

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

|                                           |                                                                                                                                                       |
|-------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Application Number:</b>                | Mod2019/0400                                                                                                                                          |
| <b>Responsible Officer:</b>               | Anne-Marie Young                                                                                                                                      |
| <b>Land to be developed (Address):</b>    | Lot 8 DP 11899, 14 Lancaster Crescent COLLAROY NSW 2097                                                                                               |
| <b>Proposed Development:</b>              | Modification of Development Consent DA2012/0381 granted for alterations and additions to a dwelling house and construction of a swimming pool and spa |
| <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>                             | Enrico Alfredo Massi<br>Kylie Elizabeth Massi                                                                                                         |
| <b>Applicant:</b>                         | Enrico Alfredo Massi<br>Kylie Elizabeth Massi                                                                                                         |

|                                  |                                         |
|----------------------------------|-----------------------------------------|
| <b>Application lodged:</b>       | 19/08/2019                              |
| <b>Integrated Development:</b>   | No                                      |
| <b>Designated Development:</b>   | No                                      |
| <b>State Reporting Category:</b> | Residential - Alterations and additions |
| <b>Notified:</b>                 | 30/08/2019 to 13/09/2019                |
| <b>Advertised:</b>               | Not Advertised                          |
| <b>Submissions Received:</b>     | 1                                       |
| <b>Clause 4.6 Variation:</b>     | Nil                                     |
| <b>Recommendation:</b>           | Approval                                |

### 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 - 4.3 Height of buildings

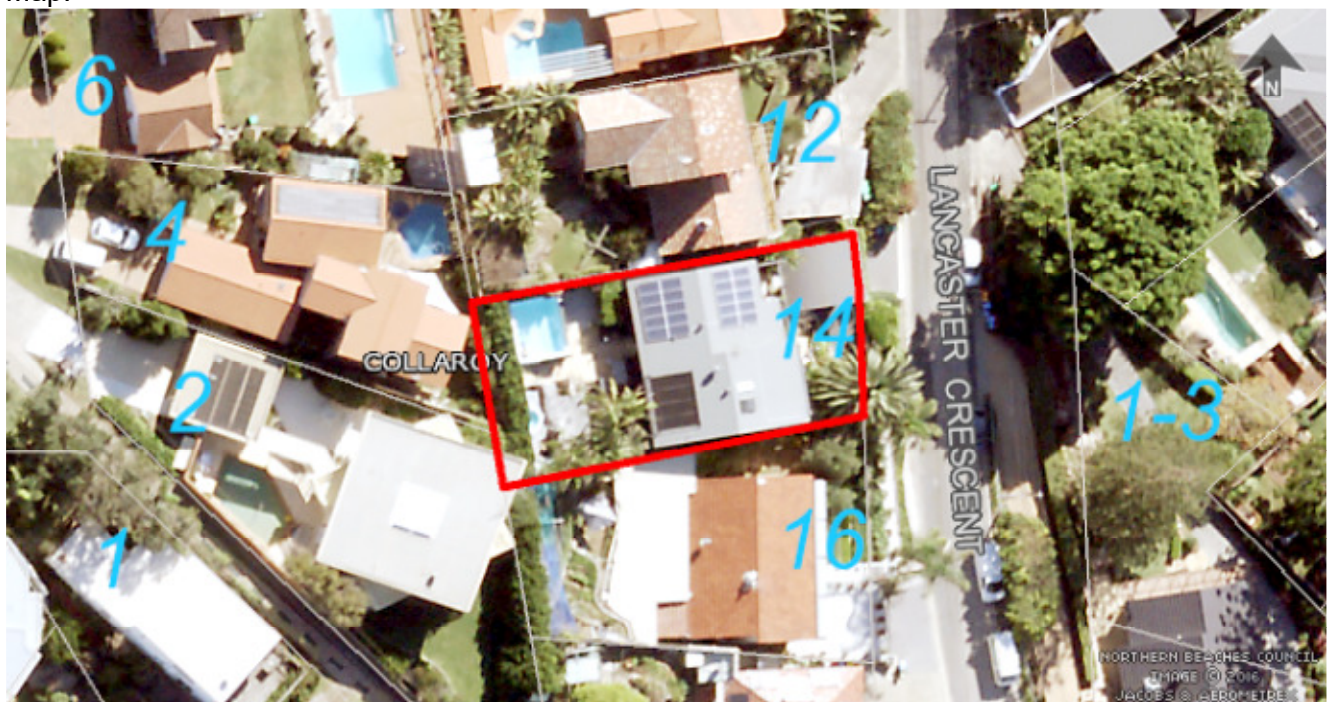
Warringah Development Control Plan - B1 Wall Heights

Warringah Development Control Plan - D8 Privacy

## SITE DESCRIPTION

|                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|-----------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Property Description:</b>      | Lot 8 DP 11899 , 14 Lancaster Crescent COLLAROY NSW 2097                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Detailed Site Description:</b> | The site is identified as Lot 8, Section 10 in DP 11899 and is known as No. 14 Lancaster Crescent, Collaroy. The subject site is located on the western side of Lancaster Crescent and is rectangular in shape. The site provides an eastern frontage to Lancaster Crescent and a total area of 565.5sqm. There is a significant level difference of 13.15m across the length of the site which equates to an approximately 38% slope. The property currently contains an existing three storey dwelling with terraced gardens, pool, spa and paving to the rear. |

Map:



## SITE HISTORY

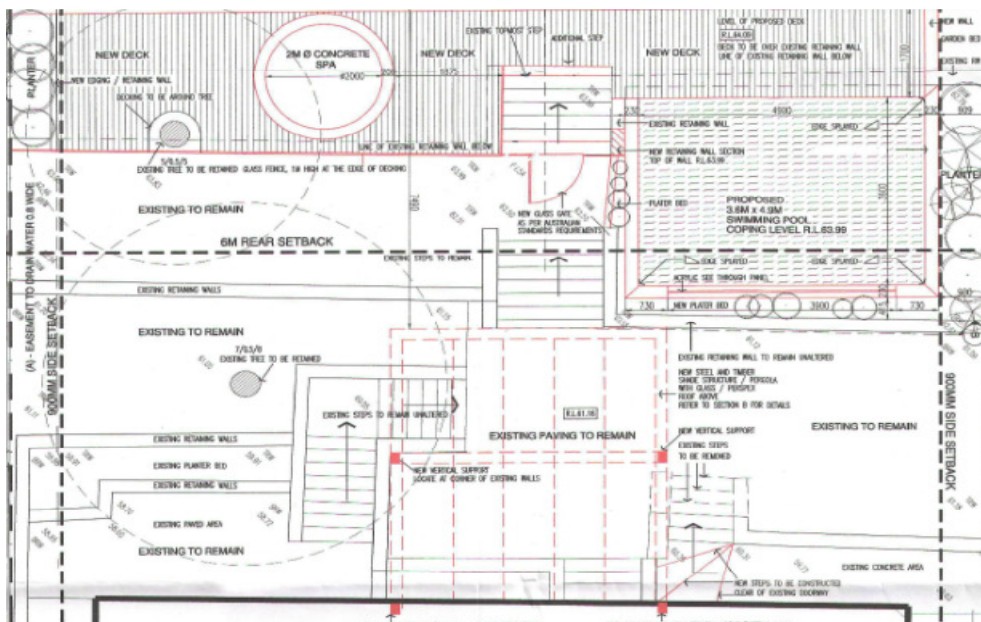
The following applications are relevant to the subject modification:

### DA2011/1653

On 21 December 2011, Development Application DA2011/1653 was lodged for the construction of a swimming pool, spa, deck and shade structure. This application was subsequently withdrawn on 1 February 2012 due to a requirement for a Geo-technical Report to be submitted.

### DA2012/0381

On 16 July 2012, Development Application DA2012/0381 approved alterations and additions to a dwelling house and construction of a swimming pool and spa. Refer to approved plan below showing the location of the proposed pergola.



Approved plan DA2012/0381

## PROPOSED DEVELOPMENT IN DETAIL

The subject application, Mod2019/0400 seeks consent for the following:

- Delete the the pergola structure which was approved (under DA2011/1653) to adjoin the rear of the dwelling and extend over the outdoor seating area, and
- Delete of condition 3(b) requiring compliance with BASIX, due to the pool and spa volume being below 40 litres.

No work is proposed as part of this application.

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

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

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 and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2012/0381, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

| Section 4.55(1A) - Other Modifications                                                                                                                                                                                                                                                                                                                                     | Comments                                                                                                                                                                                                                                             |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:                                                                                                                                        |                                                                                                                                                                                                                                                      |
| (a) it is satisfied that the proposed modification is of minimal environmental impact, and                                                                                                                                                                                                                                                                                 | <b>Yes</b><br>The modification, as proposed in this application, is considered to be of minimal environmental impact.                                                                                                                                |
| (b) it is 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), and                                                                                                            | The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2012/0381                                                                     |
| (c) it has notified the application in accordance with:<br><br>(i) the regulations, if the regulations so require, or<br><br>(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and | The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Warringah Environment Plan 2011 and Warringah 21 Development Control Plan. |
| (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.                                                                                                                                                                           | See discussion on "Notification & Submissions Received" in this report.                                                                                                                                                                              |

## Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of 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                                      | None applicable.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 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)(iia) – 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 in the original 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, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No Additional information was requested.</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 matter has been addressed via a condition in the original consent/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 in the original consent/This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent</p> |

| Section 4.15 'Matters for Consideration'                                                                                                                                           | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                    | <p>authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p>Clause 143A 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 environment and social and economic impacts in the locality | <p>(i) <b>Environmental Impact</b><br/>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> <p>(ii) <b>Social Impact</b><br/>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><br/>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                                                                                                                                         | No matters have arisen in this assessment that would justify the refusal of the application in the public interest.                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## 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 process council is in receipt of 1 submission/s from:

| Name:                 | Address:                                |
|-----------------------|-----------------------------------------|
| Mrs Christine Elliott | 12 Lancaster Crescent COLLAROY NSW 2097 |

The following issues were raised in the submissions and each have been addressed below:

- The removal of the shade structure / pergola may damage the privacy screen between No 14 and 12 Lancaster Crescent.

The matters raised within the submissions are addressed as follows:

Comment:

The pergola was proposed to adjoin the rear of the subject dwelling but did not extend as far as the boundary with No 12 Lancaster Crescent. The pergola was never constructed and the subject modification seeks to delete this element from the consent. There will be no damage to the privacy screen between No 14 and 12 Lancaster Crescent as a result of the proposal. Refer to photo below which show the privacy screen in relation to the back to the subject dwelling.



Photo showing the back of the subject dwelling and the privacy screen to No 12 Lancaster Street.

## REFERRALS

No referrals were sent in relation to this application

## 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 (Building Sustainability Index: BASIX) 2004

The application seeks consent to delete condition 3 (b) from DA2012/0381 which requires:

*BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate).*

Pursuant to State Environmental Planning Policy (SEPP) BASIX 2004, a BASIX certificate is required if the volume of a swimming pool is more than 40,000 litres. The applicant has submitted sufficient evidence in the form of a certificate from the pool company (Ryan Pools) confirming that the swimming pool and spa volume total 25,000 litres. The development is not BASIX development and the proposal to delete condition 3(b) relating to BASIX can therefore be supported.

### 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?                                                                       | Yes |
| zone objectives of the LEP?                                                            | Yes |

#### Compliance Assessment

| Clause                          | Compliance with Requirements |
|---------------------------------|------------------------------|
| 4.3 Height of buildings         | Yes                          |
| 6.4 Development on sloping land | Yes                          |

#### Detailed Assessment

### 4.3 Height of buildings

The proposed modification seeks consent for the deletion of the pergola structure approved under DA2012/0381 and removal of the requirement for a BASIX certificate required under condition 3 (b) of the original . No work is proposed under the subject application, as such clause 4.3 (height of buildings) does not apply.

### Warringah Development Control Plan

#### Compliance Assessment

| Clause                    | Compliance with Requirements | Consistency Aims/Objectives |
|---------------------------|------------------------------|-----------------------------|
| A.5 Objectives            | Yes                          | Yes                         |
| B1 Wall Heights           | Yes                          | Yes                         |
| B3 Side Boundary Envelope | Yes                          | Yes                         |

| Clause                                          | Compliance with Requirements | Consistency Aims/Objectives |
|-------------------------------------------------|------------------------------|-----------------------------|
| D1 Landscaped Open Space and Bushland Setting   | Yes                          | Yes                         |
| D2 Private Open Space                           | Yes                          | Yes                         |
| D3 Noise                                        | Yes                          | Yes                         |
| D6 Access to Sunlight                           | Yes                          | Yes                         |
| D7 Views                                        | Yes                          | Yes                         |
| D8 Privacy                                      | Yes                          | Yes                         |
| D16 Swimming Pools and Spa Pools                | Yes                          | Yes                         |
| D22 Conservation of Energy and Water            | Yes                          | Yes                         |
| E1 Preservation of Trees or Bushland Vegetation | Yes                          | Yes                         |

#### Detailed Assessment

#### **B1 Wall Heights**

The proposed modification seeks consent for the deletion of the pergola structure approved under DA2012/0381 and removal of the requirement for a BASIX certificate required under condition 3 (b) of the original . No work is proposed under the subject application, therefore clause B1 (Wall Heights) does not apply to the modification.

#### **D8 Privacy**

The modification includes the removal of the pergola. The existing privacy screen between the subject site and neighbouring property to the north will be retained. As such, the screen will ensure that the visual privacy between the private open space to the subject site and the neighbour will be maintained.

### **POLICY CONTROLS**

#### **Northern Beaches Section 7.12 Contributions Plan 2019**

Section 7.12 contributions were levied on the Development Application.

### **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, and does not result in any

unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

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

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

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2019/0400 for Modification of Development Consent DA2012/0381 granted for alterations and additions to a dwelling house and construction of a swimming pool and spa on land at Lot 8 DP 11899, 14 Lancaster Crescent, COLLAROY, subject to the conditions printed below:

### A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

#### a) Modification Approved Plans

| Architectural Plans - Endorsed with Council's stamp    |                  |                         |
|--------------------------------------------------------|------------------|-------------------------|
| Drawing No.                                            | Dated            | Prepared By             |
| MRYAN1303-S1 Shade Structure -Framing plan and details | April 2013       | Ryan Pools              |
| DA-01 Rev C Site Plan                                  | 19 November 2010 | Vista Design Architects |
| DA-02 Rev C Plan and Sectional Elevations              | 19 November 2010 | Vista Design Architects |

#### b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

### B. Delete Condition 3 (b) Prescribed Conditions (BASIX)

Reason: The development is not BASIX development as the pool and spa water volume is less than

40,000 litres.

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

**Signed**



**Anne-Marie Young, Principal Planner**

The application is determined on 18/09/2019, under the delegated authority of:

A handwritten signature in black ink, appearing to read 'Anna Williams'.

**Anna Williams, Manager Development Assessments**