

28 February 2021

Northern Beaches Council
PO Box 82
Manly NSW 1655

**RE: SECTION 8.2 REVIEW OF DETERMINATION
STATEMENT OF ENVIRONMENTAL EFFECTS: ALTERATIONS AND ADDITIONS
TO A DWELLING HOUSE INCLUDING A SWIMMING POOL
129 UPPER CLONTARF STREET, SEAFORTH (DA2020/0884)**

1.0 INTRODUCTION

On 15 December 2020 the development application (DA2020/0884) was refused by the Development Determination Panel (DDP). This request for review is made pursuant to Section 8.2(1)(a) of the Act and is to be read in conjunction with the following amended plans prepared by Space Landscaping.

The application was refused for the following reasons:

1. *Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.4.2 Privacy and Security of the Manly Development Control Plan .*
2. *Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.8 Development on Sloping Sites of the Manly Development Control Plan.*
3. *Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.9 Swimming Pools, Spas and Water Features of the Manly Development Control Plan.*
4. *Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.4.5 Earthworks(Excavation and Filling) of the Manly Development Control Plan.*

The changes to the pool design are as follows:

- Reduction in pool size to increase the southern side setback an additional 1m from the previous design. The pool is now 4.3m from the southern side boundary.
- Deleted the associated decking.
- Reduced the wall height to the southern elevation to 2.5m to ensure that the pool sits on natural ground level and does not create an undercroft.
- Reconfiguration of the pool shape to limit the need for excavation. No excavation is proposed to the rock outcrop with the shallow end to be cantilevered over the rock. The only excavation required will be to the existing driveway and soil underneath the existing stairs.

2.0 BACKGROUND

This review of determination represents the third iteration of the proposed swimming pool. The pool and associated decking was conditioned to be deleted as part of the consent for DA2020/0116 which approved alterations and additions to the dwelling. A separate DA (DA2020/0884) was lodged for the swimming pool, which was recommended for approval and subsequently overturned by the DDP, and it is this application we are seeking a review of determination.

The applicants have taken a conciliatory approach with regard to the proposed swimming pool and have amended the design at every step to ensure amenity and environmental impacts are minimised. The applicants have taken the advice from Council from the approved application (DA2020/0116) which deleted the pool as part of the conditions of consent. A scheme was presented with a subsequent application which was recommended for approval only to be overturned by the DDP. In that regard, it is considered that the further amendments made, as detailed in the plans provided, result in a scheme that is an even greater outcome, above the scheme that was recommended for approval.

We note that Council had suggested that the pool be relocated further to the north however this is not achievable due to the land being subject to an easement and the owner of the neighbouring property would like to maintain pedestrian access and separation of the pool from the bedrooms of their children.

This submission addresses the stated reasons for refusal and demonstrates that the amended development appropriately addresses such issues, satisfies the controls and

desired outcomes of the applicable planning regime, as they are reasonably applied to development on the subject site, succeeds on merit and is appropriate for the granting of consent.

Accordingly, we request that Council review its determination on the basis of the amended plans and justification detailed in the submission and grant approval to the amended development as proposed.

3.0 SECTION 8.2 ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

Section 8.2 of the Act, as it relates to the current application, provides that the applicant may request Council's review of its determination of a development application within 6 months of the date of determination, other than for complying development, designated development, integrated development or an application made by the Crown.

This application requests Council review a determination made on 15 December 2020. The State Government enacted changes to the appeal and review legislation in response to the Covid-19 pandemic which doubled the review of determination period from 6 months to 12 months. As such, this application has the ability to be assessed within 12 months of the refusal date. The development is not complying development, designated development, integrated development or made by the Crown.

There are no regulations associated with the review of determination other than the regulation relating to the prescribed fee.

Section 8.2 (4)(c) of the Act requires a consent authority to be satisfied the amended application is substantially the same development as referred to in the original application. The proposed development has been amended as detailed in section 1.0 of this submission with such amendments of a relatively minor nature in the context of the development as whole. The amendments have been made to address specific concerns raised by the Council in its reasons for refusal.

As such, Council can be satisfied that the amended submission is substantially the same as the development referred to in the original application. As such there is no statutory impediment to the making and determination of this application.

3.0 CLAIM FOR REVIEW

Having regard for the stated reasons for refusal of the application we respond as follows:

1. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.4.2 Privacy and Security of the Manly Development Control Plan .

Response: The objectives of clause 3.4.2 in the DCP are as follows:

- Objective 1) To minimise loss of privacy to adjacent and nearby development by:*
- *appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings;*
 - *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

The swimming pool has been further increased the side setback to the southern boundary to 4.3m. This is an additional 1m setback from the previous scheme. The increase spatial separation allows for greater acoustic and visual privacy coupled with the existing dense bamboo landscaping along the southern boundary providing additional screening ensuring that any adverse privacy impacts are mitigated. We note that the assessment report considered a 3m side setback between the pool and adjoining properties “adequate physical separation to ensure reasonable acoustic privacy between residential properties...”.

In addition to the increased physical distance, decking has been deleted from the pool design and the entry points and walkways to the pool have been located at natural ground level. No walkways exist along the southern boundary of the pool to ensure the design does not introduce any new privacy impacts to neighbouring properties. We note that the entire area of the pool area is contained within an existing driveway and in place of an existing staircase with extended landings. The pool in place of these two structures will actually reduce the ability for overlooking to neighbouring property of 127 Upper Clontarf Street as when any persons is using the pool their eye level will be between 1m – 1.8m lower than existing eye level and the pool coping will provide a visual barrier which limits impacts to visual privacy while swimming. Currently the existing driveway and staircase provide opportunity for some overlooking given the steep topography of the land. The new development will reduce the opportunity for overlooking from this area of the property.

- Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.*

The shadow diagrams demonstrate compliance with clause 3.4.1 of the DCP with regard to solar access. The proposed development will not result in any additional overshadowing to the private open space area or living room windows of the adjoining properties to the south. The access to air is not compromised with the proposal.

Objective 3) To encourage awareness of neighbourhood security.

Adequate security is afforded to the subject site.

It is considered that the revised swimming pool with regard to its size and location allow for adequate visual and acoustic privacy to be maintained to adjoining properties and satisfies the provisions of this clause.

2. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.8 Development on Sloping Sites of the Manly Development Control Plan.

Response: The application is accompanied by a geotechnical report which is considered to satisfy the objectives of the control with regard to the proposed development. The report concludes that the swimming pool is acceptable with regard to risk and is anticipated that the recommendations of the report are including in the conditions of consent.

Clause 4.1.8 also has the following requirements:

1. *The design of development must respond to the slope of the site, to minimise loss of views and amenity from public and private spaces.*
2. *Developments on sloping sites must be designed to:*
 - i) *generally step with the topography of the site; and*
 - ii) *avoid large undercroft spaces and minimise supporting undercroft structures by integrating the building into the slope whether to the foreshore or a street.*

The pool is proposed to sit on top of the existing rock outcrop and has been amended to further limit the required excavation and that the existing rock outcrop will not require any excavation. The existing rock outcrop forms a natural undercroft area, as shown on the images below. The swimming pool itself is not creating an undercroft area and has been designed to integrate with the existing rock outcrop. Stone cladding to the pool provides for greater integration with the character of the rock outcrop. It will also reduce any potential visual impact associated with the pool. The increase to the setback to the southern boundary allows the pool to not overhang the rock outcrop considerably so that it remains a landscape feature.



Figure 1: *Rock Outcrop forms a natural undercroft.*



Figure 2: *Rock outcrop*



Figure 3: Existing staircase built on the rock outcrop.

We note that the existing staircase does create an unnatural undercroft area in its present form. The proposed pool will create a natural sandstone wall in its place to connect the two rocky outcrops and integrate with the natural landscape features more effectively. The visual impact will be a continuation of the extended rock outcrop that runs along the entire property. This will remove an existing an unnatural undercroft space. The proposed pool development has been designed to step with the topography of the site and take advantage of a natural recess in the dominant rocky outcrops. The pool RL starts 30-60cm below natural ground level on the north side (street level) which allows the pool to sit on the natural ground on the south side. The lands natural contours have been used to determine the wading area, shallow end and deep end of the pool. The pool wall has been designed to finish at the point of the slope just before the land falls away more steeply so to avoid any undercroft structure. The height of the pool is within 10cm of the top of the rock outcrop. The resulting visual impact from beneath the pool will be the appearance of the two protected rock outcrops and a continuation of the natural cliff face that dominates this unique site.

The pool scheme has been further reduced from the previous refusal and, in that regard there is no significant adverse amenity impacts with respect to views, privacy or overshadowing. We note that the assessment report considered the previous pool acceptable with regard to these requirements of the DCP control.

3. *Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.9 Swimming Pools, Spas and Water Features of the Manly Development*

Control Plan.

Response: Clause 4.1.9 of the Manly DCP 2013 requires pools be no higher than 1m above natural ground level. Consideration of any exception to exceed height above ground must demonstrate that any swimming pools and/or spa and their curtilage and or concourse more than 1m above ground would not detract from the amenity or character of the neighbourhood and is a minimum distance from any side boundary equivalent to the height of the swimming pool at any point above existing ground level.

The current scheme has been further reduced which in turn has further reduced its elevation above ground from a maximum of 3.9m above ground to a maximum of 2.5m above ground. The setback from the southern boundary was also increased from 3.3m to 4.3m. The result is the proposed pool meets the criteria for exception to exceed height above ground. The assessment report determined that the previous pool was acceptable on merit. Considering that the pool has been reduced in scale and its projection above ground further reduced to meet the DCP criteria for merit consideration, it is anticipated that the current scheme would be considered worthy on merit also.

The objectives of the clause are as follows:

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;

Despite the non-compliance with the numerical control, the swimming pool does not raise any significant adverse impact with visual or acoustic privacy. This is achieved by increasing the setback to the southern boundary to provide appropriate spatial separation to ensure that the neighbouring dwelling maintains a reasonable level of visual and acoustic privacy. The entire western, northern and eastern edge of the pool finishes < 60cm from natural ground level where pedestrian access is currently freely available. The entire southern edge of the pool which is raised above ground level has no walkways to avoid creating any privacy impacts. Given the site constraints, the height above ground is warranted in order to integrate the pool with the existing landscape.

Objective 2) To be appropriately located so as not to adversely impact on the streetscape or the established character of the locality;

The swimming pool will not be discernible from the street. No impact to the existing streetscape character.

Objective 3) To integrate landscaping; and

Landscaping treatments are proposed to surround the swimming pool with stone cladding to the southern elevation to integrate with the rock outcrop feature. The landscaping treatment proposed, together with the existing dense bamboo screening along the southern boundary, mitigate any visual impact concerns associated with the development.

Objective 4) To become an emergency water resource in bush fire prone areas.

The site is not mapped as bushfire prone however the swimming pool could be utilised as a water resource in an emergency.

Having regard for the above objectives, it is considered that the proposed swimming pool meets the objectives of this control in the MDCP.

4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.4.5 Earthworks (Excavation and Filling) of the Manly Development Control Plan.

The objective of the clause are as follows:

Objective 1) To retain the existing landscape character and limit change to the topography and vegetation of the Manly Local Government Area by:

- *Limiting excavation, “cut and fill” and other earthworks;*
- *Discouraging the alteration of the natural flow of ground and surface water;*
- *Ensuring that development not cause sedimentation to enter drainage lines (natural or otherwise) and waterways; and*
- *Limiting the height of retaining walls and encouraging the planting of native plant species to soften their impact.*

The current design has reduced the need for any significant excavation into the rock outcrop. The design of the shallow end of the pool has been cantilevered to sit above the rock outcrop to limit any need for excavation. The only excavation required will be adjacent to the driveway and the soil underneath the existing staircase. It is envisaged that excavations through sandy soil can be carried out with a bucket and excavations through rock will require grinding or rock sawing/breaking. Possible vibrations through sandy soil will be below the threshold limit for building damage. A dilapidation report for the adjoining upper neighbour is recommended.

A geotechnical report is provided with this application which goes into detail about the proposed works, excavation and provides recommendations for construction.

We note that both the both the referrals from Council's development engineers with respect to DA2020/0116 and DA2020/0884 raised no objections to either proposal subject to recommendations provided within the previous geotechnical reports. It is anticipated that the current geotechnical report recommendations will form part of the conditions of consent, should this review of determination be approved.

4.0 CONCLUSION

This submission demonstrates that the amended plans appropriately address the reasons for refusal of the original application. Having given due consideration to the relevant matters pursuant to section 4.15(1) of the Act it has been demonstrated that the proposed development, as amended, succeeds on merit and is appropriate for the granting of consent.

Please do not hesitate to contact me to discuss any aspect of this submission.

Yours sincerely



Greg Boston
Director

Boston Blyth Fleming Pty Limited

