

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0356
Responsible Officer:	Kye Miles
Land to be developed (Address):	Lot B DP 344759, 19 Marshall Street MANLY NSW 2095
Proposed Development:	Alterations and additions to a dwelling house including change of use of studio to a secondary dwelling
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Paul Leon Jacobsohn Anna Frances Pedersen
Applicant:	Paul Leon Jacobsohn
Application lodged:	10/04/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	01/05/2019 to 15/05/2019
Advertised:	Not Advertised
Submissions Received:	5
Recommendation:	Approval
Estimated Cost of Works:	\$ 30,000.00

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 Development Control Plan - 3.1.1 Streetscape (Residential areas)

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 3.8 Waste Management

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

SITE DESCRIPTION

Property Description:	Lot B DP 344759 , 19 Marshall Street MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southern side of Marshall Street.</p> <p>The site is regular in shape with a frontage of 11.28m along Marshall Street and a depth of 47.34m. The site has a surveyed area of 533.2m².</p> <p>The site is located within the R1 General Residential zone and accommodates two storey rendered house with and attached garage.</p> <p>The site slopes down from the eastern boundary, with a relatively consistent level change of 2.0m along the western boundary.</p> <p>The site's rear setback contains garden beds, shrubs, palms and trees, and small lawn areas. There is no evidence of any endangered species on the site.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by low density residential living.</p>

Map:



SITE HISTORY

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

DA No. 357/03

This proposal sought consent for the demolition of existing outbuildings and the erection of a new studio. Consent was granted by Council on 13 October 2003.

DA No. 430/08

This proposal sought consent for alterations and additions to the existing dwelling house. The works primarily comprised of constructing a first floor element. Consent was granted by Council on 20 April 2009.

DA No. 430/08/1A

This proposal sought consent for modifying DA No. 430/08. The specific works involved modifying the roof form and alterations to approved windows. Consent was granted by Council on 23 July 2009.

BC2019/0068

This Building Certificate has been lodged in conjunction with the concerned Development Application. In summary, BC2019/0068 seeks consent for alterations and additions to the detached outbuilding.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for:

- Changing the use of the existing outbuilding to a secondary dwelling,
- Constructing a retractable pergola over existing front terrace,
- Affiliated landscaping works.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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	None applicable.
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&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p><u>Clause 98</u> of the EP&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 of consent.</p> <p><u>Clause 98</u> of the EP&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 of consent.</p>
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) Environmental Impact 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) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact 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 Matters for Consideration'	Comments
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 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 5 submission/s from:

Name:	Address:
Mr John Edwin Harvey	3 / 56 Osborne Road MANLY NSW 2095
Mrs Susan Mary Terry	6 / 56 Osborne Road MANLY NSW 2095
Ms Kathy Stroethoff Mr Pieter Edwin Stroethoff	61 Wood Street MANLY NSW 2095
Mr Pieter Edwin Stroethoff	61 Wood Street MANLY NSW 2095
Anonymous	N/A

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

- **Loss of views,**
- **Short-term holiday accommodation,**
- **Compliance with setbacks,**
- **Privacy,**
- **Noise,**
- **Parking,**
- **Light pollution.**

The matters raised within the submissions are addressed as follows:

- **Loss of views:**
Received submissions raised concerns that the selected landscaping, will cause potential view loss issues for residents at No.56 Osborne Road.

Comment:

The proposal's landscape plan indicates that a feature vegetation screen will be implemented along the eastern boundary. However, the provided landscape plan has not included a species list, indicating the mature height of the selected species along the eastern boundary. As such, imposed conditions will ensure that the views obtained from the upper and lower balconies of No.56 Osborne Road are maintained, as the mature height of the selected species can not grow above RL 37.50.

- **Short-term holiday accommodation:**

Concerns have been raised that the tenants occupying the proposed secondary dwelling will be unregulated, as it will be used for short-term holiday accommodation purpose's.

Comment:

The proposal seeks consent for changing the use of the existing outbuilding to a secondary dwelling. Nothing within this consent will permit the structure to be used for tourist and visitor accommodation purpose's. Imposed conditions, will ensure that any variation to the approved land use will require the submission to Council of a new development application.

- **Compliance with setbacks:**

Concerns have been raised that the proposed secondary dwelling does not comply with the development standards set out in State Environmental Planning Policy (Affordable Rental Housing) 2009, particularly in relation to the minimum rear set back.

Comment:

The development standards contained within the SEPP (Affordable Rental Housing) 2009, only apply to those developments seeking consent through a Complying Development Certificate. As such, the concerned Development Application for changing the use of the existing outbuilding to a secondary dwelling, is required adhere to the relevant controls set out in Manly Development Control Plan (MDCP) 2013. However, this proposal does not involve altering the built form of the existing outbuilding structure, which was approved under DA357/03, with a 1.5m rear setback. It is acknowledged, that the outbuilding structure has been altered since the original approval, that is why the applicant has lodged a building certificate (BC2019/0068) in conjunction with this application, to seek a retrospective approval for alterations and additions to the detached outbuilding.

Notwithstanding, this report has still included an assessment of the rear setback, with regard to the proposed change of use. In summary, the proposed secondary dwelling does not provide any windows that readily overlook the rear boundary into the private open space areas of adjoining sites. As such, it is considered that the proposal will not unreasonably detract the amenity of adjacent land, particularly relating to privacy between buildings adjoining the rear boundary.

Therefore, this matter does not warrant a refusal.

- **Privacy:**

Concerns have been raised that the proposed change of use will create unreasonable privacy impacts for adjoining properties. In particular, the concerns focused on the western facing window of the proposed secondary dwelling and its privacy impacts for the upper bedrooms and living areas at No. 61 Wood Street.

Comment:

It is acknowledged, that the proposed change of use will permit the existing outbuilding to be

used as a self sustained habitable space. However, from completing a site inspection and analysing the submitted plans, it was found that views into the upper bedrooms and living areas of No. 61 Wood Street, were not readily accessible from this western facing window. This is attributed to the proposed secondary dwelling's substantial setback (approximately 10.0m) from the dwelling house at No. 61 Wood Street, in addition, the existing boundary fence and neighbouring vegetation provide adequate screening. Overall, it is considered that the proposal will not cause any unreasonable privacy impacts to adjoining properties.

Therefore, this matter does not warrant a refusal.

- **Noise:**

The submissions raised concerns that the proposed change of use will create unreasonable noise impacts for adjoining properties.

Comment:

The proposal was referred to Council's Building Assessment team, who assessed the proposal's capability of reaching compliance with the BCA. They recommended an approval subject to conditions, which indicates the proposed secondary dwelling is capable of achieving compliance with the specific soundproofing standards. Additionally, the proposed secondary dwelling will be set back substantially from adjoining dwellings. Overall, the proposed use of a secondary dwelling will not unreasonably disrupt the amenity of adjoining properties, in relation to noise pollution.

This matter does not warrant refusal of the application.

- **Parking:**

Concerns have been raised that the proposed change of use will place an additional strain on street parking within the localised area.

Comment:

The submitted plans indicate that the subject site contains three (3) off-street parking spaces. It is considered, that the existing parking arrangement will sufficiently meet needs of both the principal dwelling and the proposed secondary dwelling, without putting an unreasonable strain on localised street parking. Notwithstanding, the proposal is consistent with the requirements of SEPP (Affordable Rental Housing) 2009, as such, under Clause 22 (4) (b) Council cannot refuse the application on the basis that no additional parking is supplied.

This matter does not warrant refusal of the application.

- **Light Pollution:**

Concerns have been raised that the existing flood lights attached to the western elevation of the proposed secondary dwelling unreasonably detract neighbouring amenity through excessive light glare.

Comment:

From completing a site inspection it was found that no lighting is directed towards adjoining properties. Notwithstanding, a standard condition of consent will limit the intensity of lighting, by requiring compliance with AS4282-1997: Control of the Obtrusive Effects of Outdoor Lighting.

This issue can be addressed via condition of consent.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.</p>

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 (Affordable Rental Housing) 2009

State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH) aims to provide new affordable rental housing and retain and mitigate any loss of existing affordable rental housing by providing a consistent planning regime. Specifically, SEPP ARH provides for new affordable rental housing by offering incentives such as expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards.

Division 2: Secondary dwellings

Clause 19: Definition

Development for the purposes of a secondary dwelling includes the following:

- (a) the erection of, or alterations or additions to, a secondary dwelling,
- (b) alterations or additions to a principal dwelling for the purposes of a secondary dwelling.

Note: The standard instrument defines secondary dwelling as follows:

"secondary dwelling means a self-contained dwelling that:

- (a) is established in conjunction with another dwelling (the principal dwelling), and*
- (b) is on the same lot of land (not being an individual lot in a strata plan or community title scheme) as the principal dwelling, and*
- (c) is located within, or is attached to, or is separate from, the principal dwelling."*

Comment:

The proposed use is defined under MLEP 2013 as a secondary dwelling, which means a "self-contained dwelling that:

- (a) is established in conjunction with another dwelling (the principal dwelling), and
- (b) is on the same lot of land (not being an individual lot in a strata plan or community title scheme) as the principal dwelling, and
- (c) is located within, or is attached to, or is separate from, the principal dwelling." .

Clause 20: Land to which this Division applies:

Requirement	Comment
This Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones, but <i>only if</i> development for the purposes of a dwelling house is permissible on the land:	
(a) Zone R1 General Residential, or (b) Zone R2 Low Density Residential, or (c) Zone R3 Medium Density Residential, or (d) Zone R4 High Density Residential, or (e) Zone R5 Large Lot Residential.	Consistent. The site is located within the R1 General Residential zone and, as such, the proposed use is permissible with consent under MLEP 2013.

Clause 21: Development to which this Division applies

Requirement	Comment
This Division applies to development, on land to which this Division applies, for the purposes of a secondary dwelling.	Consistent. The development involves changing the use of a detached studio to a secondary dwelling, as defined by the Standard Instrument. Therefore, this Division applies.

Clause 22: Development may be carried out with consent

Development to which this Division applies may be carried out with consent.

Requirement	Comment
(2) A consent authority must not consent to development to which this Division applies if there is on the land, or if the development would result in there being on the land, any dwelling other than the principal dwelling and the secondary dwelling.	The proposal will not be creating an additional dwelling other than the principal dwelling and secondary dwelling.
(3) A consent authority must not consent to development to which this Division applies unless: (a) the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area allowed for a dwelling house on the land under another environmental planning instrument, and (b) the total floor area of the secondary dwelling is no more than 60m ² or, if a greater floor area is permitted in respect of a secondary dwelling on the land under another environmental planning instrument, that greater floor area.	The proposed floor area is below 60m ² .
(4) A consent authority must not refuse consent to development to which this Division applies on either of the following grounds: (a) site area if: (i) the secondary dwelling is located within, or is attached to, the principal dwelling, or (ii) the site area is at least 450 square metres. (b) parking if no additional parking is to be provided on the site.	The subject site area is greater than 450 square metres.

Note: A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (4).

Clause 24: No subdivision

Requirement	Comment
A consent authority must not consent to a development application that would result in any subdivision of a lot on which development for the purposes of a secondary dwelling has been carried out under this Division.	Consistent. This application does not propose any subdivision of the existing allotment.

Conclusion

With regard to the above assessment, it is considered that the proposal is consistent with the requirements of State Environmental Planning Policy (Affordable Rental Housing) 2009 and is therefore supported by Council.

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

Manly Local Environmental Plan 2013

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	5.88m (Retractable awning) 2.40m (Boundary fence)	N/A	Yes
Floor Space Ratio	FSR: 0.6:1	FSR: 0.49:1	N/A	Yes (No change)

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
5.8 Conversion of fire alarms	Yes

Clause	Compliance with Requirements
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes
6.22 Development for the purposes of secondary dwellings in certain residential and environment protection zones	Yes

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 533.2sqm	Requirement	Proposed	% Variation*	Complies
4.1.4.1 Street Front Setbacks	6m	0.24m (Pergola structure)	N/A	Yes (No change from existing)
4.1.4.2 Side Setbacks	1.48m (Based on 6.5m wall height) - East	2.13m (Pergola structure)	N/A	Yes
	1.18m (Based on 3.5m wall height) - East	1.50m (Secondary dwelling)	N/A	Yes
	1.74m (Based on 6.5m wall height) - West	1.20m (Pergola structure)	N/A	Yes (No change from existing)
	1.28m (Based on 3.8m wall height) - West	2.46m (Secondary dwelling)	N/A	Yes
4.1.4.4 Rear Setbacks	8m	1.31m (Secondary dwelling)	N/A	No change from existing* *See rear setback section
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area	No changes to existing open space areas	N/A	Yes (No change from existing)
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	No changes to existing landscaped areas	N/A	Yes (No change from existing)
4.1.5.3 Private Open Space	18sqm per dwelling	No changes to existing	N/A	Yes (No change from existing)

from existing)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	No	Yes
3.9 Mechanical Plant Equipment	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)	Yes	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)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.10 Fencing	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.4.1 Awnings in LEP B1 and B2 Business Zones	Yes	Yes
4.4.4.2 Awning supported from the ground	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

The proposed works within the front setback included constructing a retractable pergola over the existing front terrace. These works will be contained within existing setbacks and will sit below the maximum building height. Overall, it is considered that these works will not unreasonable detract the scenic amenity of the localised area, as the design complements the existing dwelling and strives for visual improvement.

The proposed change of use for a secondary dwelling will have no impacts on the streetscape, as the existing outbuilding structure is located within the rear setback and offers no visual elements to the street.

3.4.2 Privacy and Security

Description of non-compliance

The proposal seeks consent for changing the use of the existing outbuilding to a secondary dwelling. As the structure is situated 1.31m from the rear boundary, concerns have been raised that the proposed change of use will cause unreasonable privacy impacts to adjoining properties.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

Objective 1) To minimise loss of privacy to adjacent and nearby development by:

- *appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; and*
- *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

Comment:

The subject site has four (4) lots adjoining its boundaries, despite this, the proposed secondary dwelling will be substantially set back from adjoining dwellings. The closest residence is the southern apartment belonging to the No. 56 Osborne Road complex, with a 6.8m setback from the proposed secondary dwelling. In addition, No. 56 Osborne Road sits at a much higher position overlooking the subject site.

Concerns, have been raised with the western facing window of the proposed secondary dwelling and its impacts on the privacy of the upper bedrooms and living areas at No. 61 Wood Street. However, from completing a site inspection and analysing the submitted plans, it was found that views into the upper bedrooms and living areas of No. 61 Wood Street, were not readily accessible from this western facing window. This is attributed to the proposed secondary dwelling's substantial setback (approximately

10.0m) from the dwelling house at No. 61 Wood Street , in addition, the existing boundary fence and neighbouring vegetation provide adequate screening.

Additionally, concerns have been raised that the proposed secondary dwelling will detract neighbouring amenity through excessive noise. However, the proposal was recommended to Council's Building Assessment team, who are satisfied that the structure is capable of achieving compliance with the specific soundproofing standards.

Overall, it is considered that the proposal will not cause any unreasonable privacy impacts to adjoining properties.

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

Comment:

The proposal does not involve altering the built form of the existing outbuilding structure, as such there will be no impact caused by this development in relation to equitable access to views, light and air.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal will maintain reasonable awareness of neighbourhood security.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

3.8 Waste Management

A detailed waste management plan has not been submitted with the application. To ensure proper disposal of demolition and builders' wastes, a condition has been included in the consent requiring details prior to the issue of a construction certificate.

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

Description of non-compliance

The proposed secondary will be maintaining the existing outbuilding's rear setback of 1.31m. Council 's require's a minimum rear setback of 8.0m.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

Objective 1) To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.

Comment:

The proposed secondary dwelling will be located within the rear setback of the subject site and will not have any visual aspects, which present to the street.

Objective 2) To ensure and enhance local amenity by:

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*
- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

Comment:

The proposed change of use will maintain the built form of the existing outbuilding. As such, the proposal will not impact the provision of equitable access to light, sunshine and air movement, nor will it impede on the facilitation of view sharing. The proposed change of use will permit the existing outbuilding to be used as a self-contained habitable space, although the secondary dwelling will be within the rear setback area, it is considered that there will be no unreasonable privacy impacts as a result of this existing non-compliance. This is attributed to the fact that the secondary dwelling will not have any direct views into adjoining properties private open space areas. Therefore, the proposal satisfies this objective.

Objective 3) To promote flexibility in the siting of buildings.

Comment:

The proposed change of use will maintain the built form of the existing outbuilding. As such, the proposal will not impact the siting of buildings.

Objective 4) To enhance and maintain natural features by:

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Comment:

The proposal has included a landscape plan, which seeks approval to enhance the natural features within the rear setback. Additionally, the proposal does not involve the removal of any natural features.

Objective 5) To assist in appropriate bush fire asset protection zones.

Comment:

The subject site is not located within bushfire prone land.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect 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

Manly Section 94 Development Contributions Plan

This part of the Act relates to the collection of monetary contributions from applicants for use in developing key local infrastructure. The Act reads as follows:

- (1) *If a consent authority is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the consent authority may grant the development consent subject to a condition requiring:*
- (a) *the dedication of land free of cost, or*
 - (b) *the payment of a monetary contribution,*
- or both.*
- (2) *A condition referred to in subsection (1) may be imposed only to require a reasonable dedication or contribution for the provision, extension or augmentation of the public amenities and public services concerned.'*

Comments:

In this case, the proposed development is likely to increase the demand for public amenities and public services within the area. Accordingly, suitable conditions have been included within the recommendation requiring payment of a section 94 contribution of \$20,000.00 in line with Manly Section 94 Contributions Plan.

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 Development Consent to DA2019/0356 for Alterations and additions to a dwelling house including change of use of studio to a secondary dwelling on land at Lot B DP 344759, 19 Marshall Street, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA1003 - Site Plan	5 April 2019	Rapid Plans
DA2003 - Ground Floor Plan	5 April 2019	Rapid Plans
DA2004 - First Floor Plan	5 April 2019	Rapid Plans
DA2005 - Roof Plan	5 April 2019	Rapid Plans
DA2006 - Roof Plan	5 April 2019	Rapid Plans
DA3001 - Sections 1	5 April 2019	Rapid Plans
DA3002 - Sections 2	5 April 2019	Rapid Plans
DA4001 - Elevations 1	5 April 2019	Rapid Plans
DA4002 - Elevations 1	10 April 2019	Rapid Plans
DA4002 - Elevations 2	5 April 2019	Rapid Plans
DA5001 - Material and Colour Sample Board	5 April 2019	Rapid Plans

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
L-01 - Landscape plan	15 March 2018	Space Landscape Designs

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

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

2. **Approved Land Use**

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a Secondary Dwelling

A Secondary Dwelling is defined as "*a self-contained dwelling that:*

- (a) is established in conjunction with another dwelling (the principal dwelling), and*
- (b) is on the same lot of land as the principal dwelling, and*
- (c) is located within, or is attached to, or is separate from, the principal dwelling."*

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

Reason: To ensure compliance with the terms of this consent.

3. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been

completed.

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative Requirement

4. **General Requirements**

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
- 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,
 - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (j) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:
 - (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2008
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

FEES / CHARGES / CONTRIBUTIONS

5. **Security Bond**

A bond (determined from cost of works) of \$1,000 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at www.northernbeaches.nsw.gov.au).

Reason: To ensure adequate protection of Council's infrastructure.

6. **Development Contribution - Residential**

A contribution is to be paid for the provision of or increase the demand for public amenities and public services as a consequence of the development in the area. The total contribution for this development of a secondary dwelling is \$ 20,000.00, being \$20,000.00 per additional dwelling. This contribution shall be paid to Council prior to the release of the Construction Certificate.

Reason: To enable the provision of public amenities and services required/anticipated as a consequence of increased demand resulting from the development.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

7. **Laundry Facilities**

The secondary dwelling is to incorporate clothes washing facilities, comprising of at least one washtub and space in the same room for a washing machine in accordance with Part 3.8.3 of the Building Code of Australia –‘Facilities’.

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

Reason: To ensure adequate provision is made for building occupant health and amenity

8. **Waste Management Plan**

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

Details demonstrating compliance must be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

9. **Compliance with Standards**

The development is required to be carried out in accordance with all relevant Australian Standards.

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

Reason: To ensure the development is constructed in accordance with appropriate standards.

10. **Sydney Water "Tap In"**

The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifying Authority demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website www.sydneywater.com.au for:

- "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

Reason: To ensure compliance with the statutory requirements of Sydney Water.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

11. **Waste Management During Development**

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

Details demonstrating compliance must be submitted to the Principal Certifying Authority.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

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

12. **Height of Landscaping**

The selected species for landscaping within the rear yard must not have a mature height that extends above RL 37.50.

Details demonstrating compliance must be submitted to the Principal Certifying Authority prior to the occupation certificate.

Reason: To preserve the amenity of neighbouring properties.

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

13. **Maintenance of Landscaping**

The height of landscaping within the rear yard of the subject site must not grow above RL 37.50. As such, the residents of No. 19 Marshall Street must ensure the height of the selected landscaping does not extend beyond RL 37.50.

Reason: To preserve the amenity of neighbouring properties.

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

Signed



Kye Miles, Planner

The application is determined on 27/06/2019, under the delegated authority of:



Steven Findlay, Manager Development Assessments