

## REVIEW OF DETERMINATION ASSESSMENT REPORT

<b>Application Number:</b>	REV2021/0011
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<b>Responsible Officer:</b>	Jordan Davies
<b>Land to be developed (Address):</b>	Lot 189 DP 11162, 129 Upper Clontarf Street SEAFORTH NSW 2092
<b>Proposed Development:</b>	Review of Determination of Application DA2020/0884 for alteration and additions to a dwelling house including a swimming pool
<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>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Justin Paul Caruana Rowena Mary Caruana
<b>Applicant:</b>	Justin Paul Caruana

<b>Application Lodged:</b>	26/03/2021
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	02/04/2021 to 16/04/2021
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 90,000.00
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### **Executive Summary**

This application is a Review of Determination of a previous application DA2020/0884 that was refused by the Development Determination Panel at the meeting of 9 December 2020. The proposal is for alterations and additions to a dwelling house to construct a swimming pool.

This review of determination is accompanied by amended plans which have changed the design footprint, setback and configuration of the swimming pool in response to the reasons for refusal of the DDP and to further integrate the pool into the existing rock outcrops and topography of the site. The amended plans and documentation submitted with this Review of Determination have been considered

against the reasons for refusal of DA2020/0884 later within this assessment report and it is concluded that the reasons for refusal have been adequately addressed by amended plans and the proposal has demonstrated compliance with the relevant controls within the Manly DCP which were raised as reasons for refusal of DA2020/0884.

The application was notified for a period of 14 days and one (1) public submission was received objecting to the proposal, the concerns included the amenity impacts of the proposed pool (overshadowing, visual and acoustic privacy) and the scale of the proposed development. The contents of the submissions are summarised and addressed within this assessment report and the full public submission is available for the Panel's consideration.

Overall, the proposed development is considered to meet the key development controls of the Manly DCP and Manly LEP the plans amended in a satisfactory way to respond to the reasons for refusal of DA2020/0884. Therefore, the proposed development is recommended for approval to the Development Determination Panel subject to the conditions outlined within this assessment report.

## **PROPOSED DEVELOPMENT IN DETAIL**

The proposed development is for the construction of a swimming pool, associated pool fencing and associated concourse around the edge of the pool.

## **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**

Environmental Planning and Assessment Act 1979 - Section 8.3 - Environmental Planning and Assessment Act 1979 - Section 8.3

Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 3.9 Mechanical Plant Equipment

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

Manly Development Control Plan - 4.1.8 Development on Sloping Sites

Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 189 DP 11162 , 129 Upper Clontarf Street SEAFORTH NSW 2092
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the western side of Upper Clontarf Street. Upper Clontarf Street is a partially unformed road located above Clontarf Street to the south.</p> <p>The site is irregular in shape with a frontage of 12.52m along Upper Clontarf Street and a depth of 43.84m. The site has a surveyed area of 531.1m<sup>2</sup>.</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a three-storey dwelling positioned to the rear of the site. The site has vehicular access via an existing driveway from Upper Clontarf Street to an existing single garage to the front of the existing dwelling. This driveway is subject to a right of carriageway easement with the adjoining neighbour at No.131 Upper Clontarf Street. The driveway area is subject to change via the works associated with the approved application DA2020/0116, which is to enclose the existing garage and create an open car parking area at the site entrance.</p> <p>The site slopes steeply down from the northern to southern side boundary with a fall of approximately 6.0m.</p> <p>The site contains large rock outcrops, canopy trees and a grassed lawn area within the front setback .</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by one and two storey detached dwelling of varying architectural styles.</p>

Map:



## SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

- **DA62/2008** – Alterations and additions to dwelling including new deck, rendering cladding and refurbishment of carport – Approved May 2008
- **DA161/2017** - Alterations and additions to the existing dwelling house - Approved 05/09/2017
- **PLM2019/0264** - Pre-lodgement advice - Alterations and additions to the dwelling house - December 2019
- **DA2020/0116** - Alterations and additions to an existing driveway, parking area, swimming pool and ancillary works - Approved 21 May 2020. A condition of consent was imposed to delete the proposed swimming pool and decking, which read as follows:

### 9. Amendments to the approved plans

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.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

- **DA2020/0884** - Alterations and additions to a dwelling house including a swimming pool. This application was submitted to seek approval for the swimming pool which was in the general area of the proposed swimming pool under DA2020/0116 which was deleted via condition. The proposed design of the swimming pool increased the setback to 3.3m from previously proposed 2.05m and reduced the size of the decking to the eastern edge of the pool. This application was subsequently refused by the Development Determination Panel on 9 December 2020. The reasons for refusal were 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.*

*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.*

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

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

In accordance with Section 8.3 of the Act, an applicant may request Council to review a determination of a development application, other than for a complying development, integrated development, designated development or a determination made by Council in respect to an application by the Crown. The development application does not fall into any of these categories, therefore the applicant may request a review.

As the determination was made within the 'prescribed period' as outlined in Division 8.10 (1)(b), a request for the review must be made and determined within 12 months after the date of determination of the development application. The application was determined on 9 December 2020 and the notice of determination was issued on 9 December 2020. The review was lodged on 26 March 2021 and is to be considered by the DDP on 26 May 2021, which is within 12 months of the date of determination.

Section 8.3 (3) provides that the Council may review a determination if in the event that the applicant has made amendments to the development described in the original application, the consent authority is satisfied that the development, as amended, is substantially the same as the development described in the original application.

The amendments to the proposal are outlined in the 'Detailed Description of Works' section of this report.

A review of the original and amended plans has found that there are fundamental similarities between

the original and the amended design (being subject of the 8.3 review) and the nature of the intended land use remains the same. Accordingly it is concluded that the amended scheme is substantially the same as the original proposal. Accordingly, it is considered that the proposal satisfies the requirement of Section 8.3 (3) of the Act.

## **Assessment of Reasons for Refusal DA2020/0884**

### **How has the 8.2 Application Responded to The Reasons for Refusal?**

The applicant has amended the proposal and has provided additional information. Consequently, the Reasons for Refusal of DA2020/0884 that are stipulated in the Notice of Determination are examined below to determine if they remain applicable or should be overturned:

#### ***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.***

Comment: The proposed development has deleted all additional elevated decking from the proposal and has increased the pool setback from 3.3m to 4.3m. A detailed assessment regarding visual and acoustic privacy has been undertaken later within this assessment report, which concludes there will not be an unreasonable impact as a result of the changes resulting from the amended design. The applicant has clearly indicated that the stairs to the east of the pool are approved under DA2020/0116 and are included on the construction certificate issued for that approval. There are no further changes to the approved staircase design which would result in additional privacy and overlooking impacts.

Consequently, it is recommended that this reason for refusal should not be maintained following the detailed assessment of the amended plans and documentation submitted with the application.

#### ***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.***

Comment: The previous proposal included a substantial undercroft area and the pool did not integrate into the landform in a satisfactory way and was therefore inconsistent with the control. The proposed amended pool design does not result in an undercroft area. The proposed design of the pool involves in-filling between existing rock outcrops and cantilevering portions of the pool over the existing rock outcrops, as shown in the submitted plan, to nestle the pool between the rock outcrops. The section of pool between the rock outcrops is proposed to be treated with a sandstone finish to integrate the building form into the topography of the site and soften the appearance of the structure as viewed from the adjoining property. The proposal is considered an appropriate response to the site topography and constraints of the sloping site.

Consequently, it is recommended that this reason for refusal should not be maintained following the detailed assessment of the amended plans and documentation submitted with the application.

#### ***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.***

Comment: This proposed amended plans submitted with the review application have been considered against the requirements of the control. It is understood that the previous design did not comply with the control for swimming pools as the swimming pool design included a large undercroft area that would result in a visual impact for the adjoining properties and did not integrate into the landform. However, as

described above, the amended design deletes this undercroft area and the proposal is considered against control 4.1.9 below.

The DCP controls require that Swimming pools and spas must be built on or in the ground and not elevated more than 1m above natural ground level. The proposed pool is partially in-ground (at the northern edge) and protrudes up to 2.4m above the existing ground level at the southern edge due to the topography of the land and location between the existing rock outcrops.

However, the DCP provides that consideration of any exception to exceed the height above ground must demonstrate that any swimming pools and their curtilage and/or concourse more than 1m above natural ground level demonstrate the following:

*i) would not detract from the amenity or character of the neighbourhood; and*

Comment: The swimming pool is not visible from the streetscape and therefore does not have an impact on the 'character of the neighbourhood' or streetscape more widely. However, the swimming pool is partially visible from the southern neighbouring property (however the views to area of the proposed swimming pool are heavily screened by existing vegetation) and this is considered in regards visual impact and impact upon amenity (visual privacy/acoustic privacy and overshadowing). For the reasons outlined later within the report, the proposed pool is not found to have an unreasonable impact on solar access, visual privacy or acoustic privacy for the adjoining properties. As discussed under control 4.1.8 the proposal has been designed with regard to the site topography and integrated into the existing rock outcrop. The undercroft area has been deleted from the proposal. Therefore, the proposal is considered to achieve this requirement and does not have an unreasonable impact on adjoining properties or the wider locality.

*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.*

Comment: The maximum height of the pool is 2.4m, as measured to the top of the pool concourse. The pool is setback 4.3m from the southern boundary and complies with this requirement, exceeding the control.

Consequently, it is recommended that this reason for refusal should not be maintained following the detailed assessment of the amended plans and documentation submitted with the application.

***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.***

Comment: The above referenced control requires the following:

*a) Earthworks must be limited to that part of the site required to accommodate the building and its immediate surrounds to protect significant natural features of the site including vegetation and prominent rock outcrops.*

The previous design proposed a more substantial impact to the existing rock outcrops, thus being inconsistent with the control. The amended design submitted with this review has a more sensitive approach, which places the pool between the rock outcrops and cantilevers the edge of the pool over portions of the rock outcrop, rather than excavating into the rock. Therefore, the proposal meets the requirements of the control by limiting excavation of prominent rock outcrops. This is also discussed in detail under controls 4.1.8 MDCP Development on Sloping Sites.

Consequently, it is recommended that this reason for refusal should not be maintained following the detailed assessment of the amended plans and documentation submitted with the application.

## 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 from 02/04/2021 to 16/04/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Mr David Stuart Simington	127 Upper Clontarf Street SEAFORTH NSW 2092

The following issues were raised in the submissions and each have been addressed below:

- Visual and acoustic privacy and overlooking from the proposed pool and staircase to the east of the pool. Overlooking into the adjacent bedrooms and open space to the east of the dwelling on 127 Upper Clontarf Street.
- Overshadowing resulting from the development.
- Noise from pool pump
- Height and scale of the proposed pool and resulting visual impact as viewed from 127 Upper Clontarf Street.
- The pool augments the natural site features and rock outcrops, which is inconsistent with the DCP controls for landscape design.

The matters raised within the submissions are addressed as follows:

- *Visual and acoustic privacy and overlooking from the proposed pool and staircase to the east of the pool. Overlooking into the adjacent bedrooms and open space to the east of the dwelling on 127 Upper Clontarf Street.*

Comment:

A detailed discussion is undertaken later within this assessment report regarding visual and acoustic privacy, under control 3.4.2 MDCP. The proposal is found to not have an unreasonable impact for the reasons described under this assessment.

- *Overshadowing resulting from the development.*

Comment:

A detailed discussion is undertaken later within this assessment report regarding overshadowing resulting from the development under control MDCP. The proposal is found to not have an unreasonable impact for the reasons described under this assessment.



- *Noise from pool pump*

Comment:

The applicant has proposed the pool pump to be within an enclosed soundproof structure, located away from the adjoining boundary. In addition, a condition of consent has been recommended regarding ongoing noise of the pool pump.

- *Height and scale of the proposed pool and resulting visual impact as viewed from 127 Upper Clontarf Street.*

Comment:

The height and scale of the proposal is considered under the controls relating to development on sloping sites Clause 4.1.8 MDCP and Swimming pools Clause 4.1.9 MDCP, which are the most relevant controls to guide the built form in relation to a pool on a sloping site. The development is found to meet the requirements of these two controls (including providing a sufficient side setback) and is therefore reasonable with regards to height and scale.

- *The pool augments the natural site features and rock outcrops, which is inconsistent with the DCP controls for landscape design.*

Comment:

As discussed in detail later within this report, the amended design retains the existing rock outcrops by nestling the pool between the rock outcrops and cantilevering the pool design over the rock outcrops in order to retain the natural landscape features and integrate the pool into the existing topography. The proposal is found to be reasonable and consistent with the requirements of the controls for development on sloping sites and the requirements to retain natural landscape features including rock outcrops.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The review application under development application DA2020/0884 for the construction of a swimming pool, stair access and associated planting.</p> <p>The proposal under REV2021/0011 provides amended plans including the reduction in pool size, increase in side boundary setback to 4.3 metres from the southern boundary, deletion of decking, and the siting of the pool amongst the natural rock outcrop, and the reduction of the pool height above ground.</p> <p>The Landscape Plan indicates tall screen planting along the southern boundary of adequate height to ensure privacy to adjoining properties.</p> <p>Landscape Referral raise no objections to the proposal.</p>
NECC (Bushland and Biodiversity)	<p>The original development (DA2020/0116) was assessed against the Manly LEP Clause 6.5 (Terrestrial Biodiversity). The assessment officer at the time concluded that, subject to retention of trees with a medium to long safe useful life expectancy and compensatory plantings, the proposal complies with the control objectives. A</p>

Internal Referral Body	Comments
	condition of that consent, required at least two locally native canopy trees are to be planted onsite. The latest pool design will not require removal of any additional trees, and the previous tree planting condition is therefore still sufficient.

## **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	2.4m - Top of pool 3.6m - Top of pool fence  (DA2020/0884 was proposed 4.8m to top of pool fence)	N/A	Yes

### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.12 Essential services	Yes

## Manly Development Control Plan

### Built Form Controls

Built Form Controls - Site Area: 531sqm	Requirement	Proposed	% Variation*	Complies
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	17m, behind prevailing setback	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area	59.8% (317.6sqm)	N/A	Yes
	Open space above ground 25% of total open space	27% (86.4sqm)	8%	No - However, proposed works do not further contribute to existing non-compliance
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	61%/ 196sqm	N/A	Yes
	X native trees	2 trees	N/A	Yes
4.1.5.3 Private Open Space	18sqm / 12sqm per dwelling	>18sqm	N/A	Yes
4.1.9 Swimming Pools,	1m height above ground	2.4m	N/A	No - Discussed

Spas and Water Features	(to pool edge)			in detail later in report
	1m curtilage/1.5m water side/rear setback	4.3m	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
3.3.2 Preservation of Trees or Bushland Vegetation	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
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	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
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

#### Detailed Assessment

##### **3.4.1 Sunlight Access and Overshadowing**

##### **Overshadowing of Private Open Space**

For overshadowing of the adjoining properties private open space, the following controls are applicable:

*a) New development (including alterations and additions) must not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm at the winter solstice (21 June) ; or*

Comment: For the purpose of this assessment, the private open space area of the adjoining property on 127 Upper Clontarf Street is considered to be the ground level deck to the east of the property, which adjoins the living room.

The applicant has provided shadow diagrams showing the current overshadowing situation in comparison to the what would result from the proposed development. For the winter solstice, there is no additional overshadowing impact as a result of the proposed development, as demonstrated in the submitted shadow diagrams.

*b) Where there is no winter sunlight available to open space of adjacent properties from 9am to 3pm, the calculations for the purposes of sunlight will relate to the equinox in March and September from 9am to 3pm.*

Comment: The applicant has provided shadow diagrams for the equinox for both existing situation and following the proposed development. As shown in the submitted shadow diagrams for the Equinox, there is no additional overshadowing of the private open space of 127 Upper Clontarf Street.

Therefore, the proposed development is compliant with the control and does not increase overshadowing to POS.

### **Overshadowing of adjoining living room windows**

In relation to sunlight to the windows or glazed doors to living rooms of adjacent properties:

*a) for adjacent buildings with an east-west orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors to living rooms for a period of at least 2 hours from 9am to 3pm on the winter solstice (21 June);*

Comment: The properties have an east-west orientation. Elevation shadow diagrams have been submitted showing the existing overshadowing situation on the Winter Solstice and a comparison with the resulting impact from the proposed development. The living room and kitchen windows along the northern elevation of 127 Upper Clontarf Street do not currently receive solar access at the Winter solstice, which is due to the topography of the land and being overshadowed by the existing development upon the adjoining sites. Therefore, the proposal does not currently receive the required amount of solar access. See below under c) which is the control relative to this situation.

*b) for adjacent buildings with a north-south orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors of living rooms for a period of at least 4 hours from 9am to 3pm on the winter solstice (21 June);*

Comment: Not applicable to the site.

*c) for all adjacent buildings (with either orientation) no reduction in solar access is permitted to any window where existing windows enjoy less than the minimum number of sunlight hours specified above.*

Comment: The windows at 127 Upper Clontarf Street do not currently receive solar access on the Winter Solstice as a result of the existing building and structures on the subject site, as well as the next site to the north at 131 Upper Clontarf Street. The proposed development does not further reduce solar access to these windows as demonstrated in the submitted shadow diagrams and therefore the proposal is compliant with the control, as the impact is existing and not made worse by the proposal. It is noted the location of the living room windows on the northern elevation are highly susceptible to overshadowing given the topography of the land, the proximity of the windows to the boundary and the direct south orientation. A photograph below is shown of these windows:



Although not required by the control, the applicant has demonstrated that solar access has been maintained to these windows at the equinox which is a reasonable outcome for the site, given the location and susceptibility of these windows to overshadowing impacts, especially at the Winter Solstice.

As the proposed pool does not cause additional overshadowing to the north facing living room windows on either the Winter Solstice or Equinox, the proposal is considered reasonable with regards to solar access of the adjoining property and in accordance with the controls contained within the DCP.

### **3.4.2 Privacy and Security**

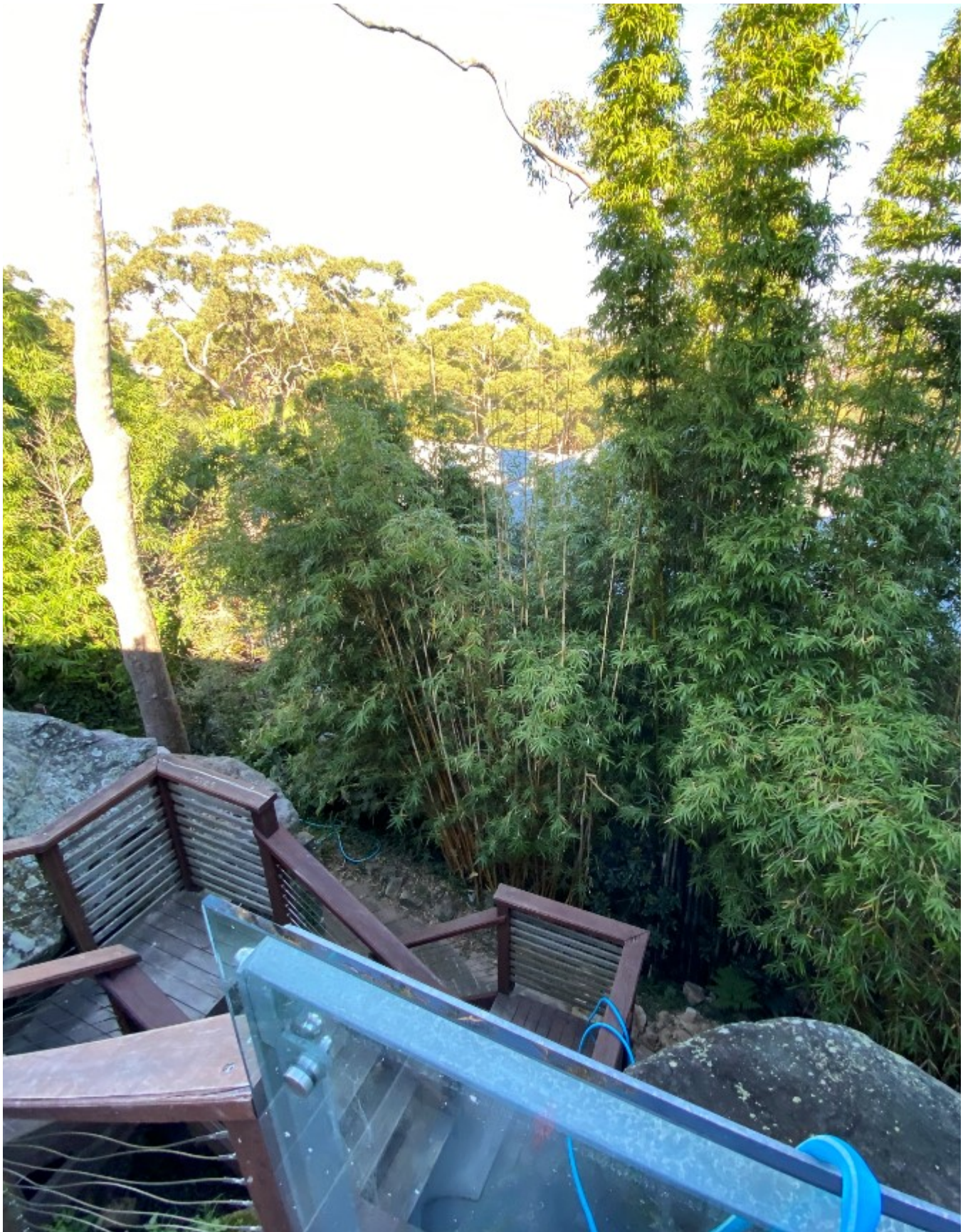
#### Visual Privacy

Consideration is given to the visual privacy impact the proposal may have. The proposal does not involve the erection of any new decking areas and provides a very limited pool concourse along the southern edge of the pool (approx 200mm wide), the limited width of the concourse providing a very limited area capable of enabling a person to stand and overlook the adjoining property for anymore than a short period of time (if any).

The stairs to the east of the pool are approved under DA2020/0116 and are not changed via this proposal. The pool fencing is positioned such that people would not use the existing rock outcrop at the top of the stairs as a informal extension of the pool concourse area.

As shown in the below site photo, there is existing vegetation planting within the subject site along the boundary which provides additional screening between the two properties.





*Figure 1 - View looking south from the top of the existing staircase on the subject site, in the approximate location of the proposed pool. Taken by assessing officer.*

Acoustic Privacy



The pool is setback 4.3m from the southern boundary and the pool is centrally located within the site. The ordinary residential use of the pool is not considered to give rise to unreasonable acoustic impacts for the adjoining residents, especially given its location and setback, with pools allowed to be within 1m of the side setback when at ground level. The elevated nature of the pool is not considered to give rise to additional acoustic impacts.

### **3.9 Mechanical Plant Equipment**

The location of the proposed pool filter is located underneath the existing deck and a reasonable distance from the shared boundary. The pool filter is proposed to be enclosed in an acoustic treated enclosure, as required by the control. Furthermore, a condition of development consent has been recommended to ensure the location of the pool filter is centrally located, away from the boundary, enclosed an acoustic treated enclosure that will not result in noise exceeding 5 dB(a) above background noise levels.

#### **4.1.5 Open Space and Landscaping**

As outlined in the compliance table at the beginning of this assessment report, the proposed development will result in the site maintaining a compliant amount of open space and landscaped area. The existing situation of the site, when considering all above ground decks which are existing, result in a non-compliance with the 25% 'open space above ground' calculation, with the site currently consisting of 27% of the total open space comprising of 'open space above ground'.

A pool does not form additional 'open space above ground' as per the definition of the Manly DCP. There are no additional decks proposed as part of the application and the pool concourse on the northern edge of the pool is not more than 1m above ground level. Therefore, although the current situation is non compliant at 27%, the proposed development does not increase this non-compliance or introduce additional areas of 'open space above ground'.

#### **4.1.8 Development on Sloping Sites**

The site is considered to be a 'sloping site' and therefore development is required to follow the below requirements:

*a) The design of development must respond to the slope of the site, to minimise loss of views and amenity from public and private spaces.*

Comment: There is no view loss as a result of the proposal

*b) Developments on sloping sites must be designed to:*

*i) generally step with the topography of the site; and*

Comment: The proposed pool has been designed to nestle between the two rock outcrops and cantilevered over the rock outcrops, as to avoid excavation of the prominent rock outcrops as viewed from the adjoining site. Up to 2m excavation is required in the area of the former driveway at the northern extent of the pool, however this is acceptable as it does not impact the prominent rock feature of the site and still allows for the development to be integrated into the existing site topography. The proposal is considered to achieve this requirement.

*ii) avoid large undercroft spaces and minimise supporting undercroft structures by integrating the building into the slope whether to the foreshore or a street.*

Comment: The proposed pool design does not result in an undercroft area. The proposed design of the pool involves in-filling between to existing rock outcrops and cantilevering portions of the pool over the existing rock outcrops, as shown in the submitted plan. The section of pool between the rock outcrops is proposed to be treated with a sandstone finish to integrate the building form into the topography of the site and soften the appearance of the structure as viewed from the adjoining property. The proposal is not visible from the street or a public place.

### **Considerations required in Geotechnical area 'G1'**

The site is located within the G1 Geotechnical Area as mapped under the Manly DCP. The application is therefore required to be accompanied by a geotechnical report.

The application is accompanied by a Geotechnical Report prepared by a suitably qualified engineer. The geotechnical report makes a number of recommendations to ensure there will be no unacceptable risks to life and property as a result of the proposal, subject to adherence with the design recommendations of the report which will be included within the consent conditions as recommended in this report.

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

The DCP controls require that Swimming pools and spas must be built on or in the ground and not elevated more than 1m above natural ground level. The proposed pool is partially in-ground (at the northern edge) and protrudes up to 2.4m above the existing ground level at the southern edge due to the topography of the land and location between the existing rock outcrops.

However, the DCP provides that consideration of any exception to exceed the height above ground must demonstrate that the swimming pool and concourse more than 1m above natural ground level demonstrate the following:

*i) would not detract from the amenity or character of the neighbourhood;*

Comment: The swimming pool is not visible from the the streetscape and therefore does not have an impact on the 'character of the neighbourhood' more widely. However, the swimming pool is partially visible from the southern neighbouring property (however the views to area of the proposed swimming pool are heavily screened by existing vegetation) and this is considered with regards visual impact and impact upon amenity (visual privacy/acoustic privacy and overshadowing). For the reasons outlined elsewhere within the report, the proposed pool is not found to have an unreasonable impact on solar access, visual privacy or acoustic privacy for the adjoining properties. As discussed under control 4.1.8 the proposal has been designed with regard to the site topography and integrated into the existing rock outcrop. Therefore, the proposal is considered to achieve this requirement and does not have an unreasonable impact on adjoining properties or the wider locality.

*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.*

Comment: The maximum height of the pool is 2.4m, as measured to the top of the pool concourse. The pool is setback 4.3m from the southern boundary and complies with this requirement, exceeding the control.

The proposed pool, although more than 1m above the ground level at the southern edge, has demonstrated that above requirements have been met and therefore the proposal is supported on merit.

## **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

## **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

## **POLICY CONTROLS**

### **Northern Beaches Section 7.12 Contributions Plan 2019**

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of 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

In summary, a detailed assessment has been required for the following specific issues:

- Overshadowing, visual and acoustic privacy, visual bulk and scale and landscape character.
- The issues raised in the public submissions.
- The proposals compliance against the controls of the Manly DCP and Manly LEP.

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 REV2021/0011 for Review of Determination of Application DA2020/0884 for alteration and additions to a dwelling house including a swimming pool on land at Lot 189 DP 11162, 129 Upper Clontarf Street, SEAFORTH, 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

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
DA 01, Rev D	5/05/2021	Space Landscape Designs
DA 03, Rev C	16/02/21	Space Landscape Designs

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Geotechnical Investigation, J2532B	19/05/2021	White Geotechnical Group

b) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

c) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

d) The development is to be undertaken generally in accordance with the following:

<b>Waste Management Plan</b>		
<b>Drawing No/Title.</b>	<b>Dated</b>	<b>Prepared By</b>
Waste Management Plan	28/07/2020	Justin Caruana

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) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) 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.
- (d) 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.
- (e) 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.
- (f) 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.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) 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.

(k) 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.

(l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

(m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

(n) 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 2018
  - (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 \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security are required 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, and 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. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

### 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.

#### 8. **Structural Adequacy and Excavation Work**

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
- (b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To provide public and private safety.

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

#### 9. **Protection of Rock and Sites of Significance**

All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.

Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office contacted to assess the finds.

Under Section 89a of the NPW Act should the objects be found to be Aboriginal, NSW Biodiversity and Conservation Division, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

Reason: Preservation of significant environmental features.

#### 10. **Tree and Vegetation Protection**

- a) Existing trees and vegetation shall be retained and protected including:
  - i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
  - ii) all trees and vegetation located on adjoining properties,
  - iii) all road reserve trees and vegetation.
- b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- viii) any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
- ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Certifying Authority must ensure that:

- c) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites do not occur within the tree protection zone of any tree and any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained on the site during the construction is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

**Note:** All street trees within the road verge and trees within private property are protected under Northern Beaches Council development control plans except where Council's written consent for removal has been obtained. The felling, lopping, topping,

ringbarking or removal of any tree(s) is prohibited.

Reason: Tree and vegetation protection.

## **CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE**

### **11. Landscape Completion**

Landscaping is to be implemented in accordance with the approved Plans.

Prior to the issue of any Occupation Certificate details shall be submitted to the Principal Certifying Authority certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

### **12. Geotechnical Certification Prior to Occupation Certificate**

The Applicant is to submit evidence to the Principal Certifying Authority that the development has been carried out in accordance with the recommendations of the geotechnical report referenced in Condition 1, prior to issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

### **13. Swimming Pool Requirements**

The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the 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

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifying Authority, certifying compliance with Australian Standard 1926.

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite 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. Appropriate instructions of artificial resuscitation methods.

(d) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.

(e) Signage showing resuscitation methods and emergency contact

(f) All signage shall be located in a prominent position within the pool area.

(g) Swimming pools and spas must be registered with the *Division of Local Government*.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of an Interim / Final Occupation Certificate.

Reason: To protect human life (DACPLF09)

## ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

### 14. **Landscape Maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent.

All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: To maintain local environmental amenity.

### 15. **Geotechnical Recommendations**

Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

### 16. **Swimming Pool Mechanical Plant**

Any mechanical plant associated with the swimming pool shall be centrally located within the site, away from the boundaries and acoustically treated so the pool filter does not emit any noise of 5dB(a) above background noise at the nearest residential receiver.

Reason: To ensure the acoustic amenity of the neighbouring residents.