

20 September 2021

Northern Beaches Council
PO Box 82
Manly NSW 1655

Report – Statement of Modification DA2020/0116

Section 4.55 (1a) Application 129 UPPER CLONTARF STREET, SEAFORTH
For DA2020/0116

Site description:

The site is known as 129 Upper Clontarf Street, Seaforth or Lot 189, D.P. 11162. The site is located on the western side of Upper Clontarf Street. The site is irregular in shape with an area of 531.1m². The site is located on the edge of a sandstone ridge with cross-fall slope of approximately 29 degrees. The front setback contains large rock outcrops, trees and turf area. Currently the site contains a multi storey single dwelling positioned at the rear of the site. Vehicle access is via a driveway from Upper Clontarf Street which is subject to a right of carriageway easement with adjoining neighbour at number 131.

Property 129 Upper Clontarf Street is the last lot on upper Clontarf street before the topography drops off via a dramatic 6 meter cliff. The property itself does not have a frontage to the street and is only accessible via a right of carriageway through the front setback of 131 Upper Clontarf Street. The property itself would be classed as a battle-axe block due to access via a laneway.

Site history:

The approved works under DA2020/0116 provide a parking platform for 129 Upper Clontarf Street which substantially reduces the area of the right of carriageway which is necessary for vehicle access to the property and the area is limited to the carriageway in the front setback of 131 Upper Clontarf Street. Property 131 no longer uses the right of carriageway for vehicle access and has a parking platform at the front of their property. They have renovated the previous garage more than 20 years ago and have included pedestrian glass doors so vehicle access is no longer available by the historical right of carriageway and a pool room is in the place of a previous garage. The property 131 Upper Clontarf Street has used the exempt development code to provide for parking at the front of their property. The property also has an approved development consent for a carport at the frontage of the property. In short, the entire side boundary of both property 129/131 are no longer dependent on the right of carriageway for

vehicle or pedestrian access and each property has appropriate vehicle and pedestrian access without using the right of carriageway along the side boundary. This is a mutual and reciprocal written agreement between the property owners.

The approved works under DA 2020/0116 also provided for a new access staircase for the lower backyard from the upper lawn area and internal renovations.

DA2020/0116 was approved with the following conditions:

The following amendments are to be made to the approved plans: a) The proposed pool, screening and associated decking located adjacent to the southern boundary do not form part of this application and shall be deleted from all plans. b) The proposed fence located on the northern boundary shall have a maximum height of 1.5m. c) The proposed fence located on the northern boundary shall have a maximum length of 10.0m when measured from the rear wall of the proposed mudroom. d) The proposed gate in located on the northern boundary, adjacent to the proposed awning shall be 1.6m in width

Conditions b, c,d were conditions at the written request of the previous owners of 129 Upper Clontarf St, Seaforth and they were conditions that were required in order for them to grant consent for the proposed works.

In REV2021/0011 a swimming pool was approved for construction. This approval includes a pool which does cross over the historical right of carriageway and consent for the development was provided by the owners of 131 Upper Clontarf St, Seaforth.

Summary of modification to development consent:

The proposed Section 4.55 application seeks to;

(1) Remove the conditions of consent for:

- b) The proposed fence located on the northern boundary shall have a maximum height of 1.5m.*
- c) The proposed fence located on the northern boundary shall have a maximum length of 10.0m when measured from the rear wall of the proposed mudroom.*
- d) The proposed gate in located on the northern boundary, adjacent to the proposed awning shall be 1.6m in width*

Reason: The proposed conditions were requested by the Owners of 131 Upper Clontarf Street in a letter addressed to council. At the time of our Development Application the owners were selling

their property. The new owners of 131 Upper Clontarf Street Seaforth do not agree to these conditions and have raised a request for us to have a fence along the side boundary behind their building line to a height of 1.8m. They have requested this under the Dividing Fences Act. We are able to achieve this via the Dividing Fences Act as due to the changes made to both properties neither house is dependant on the side boundary right of carriageway for either vehicle or pedestrian access. For this reason we are asking the conditions relating to fencing to be removed from the property. We understand this still means the development consent will only provide fencing for halfway up the property as per the original plans but we are comfortable to then rely on the Dividing Fences Act for any additional fencing needs. A letter of consent to remove these conditions has been provided by the owners of 131 Upper Clontarf Street, Seaforth.

Relocation of the Staircase:

The staircase location has been proposed to be moved back by approximately 7m to run off the existing deck off the properties ground floor living area. This will provide for access to the lower yard.

Reason:

To improve neighbour amenity.

This relocation is at the request of 127 Upper Clontarf street as they believe this relocation will provide them with more privacy and more light to their private open space. A letter to this effect has been attached to the application.

The request for these changes has been made with due to consideration to the following planning instruments; • The Environmental Planning and Assessment Act, 1979 •

Manly Local Environmental Plan, 2013 •

Manly Development Control Plan 2013 (Manly DCP)

Manly DCP 3.4.2 Privacy and Security

The existing conditions of development consent concerning fence height and fence length adversely impact the privacy of both property 129 and 131 Upper Clontarf Street and prevent the owners of both these properties making use of the Dividing Fences act. The conditions themselves do not facilitate access through the right of carriageway as both of the property's developments have removed the need for side boundary access to the right of carriageway. The condition in relation to minimum gate width adversely impacts security of both properties and this is not necessary to facilitate access to either property. Consent has been provided by both property 129 and 131 to remove these conditions to restore both property owners rights to make use of the SEPP and Dividing Fences Act to continue the fence length and height beyond what is approved here if they wish to do so in the future.

The repositioning of the stairs support the visual privacy of 127 Upper Clontarf Street and prevent overlooking over their private open space and the master bedroom. This change is at the request of the owners of 127 Upper Clontarf Street, Seaforth to provide privacy.

4.1.10 Fencing of the Manly Development Control Plan 2013.

Freestanding walls between the front street boundary and the are to be no more than 1m high above ground level at any point.

Reason for compliance:

129 and 127 Upper Clontarf Street do not have a public road at the frontage of the property. Clause 3.3 of the Housing Code states: A battle-axe lot has 3 side boundaries and 1 rear. The proposed fence height of 1.8m is compliant with both SEPP and Manly DCP in terms of height for side boundary fences. The proposed fence does not extend beyond the building line of 131 Upper Clontarf Street. The reason the fence is both above 1m in height and in front of the building line of 129 Upper Clontarf Street is due to the location of the house at the rear of the site. The house has been positioned in this location to accommodate view sharing and due to the access via a right of carriageway through the front of 131 Upper Clontarf street. This is due to the lack of any public road access for 129 and 127. For this reason the proposed fencing meets the control without the nominated condition of consent.

Conclusion

This submission demonstrates that the amended plans and conditions meet all controls in the Manly DCP. All the changes are made with neighbour amenity in mind and are in direct response to neighbour requests. The attached letters of consent outline there are no concerns from neighbouring properties.

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

Yours sincerely

Rowena and Justin Caruana

