

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

|                            |             |
|----------------------------|-------------|
| <b>Application Number:</b> | DA2019/0219 |
|----------------------------|-------------|

|   |   |
|---|---|
| <b>Responsible Officer:</b>               | Kye Miles   |
| <b>Land to be developed (Address):</b>    | Lot 36 DP 9517, 2 Allenby Street CLONTARF NSW 2093    |
| <b>Proposed Development:</b>              | Alterations and additions to a dwelling house         |
| <b>Zoning:</b>                            | Manly LEP2013 - 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>                             | Andrew Anton Bowden<br>Corinne Anne Bowden            |
| <b>Applicant:</b>                         | Performance Building Consultants                      |

|                                  |   |
|----------------------------------|---|
| <b>Application lodged:</b>       | 06/03/2019                              |
| <b>Integrated Development:</b>   | No                                      |
| <b>Designated Development:</b>   | No                                      |
| <b>State Reporting Category:</b> | Residential - Alterations and additions |
| <b>Notified:</b>                 | 12/03/2019 to 28/03/2019                |
| <b>Advertised:</b>               | Not Advertised                          |
| <b>Submissions Received:</b>     | 0                                       |
| <b>Recommendation:</b>           | Approval                                |

|                                 |              |
|---------------------------------|--------------|
| <b>Estimated Cost of Works:</b> | \$ 26,420.00 |
|---------------------------------|--------------|

### 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

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

Manly Development Control Plan - 4.1.7 First Floor and Roof Additions

## SITE DESCRIPTION

|                                   |   |
|-----------------------------------|---|
| <b>Property Description:</b>      | Lot 36 DP 9517 , 2 Allenby Street CLONTARF NSW 2093   |
| <b>Detailed Site Description:</b> | <p>The subject site consists of 1 allotment located on the eastern side of Allenby Street and the western side of Amiens Road.</p> <p>The site is irregular in shape with a frontage of 15.24m along Allenby Street and 14.89m along Amiens Road. The site has a depth of 54.36m with a surveyed area of 779.3m<sup>2</sup>.</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a three storey dwelling with an attached garage.</p> <p>The site slopes from the rear boundary to the Allenby Street frontage.</p> <p>The site is classified as a wildlife corridor area. The site has a front and rear garden with landscaping and natural rock outcrops. The existing species are both native and exotic species, neither of which are thought to constitute endangered species.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by 2 and 3 storey residential dwellings.</p> |

Map:



## SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site.

The land has been used for residential purposes for an extended period of time.

## PROPOSED DEVELOPMENT IN DETAIL

The proposed development is for the construction of a Vergola louvred roof system attached to the first floor terrace of the existing dwelling, with a total proposed area of 22.8m<sup>2</sup>.

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

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

| Section 4.15 Matters for Consideration'   | Comments   |
|---|--|
| Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument   | See discussion on "Environmental Planning Instruments" in this report.   |
| Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument                                      | None applicable.   |
| Section 4.15 (1) (a)(iii) – Provisions of any development control plan  | Manly 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) | Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. |

| Section 4.15 Matters for Consideration'  | Comments   |
|--|--|
|  | <p>Clauses 54 and 109 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>Clause 98 of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p>Clause 98 of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> |
| 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 Manly 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.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

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

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

## **MEDIATION**

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

## **REFERRALS**

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

## **ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)\***

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

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

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

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

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

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

### **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:

- 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.

**Manly Local Environmental Plan 2013**

|  |     |
|--|-----|
| 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

| Standard             | Requirement | Proposed | % Variation | Complies |
|----------------------|-------------|----------|-------------|----------|
| Height of Buildings: | 8.5m        | 9.09m    | 6.7%        | No       |

Compliance Assessment

| Clause                                     | Compliance with Requirements |
|--|------------------------------|
| 4.3 Height of buildings                    | No                           |
| 4.4 Floor space ratio                      | Yes                          |
| 4.6 Exceptions to development standards    | No                           |
| 5.8 Conversion of fire alarms              | Yes                          |
| 6.1 Acid sulfate soils                     | Yes                          |
| 6.2 Earthworks                             | Yes                          |
| 6.4 Stormwater management                  | Yes                          |
| 6.8 Landslide risk                         | Yes                          |
| 6.9 Foreshore scenic protection area       | Yes                          |
| 6.10 Limited development on foreshore area | Yes                          |
| 6.12 Essential services                    | Yes                          |
| 6.15 Tourist and visitor accommodation     | Yes                          |

Detailed Assessment

**4.6 Exceptions to development standards**



Description of non-compliance:

|                                      |                     |
|--------------------------------------|---------------------|
| Development standard:                | Height of buildings |
| Requirement:                         | 8.5m                |
| Proposed:                            | 9.09m               |
| Percentage variation to requirement: | 6.7%                |

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard, has taken into consideration the recent judgement contained within Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.

Clause 4.6 Exceptions to development standards:

*(1) The objectives of this clause are as follows:*

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

*(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Comment:

4.3 – Height of Buildings development standard is not expressly excluded from the operation of this clause.

*(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

*(4) Development consent must not be granted for development that contravenes a development standard unless:*

*(a) the consent authority is satisfied that:*

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Secretary has been obtained.*

**Clause 4.6 (4)(a)(i) (Justification) assessment:**

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

*(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

Comment:

The Applicant's written request (attached to this report as an Appendix) has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

In this regard, the Applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

*(b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

Comment:

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

*'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'*

s 1.3 of the EPA Act reads as follows:

*1.3 Objects of Act(cf previous s 5)*

*The objects of this Act are as follows:*

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*



- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The applicants written request argues, in part:

- *"The proposed Vergola will not add to the height of the approved building. The awning is consistent with the prevailing building height and streetscape character of the area. The roof form is an open structure and fits well into the topography of the allotment without adding to the bulk or scale of the building.*
- *There is no impact in terms of view sharing from adjacent neighbours or public areas and with the awning built over an approved terrace area its add no additional height to the approved building.*
- *The awning has minimal impact with regard to privacy and solar access enjoyed by adjacent properties. It maintains adequate sunlight access to private open spaces and to habitable rooms of the adjacent dwellings and the residence itself."*

It is agreed that the proposed Vergola structure will not add to the height of the existing building and is consistent with the existing roof form. In addition, it is considered that the proposed structure is relatively minor by nature and will not unreasonably affect the amenity of adjoining properties, nor will it significantly contribute to the existing bulk and scale of the building. Overall, demanding compliance with Council's maximum height standard is both unreasonable and unnecessary for this proposal, due to the existing dwelling's height and the minor nature of the proposed works.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act. In this regard, the applicants written request has adequately identified that there are sufficient environmental planning grounds to justify breaching the development standard as required by cl 4.6(3)(b). Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

#### **Clause 4.6 (4)(a)(ii) (Public Interest) assessment:**

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

*(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out*

#### **Comment:**

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

#### **Objectives of development standard**

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the MLEP 2013 are:

(1) The objectives of this clause are as follows:

*a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*

Comment:

The proposal involves the construction of a Vergola louvred roof system, which will be attached to the first floor terrace of the existing dwelling. The existing first floor terrace is partially covered by a pergola structure that sits above Council's maximum building height control. The proposed structure is set below the existing ridge height, and is consistent with the overall building height of other comparable developments in the immediate vicinity. Additionally, the proposed development will not be readily visible within the localised streetscape due to its substantial setback (32.11m) to the street. Overall, the proposal has no unreasonable impact on the visual impact of the dwelling from the street, and retains the character of the development in the context of the streetscape and its locality.

*b) to control the bulk and scale of buildings,*

Comment:

The proposed structure is relatively minor by nature and does not involve the construction of any additional floor space. As such, the proposed floor space ratio development standard that controls bulk and scale, will be unaltered by these works. Additionally, the proposed works are within the established setbacks of the existing dwelling and does it involve the removal of any soft landscaped areas, therefore, demonstrating the proposal does not add unreasonable bulk.

*c) to minimise disruption to the following:*

*(i) views to nearby residential development from public spaces (including the harbour and foreshores),*

*(ii) views from nearby residential development to public spaces (including the harbour and foreshores),*

*(iii) views between public spaces (including the harbour and foreshores),*

Comment:

The proposed structure sits below the existing ridge height and is contained within the established setbacks of the existing dwelling. As such, the proposed development is sited and designed to minimise the disruption of any unreasonable view loss from surrounding public and private places.

*d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*

Comment:

The proposed development is consistent with the requirements of Clause 3.4.1 Sunlight Access and Overshadowing of the Manly DCP 2013.

*e) to ensure the height and bulk of any proposed building or structure in a recreation or*

*environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

Comment:

Not applicable. The subject site is zoned R2 Low Density Residential.

## Zone objectives

The underlying objectives of the R2 Low Density Residential zone are:

- To provide for the housing needs of the community within a low density residential environment.*

Comment:

The proposal retains the existing low density residential use of the site.

- To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment:

Not applicable. The proposal retains the existing low density residential use of the site.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone.

## Mainly Development Control Plan

### Built Form Controls

| Built Form Controls - Site Area: 779.3sqm          | Requirement                               | Proposed | % Variation* | Complies              |
|--|---|----------|--------------|-----------------------|
| 4.1.4.1 Street Front Setbacks                      | 6m  | 19.52m   | N/A          | Yes                   |
| 4.1.4.2 Side Setbacks and Secondary Street Setback | East - 2.45m (based on 8.16m wall height) | 1.83m    | N/A          | No change to existing |
|  | West - 2.63m (based on 8.77m wall height) | 6.31m    | N/A          | Yes                   |
|  | Consistent with prevailing setbacks       | 24.01m   | N/A          | Yes                   |

### Compliance Assessment

| Clause                                | Compliance with Requirements | Consistency Aims/Objectives |
|---------------------------------------|------------------------------|-----------------------------|
| 3.1 Streetscapes and Townscapes       | Yes                          | Yes                         |
| 3.1.1 Streetscape (Residential areas) | Yes                          | Yes                         |
| 3.3.1 Landscaping Design              | Yes                          | Yes                         |
|                                       |                              |                             |

| Clause   | Compliance with Requirements | Consistency Aims/Objectives |
|--|------------------------------|-----------------------------|
| 3.3.2 Preservation of Trees or Bushland Vegetation   | Yes                          | Yes                         |
| 3.3.3 Footpath Tree Planting   | Yes                          | Yes                         |
| 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)  | Yes                          | Yes                         |
| 3.4.1 Sunlight Access and Overshadowing  | Yes                          | Yes                         |
| 3.4.2 Privacy and Security   | Yes                          | Yes                         |
| 3.4.3 Maintenance of Views   | Yes                          | Yes                         |
| 3.4.4 Other Nuisance (Odour, Fumes etc.)   | Yes                          | Yes                         |
| 3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design) | Yes                          | Yes                         |
| 3.5.1 Solar Access   | Yes                          | Yes                         |
| 3.5.3 Ventilation  | Yes                          | Yes                         |
| 3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)  | Yes                          | Yes                         |
| 3.5.5 Landscaping  | Yes                          | Yes                         |
| 3.5.7 Building Construction and Design   | Yes                          | Yes                         |
| 3.5.8 Water Sensitive Urban Design   | Yes                          | Yes                         |
| 3.6 Accessibility  | Yes                          | Yes                         |
| 3.7 Stormwater Management  | Yes                          | Yes                         |
| 3.8 Waste Management   | Yes                          | Yes                         |
| 3.9 Mechanical Plant Equipment   | Yes                          | Yes                         |
| 3.10 Safety and Security   | Yes                          | Yes                         |
| 4.1 Residential Development Controls   | Yes                          | Yes                         |
| 4.1.1 Dwelling Density, Dwelling Size and Subdivision  | Yes                          | Yes                         |
| 4.1.1.1 Residential Density and Dwelling Size  | Yes                          | Yes                         |
| 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)                     | Yes                          | Yes                         |
| 4.1.3 Floor Space Ratio (FSR)  | Yes                          | Yes                         |
| 4.1.4 Setbacks (front, side and rear) and Building Separation  | Yes                          | Yes                         |
| 4.1.5 Open Space and Landscaping   | Yes                          | Yes                         |
| 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)                                 | Yes                          | Yes                         |
| 4.1.7 First Floor and Roof Additions   | Yes                          | Yes                         |
| 4.1.8 Development on Sloping Sites   | Yes                          | Yes                         |
| 5.4.1 Foreshore Scenic Protection Area   | Yes                          | Yes                         |

#### Detailed Assessment

##### **4.1.4 Setbacks (front, side and rear) and Building Separation**

The proposed structure is set back 1.83m from the eastern side boundary. The control requires a minimum side setback of 2.45m based on a wall height of 8.16m. The structure does not protrude

beyond the established eastern side setback of the existing first floor terrace. Additionally, the proposal is relatively minor in nature and will not unreasonably detract the amenity experienced by neighbouring properties.

#### **4.1.7 First Floor and Roof Additions**

The proposed development is for the construction of a Vergola louvred roof system attached to the first floor terrace of the existing dwelling. The proposal reasonably maintains the existing roof form, while staying consistent with the overall scale and character of other comparable developments in the immediate vicinity.

### **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 inconsistent with the principles of Crime Prevention Through Environmental Design.

### **POLICY CONTROLS**

#### **Manly Section 94 Development Contributions Plan**

S94 Contributions are not applicable to this 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;
- Manly Local Environment Plan;
- Manly 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 Development Consent to DA2019/0219 for Alterations and additions to a dwelling house on land at Lot 36 DP 9517, 2 Allenby Street, CLONTARF, subject to the conditions printed below:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

#### 1. Approved Plans and Supporting Documentation

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

##### a) Approved Plans

| Architectural Plans - Endorsed with Council's stamp |          |                 |
|---|----------|-----------------|
| Drawing No.   | Dated    | Prepared By     |
| Sheet 1 - Rev B                                     | 14/02/19 | Vergola Pty Ltd |
| Sheet 2 - Rev B                                     | 14/02/19 | Vergola Pty Ltd |
| Sheet 3 - Rev B                                     | 14/02/19 | Vergola Pty Ltd |
| Sheet 4 - Rev B                                     | 14/02/19 | Vergola Pty Ltd |
| Sheet 5 - Rev B                                     | 14/02/19 | Vergola Pty Ltd |

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

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

#### 2. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) 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);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
  - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - (iii) stating that unauthorised entry to the work site is prohibited.



Any such sign is 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.

- (d) 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 (not being the Council) has given the Council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
    - A. the name and licence number of the principal contractor, and
    - B. the name of the insurer by which the work is insured under Part 6 of that Act,
  - (ii) in the case of work to be done by an owner-builder:
    - A. the name of the owner-builder, and
    - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
  - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
  - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
  - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative Requirement

### 3. **General Requirements**

- (a) Unless authorised by Council:  
Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (j) Prior to the commencement of any development onsite for:
  - i) Building/s that are to be erected
  - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
  - iii) Building/s that are to be demolished
  - iv) For any work/s that is to be carried out
  - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;
 

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

    - (i) Swimming Pools Act 1992
    - (ii) Swimming Pools Amendment Act 2009
    - (iii) Swimming Pools Regulation 2008
    - (iv) Australian Standard AS1926 Swimming Pool Safety
    - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
    - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
  - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
  - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
  - (4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

## FEES / CHARGES / CONTRIBUTIONS

### 4. **Security Bond**

A bond (determined from cost of works) of \$1,000 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au)).

Reason: To ensure adequate protection of Council's infrastructure.

## CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

### 5. **Waste Management Plan**

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

Details demonstrating compliance must be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

### 6. **Compliance with Standards**

The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards.

### 7. **Sydney Water "Tap In"**

The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifying Authority demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

- "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

Reason: To ensure compliance with the statutory requirements of Sydney Water.

## CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

### 8. **Waste Management During Development**

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

Details demonstrating compliance must be submitted to the Principal Certifying Authority.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

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

**Signed**



**Kye Miles, Planner**

The application is determined on 16/05/2019, under the delegated authority of:



**Steven Findlay, Manager Development Assessments**