



Given that the timber and PVC fencing located along parts of the northern and eastern property boundaries and on the eastern side of the swimming pool, and the PVC open 'picket style' fencing located between the existing dwelling and northern property boundaries have been constructed prior to issue of Development Consent, the Construction Certificate cannot be issued retrospectively to incorporate these structures.

Therefore, a condition will be imposed on the Development Consent requiring that prior to the issue of an Occupation Certificate for the proposed swimming pool, the applicant obtain a Building Information Certificate for these structures.

Furthermore, so as to ensure that the structural adequacy of the fencing is not compromised, a condition will also be imposed on the Development Consent requiring that the existing timber sections of the fencing located along the northern and eastern property boundaries, and on the eastern side of the swimming pool, not be utilised as a retaining wall.

## **2. SUMMARY**

To assess and recommend determination of DA112/19 with recommendation for approval subject to conditions.

## **3. LOCATION OF THE PROPOSAL**

Legal Description : Lot 10 DP 1223585  
Property Address : 2 Mayview Drive LITHGOW NSW 2790

## **4. ZONING:**

The land is zoned R1 General Residential in accordance with *Lithgow Local Environmental Plan (LEP) 2014*.

## **5. PERMISSIBILITY:**

The development, being ancillary to the existing dwelling house (defined below), is permitted with consent on land zoned R1 General Residential, under LEP 2014.

**dwelling** means a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile.

**dwelling house** means a building containing only one dwelling.

**Note.** Dwelling houses are a type of **residential accommodation**—see the definition of that term in this Dictionary.

### **5.1 POLICY IMPLICATIONS (OTHER THAN DCP's)**

#### **Policy 7.5 Notification Of Development Applications**

Council Policy 7.5 'Notifications Policy for Development Applications' is applicable to all land within the Lithgow Local Government Area. The development proposal is not exempt under Section 2 of the Policy 7.5 and therefore was notified on two separate occasions to adjoining property owners.

Notification letter dated 12/7/19 – The original application, including isolated pool fencing only, was notified to adjoining and adjacent property owners for a period of fourteen days.

Notification letter dated 14/8/19 – The revised application, including retrospective approval of existing timber and PVC fencing, was notified to the adjoining property owner to the east for a period of seven days.

No submissions were received during either of these notification periods. The proposal is considered to satisfy the provisions of this policy.

### **Policy 7.6 Development Applications By Councillors And Staff Or On Council Owned Land**

Council Policy 7.6 'Development Applications By Councillors and Staff or on Council Owned Land' is applicable to this development proposal given that the owner of the land is an elected Councillor. Therefore, the application will be referred to Council for consideration and determination. The proposal is considered to satisfy the provisions of this policy.

## **5.2 FINANCIAL IMPLICATIONS (eg Section 94)**

Nil

## **5.3 LEGAL IMPLICATIONS**

### ***Conveyancing Act 1919***

The subject allotment is burdened by restrictions outlined on Section 88b instrument no. 1223585. Notwithstanding, the applicable restrictions do not impact the proposed development. Furthermore, the person/authority having the right to release, vary or modify the applicable restrictions is Ceedive Pty Ltd and Water NSW. Therefore the proposal is considered to generally satisfy the provisions of this Act.

### ***Coal Mine Subsidence Compensation Act 2017***

The development is considered to be integrated under the provisions of Section 4.46 of the Environmental Planning and Assessment Act 1979 given that the allotment is located within a Mine Subsidence Area. The subject allotment is mapped within a Subsidence Advisory NSW 'Surface Development Guideline 8 – No Restrictions' area, which does not apply any restrictions on development. Therefore, the application is not required to be referred to Subsidence Advisory NSW for comment. The application is considered to satisfy the provisions of this Act.

### ***Biodiversity Conservation Act 2016***

Section 7.2 of the *Biodiversity Conservation Act 2016* (BC Act) prescribes the circumstances in which the Biodiversity Offset Scheme (BOS) is required to be applied to development.

#### **Biodiversity Conservation Act 2016**

##### **7.2 Development or activity "likely to significantly affect threatened species"**

(1) For the purposes of this Part, development or an activity is likely to significantly affect threatened species if:

- (a) it is likely to significantly affect threatened species or ecological communities, or their habitats, according to the test in section 7.3, or
- (b) the development exceeds the biodiversity offsets scheme threshold if the biodiversity offsets scheme applies to the impacts of the development on biodiversity values, or
- (c) it is carried out in a declared area of outstanding biodiversity value.

For Section 7.2(1)(a), the allotment does not contain any threatened flora or fauna. The allotment was cleared as part of the recent residential subdivision and therefore the development proposal is unlikely to significantly affect threatened species or ecological communities, or their habitats.

Further, for the purpose of Section 7.2(1)(b) of the BC Act, Clause 7.1 of the *Biodiversity Conservation Regulation 2017* (BC Regulation 2017), defines the BOS thresholds, as below:

**Biodiversity Conservation Regulation 2017**

**7.1 Biodiversity offsets scheme threshold (section 7.4)**

(1) Proposed development exceeds the biodiversity offsets scheme threshold for the purposes of Part 7 of the Act if it is or involves:

- (a) the clearing of native vegetation of an area declared by clause 7.2 as exceeding the threshold, or
- (b) the clearing of native vegetation, or other action prescribed by clause 6.1, on land included on the Biodiversity Values Map published under clause 7.3.

Clause 7.2 of the BC Regulation 2017, declares that where the following areas of clearing are exceeded the BOS will be applicable:

**Biodiversity Conservation Regulation 2017**

**7.2 Clearing of area of land that exceeds threshold**

(1) Clearing of native vegetation is declared by this clause to exceed the biodiversity offsets scheme threshold if the area proposed to be cleared is the area set out in Column 2 of the Table to this clause opposite the minimum lot size applicable to the land to be cleared in Column 1 of that Table.

**Table**

**Column 1**

**Minimum lot size of land**

Less than 1 hectare

**Column 2**

**Area of clearing**

0.25 hectare or more

The MLS applicable to the land is 600m<sup>2</sup>. The total area of land to be cleared for the proposed development is approximately 36m<sup>2</sup>, which is below the 0.25 hectare threshold prescribed under Clause 7.2 of the BC Regulation. Therefore, the BOS is not applicable to the development under Clause 7.1(1)(a) of the BC Regulation.

Further, the proposed clearing is not on land included on the Biodiversity Values Map under Clause 7.1(1)(b) of the BC Regulation. Therefore, the BOS is not applicable to the development under Section 7.2(b) of the BC Act.

See map available at <https://www.lmbc.nsw.gov.au/Maps/index.html?viewer=BVMap>)

Lastly, the proposed development is not proposed to be carried out in a declared area of outstanding biodiversity value under Section 7.2(c) of the BC Act.

Therefore, the proposal is considered to satisfy the provisions of the Biodiversity Conservation Act 2016

### ***Environmental Planning and Assessment Act 1979***

In determining a development application, a consent authority is required to take into consideration the matters of relevance under Section 4.15 of the *Environmental Planning and Assessment Act 1979*. These matters for consideration are as follows:

#### 5.3.1 Any Environmental Planning Instruments

### ***Lithgow Local Environmental Plan 2014***

<b>LEP 2014 – Compliance Check</b>		
<b>Clause</b>		<b>Compliance</b>
<b>Land Use table</b>	R1 General Residential	Yes
<b>Land Use table</b>	R2 Low Density Residential	N/A
<b>Land Use table</b>	R5 Large Lot Residential	N/A
<b>5.10</b>	Heritage conservation	N/A
<b>6.3</b>	Development Control plans	N/A
<b>6.4</b>	Relationship between Part and remainder of Plan (part 6)	N/A
<b>7.1</b>	Earthworks	Yes
<b>7.2</b>	Flood Planning	N/A
<b>7.3</b>	Stormwater management	N/A
<b>7.4</b>	Terrestrial biodiversity	N/A
<b>7.5</b>	Groundwater vulnerability	Yes
<b>7.6</b>	Riparian land and watercourses	N/A
<b>7.7</b>	Sensitive lands	N/A
<b>7.8</b>	Development within a designated buffer area	N/A
<b>7.10</b>	Essential Services	Yes
<b>7.12</b>	Development in Pottery Estate	N/A

#### **Comment:**

**7.1** – Earthworks consist only of excavation associated with installation of the swimming pool, and minor benching of the land to achieve a level building platform. Earthworks are considered to have minimal impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land. The proposal is considered to satisfy the provisions of the LEP.

**7.5** – The application is has been assessed using the Neutral or Beneficial Effect on Water Quality Assessment Tool provided by Water NSW. The development has achieved a neutral or beneficial effect on water quality and is considered to satisfy the provisions of the LEP.

**7.10** – The existing dwelling will retain connection to

- a. reticulated supply of water
- b. mains electricity,
- c. reticulated sewer,
- d. reticulated stormwater drainage
- e. vehicular access from Mayview Drive.

The development is considered to satisfy the provisions of the LEP.

### ***State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011***

	<b>Clause</b>	<b>Compliance</b>
<b>10</b>	Development consent cannot be granted unless neutral or beneficial effect on water quality	Yes
<b>11</b>	Development that needs concurrence of the Chief Executive	Yes

**Comment:** The application is has been assessed using the Neutral or Beneficial Effect on Water Quality Assessment Tool provided by Water NSW. The development has achieved a neutral or beneficial effect on water quality and is considered to satisfy the provisions of this SEPP.

5.3.2 Any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority

Nil

5.3.3 Any Development Control Plan

Nil

5.3.4 Any planning agreement that has been entered into under Section 7.4, or any draft planning agreement that a developer has offered to enter into under Section 7.4?

No

5.3.5 Any matters prescribed by the regulations that apply to the land

It is considered that as a result of this assessment the development will comply with the provisions of the regulations subject to conditions of consent.

5.3.6 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

**Adjoining Landuse:** The surrounding area is generally for residential pursuits with the proposal to be consistent with the surrounding land uses. The proposal will not cause any land use conflicts and the development is permissible within the zone.

**Services:** The exiting dwelling will maintain connections to Council's reticulated water and reticulated sewer services, electricity and telecommunication services. Therefore, it is considered that the proposal will be adequately serviced.

**Context and Setting:** The proposed development will be located within an established residential area and will have no major impact on the context and setting of the area. The development has been designed to complement existing features of similar development in the area.

**Access:** The existing development will maintain vehicular access from Hassans Walls Road. It is considered that the existing vehicular access arrangement will be adequate for the development.

**Heritage:** The land does not retain, nor is near an item of environmental heritage and/or a heritage conservation area. The proposed development is considered to have minimal impact on environmental heritage.

**Flora and Fauna:** No proposed clearing is required and the development will have no impact on flora or fauna.

**Social and Economic Impact:** As the proposed development will be generally in keeping with the provisions of the planning instrument and is reasonably compatible with other similar development in the locality, it is expected to have minimal social and economic impact.

**Soils:** The proposed development will have no significant impact on soils. There is no reason to believe the site would be affected by acid sulphate soil or contamination problems. Conditions of consent will be imposed to control erosion and sedimentation impacts on the site and therefore it is considered there will be minimal impacts on soils.

**Water:** The proposed development has been assessed using the NorBE tool as required by the *State Environmental Planning Policy (Sydney Catchment Drinking Water) 2011* with a result of satisfied. Therefore it is considered that the development will have minimal impact on water.

**Air and Microclimate:** There will be no significant impact on air or microclimate. However, a condition of consent will be imposed requiring that dust suppression be used during construction works to minimise impacts on the surrounding area.

**Waste:** It will be a condition of consent that waste during construction will be taken to a licenced waste disposal facility. The swimming pool will utilise a cartridge filter system meaning that no swimming pool water will be discharged into Council's reticulated sewer system.

**Natural Hazards:** The land is known as being bushfire prone. However, the provisions of AS3959:2009 do not apply to swimming pools. Therefore, no bushfire related requirements are considered applicable to the proposal.

**Noise and Vibration:** The proposal is not expected to cause any noise issues in the surrounding area. It will be a condition of consent that the pool pump located within a sound attenuating enclosure and only be operated between certain hours to ensure noise and vibration is kept to a minimum.

**Other Land Resources:** The development will not impact on the value of the land in terms of agricultural potential or mining as it is zoned for residential use and adjacent to an established residential area.

#### 5.3.7 The Suitability of the site for the development

The surrounding land uses are for residential pursuits with the size and nature of the development consistent with those in the surrounding area. The development will have minimal impact to the surrounding amenity. The proposed development complies with the objectives of the zone and the site is considered to be suitable for the proposal.

#### 5.3.8 Any submissions made in accordance with this Act or the Regulations

Nil

#### 5.3.9 The public interest

There have been no issues raised from the public regarding planning issues.

## **6. DISCUSSION AND CONCLUSIONS**

The proposal is considered to generally comply with the relevant provisions of the applicable Environmental Planning Instruments. The proposal is not considered likely to have any significant negative impacts upon the environment or upon the amenity of the locality. As such it is recommended that development consent is issued subject to the conditions outlined below.

## **7. ATTACHMENTS**

Schedule A- Conditions of consent.

## **8. RECOMMENDATION**

**THAT** development application DA112/19 is approved subject to conditions set out in Schedule A.

Report prepared by: ..... Signed:.....

Dated:.....

## **REASONS FOR CONDITIONS**

The conditions in Schedule A have been imposed for the following reasons:

- To ensure compliance with the terms of the relevant Planning Instruments
- To ensure no injury is caused to the existing and likely future amenity of the neighbourhood
- Due to the circumstances of the case and the public interest.
- To ensure that adequate road and drainage works are provided.
- To ensure that satisfactory arrangements are made to satisfy the increased demand for public recreation facilities.
- To ensure access, parking and loading arrangements will be made to satisfy the demands created by the development.
- To ensure the structural integrity of the development.
- To ensure the protection of the health and safety of the occupants of the development.
- To protect the environment.
- To prevent, minimise, and/or offset adverse environmental impacts.
- To ensure lots are adequately serviced.
- To ensure there is no unacceptable impact on the water quality.
- To ensure compliance with the requirements of the Rural Fire Services.
- To ensure adequate soil conservation and protect against movement of soil and sediments.

## **Schedule A**

### **Conditions of Consent (Consent Authority)**

#### **General Requirements**

1. The development shall take place in accordance with the approved development plans containing Council's approved development stamp and all associated documentation submitted with the application, except as modified in red by Council and/or any conditions of this consent.
2. All building work must be carried out in accordance with the provisions of the Building Code of Australia.
3. Building work that involves residential building work (within the meaning of the Home Building Act 1989) must not be carried out unless the Principal Certifying Authority for the development to which the work relates:
  - a) in the case of work to be done by a Licensee under that Act:
    - i) has been informed in writing of the licensee's name and contractor Licence Number, and
    - ii) it is satisfied that the Licensee has complied with the requirements of Part 6 of that Act, or
  - b) in the case of work to be done by any other person:
    - i) has been informed in writing of the persons name and Owner-Builder Permit Number, or
    - ii) has been given a declaration signed by the owner of the land that states that the reasonable market cost of the labour and materials involved in work is less than the amount prescribed for the purposes of the definition of Owner-Builder Work in Section 29 of that Act, and is given appropriate information and declarations under paragraphs (a) and (b) whenever arrangements for the doing of the work are changed in such a manner as to render out of date any information or declaration previously given under either of those paragraphs.
4. To protect the amenity of the area, the filtration equipment and/or pump shall be housed within a sound attenuating enclosure so that the noise level measured at the property boundary does not exceed 5 dB(A) above the ambient background level. Note: This approval does not negate your responsibilities under the Protection of the Environmental Operations Act 1997.
5. That the swimming pool filtration equipment and/or pump not be operated between the following times:
  - 8.00pm to 7.00am weekdays
  - 8.00pm to 8.00am weekends and public holidays.
6. That all coping/impervious paving is to be constructed to ensure that run-off will not discharge onto an adjoining property.
7. The existing timber sections of the fencing located along the northern and eastern property boundaries, and on the eastern side of the swimming pool, must not be utilised as a retaining wall in perpetuity.

### **Requirements Prior to Commencement of Work**

8. Prior to commencing any construction works, Council is to be notified at least two days prior of the intention to commence building works, in accordance with Section 81A(2)(c) of the Act in Form 7 of Schedule 1 of the Regulations.
  
9. To contain soil and sediment on the property, controls are to be implemented prior to clearing of the site vegetation and the commencement of site works. This will include:
  - a) The installation of a sediment fence with returned ends across the low side of the site so that all water flows through. These shall be maintained at no less than 70% capacity at all times. Drains, gutters, roadways etc., shall be kept clean and free of sediment.
  - b) To prevent the movement of soil off site, a single entry/exit point to the property shall be constructed of 40mm blue metal aggregate or recycled concrete to a depth of 150mm. The length must be at least 5 metres with the width at least 3 metres. Soil erosion fences shall remain and must be maintained until all disturbed areas are restored by turving, paving, revegetation.
  
10. Prior to commencement of any building works, a suitable lidded waste container for the deposit of all building rubbish and litter must be provided onsite. The waste container must be emptied at a licensed waste disposal facility when full. All building rubbish and litter must be contained on the building site and the site left clear of waste and debris upon completion of works.
  
11. Prior to the commencement of any works on the land, a sign/s must be erected in a prominent position on the site:
  - a. Showing the name of the principal contractor (if any) for any building work and a telephone number on which that person can be contacted outside working hours.
  - b. Stating that unauthorised entry to the work site is prohibited and
  - c. Showing the name, address and telephone number of the principle certifying authority for the work.
  
12. The sign/s are to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

### **Requirements During Construction**

13. All work on site shall only occur between the following hours:

Monday to Friday	7.00am to 6.00pm
Saturday	8.00am to 1.00pm
Sunday and public holidays	No work
  
14. Measures shall be implemented to minimize wind erosion and dust nuisance in accordance with the requirements of the manual – "Soils and Construction" (2004) (Bluebook).
  
15. That seepage and surface waters are collected and diverted clear of the dwelling site by a drainage system to the satisfaction of Council. Care is to be taken to ensure that no nuisance is created to adjoining properties.
  
16. That all plumbing and drainage work be carried out by a licensed plumber and drainer and inspected by Council officers.

17. To ensure adequate levels of public safety during the construction of the pool, temporary safety fencing complying with the provisions of the Swimming Pools Act 1992 and AS1926.1:2012 is required prior to the filling the pool with water.
18. To assist in the resuscitation of others and to highlight the importance of supervising young children within the pool area, an approved chart detailing resuscitation techniques is required to be affixed in a prominent position within in the pool area prior to the filling of the pool with water, and be in accordance with the requirements of the Swimming Pools Act 1992.

### **Requirements Prior to Use**

19. The swimming pool must not be used until an occupation certificate has been issued by the Principal Certifying Authority. In this regard an application must be lodged with the PCA in conjunction with any request to carry out a final inspection.
20. Prior to the issue of an Occupation, an effective Child Resistant Barrier separating the existing dwelling from the proposed swimming pool, must be installed in accordance with the provisions of the Swimming Pools Act 1992 and Australian Standard 1926.1:2012. Resuscitation and warning signage must be installed in a prominent position within in the pool area in accordance with the requirements of the Swimming Pools Act 1992.
21. Prior to the issue of an Occupation Certificate, a Building Information Certificate must be submitted to and approved by Council to regularise construction of the existing timber and PVC fencing located along the northern and eastern property boundary, the timber and PVC fencing located on the eastern side of the swimming pool, and the existing PVC open 'picket style' fencing located between the existing dwelling and northern allotment boundary. The Building Information Certificate must be accompanied by the prescribed application fees and any documentation deemed necessary by Council.

### ***Advisory Notes:***

AN1. To ensure structural integrity, the maintenance of minimum health standards, the management of the buildings surrounds and the protection of the environment, compliance certificates are to be issued at significant stages throughout the construction period. These stages are:

- a) The pool excavation with steel in position prior to the spraying of concrete;
- b) The excavation prior to the pool being placed in position;
- c) The swimming pool barrier prior to filling the pool with water;
- d) Pier holes/pad footings before filling with concrete.
- e) Trenches complete with reinforcing and prior to filling with concrete.
- f) Reinforcing steel in position and before concrete is poured (footings, lintels, beams, columns, floors, walls and the like.
- g) External drainage installed by a licensed plumber and prior to covering.
- h) Completion of the development and sign off to all conditions of the consent including landscaping, and swimming pool barrier, prior to occupation and use.

At each inspection, erosion and sediment control measures and site management will be inspected.

**Note: forty-eight (48) hours notice shall be given to Council prior to inspections.**

AN2. To provide for the safety of small children, the Swimming Pool Act 1992, requires that the owner of the premises must ensure that the swimming pool is at all times surrounded by a child-resistant barrier that:

- Separates the swimming pool from any residential building situated on the premises and from any place (whether public or private) adjoining the premises; and
- Is designed, constructed, installed and maintained in accordance with the standards prescribed by the regulations.

AN3. That any horizontal joint within the proposed swimming pool barrier comply with the provisions of the Swimming Pools Act 1992 and AS1926.1:2012.

AN4. That the intersection of the internal swimming pool barrier and boundary barrier comply with the provisions of AS1926.1:2012.

AN5. Future landscaping must not compromise the integrity of the swimming pool barrier.