

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

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| <b>Application Number:</b> | Mod2020/0335 |
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|-------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Responsible Officer:</b>               | Kent Bull                                                                                                                                                                           |
| <b>Land to be developed (Address):</b>    | Lot 69 DP 9517, 9 Beatrice Street CLONTARF NSW 2093                                                                                                                                 |
| <b>Proposed Development:</b>              | Modification of Development Consent DA 26/2015 granted for construction of a new double carport with storeroom underneath, elevated driveway, new pedestrian access stairs and lift |
| <b>Zoning:</b>                            | Manly LEP2013 - Land zoned R2 Low Density Residential                                                                                                                               |
| <b>Development Permissible:</b>           | Yes                                                                                                                                                                                 |
| <b>Existing Use Rights:</b>               | No                                                                                                                                                                                  |
| <b>Consent Authority:</b>                 | Northern Beaches Council                                                                                                                                                            |
| <b>Land and Environment Court Action:</b> | No                                                                                                                                                                                  |
| <b>Owner:</b>                             | Max Jocelyn Thomson<br>Caroline Margaret Thomson                                                                                                                                    |
| <b>Applicant:</b>                         | Spitfire Control                                                                                                                                                                    |

|                                  |                                         |
|----------------------------------|-----------------------------------------|
| <b>Application Lodged:</b>       | 28/07/2020                              |
| <b>Integrated Development:</b>   | No                                      |
| <b>Designated Development:</b>   | No                                      |
| <b>State Reporting Category:</b> | Residential - Alterations and additions |
| <b>Notified:</b>                 | 07/08/2020 to 21/08/2020                |
| <b>Advertised:</b>               | Not Advertised                          |
| <b>Submissions Received:</b>     | 1                                       |
| <b>Clause 4.6 Variation:</b>     | 4.3 Height of buildings: 24.5%          |
| <b>Recommendation:</b>           | Approval                                |

### PROPOSED DEVELOPMENT IN DETAIL

The application seeks the modification of Development Consent DA 26/2015 granted for the construction of a new double carport with storeroom underneath, elevated driveway, new pedestrian access stairs and lift.

In particular, the modifications include:

1. Deletion of Condition ANS01 that relates tree protection measures to a *Eucalyptus pierita* (Sydney Peppermint) that has since been removed under Tr2018/03904.
2. Modification of condition ANS03 that relates to consent for the use of a portion of Road Reserve.
3. Engineering modifications including:

- Two (2) supporting columns for the car parking structure; and
- Revised driveway structure from steel mesh to suspended concrete.

4. Reconfiguration of driveway crossover to avoid interference with Council stormwater assets.
5. Deletion of stairs from the street, to be replaced with new staircase to the north of the driveway.
6. Changes to exterior cladding, window arrangements and carport door.
7. Increase to store room floor area, width of the lift shaft and extension to the associated accessway.

## ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

## SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.3 Height of buildings

Manly Local Environmental Plan 2013 - 6.8 Landslide risk

Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area

Manly Development Control Plan - 3.9 Mechanical Plant Equipment

Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

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

Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

## SITE DESCRIPTION

|                                   |                                                                                                                                                                                                                                                                                                                                        |
|-----------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Property Description:</b>      | Lot 69 DP 9517 , 9 Beatrice Street CLONTARF NSW 2093                                                                                                                                                                                                                                                                                   |
| <b>Detailed Site Description:</b> | <p>The subject site is commonly known as 9 Beatrice Street, Clontarf and legally referred to as Lot 69 DP 9517, The site consists of one (1) allotment located on the western side of Beatrice Street.</p> <p>The site is irregular in shape with a frontage of 24.385m along Beatrice Street and a depth of up to 31.915m. To the</p> |

west, the site has a 6.165m frontage to Amiens Road. The site has a surveyed area of 714m<sup>2</sup>.

The site is located within the R2 Low Density Residential zone of the Manly LEP 2013 and accommodates a single storey brick dwelling house. Pedestrian access is gained via the Beatrice Street frontage. The property currently has no vehicle access.

The slope of the site is measured at 43%, falling approximately 11.8m from the Beatrice Street frontage to the rear boundary.

The site contains a modified landscape setting, with vegetation consisting of established native canopy trees, turfed lawn areas and terraced garden beds.

A Council stormwater easement runs along the southern side setback area of the site.

The site is mapped within a Landslip Hazard - Area G1 and a Foreshore Scenic Protection Area.

### **Detailed Description of Adjoining/Surrounding Development**

Adjoining and surrounding development is characterised by low density dwelling houses of varying architectural styles and age, with landscaped settings.

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:

17 April 2014

Development Application No. 224/2013 for alterations and additions to an existing dwelling including rear addition, rear deck, pergola with privacy screen, replace side pergola, terrace area, garden store and block wall to boundary, was approved by Council under the delegation of the Manly Independent Assessment Panel (MIAP).

18 June 2015

Development Application No. 26/2015 for the construction of a new double carport with storeroom underneath, elevated driveway, new pedestrian access stairs and lift, was approved by Council under the delegation of the Manly Independent Assessment Panel (MIAP).

22 March 2018

Complying Development Certificate No. CDC2018/0267 for the minor extension to existing residential dwelling was issued.

14 June 2018

Construction Certificate No. CC2018/0728 issued in relation to Development Application No. 224/2013 for alterations and additions to an existing dwelling to NOT include rear ground floor addition and rear deck, pergola and privacy screen.

19 September 2018

Tree Removal Application No. Tr2018/03904 issued in relation to the removal of 2x Eucalyptus pierita (Sydney Peppermint) located above No. 9 Beatrice Street, Clontarf.

19 July 2019

Final Occupation Certificate No. FOC2019/0287 issued in relation to Development Application No. 224/2013.

5 May 2020

Modification Application No. Mod2019/0661 for the Modification of Development Consent DA0026/2015 granted for Construction of a new double carport with storeroom underneath elevated driveway new pedestrian access stairs and lift, was withdrawn from Council.

29 May 2020

Construction Certificate No. CC2020/0591 issued in relation to Development Application No. 26/2015.

**SITE HISTORY**

8 August 2020

Photo confirmation of the notification sign being in place provided to Council.

27 August 2020

Arborist Report submitted by the Applicant and accepted by Council.

1 September 2020

Site inspection undertaken by the development assessment officer. Property owner present.

14 September 2020

Applicant submits engineers drawings in relation to the proposed development.

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

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

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 and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA No. 26/2015, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

| <b>Section 4.55(1A) - Other Modifications</b>                                                                                                                                                                                       | <b>Comments</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if: |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| (a) it is satisfied that the proposed modification is of minimal environmental impact, and                                                                                                                                          | <p><b>Yes</b></p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <p>The application seeks minor changes involving the alignment of the driveway crossover to avoid interference with Council stormwater assets, engineering modifications including those to supporting columns, reconfiguration of the pedestrian access stairs as well as modifications to increase the store room and other material changes to the exterior of the building. The modifications do not seek the removal of any existing native canopy trees or the removal of rock outcrops, and therefore is seen to be of minimal environmental impact.</p> |
| (b) it is satisfied that the                                                                                                                                                                                                        | The development, as proposed, has been found to be such that                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |

| Section 4.55(1A) - Other Modifications                                                                                                                                                                                                                                                                                                                                            | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
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| development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and                                                                                                                                                | <p>Council is satisfied that the proposed works are substantially the same as those already approved under DA No. 26/2015 for the following reasons:</p> <p>As highlighted above, the application predominately involves changes to respond to engineering and site constraints such as stormwater assets. Further, fundamental elements of the original application including the double carport and store room on site remain largely the same location as approved. Whilst there is a minor increase to the approved building height by approximately 288mm, it has not been considered to result in unreasonable impacts on the amenity of surrounding properties or the public domain. The changes to the pedestrian stairs and the vehicle crossover to Beatrice Street are seen to provide a more practical access arrangement that avoids interference with stormwater assets and related infrastructure to the south of the site.</p> |
| (c) it has notified the application in accordance with:<br><br>(i) the regulations, if the regulations so require,<br><br>or<br><br>(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and | The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Local Environment Plan 2013 and Manly Development Control Plan.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.                                                                                                                                                                                  | No submissions were received in relation to this application.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |

#### Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

| Section 4.15 'Matters for Consideration' | Comments |
|------------------------------------------|----------|
|                                          |          |

| Section 4.15 'Matters for Consideration'                                                                                  | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|---------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument                                             | See discussion on “Environmental Planning Instruments” in this report.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument                                      | Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Section 4.15 (1) (a)(iii) – Provisions of any development control plan                                                    | Manly Development Control Plan applies to this proposal.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement                                                         | None applicable.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000) | <p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> |

| Section 4.15 'Matters for Consideration'                                                                                                                                           | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
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|                                                                                                                                                                                    | Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.                                                                                                                                                                                                                                                                                                                                                 |
| Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality | <p>(i) <b>Environmental Impact</b><br/>The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b><br/>The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b><br/>The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p> |
| Section 4.15 (1) (c) – the suitability of the site for the development                                                                                                             | The site is considered suitable for the proposed development.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs                                                                                             | See discussion on “Notification & Submissions Received” in this report.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Section 4.15 (1) (e) – the public interest                                                                                                                                         | No matters have arisen in this assessment that would justify the refusal of the application in the public interest.                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 07/08/2020 to 21/08/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

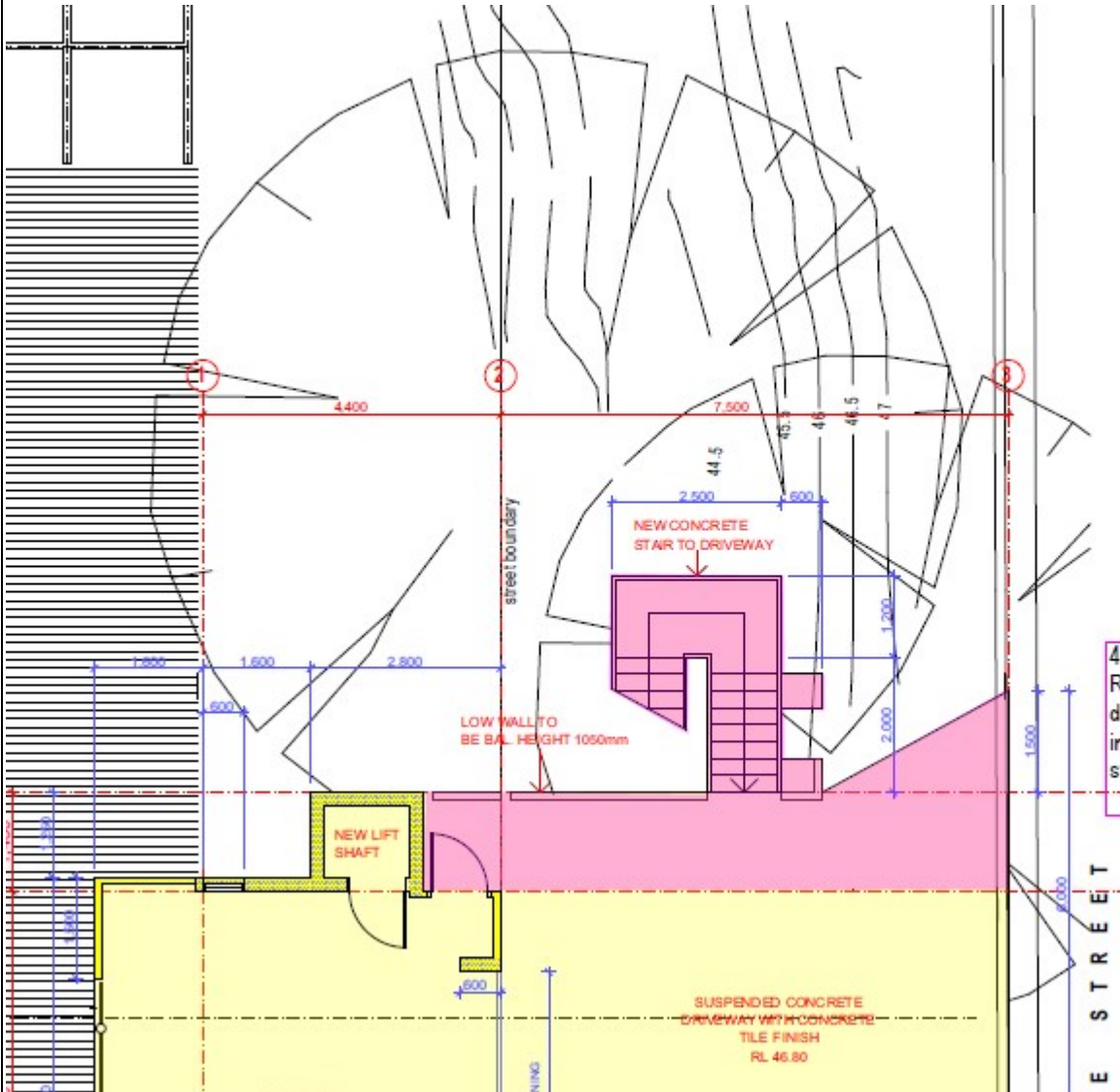
As a result of the public exhibition process council is in receipt of 1 submission/s from:

| Name:                 | Address:                           |
|-----------------------|------------------------------------|
| Mr Michael Peter Bell | PO Box 387 FRENCHS FOREST NSW 1640 |

One (1) submission was received in support of the modification application.

## REFERRALS

| Internal Referral Body | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Landscape Officer      | <p><u>Additional information comment 1/10/2020</u></p> <p>The Arborist's Report provided with additional information is noted.</p> <p>The Report assesses two trees within the road reserve potentiality affected by the works. as Tree 1 and tree 2, both mature locally native <i>Angophora costata</i> trees.</p> <p>The report concludes that there will be minimal impact upon Tree 2.</p> <p>Tree 1 however is located immediately adjacent to the works and may be affected by exc footings. The report recommends hand digging under supervision of a Project Arborist ar the structural engineer.</p> <p>Piers will need to be adjusted on site to accommodate roots found once excavation comr</p> <p>The Report also notes that irrigation should be provided to the tree to maintain moisture l increase in impervious cover over the root zone .</p> <p>Subject to conditions addressing the Arborist's recommendations, no objections are raise works.</p> <p>It is noted that the application seeks to also remove Condition ANS01 (copy below) regar <i>Eucalyptus piperita</i> tee. It is noted that this tree has since been removed under separate are therefore raised to deletion of the condition, though it is noted that new conditions are address protection of Trees 1 and 2.</p> <p><i>Condition ANS01</i></p> <p><i>That a qualified arborist, minimum level 5 AQF (Australian Qualification Framework), sha prepare a report to detail specific protection requirements and any methodologies during demolition and construction, to ensure the existing tree: Eucalyptus piperita (Sydney Peppermint) to be retained on site is not damaged. This report shall be submitted to the Accredited Certifier, who shall issue it to all builders and contractors carrying out works o the site, prior to the issue of Construction Certificate.</i></p> <p>5</p> <p><i>The project arborist shall then monitor and supervise the works, as necessary to ensure the tree protection measures have been installed correctly and any specific construction methodologies required within the Tree Protection Zones and Structural Root Zones are being adhered to on-site during the works. The project arborist shall then complete a</i></p> |

| Internal Referral Body | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                        | <p>report confirming the actions taken to ensure the health, structure, amenity or environmental value of these existing trees, were not adversely affected by the development, for submission to the Accredited Certifier prior to the issue of Occupation Certificate.</p> <p><u>Original Comment</u></p> <p>The information provided is insufficient to enable assessment of the impacts of the proposed trees in the road reserve required to be retained.</p> <p>The extension of the driveway to the north, amendment of material to concrete rather than inclusion of stairs adjacent to trees has not been adequately addressed.</p>  |

| Internal Referral Body         | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|--------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                | <p>An Arborist's Report prepared by a minimum AQF Level 5 Consulting Arborist is required for trees and any mitigating measures required to be implemented.</p> <p>At this stage the proposal is not supported with regard to landscape issues. If additional information further assessment can be undertaken.</p>                                                                                                                            |
| NECC (Development Engineering) | <p>The applicant proposed to amend the driveway and carport. Development Engineering has no objection to the application. However, the proposed stair on the southern side of the property shall be deleted due to Council's drainage easement. An additional condition has been added.</p> <p>Also, the condition 8, 14 and 22 of the DA 0026/2015 shall be deleted and some of the conditions to reflect the current Council's practice.</p> |

| External Referral Body | Comments                                                                                                                                                                                                                                                                     |
|------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Ausgrid: (SEPP Infra.) | The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent. |

## 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

The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

### 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                           | Approved                                | Proposed                              | % Variation | Complies |
|----------------------|---------------------------------------|-----------------------------------------|---------------------------------------|-------------|----------|
| Height of Buildings: | 8.5m                                  | 8.5m* (RL 49.60)                        | 10.58m (RL 49.88)                     | 24.5%       | No       |
| Floor Space Ratio    | FSR: 0.40:1<br>(285.6m <sup>2</sup> ) | FSR: 0.24:1**<br>(122.2m <sup>2</sup> ) | FSR: 0.25:1<br>(180.9m <sup>2</sup> ) | -           | Yes      |

\* The assessment report for DA No. 26/2015 detailed that the proposed building height was compliant at 8.5m (RL 49.60). However, the measurement of building height should be taken from ground level (existing), which is a reference to the ground level in an undisturbed state (i.e. not taken from within an excavated area or from on top of filed land). The proposed building height on this basis is 10.58m, a breach of 2.08m (24.5%).

\*\* The assessment report for DA No. 26/2015 detailed that the floor space ratio was unchanged as a result of the proposed development. However, the calculation of floor area should include the storage room as the floor level is not predominantly below ground level (existing) and therefore cannot be excluded as basement storage. The proposed floor space ratio for this modification application has been measured at 0.25:1 (180.9m<sup>2</sup>).

### Compliance Assessment

| Clause                                             | Compliance with Requirements |
|----------------------------------------------------|------------------------------|
| 4.3 Height of buildings                            | No                           |
| 4.4 Floor space ratio                              | Yes                          |
| 4.5 Calculation of floor space ratio and site area | Yes                          |
| 6.1 Acid sulfate soils                             | Yes                          |
| 6.2 Earthworks                                     | Yes                          |
| 6.4 Stormwater management                          | Yes                          |
| 6.8 Landslide risk                                 | Yes                          |
| 6.9 Foreshore scenic protection area               | No                           |
| 6.12 Essential services                            | Yes                          |

### Detailed Assessment

### 4.3 Height of buildings

In *Gann v Sutherland Shire Council [2008] NSWLEC 157*, the Court was prepared to distinguish an earlier line of authority, and hold that, since Section 4.55 was a “free-standing” provision, it could be utilised to modify a consent even where (in that case) no SEPP 1 or Clause 4.6 Objection could be lodged.

By application of that case in the context of this application, the Council can consider (and approve) a modification that still results in a breach of the height of buildings development standard, without reference to SEPP 1 or Clause 4.6, relying instead on the “free-standing” power of Section 4.55.

In this regard, the matters for consideration under SEPP 1 or Clause 4.6 provide a reasonable and consistent means of assessing any Section 4.55 that is beyond the provisions of the planning controls.

Whilst this modification application will result in a building height greater than that permitted by Clause 4.3 of the MLEP 2013, the application does not strictly need to address the requirements of Clause 4.6. This application has been made under Section 4.55 of the EP&A Act, which is a free-standing provision which in itself authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as the substantially the same test and consideration of all relevant Section 4.15 matters) and does not rely upon having a Clause 4.6 variation objection in order to determine the modification.

Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. Notwithstanding that Clause 4.6 does not apply to modification applications, the merits of the departure has been assessed and found that the development satisfies the underlying objectives of Clause 4.3 Height of Buildings under the MLEP 2013 and the variation can be supported.

The modification application seeks a proposed building height of 10.58m (RL 49.88), which results in a 288mm increase to the height approved under Development Consent. 26/2015 (RL 49.60). Whilst the modified development results in an overall breach to the development standard by 2.08m (24.5%), it is acknowledged that the variation from the approved height is 3.4%. For the purposes of assessing this modification application, “ground level (existing)” has been calculated in accordance with the approach set out in *Bettar v Council of the City of Sydney [2014] NSWLEC 1070*. In this instance, the ground level (existing) has been taken from directly below the south west corner of the carport landing that has been identified as AHD 39.300.

The change to the overall building height is largely resulting from increasing the grade/slope of the carport roof. The bulk, scale and roof form of the modified structure are considered as acceptable, however a condition has been recommended to ensure that the carport door be semi-transparent with 40mm gaps between the vertical timber batters in order to minimise the disruption of views through the carport to Middle Harbour from the Beatrice Street frontage. Whilst the resultant development is expected to reduce the extent of solar access to the public walkway, the proposal is seen to maintain adequate sunlight access towards adjoining and adjacent properties. Further, the application has indicated that the changes would avoid impacts of Council stormwater assets as well as the potential loss of existing mature native canopy trees in proximity to the proposed development. In this regard, Council can be satisfied that the modified development is substantially the same development as previously approved and therefore no assessment against the objectives of Clause 4.6 is required and the departure from the development standard is supported in this instance.

### 6.8 Landslide risk

The recommendations contained within the Geotechnical Investigation Report Ref. J2554, dated 21 February 2020 and prepared by White Geotechnical Group are to be adhered to as a condition of this consent.

## 6.9 Foreshore scenic protection area

The subject site is mapped within the Foreshore Scenic Protection Area Map and therefore subject to the considerations of this clause. The modified carport and lift structure will impact on views towards Middle Harbour when viewed from the Beatrice Street frontage. In order to help protect these views, a condition has been recommended for the carport door to be semi-transparent. Subject to compliance with this condition, the proposed structure is seen to be in a suitable location and design and is therefore recommended to be supported on merit.

## Manly Development Control Plan

### Built Form Controls

| Built Form Controls - Site Area: 714m <sup>2</sup>                                            | Requirement                                     | Approved                                 | Proposed                            | Complies                              |
|-----------------------------------------------------------------------------------------------|-------------------------------------------------|------------------------------------------|-------------------------------------|---------------------------------------|
| 4.1.2.1 Wall Height                                                                           | North: 8m (based on gradient 1:4+)              | Not referenced.                          | 9.9m                                | No                                    |
|                                                                                               | South: 8m (based on gradient 1:4+)              | 8.5m                                     | 9.4m                                | No                                    |
| 4.1.2.3 Roof Height                                                                           | Height: 2.5m                                    | 400mm                                    | 585mm                               | Yes                                   |
|                                                                                               | Pitch: maximum 35 degrees                       | Not referenced.                          | 4 degrees                           | Yes                                   |
| 4.1.4.1 Street Front Setbacks                                                                 | Prevailing building line / 6m                   | Nil (0m)                                 | Unchanged                           | No, but unchanged from DA No. 26/2015 |
| 4.1.4.2 Side Setbacks and Secondary Street Frontages                                          | North: 2.7m (based on wall height)              | Not referenced.                          | 13.2m                               | Yes                                   |
|                                                                                               | South: 2.7m (based on wall height)              | 2.09m to stairs<br>3.29m to carport roof | 2.09m to stairs<br>3.29m to carport | No<br>Yes                             |
|                                                                                               | Windows: 3m                                     | N/A                                      | N/A                                 | Yes                                   |
| 4.1.4.4 Rear Setbacks                                                                         | 8m                                              | Not referenced.                          | 21.4m                               | Yes                                   |
| 4.1.5.1 Minimum Residential Total Open Space Requirements<br>Residential Open Space Area: OS4 | Open space 60% of site area                     | 61% (438m <sup>2</sup> )                 | 62% (442.8m <sup>2</sup> )          | Yes                                   |
|                                                                                               | Open space above ground 25% of total open space | Not referenced.                          | 21.9% (96.9m <sup>2</sup> )         |                                       |
| 4.1.5.2 Landscaped Area                                                                       | Landscaped area 40% of open space               | Not referenced                           | 67.7% (299.7m <sup>2</sup> )        | Yes                                   |
|                                                                                               | 3 native trees                                  | Not referenced.                          | > 3 trees                           | Yes                                   |
| 4.1.5.3 Private Open Space                                                                    | 18m per dwelling                                | Not referenced.                          | > 18sqm                             | Yes                                   |
| 4.1.6.1 Parking Design and                                                                    | Maximum 50% of                                  | Not                                      | 6.5m                                | No, but                               |

|                                                      |                             |             |          |                               |
|------------------------------------------------------|-----------------------------|-------------|----------|-------------------------------|
| the Location of Garages, Carports or Hardstand Areas | frontage up to maximum 6.2m | referenced. |          | unchanged from DA No. 26/2015 |
| Schedule 3 Parking and Access                        | Dwelling 2 spaces           | 2 spaces    | 2 spaces | 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                         |
| 3.5.1 Solar Access                                                                                         | Yes                          | Yes                         |
| 3.5.3 Ventilation                                                                                          | Yes                          | Yes                         |
| 3.5.5 Landscaping                                                                                          | Yes                          | Yes                         |
| 3.5.7 Building Construction and Design                                                                     | Yes                          | Yes                         |
| 3.5.8 Water Sensitive Urban Design                                                                         | Yes                          | Yes                         |
| 3.6 Accessibility                                                                                          | Yes                          | Yes                         |
| 3.7 Stormwater Management                                                                                  | Yes                          | Yes                         |
| 3.8 Waste Management                                                                                       | Yes                          | Yes                         |
| 3.9 Mechanical Plant Equipment                                                                             | No                           | Yes                         |
| 3.10 Safety and Security                                                                                   | Yes                          | Yes                         |
| 4.1 Residential Development Controls                                                                       | Yes                          | Yes                         |
| 4.1.1 Dwelling Density, Dwelling Size and Subdivision                                                      | Yes                          | Yes                         |
| 4.1.1.1 Residential Density and Dwelling Size                                                              | Yes                          | Yes                         |
| 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)                     | No                           | Yes                         |
| 4.1.3 Floor Space Ratio (FSR)                                                                              | Yes                          | Yes                         |
| 4.1.4 Setbacks (front, side and rear) and Building Separation                                              | No                           | Yes                         |
| 4.1.5 Open Space and Landscaping                                                                           | Yes                          | Yes                         |
| 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)                                 | No                           | Yes                         |
| 4.1.8 Development on Sloping Sites                                                                         | Yes                          | Yes                         |
| 4.4.1 Demolition                                                                                           | Yes                          | Yes                         |
| 4.4.2 Alterations and Additions                                                                            | Yes                          | Yes                         |

| Clause                                    | Compliance with Requirements | Consistency Aims/Objectives |
|-------------------------------------------|------------------------------|-----------------------------|
| 4.4.5 Earthworks (Excavation and Filling) | Yes                          | Yes                         |
| 5 Special Character Areas and Sites       | Yes                          | Yes                         |
| 5.4.1 Foreshore Scenic Protection Area    | Yes                          | Yes                         |
| Schedule 1 – Maps accompanying the DCP    | Yes                          | Yes                         |

### Detailed Assessment

## **3.9 Mechanical Plant Equipment**

The design and external finishes of the modified lift help to incorporate the structure with the site. While the lift will remain visible from the Beatrice Street frontage, it is not considered to dominate the street character. Being a practical means of access for steeply sloping sites, the provision of a lift also provides 'ageing in place' which is an objective under Clause 3.6 (Accessibility) of the Manly DCP. It is therefore considered that the modified proposal be supported on merit.

### **4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)**

Requirement:

North: 8m (based on a gradient 1:4+)

South: 8m (based on a gradient 1:4+)

Proposed:

North: 9.9m

South: 9.4m

The modified development remains technically non-compliant with the 8m wall height requirement as prescribed under this clause. Consideration has been given that the wall height breach appears as substantially the same as that approved under Development Consent. 26/2015. It should also be noted that despite the slope of the site being particularly steep at 43% (23.27 degrees), that the permitted maximum wall height is capped at a gradient of 1 in 4. In assessing the variation to this clause, it is acknowledged that majority of the bulk and scale being below the curb height of the Beatrice Street frontage will help to ensure that the structure will not dominate the streetscape character. As discussed previously within this report, measures have been incorporated to minimise the disruption of views towards Middle Harbour from Beatrice Street. In addition appropriate solar access will be maintained for neighbouring properties and that no existing trees are to be removed as part of this application.

Based on the above, the application is considered to meet the relevant objectives of this clause and is recommended to be supported on merit.

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

The modified proposal remains technically non-compliant with the front setback and southern side setback control requirements. The nil (0m) setback to the front boundary and the 2.09m setback to the southern boundary is unchanged from that approved under Development Consent DA 26/2015. It should be noted however that the proposed stairs on the southern side of the carport are to be deleted due to its proximity to Council's stormwater drainage easement. Therefore, the resultant development is

expected to be compliant with the southern side setback requirement of 2.7m. The changes proposed are not seen to result in any additional amenity, streetscape or environmental impacts.

Based on the above, the application is considered to meet the relevant objectives of this clause and is recommended to be supported on merit.

#### **4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)**

The modified carport remains technically non-compliant with a width facing Beatrice Street of 6.5m. The control requirement is that the maximum width of any garage, carport or hardstand area is not to exceed a width equal to 50 percent of the frontage, up to a maximum width of 6.2m. It should be noted that the overall width of the carport remains unchanged from that approved under Development Consent DA No. 26/2015. As discussed previously within this report, the proposal is seen to have minimised the extent of the visual impact to the streetscape through the use of a timber batten carport door with at least 40mm gaps and proposing a steel rod balustrade on the western elevation. To ensure the long-term protection of the existing native canopy tree to the north of the vehicle crossover, the project Arborist has recommended that irrigation be installed. Such measure are considered necessary, in particular due to the change from a permeable mesh driveway to an impervious concrete driveway. Noting the subject site currently has no on-site vehicle parking, it is considered that the proposal ensures that at least two (2) cars can be adequately parked on site to accommodate the demands of a dwelling house.

Based on the above, the proposal is considered to meet the objectives of this clause and is recommended to be 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**

Section 7.12 contributions were levied on the Development Application.

### **CONCLUSION**

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2020/0335 for Modification of Development Consent DA 26/2015 granted for construction of a new double carport with storeroom underneath, elevated driveway, new pedestrian access stairs and lift on land at Lot 69 DP 9517,9 Beatrice Street, CLONTARF, subject to the conditions printed below:

### A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

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

#### a) Modification Approved Plans

| Architectural Plans - Endorsed with Council's stamp |           |                  |
|-----------------------------------------------------|-----------|------------------|
| Drawing No.                                         | Dated     | Prepared By      |
| A0 (Site Plan)                                      | June 2020 | Spitfire Control |
| A1 (Ground Floor Plan)                              | June 2020 | Spitfire Control |
| A2 (Store Room Floor Plan)                          | June 2020 | Spitfire Control |
| A3 (Carport Floor Plan)                             | June 2020 | Spitfire Control |
| A4 (Roof Plan)                                      | June 2020 | Spitfire Control |
| A5 (External Elevation - North)                     | June 2020 | Spitfire Control |
| A6 (External Elevation - South)                     | June 2020 | Spitfire Control |
| A7 (External Elevation - East)                      | June 2020 | Spitfire Control |
| A8 (External Elevation - West)                      | June 2020 | Spitfire Control |

|               |           |                  |
|---------------|-----------|------------------|
| A9 (Sections) | June 2020 | Spitfire Control |
|---------------|-----------|------------------|

| Reports / Documentation – All recommendations and requirements contained within: |                  |                                  |
|----------------------------------------------------------------------------------|------------------|----------------------------------|
| Report No. / Page No. / Section No.                                              | Dated            | Prepared By                      |
| Geotechnical Investigation Report, Ref. J2554                                    | 21 February 2020 | White Geotechnical Group         |
| Arborist Report - Tree Management Plan                                           | 25 August 2020   | Margot Blues Consulting Arborist |

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.

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

#### **B. Delete Condition ANS01**

Reason: Condition ANS01 related to the protection of 1 x Eucalyptus piperita tree, which following the issuing of Development Consent No. DA 26/2015 had been approved under a separate approval. Council's Landscape Officer has recommended new conditions to address the protection of Trees 1 and 2 that are both *Angophora costata* (Sydney Red Gum).

#### **C. Delete Condition 8 (2DS01)**

Reason: Condition 8 (2DS01) related to a detailed stormwater management plan being submitted to Council prior to the issue of a Construction Certificate. Council's Development Engineer has advised that the condition should be deleted in lieu of new conditions reflect the Council's current practices.

#### **D. Delete Condition 14 (2PT02)**

Reason: Condition 14 (2PT02) relates to details of all driveways, car parking areas and pedestrian paths being submitted to Council prior to the issue of a Construction Certificate. Council's Development Engineer has advised that the condition should be deleted in lieu of new conditions reflect the Council's current practices.

#### **E. Delete Condition 22 (3FP01)**

Reason: Condition 22 (3FP01) relates to a vehicle crossing application being submitted to Council. Council's Development Engineer has advised that the condition should be deleted in lieu of new conditions reflect the Council's current practices.

#### **F. Add Condition 18A (Submission Roads Act Application for Civil Works in the Public Road) under heading "CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE":**

Submission Roads Act Application for Civil Works in the Public Road

The Applicant is to submit an application for approval for infrastructure works on Council's roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the

Roads Act 1993.

The application is to include four (4) copies of Civil Engineering plans for the design of driveway which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer. The design must include the following information: The fee associated with the assessment and approval of the application is to be in accordance with Council's Fees and Charges.

An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.

**G. Add Condition 18B (Deletion of Stair) under heading "CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE":**

Deletion of Stair

The applicant shall delete the stair on the southern side of the property. Any proposed structure is to be located clear of the existing Council drainage easement at the southern boundary of the property.

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

Reason: Protection of Council's infrastructure.

**H. Add Condition 18C (External treatment to Carport Door) under heading "CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE":**

External treatment to Carport Door

The timber battens to the carport door are to be spaced at a minimum of 40mm.

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

Reason: To ensure development does not detract from the visual amenity of the Foreshore Scenic Protection Area.

**I. Add Condition 27A (Tree and vegetation protection) under heading "CONDITIONS TO BE SATISFIED PRIOR TO ANY COMMENCEMENT":**

Tree and vegetation protection

a) Existing trees and vegetation shall be retained and protected, including:

- i) all trees and vegetation within the site not indicated for removal on the approved plans, 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 not approved for removal.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with the Arborist Report - Tree Management Plan dated 25

August 2020 prepared by Margot Blues and 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 the Project Arborist
- iii) 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,
- iv) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with the Project Arborist including advice on root protection measures,
- v) 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,
- vi) 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
- vii) 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.
- viii) 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.

c) The Certifying Authority must ensure that 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. Any request to remove a tree approved for retention under the development application is subject to a Section 4.55 modification application, or an assessment by an Arborist with minimum AQF Level 5 in arboriculture that determines that the tree presents an imminent risk to life or property.

Reason: Tree and vegetation protection.

**J. Add Condition 27B (Project Arborist) under heading "CONDITIONS TO BE SATISFIED PRIOR TO ANY COMMENCEMENT":**

**Project Arborist**

- a) A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged to provide tree protection measures in accordance with the Arborist Report - Tree Management Plan dated 25 August 2020 prepared by Margot Blues and Australian Standard 4970-2009 Protection of Trees on Development Sites.
- b) The Project Arborist is to specify and oversee all tree protection measures such as tree protection fencing, trunk and branch protection, and ground protection.
- c) The Project Arborist is to supervise all demolition, excavation and construction works near all trees to be retained, including construction methods near the existing trees to protect tree roots, trunks, branches and canopy. Manual excavation is to occur ensuring no tree root is damaged by works,

unless approved by the Project Arborist.

d) The Project Arborist shall be in attendance and supervise all works as nominated in the Arborist Report - Tree Management Plan dated 25 August 2020 prepared by Margot Blues, including:

- i) Excavation for pier footings
- ii) Installation of irrigation below the driveway slab

e) All tree protection measures specified 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.

f) The Project Arborist shall provide certification to the Certifying Authority that all recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

Note: A separate permit or development consent may be required if the branches or roots of a protected tree on the site or on an adjoining site are required to be pruned or removed.

Reason: Tree protection.

**K. Add Condition 39A (Protection of landscape features and sites of significance) under heading "CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK":**

Protection of landscape features and sites of significance

- a) All natural landscape features, including natural rock outcrops, natural vegetation, soil and watercourses, are to remain undisturbed during demolition, excavation and construction works, except where affected by works detailed on approved plans.
- b) Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: preservation of significant environmental features.

**L. Add Condition 42A (Condition of retained vegetation) under heading "CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE":**

Condition of retained vegetation

Prior to the issue of an Occupation Certificate, a report prepared by the Project Arborist shall be submitted to the Principal Certifying Authority, assessing the health and impact of trees and vegetation required to be retained as a result of the proposed development, including the following information:

- a) Compliance to Arborist recommendations for tree protection and excavation works.
- b) Extent of damage sustained by vegetation as a result of the construction works.
- c) Any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: To ensure compliance with the requirement to retain and protect significant planting on development sites.

**M. Modify Condition ANS03 to read as follows:**

A "Consent for the use of a portion of Road Reserve" application will be required for the elevated driveway and stair structures across Council's Road Reserve. In this regard full structural engineering details in relation to the construction of the elevated driveway and stair structures and on-going maintenance thereof shall be provided with the application. Please note that this approval must be obtained prior to the issue of the Construction Certificate.

Reason: Management of Council's Road Reserve.

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

**Signed**



**Kent Bull, Planner**

The application is determined on 14/10/2020, under the delegated authority of:



**Tony Collier, Manager Development Assessments**