located between 200mm and 400mm inside and adjacent to the site's front boundary. While front boundary fencing does exist in the adjoining and surrounding area, fencing of the proposed height and style is inconsistent with the surrounding streetscape and would create an undesirable visual appearance. Furthermore, front setback areas beyond existing front fences within the street consists of landscaping and is free of above and in-ground structures.

It is therefore considered that the proposed results in a reduced sense of openness.

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



Comment:

As mentioned above, the proposed 1.8 meter high fence associated with the swimming pool which is required adjacent to the site's front boundary is inconsistent with the existing streetscape. Front setback areas within the surrounding streetscape are characterised by landscaped vegetation and lawn and are free of above and below ground structures, including swimming pools. While the proposal does include screen planting to screen the pool, the presence of a swimming pool within the front setback area and associated location of landscaping does not maintain the visual continuity and pattern of buildings and landscape elements within the street and does not preserve or enhance amenity within the surrounding neighbourhood.

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

Comment:

Given that mentioned above, the extent to which the proposal does not comply with the front setback requirement creates an undesirable precedent which is inconsistent with the objectives and requirements of this clause and does not result in an outcome which protects and enhances the visual quality of the streetscape. In this particular circumstance, opportunity is provided elsewhere on site to locate the swimming pool which would achieve compliance with the objectives and requirements of the WDCP 2011 and this is enforced in order to protect the visual quality of the streetscape.

- *To achieve reasonable view sharing.*

Comment:

An inspection of the site in relation to the proposed works has confirmed that the development would not result in an impact on views.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

## **D16 Swimming Pools and Spa Pools**

### Merit consideration

The development is considered against the underlying Objectives of the Control as follows:

- *To ensure swimming pools and spas are located to preserve the natural environment, streetscape and residential amenity.*

Comment:

The location of the proposed swimming pool being located entirely within the front setback area and a minimum of 1.3 meters from the front boundary is unacceptable as it is inconsistent with the existing streetscape character and will set an undesirable precedent which and fails to achieve the requirements and objectives of this Clause, along with Part B7 Front Boundary

Setbacks. Furthermore, opportunity is provided elsewhere on site to locate the swimming pool which can achieve compliance with the relevant objectives and requirements and will therefore allow for preservation of the the streetscape and improved residential amenity. For these reasons, the proposal cannot be supported in its current form.

- *To encourage innovative design solutions to improve the urban environment.*

Comment:

As stated within the requirements of this clause, pools are not to be located in the front building setback and the proposal cannot be supported in this particular circumstance as ample opportunity is provided elsewhere on site to locate the pool which will not adversely impact the existing streetscape character. The proposed location of the swimming pool does not present an innovative design solution to improve the urban environment and the proposal therefore cannot be supported.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

## **E10 Landslip Risk**

The subject site is identified as being located within Area B of the Landslip Risk Map.

A Geotechnical Report in accordance with this Clause has not been provided with the application. Council therefore cannot be satisfied that the requirements and objectives of the Clause are achieved.

## **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

The proposal will not significantly effect threatened species, populations or ecological communities, or their habitats.

## **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

## **CONCLUSION**

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Inconsistent with the objectives of the DCP
- Inconsistent with the zone objectives of the LEP
- Inconsistent with the aims of the LEP
- Inconsistent with the objectives of the relevant EPIs
- Inconsistent with the objects of the Environmental Planning and Assessment Act 1979

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## **RECOMMENDATION**

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2020/0212 for the Construction of a swimming pool on land at Lot 47 DP 237862,21 Badcoe Road, CROMER, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Warringah Local Environmental Plan 2011.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 6.4 Development on Sloping Land of the Warringah Local Environmental Plan 2011.
3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B7 Front Boundary Setbacks of the Warringah Development Control Plan.
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D16 Swimming Pools and Spa Pools of the Warringah Development Control Plan.
5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause E10 Landslip Risk of the Warringah Development Control Plan.

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

**Signed**



**Kelsey Wilkes, Planner**

The application is determined on 01/05/2020, under the delegated authority of:



**Matthew Edmonds, Manager Development Assessments**