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**Sent:** 9/03/2020 4:14:58 PM  
**Subject:** Letter of Objection - Application No DA2020/0116  
**Attachments:** Letter of Objection - 129 Upper Clontarf Street Seaforth.pdf;

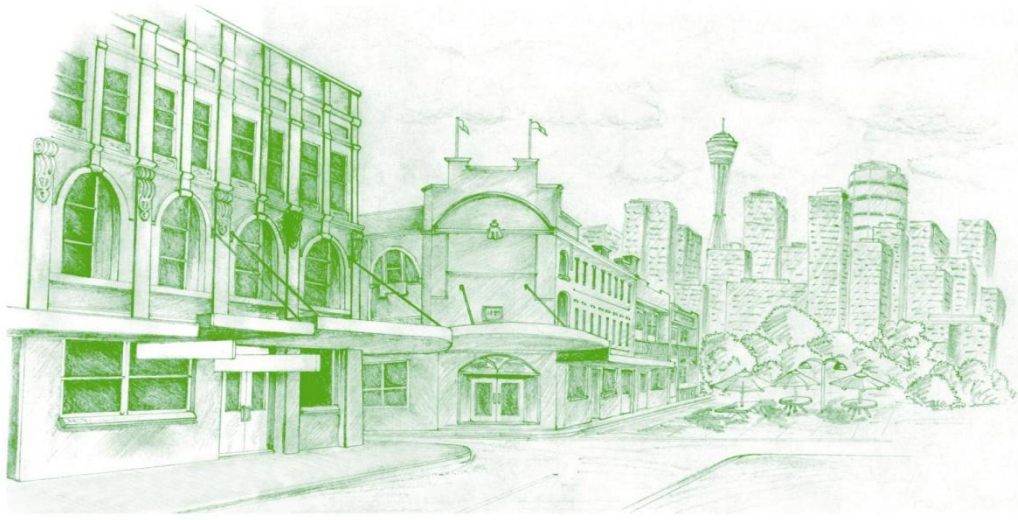
Dear Sir/Madam,

Please find our objections to the Proposed Development DA2020/0116 (See attached). This proposal is a real concern to us and if approved, will have a significant impact on our home. We have worked with Nigel from Planning Direction to help articulate our concerns.

We are open to meet with you personally at our home to discuss our concerns further. Please let me know if you need any further information?

Thanks and Regards

David Simington - Mobile 0407 896 783  
Emma Lane



*Planning Direction Pty. Ltd.*  
*Town Planning & Development Services*

The General Manager,  
Northern Beaches Council

7th March 2020

Att: Gareth David,

**Re: 129 Upper Clontarf Street Seaforth - DA 2020/0116  
Proposed Alterations and additions - Construction of a Pool and  
ancillary works**

Dear Gareth,

I refer to the development application for alterations and additions to a dwelling including a new pool at the above property.

*Planning Direction P/L* has been commissioned by the owners of No 127 Clontarf Street to review the development application and make submission to Council on their behalf.

Documents viewed via Council's internet page includes the survey plan, architectural plans, statement of environmental effects and the landscape plan as provided by the applicant.

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Based on my assessment, I maintain strong objection to the proposal for the following reasons:

### **The subject site and site context**

The subject site is identified as No 129 Upper Clontarf Street, which is legally described as Lot 189 in DP 11162.

The subject site has a distinct site characteristic of being the last accessible house from the northern end of Upper Clontarf Street because of the significant fall in the land to the south.

The subject site presently contains a 3-4 level dwelling located at the rear of the site and accessed via an existing driveway inclusive of a right of way arrangement over No 131 Upper Clontarf Street.



**View from the neighbour's rear yard of the subject dwelling**

The land forward of this dwelling has an appreciable cross fall to the south by up to 6m over a site width of 12.5m.

An array of vegetation exists within this front setback inclusive of rock outcrops. Formal drainage of the property is not known.

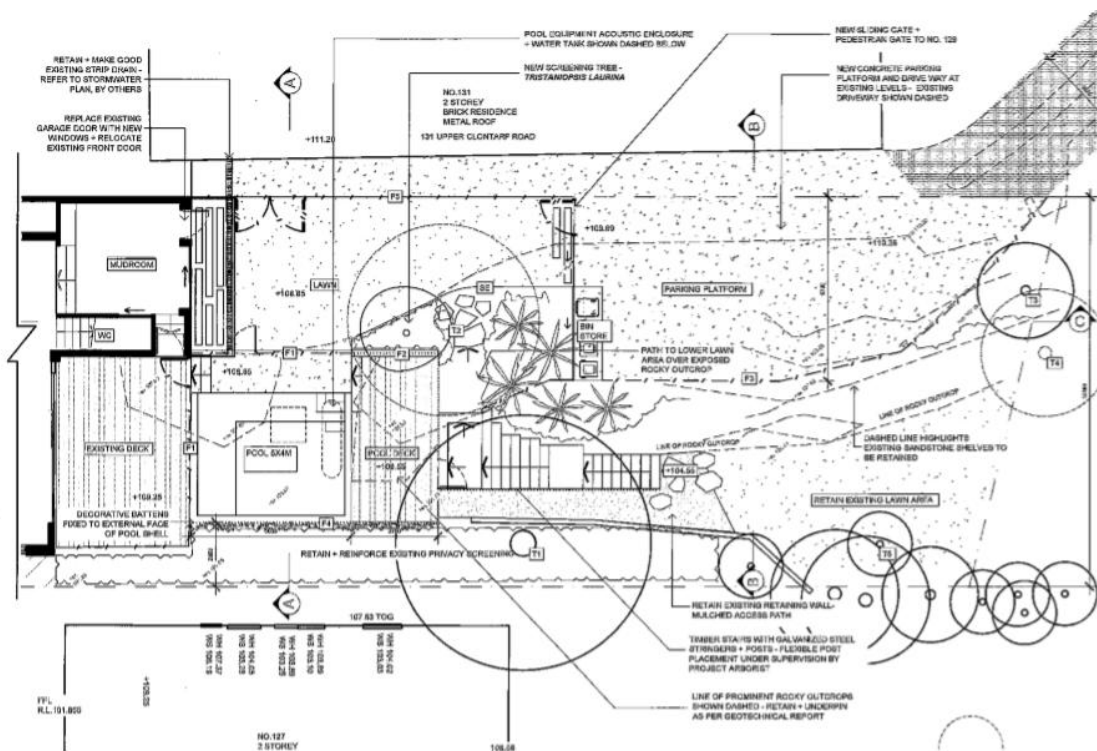
Located to the south is the adjoining property known as No 127 Clontarf Street. This property is the most affected by the proposed works.

No 127 Clontarf Street is situated on the southern side and sits directly below the subject property. The existing dwelling on the subject property effectively towers over the adjoining southern property.

Overshadowing and building bulk are present issues to the adjoining owners.

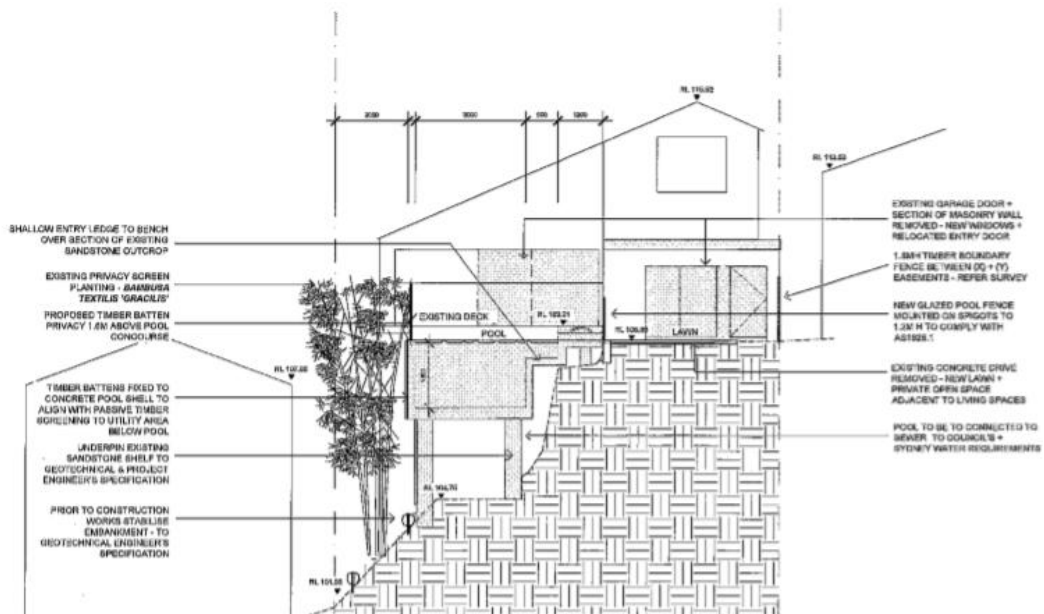
### **The proposal**

The applicant proposes to carry out alterations and additions to an existing dwelling including a new partially above ground swimming pool, timber decking + access stairs and hardstand parking area.



Of particular, relevance to the adjoining owner is the proposed construction of a swimming pool described as being partially above ground adjacent to the existing deck.

Also proposed are new steel/timber pool deck + steps to access lower lawn areas and storage below the dwelling/proposed pool. (quotes extracted from the statement of environmental effects).



The proposed pool is to be built above an existing outcrop with a maximum height to the coping of approximately 4.5m at a setback from the southern side boundary of 2m. The proposed access stairs to the pool deck and proposed retaining walls are also located near the southern side boundary.

The remaining proposed works are situated on the northern side of the subject site and do not contribute to additional impacts from the southern neighbour's point of view.

### **The Council Planning Controls**

The subject site is zoned Low Density Residential pursuant to the Manly Local Environmental Plan 2013 (MLEP 2013).

The proposal is permissible subject to Council assessment and satisfying zone objectives, Clauses of the MLEP 2013 and provisions of the Manly Development Control Plan 2013 to determine acceptability.

A relevant clause of the LEP are as follows:

#### ***Clause 6.2 Earthworks***

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

*(a) to ensure that earthworks and associated groundwater dewatering for which development consent is required will not have a detrimental*

*impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land,*

*(b) to allow earthworks of a minor nature without requiring a separate development consent.*

*(2) Development consent is required for earthworks unless—*

*(a) the earthworks are exempt development under this Plan or another applicable environmental planning instrument, or*

*(b) the earthworks are ancillary to development that is permitted without consent under this Plan or to development for which development consent has been given.*

*(3) Before granting development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters—*

**(a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,**

*(b) the effect of the development on the likely future use or redevelopment of the land,*

*(c) the quality of the fill or the soil to be excavated, or both,*

**(d) the effect of the development on the existing and likely amenity of adjoining properties,**

*(e) the source of any fill material and the destination of any excavated material,*

*(f) the likelihood of disturbing relics,*

*(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*

*(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

**Note.**

*The National Parks and Wildlife Act 1974, particularly section 86, deals with harming Aboriginal objects.*

Comment:

The subject site relative to the adjoining southern site is substantially higher and includes rock outcrops and sloping ground.

The inclusion of a swimming pool in the vicinity of rock outcrops and sloping ground requires geotechnical stabilisation and significant engineering works to secure the footing and weight of an elevated swimming pool. Importantly the location and design of the pool sits directly to the side of the southern neighbouring dwelling.

The extent of works required to secure this pool is significant and concern is raised that if the works are not properly undertaken then major damage to the neighbour's dwelling will eventuate, if not in the short term possible in the long term.

The proposed pool also has the effect of covering over rock outcrops replacing a feature of the natural landscape with built form. The photo below shows informal stabilisation works of the affected rock crop already taken, thus highlighting the precarious circumstance proposed by placing a suspended pool in this location.



**View of existing rock outcrop, stabilisation works and location of pool**

The Manly Development Control Plan (MDCP) 2013 contains more specific design and amenity considerations.

### **3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)**

#### **3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)**

Relevant DCP objectives to be met in relation to these paragraphs include the following:

- Objective 1) To protect the amenity of existing and future residents and minimise the impact of new development, including alterations and additions, on privacy, views, solar access and general amenity of adjoining and nearby properties including noise and vibration impacts.
- Objective 2) To maximise the provision of open space for recreational needs of the occupier and provide privacy and shade.

##### Designing for Amenity

- a) Careful design consideration should be given to minimise loss of sunlight, privacy, views, noise and vibration impacts and other nuisance (odour, fumes etc.) for neighbouring properties and the development property. This is especially relevant in higher density areas, development adjacent to smaller developments and development types that may potentially impact on neighbour's amenity such as licensed premises.
- b) Development should not detract from the scenic amenity of the area. In particular, the apparent bulk and design of a development should be considered and assessed from surrounding public and private viewpoints.
- c) The use of material and finishes is to protect amenity for neighbours in terms of reflectivity. The reflectivity of roofs and glass used on external walls will be minimal in accordance with industry standards. See also Council's Administrative Guidelines regards DA lodgement requirements for materials and finishes.



**View of the private open space area of the adjoining southern property**

The MDCP clearly establishes protocols for appropriate development and the protection of neighbour amenity - objective 1 above.

Such is achieved through careful design, which aims to *minimise loss of sunlight, privacy, views, noise and vibration impacts and other nuisance (odour, fumes etc.) for neighbouring properties and the development property.*

*Development should not detract from the scenic amenity of the area. In particular, the apparent bulk and design of a development should be considered and assessed from surrounding public and private viewpoints.*



The proposed pool, deck and access stairs presents an unacceptable bulk and design, which will significantly impact upon the private open space and living areas on the adjoining southern dwelling.

#### 3.4.1 Sunlight Access and Overshadowing

- Objective 1) To provide equitable access to light and sunshine.
- Objective 2) To allow adequate sunlight to penetrate:  
private open spaces within the development site; and  
private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.
- Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:  
encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and  
maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.

The consideration above, clearly calls for careful consideration in relation to maintaining adequate levels of sunlight to adjoining properties.

The adjoining southern property is already subject to overshadowing given the orientation of the land, the dramatic change in ground level between properties and the sheer bulk of the existing dwelling on the subject site.

Presently the adjoining southern property benefits from solar access penetration. It is evident that the construction of the pool in its proposed location at an equivalent height to the ridge of the adjoining southern property will erode the remaining quality solar access available to the adjoining southern property.

Currently, there is sunlight entering all the first-floor windows from Spring through to Summer and into Autumn. The second-floor windows also get sunlight all year round. Should this proposal be approved, the lower kitchen and bathroom windows will lose direct sunlight all year round. The second floor windows will also receive significantly reduced sunlight.

#### **Kitchen Light**

The kitchen window of the adjoining southern dwelling currently receives sunlight from Spring, through to Summer and Autumn and is a focal

point in the house. The proposed development will greatly reduce natural light getting into the kitchen window. The side of the house currently gets natural light all year round and the path will become darker and the concrete may become susceptible to moss. This is the only external way to get from the front yard to the back of the house.

### **Second Floor Second Bedroom**

The upstairs second bedroom of the adjoining southern dwelling benefits from a north facing window. This currently receives direct sunlight and is used to provide natural light into the room. The proposed pool and deck will effectively remove direct natural light to this room and make it very dark.

The applicant's commentary on overshadowing is not an accurate account of site circumstances and is dismissive of the real issue affecting the southern neighbour.

#### *3.4.2 Privacy and Security*



**View from the main bedroom of the balcony and subject site in the background**



**View from the balcony towards the subject site**

### **Second Floor Bathroom**

The second floor bathroom of the adjoining southern dwelling currently has a clear skylight to get natural light into the bathroom. There is concern that anyone standing on the proposed deck can look into the bathroom because the pool is above the roofline.

### **Second Floor Deck and Man Bedroom**

The second-floor balcony that leads off the main bedroom of the adjoining southern dwelling is currently very private. With this development, the pool deck will provide opportunity for viewing straight down onto this balcony, thereby removing all privacy. The stairs from the pool deck will start above the roofline and have a clear view into the deck as well as straight into the main bedroom because of its elevated position. Anyone walking up the stairs will have a clear vision into the bedroom, meaning that the curtains will need to be closed all the time. Currently, the main bedroom is private and if this development goes ahead all privacy for the main bedroom and deck will be unfairly compromised.

The proposed position of the pool being above the roof means that the pool, pool deck and stairs significantly affect current levels of privacy the southern neighbour presently adjoins.

### **The proposed Deck**

The proposed development and location of the pool deck has the potential to look straight into the front courtyard and upper balcony on the

neighbouring southern property. The pool deck stairs start above the roof line of the southern adjoining dwelling and extends down to ground level that is about 2 metres above the neighbour's front yard. The privacy of the adjoining southern property will be compromised through the use of the access stairs.

The proposal will significantly reduce the current level of privacy enjoyed by the adjoining owners.

## **Noise Concerns**

The use of the pool and new deck has the potential to an increase in noise disturbance. The location of the pool pump under the deck beside the adjoining southern dwelling contributes to potential noise disturbance. The enclosure of the space may direct noise from the pool pump to the south. In addition, will the pool pump be readily accessible for back washing and servicing?

### *4.1.9 Swimming Pools, Spas and Water Features*

See also paragraph 4.1.5 *Open Space and Landscaping*.

Relevant DCP objectives to be met in relation to these paragraphs include:

- Objective 1) To be located and designed to maintain the privacy (visually and aurally) of neighbouring properties and to minimise the impact of filter noise on neighbouring properties;
- Objective 2) To be appropriately located so as not to adversely impact on the streetscape or the established character of the locality;
- Objective 3) To integrate landscaping; and
- Objective 4) To become an emergency water resource in bush fire prone areas.

The above objectives are clearly designed to ensure swimming pools are sensitively located and designed.

#### *4.1.9.1 Height above ground*

- a) Swimming pools and spas must be built on or in the ground and not elevated more than 1m above natural ground level. Consideration of any exception to exceed the height above ground must demonstrate that any swimming pools and/or spa and their curtilage and/or concourse more than 1m above natural ground level:
  - i) would not detract from the amenity or character of the neighbourhood; and
  - ii) is a minimum distance from any side boundary equivalent to the height of the

swimming pools and/or spa and their curtilage and/or concourse at any point above existing ground level.

#### *4.1.9.2 Location and Setbacks*

See also paragraph 4.1.4.5 *Foreshore Building Lines* and paragraph 4.1.4.6 *Setback* adjacent LEP Zones RE1, RE2, E1 and E2.

The proposed location is a significant and elaborate structure, which is suspended above the existing ground level by 4.5m.

This structure and associated deck and access stairs will be prominent when viewed from the neighbour's property and will significantly alter the natural landscape. Currently, the southern neighbours have an outlook to a nature rock wall and vegetation on the subject site - No 129 Upper Clontarf Street.

The pool would need a minimum 4.5m setback from the side boundary to alleviate impacts as per the control.



### **Conclusions**

The proposed pool, deck and access stairs are inappropriate, excessive and give rise to unacceptable levels of privacy loss and overshadowing impacts.

The proposed reliance on vegetation to be used as screening is inappropriate given that solar access is limited within this space and rock

foundations dominate the landscape. In addition, the reliance on landscaping to screen the development highlights the inappropriateness of the proposal.

A solution to the issue would be to remove the pool, deck and access stair from the application. No objection would be raised to the location of the pool on the northern side of the site.

It would appear that the application has been prepared in isolation and with little regard to neighbour amenity.

The proposal effectively borrows amenity from the adjoining southern property to achieve its goals.

The proposal is an overdevelopment of a site, which is already constrained and the proposed pool and associated works will be a significant impost to the adjoining southern neighbour.

A more sympathetic development of the site needs to be considered.

The application fails the test of reasonability as established by MDCP controls and should be refused or modified as recommended above.

Yours Sincerely

A handwritten signature in black ink that reads "Nigel White". The signature is written in a cursive, flowing style.

Nigel White  
Bachelor of Applied Science (Environmental Planning)