

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

|                            |              |
|----------------------------|--------------|
| <b>Application Number:</b> | Mod2016/0182 |
|----------------------------|--------------|

|                                           |                                                                                                           |
|-------------------------------------------|-----------------------------------------------------------------------------------------------------------|
| <b>Responsible Officer:</b>               | David Auster                                                                                              |
| <b>Land to be developed (Address):</b>    | Lot 1 DP 514220, 12 Toronto Avenue CROMER NSW 2099                                                        |
| <b>Proposed Development:</b>              | Modification of Development Consent DA2014/0612 granted for Alterations and additions to a dwelling house |
| <b>Zoning:</b>                            | LEP - 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>                             | Simon David Robert Gee<br>Coral Ann Betts                                                                 |
| <b>Applicant:</b>                         | Simon David Robert Gee                                                                                    |

|                                  |                                                |
|----------------------------------|------------------------------------------------|
| <b>Application lodged:</b>       | 12/07/2016                                     |
| <b>Application Type:</b>         | Local                                          |
| <b>State Reporting Category:</b> | Residential - Alterations and additions        |
| <b>Notified:</b>                 | 20/07/2016 to 04/08/2016                       |
| <b>Advertised:</b>               | Not Advertised, in accordance with A.7 of WDCP |
| <b>Submissions:</b>              | 1                                              |
| <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 all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (upto the time of determination) by the applicant, persons who have made submissions regarding the application and any advice provided by relevant Council / Government / Authority Officers on the proposal.

### SUMMARY OF ASSESSMENT ISSUES

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Warringah Development Control Plan - B5 Side Boundary Setbacks

Warringah Development Control Plan - B9 Rear Boundary Setbacks

## SITE DESCRIPTION

|                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-----------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Property Description:</b>      | Lot 1 DP 514220 , 12 Toronto Avenue CROMER NSW 2099                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>Detailed Site Description:</b> | <p>The site is a battle axe shaped allotment with an area of 1,026m<sup>2</sup> including the access handle. The site is located on the northern side of Toronto Avenue with the access handle having a street frontage of 4.57m. The site shares it's rear boundary with Cromer Golf Course.</p> <p>The site slopes to the rear northeast corner which adjoins the golf course. The site is currently developed by a two storey brick dwelling with tiled roof with in ground pool in the rear yard. Vehicular access is currently provided via a concrete driveway providing access to the single carport.</p> <p>The existing surrounding development is comprised of predominantly single residential development, with a number of battle axe allotments.</p> |

Map:



## SITE HISTORY

Application DA2014/0612 for Alterations and additions to a dwelling house was approved on 02/09/2014 by Council. The application was for various alterations and additions, and included replacing the existing mainly solid pool fence with a glass balustrade.

Application Mod2015/0013 for Modification of Development Consent DA2014/0612 granted for Alterations and additions to a dwelling house was approved on 11/03/2015 by Council. This application was for minor changes to the approved development, but not relating to the pool fence.

Application Mod2014/0203 for Modification of Development Consent DA2014/0612 granted for Alterations and additions to a dwelling house was approved on 12/12/2014 by Council. This application was also for minor changes to the original approval, but not relating to the pool fence.

## PROPOSED DEVELOPMENT IN DETAIL

The application proposes to replace the approved glass fencing along the eastern elevation of the swimming pool with a timber screen.

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment C.

## 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 DA2014/0612, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 96(1A) of the Environmental Planning and Assessment Act, 1979, are:

| Section 96(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 DA2014/0612. |
| (c) it has notified the application in accordance with:                                                                                                                                                                                                         | The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning                                         |

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| Section 96(1A) - Other Modifications                                                                                                                                                                                                                                                                        | Comments                                                                                                      |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|
| (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 | and Assessment Regulation 2000, Warringah Local Environment Plan 2011 and Warringah 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 "Submissions" in this report.                                                               |

## Section 79C Assessment

In accordance with Section 96(3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 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 relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act, 1979, are:

| Section 79C 'Matters for Consideration'                                                                                  | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|--------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Section 79C (1) (a)(i) – Provisions of any environmental planning instrument                                             | See discussion on "Environmental Planning Instruments" in this report.                                                                                                                                                                                                                                                                                                                                                                            |
| Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument                                      | None applicable.                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Section 79C (1) (a)(iii) – Provisions of any development control plan                                                    | Warringah Development Control Plan applies to this proposal.                                                                                                                                                                                                                                                                                                                                                                                      |
| Section 79C (1) (a)(iiia) – Provisions of any planning agreement                                                         | None applicable.                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Section 79C (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</p> |

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| Section 79C 'Matters for Consideration'                                                                                                                                           | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                   | <p>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 matter has been addressed via a condition in the original consent.</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 in the original 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 in the original 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 79C (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 | (i) 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. (ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Section 79C (1) (c) – the suitability of the site for the development                                                                                                             | The site is considered suitable for the proposed development.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs                                                                                             | See discussion on “Submissions” in this report.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Section 79C (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

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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 Warringah Development Control Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

| Name:        | Address:                         |
|--------------|----------------------------------|
| Ricky Bridge | 6 Toronto Avenue CROMER NSW 2099 |

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

- S96 process used for unauthorised works
- Solar access
- Views

The matters raised within the submissions are addressed as follows:

- S96 process used for unauthorised works  
Comment: Concerns were raised that the 1.8m timber fence has already been constructed, and that the section 96 process is being used to regularise unauthorised works. The 1.8m timber fence has been constructed, but seeking consent for the works via a section 96 application is the correct legal process to follow in this instance. A development application cannot give approval for previously constructed works, but a section 96 application can do so. The approved plans for DA2014/0612 showed the existing metal pool fence to be replaced by a glass pool fence, which is now proposed to be altered to the timber fence which has been constructed. Additionally, the applicants were instructed to seek consent for the fence by Council's Compliance department. The submission is not therefore supported in this regard.
- Solar access  
Comment: Concerns were raised that the proposed timber pool fence has a significant impact on solar access to the eastern neighbour. The sites are on a north/south orientation, and as such the fence only overshadows the eastern neighbour in the afternoon. The proposal complies with the solar access requirements under Clause D6 Access to Sunlight of the DCP, and the shading impacts of the proposal are not considered to be unreasonable.
- Views  
Comment: Concerns were raised that the timber fence blocks views from the eastern neighbour. The fence is not considered to block 'views' as such (for example, district or ocean views), but impacts more on the general close range 'outlook' from the eastern neighbour. There is existing screen planting located along the eastern side of the pool and fence, which screens the fence to a significant degree. The fence is also somewhat articulated with regular 'inversions' where the palings are placed on the other side of the posts, which helps to break up the built form. The bulk and scale of the screen is considered to be generally within reasonable expectations given that there would be some sort of fence in that location no matter what. The glass fencing shown on the plans to comply with the Swimming Pools Act

could be obscured glazing (as opposed to transparent), and would be required to be 1.8m high due to the climbable zone created by some of the planting along the eastern boundary. The issue is caused by the original location of the swimming pool near the side boundary, and the requirements for fencing under the Swimming Pools Act.

Given the planting along the eastern boundary screens the timber screen/fence to a significant degree, and the requirements of the Swimming Pools Act for fencing, the impact of the development is not considered to be unreasonable. However, the applicants have not provided an elevation plan, or the height of the proposed timber screen on any of the plans. A condition is therefore recommended requiring the screen to be no higher than 1.8m above the pool coping level, the minimum requirement under the swimming pools act, to ensure that the screen is no higher than is absolutely necessary.

## **MEDIATION**

No requests for mediation have been made in relation to this application.

## **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 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.

### **SEPP (Infrastructure) 2007**

#### Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

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- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

## Comment:

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.

## **Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

## **Warringah Local Environment 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 |

## Principal Development Standards

| Development Standard | Requirement | Approved | Proposed | % Variation | Complies |
|----------------------|-------------|----------|----------|-------------|----------|
| Height of Buildings: | 8.5m        | 2.93m    | 3.53m    | N/A         | Yes      |

## Compliance Assessment

| Clause                               | Compliance with Requirements |
|--------------------------------------|------------------------------|
| Part 1 Preliminary                   | Yes                          |
| Land Use Table                       | Yes                          |
| 4.3 Height of buildings              | Yes                          |
| 5.3 Development near zone boundaries | Yes                          |
| 6.1 Acid sulfate soils               | Yes                          |
| 6.4 Development on sloping land      | Yes                          |

## **Warringah Development Control Plan**

### Built Form Controls

| Standard       | Requirement | Approved | Proposed                      | Complies |
|----------------|-------------|----------|-------------------------------|----------|
| B1 Wall height | 7.2m        | 6.3m     | No change (screen not a wall) | Yes      |
|                |             |          |                               |          |

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|                                               |      |                                    |                                 |     |
|-----------------------------------------------|------|------------------------------------|---------------------------------|-----|
| B3 Side Boundary Envelope                     | 4m   | Small breach west side on dwelling | No change (screen is compliant) | Yes |
| B5 Side Boundary Setbacks                     | 0.9m | Existing pool fence setback 0.49m  | 0.475m                          | No  |
| B7 Front Boundary Setbacks                    | 6.5m | 40m                                | No change (pool in rear yard)   | Yes |
| B9 Rear Boundary Setbacks                     | 6m   | 2m                                 | 2m                              | No  |
| D1 Landscaped Open Space and Bushland Setting | 40%  | 32%                                | No change                       | Yes |

## Compliance Assessment

| Clause                                        | Compliance with Requirements | Consistency Aims/Objectives |
|-----------------------------------------------|------------------------------|-----------------------------|
| Part A Introduction                           | Yes                          | Yes                         |
| A.5 Objectives                                | Yes                          | Yes                         |
| Part B Built Form Controls                    | Yes                          | Yes                         |
| B3 Side Boundary Envelope                     | Yes                          | Yes                         |
| B5 Side Boundary Setbacks                     | No                           | Yes                         |
| Side Setbacks - R2                            | No                           | Yes                         |
| Side Setback Exceptions - R2                  | Yes                          | Yes                         |
| B7 Front Boundary Setbacks                    | Yes                          | Yes                         |
| R2 - All other land in R2 Zone                | Yes                          | Yes                         |
| B9 Rear Boundary Setbacks                     | No                           | Yes                         |
| C4 Stormwater                                 | Yes                          | Yes                         |
| C5 Erosion and Sedimentation                  | Yes                          | Yes                         |
| C8 Demolition and Construction                | Yes                          | Yes                         |
| C9 Waste Management                           | Yes                          | Yes                         |
| Part D Design                                 | Yes                          | Yes                         |
| 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                         |
| D9 Building Bulk                              | Yes                          | Yes                         |
| D10 Building Colours and Materials            | Yes                          | Yes                         |
| D12 Glare and Reflection                      | Yes                          | Yes                         |
| D14 Site Facilities                           | Yes                          | Yes                         |
| D20 Safety and Security                       | Yes                          | Yes                         |
| E1 Private Property Tree Management           | Yes                          | Yes                         |
|                                               |                              |                             |

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| Clause                                             | Compliance with Requirements | Consistency Aims/Objectives |
|----------------------------------------------------|------------------------------|-----------------------------|
| E4 Wildlife Corridors                              | Yes                          | Yes                         |
| E6 Retaining unique environmental features         | Yes                          | Yes                         |
| E7 Development on land adjoining public open space | Yes                          | Yes                         |
| E8 Waterways and Riparian Lands                    | Yes                          | Yes                         |
| E10 Landslip Risk                                  | Yes                          | Yes                         |
| E11 Flood Prone Land                               | Yes                          | Yes                         |

## Detailed Assessment

### **B5 Side Boundary Setbacks**

#### Description of non-compliance

The proposed fence is in essentially the same position as the previous pool fence. The applicants have provided a detailed surveyors report with the modification application showing that the new screen is a minimum of 0.475m from the eastern side boundary.

#### Merit consideration

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

- To provide opportunities for deep soil landscape areas.*

#### Comment:

The proposed screen does not affect opportunities for deep soil landscape areas, being located on the edge of the pool coping.

- To ensure that development does not become visually dominant.*

#### Comment:

The screen is a relatively high structure adjacent to the eastern side boundary. The screen is generally well screened by the existing screen planting along the eastern side boundary. It replaces the previously approved 'glass pool fence' on the stamped plans. The plans did not make clear whether the glass fence was transparent or obscured. Given that that this glass pool fence may have been obscured glazing, with a similar visual impact to solid timber screen erected, the visual dominance of the screen is not dramatically altered. The plans approved previously stated that the pool fence would be in accordance with the Swimming Pools Act, which requires a 1.8m high fence if there is a climbable zone adjacent. Given that some of the screen planting adjacent may be climbable, a 1.8m screen/fence height is required. Given these considerations, the screen is considered to be sufficiently screened by the planting adjacent.

- To ensure that the scale and bulk of buildings is minimised.*

#### Comment:

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As discussed above, the Swimming Pools Act requires a 1.8m screen. The bulk and scale of the screen has therefore been minimised as much as possible given the requirements.

- *To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.*

Comment:

The timber screen will provide greater privacy between the sites than a clear glazed fence would have done. Obscure glazing would have had the same effect. The modification is not considered to reduce privacy in any way.

- *To provide reasonable sharing of views to and from public and private properties.*

Comment:

The proposal is not considered to impact on any 'views' (see discussion under submissions in this report). It will affect the outlook from the eastern neighbour, but no more than obscured glazing to the same height would have done.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## **B9 Rear Boundary Setbacks**

Description of non-compliance

The screen is 2m from the rear boundary. It is in the same location as previously approved, but has changed to a timber screen.

Merit consideration:

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

- *To ensure opportunities for deep soil landscape areas are maintained.*

Comment:

The proposal does not affect deep soil landscape areas, being constructed on the pool coping.

- *To create a sense of openness in rear yards.*

Comment:

The proposal is adjacent to a golf course to the rear, and well screened in that direction by existing vegetation. It will not significantly impact on the sense of openness. To the east, the rear screening will be blocked from view by the screen along the eastern side of the pool. As discussed under the side boundary setback control, the height of the screen along that side is dictated by the requirements of the Swimming Pools Act.

- *To preserve the amenity of adjacent land, particularly relating to privacy between buildings.*

Comment:

The proposal will improve privacy to the east over a clear glazed fence. However, as discussed, the applicants may have chosen to make the glazing obscured glass. However, the modification will not reduce privacy in anyway.

- *To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.*

Comment:

The proposal replaces one type of pool fencing/screening for another. It will not impact the overall pattern of development.

- *To provide opportunities to maintain privacy between dwellings.*

Comment:

The timber screen will provide greater privacy than the previous chain wire fence that was on site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## **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.

## **POLICY CONTROLS**

### **Warringah Section 94A Development Contribution Plan**

Section 94 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 Modification Application No. Mod2016/0182 for Modification of Development Consent DA2014/0612 granted for Alterations and additions to a dwelling house on land at Lot 1 DP 514220, 12 Toronto Avenue, CROMER, 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                    |
| S2 Showing "Section 96 - replace glass pool fence with timber screen" in red | 5 May 2014 | Sally Gardner Design and Draft |

#### 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. (DACPLB01)

### B. Add Condition No. 1B - to read as follows:

#### 1B. Height of Timber Screen

The Timber Screen located along the eastern and northern edges of the swimming pool coping is to be no higher than 1.8m above the height of the coping.

Reason: To minimise bulk and scale while still complying with pool fencing requirements.

I am aware of Warringah's Code of Conduct and, in signing this report, declare that I do not have a Conflict of Interest.

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**Signed**

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**David Auster, Planner**

The application is determined under the delegated authority of:

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**Anna Williams, Development Assessment Manager**

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## ATTACHMENT A

| Notification Plan                                                                             | Title               | Date       |
|-----------------------------------------------------------------------------------------------|---------------------|------------|
|  2016/232817 | Plan - Notification | 13/07/2016 |

## ATTACHMENT B

No notification map.

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## ATTACHMENT C

| Reference Number                                                                                | Document                                                                                                  | Date       |
|-------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------|------------|
|  2016/232815   | Plan - Survey and Report                                                                                  | 01/06/2016 |
|  2016/232819   | Report - Amended Statement of Environmental Effects                                                       | 01/07/2016 |
|  2016/232821   | Plan - Site Plan                                                                                          | 11/07/2016 |
|  MOD2016/0182  | 12 Toronto Avenue CROMER NSW 2099 - Section 96 Modifications - Section 96 (1a) Minor Environmental Impact | 12/07/2016 |
|  2016/232397   | DA Acknowledgement Letter - Simon David Robert Gee                                                        | 13/07/2016 |
|  2016/232817   | Plan - Notification                                                                                       | 13/07/2016 |
|  2016/232808   | Development Application Form                                                                              | 13/07/2016 |
|  2016/232812   | Applicant Details                                                                                         | 13/07/2016 |
|  2016/242893   | Notification Letters - Mod                                                                                | 20/07/2016 |
|  2016/242898   | Notification Map - Mod                                                                                    | 20/07/2016 |
|  2016/249913  | Online Submission - Bridge                                                                                | 26/07/2016 |
|  2016/388565 | Site Photos                                                                                               | 29/11/2016 |
|  2017/041628 | Additional info from applicants                                                                           | 09/02/2017 |