

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/0300
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Responsible Officer:	Kent Bull
Land to be developed (Address):	Lot 3 SP 13150, 3 / 62 Osborne Road MANLY NSW 2095
Proposed Development:	Alterations and additions to a residential flat building
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:	Ann Philomena Jacinta Fraser
Applicant:	BBF Town Planners

Application Lodged:	23/03/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	06/04/2020 to 25/04/2020
Advertised:	Not Advertised
Submissions Received:	6
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 25,000.00
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PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for the alterations and additions to a residential flat building. In particular the works include:

- An open first floor balcony accessed from Unit 3 with a privacy screen and dimensions of 7m x 1.9m over common property.

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 - 3.4.1 Sunlight Access and Overshadowing

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

SITE DESCRIPTION

Property Description:	Lot 3 SP 13150 , 3 / 62 Osborne Road MANLY NSW 2095
Detailed Site Description:	<p>The subject site is commonly known as 62 Osbourne Road, Manly and legally referred to as Lot CP SP 13150. The site consists of four (4) individual strata units. This application specifically relates to a proposed balcony accessed via Unit 3 (Lot 3 SP 13150) that is over common property.</p> <p>The site is regular in shape with a frontage of 14.325m along Osbourne Road and a depth of 43.3m. The site has a surveyed area of 619.7m².</p> <p>The site is located within the R1 General Residential Zone of the Manly LEP 2013 and accomodates a two storey brick residential unit building with two metal sheds indicated in the rear yard.</p> <p>The slope of the site is measured at 9.2%, falling approximately 4m from the road frontage to the rear boundary.</p> <p>The site had a modified landscaped setting, with vegetation consisting of lawned turfed areas, shrubs and an established tree to the rear of the property.</p> <p>The site has is a declared habitat for the endangered population of Long-nosed Bandicoots at North Head.</p> <p>Detailed Description of Adjoining/Surrounding</p>

Development

Adjoining and surrounding development is characterised by a combination of low-density residential houses and medium density residential apartments of varying age and style.

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:

5 November 2002

Development Consent No. 356/02 for the addition of first floor balcony to Unit 3 was granted by Council on 5 November 2002.

7 November 2002

Development Consent No. 429/02 for a deck to Unit 1 was granted by Council on 7 November 2002.

23 June 2006

Development Consent No. 105/06 for the alterations and additions to existing residential flat building, including conversion of rear window to door and steps to Unit 1 granted by Council on 23 June 2006.

APPLICATION HISTORY

2 April 2020

Site inspection undertaken by the development assessment officer.

6 April 2020

Photo confirmation received of the notification sign being erected on site.

12 May 2020

Council is informed by a unit holder of the subject site, that a 'Qualified Request' had been made for a strata general meeting to be held within the next 14 days in order to discuss support that was given for the lodgement of the development application.

8 July 2020

Council is provided with minutes from this meeting and is informed that support had not been withdrawn for the proposed development.

14 July 2020

The development assessment officer highlights issues with the proposed balcony relating to access to sunlight and amenity impacts to the applicant.

28 July 2020

The applicant provides amended plans to could addressing the above concerns, reducing the scale and size of the proposed balcony, while also addressing concerns relating to stormwater drainage. These plans form the basis of the following assessment.

Note: While effected neighbours were informed of the amended plans that were made available to view on Council's website, these plans were not re-notified, as in accordance with the Northern Beaches Community Participation Plan, the *"changes result in a lesser or reduction of environmental impacts"*.

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	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)(iia) – Provisions of any planning agreement	None applicable.

Section 4.15 Matters for Consideration'	Comments
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 allow Council to request additional information. Whilst no additional information was requested, amended architectural plans were received on 28 July 2020.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter can be addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&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&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter can be 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 (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 06/04/2020 to 25/04/2020 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 6 submission/s from:

Name:	Address:
Rebecca Watts	1 / 62 Osborne Road MANLY NSW 2095
Mr Nattapong Teswattana	2 / 62 Osborne Road MANLY NSW 2095
Evolution Planning Pty Ltd	Po Box 309 FRENCHS FOREST NSW 1640
Nerida Jean Harvey	2 / 60 Osborne Road MANLY NSW 2095
Ms Belinda Anne Elworthy	64 Osborne Road MANLY NSW 2095
Ms Harriet Catherine Cheney	39 Kite Street ORANGE NSW 2800

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

- **Drainage**

Comment:

Concerns were raised by the occupier and owner of Unit 1/62 Osborne Road, Manly (that is located directly below Unit 3), regarding drainage issues arising from the proposed balcony. Based on the amended architectural plans received on 28 July 2020, a down pipe has been indicated to ensure that drainage from the balcony connects to the existing stormwater system. Subject to conditions, Council can be satisfied that the proposed development will avoid any significant adverse impacts of stormwater runoff on the subject site or adjoining properties.

- **Access to Sunlight**

Comment:

Submissions were received from the occupier and owner of Unit 1/62 Osborne Road, Manly as well as from the owners of Unit 2/60 Osborne Road, Manly and 64 Osbourne Road, Manly concerning the loss of sunlight arising from the proposed balcony. The proposed balcony is not seen result in any loss of sunlight access towards Unit 2/60 Osborne Road, Manly and the extent of overshadowing is acceptable towards 64 Osbourne Road, Manly. In order to provide equitable access to light for Unit 1/62 Osborne Road, Manly the architectural plans were amended in order to reduce the size and scale of the proposed balcony to maximise light into the kitchen/living areas of the unit. Refer to Clause 3.4.1 (Sunlight Access and Overshadowing) in this report for further discussion.

- **View Impacts**

Comment:

Both the occupier and owner of Unit 1/62 Osborne Road, Manly raised concerns in submissions relating to view impacts arising from the proposed balcony. In order to help preserve views towards Sydney Harbord and skyline, the amended plans have reduce the number of supporting columns/posts from four (4) to two (2). These two posts are not directly in front of any window or sliding door, and as such the proposal is seen to maintain existing views.

- **Construction Noise**

Comment:

Concerns were raised by the occupier of Unit 1/62 Osborne Road, Manly raising specific concerns relating to construction noise. Should the application be approved, standard construction hours would apply. It should be noted that the *Environmental Planning and Assessment (COVID-19 Development – Construction Work Days) Order 2020* is now in place to allow construction hours to be extended to support industry until the COVID-19 pandemic is over.

- **Amenity of Common Area**

Comment:

Submissions were received from the owner of Unit 1/62 Osborne Road, Manly, on behalf of the owner of Unit 2/62 Osborne Road, Manly, the owner of Unit 4/62 Osborne Road, Manly and the owner of Unit 2/60 Osborne Road, Manly with regards to amenity impacts on the common area towards the rear of the property. As previously discussed, the amended plans for the proposed balcony demonstrate a reduced footprint to better serve to minimise amenity impacts on neighbours. In this regard, noise is seen to be substantially contained within Unit 3 and noise from the balcony area (private open space areas) would be limited. Further, with the exception of the two (2) supporting columns/posts, the proposed balcony does not unreasonably restrict the usability or area for apartment residents.

- **Scale of Balcony**

Comment:

Concern was raised by the owner of Unit 2/62 Osborne Road, Manly with regards to the scale of the proposed balcony. The plans submitted at the time of lodgement reflected a balcony with dimensions of 3.17m (W) x 10.35m (L). The size and scale of this balcony was reduced to 1.9m (W) x 7m (L). The amended plans are seen to reflect a balcony that is reasonable for its context and not excessive.

- **Legitimacy of Owners Consent**

Comment:

Submissions were received from the owner of Unit 1/62 Osborne Road, Manly, on behalf of the owner of Unit 2/62 Osborne Road, Manly and the owner of Unit 4/62 Osborne Road, Manly concerning the legitimacy of the owners consent provided at lodgement. In this regard, the proposal was lodged with the common seal of the owner's corporation, a letter on strata management letterhead and minutes by the Owner's Corporation indicating the support for the lodgement of the development application.

As such, the development application was seen to comply with clause 49(1) of the

*Environmental Planning and Assessment Regulation 2000 (NSW) and the Northern Beaches Council Development Application & Modification Lodgement Requirements and the case law established under *Crowley v Hastings Municipal Council (1982) 4 APAD 115* to the effect that once landowners consent is given, that it can be relied upon by the consent authority to determine the development application and as such, it cannot be revoked or withdrawn.*

- **Inconsistency with the Public Interest**

Comment:

Concern was raised in a submission on behalf of the owner of Unit 1/62 Osborne Road, Manly with regards to the proposed not being in the 'public interest'. The assessment of the proposal has taken into consideration the public interest of the development under Section 4.15 of the Environmental Planning and Assessment Act 1979. Consideration has been given that the proposal is consistent with the aims of the Manly Local Environmental Plan 2013 as well as the objectives of the land zoning applicable to the site. In consideration of the above, no matters have arisen in this assessment that would justify the refusal of the application on the basis of an inconsistency with the public interest.

- **Non-compliance to Side Setback**

Comment:

Concern was raised in a submission on behalf of the owner of Unit 1/62 Osborne Road, Manly with regards to a potential non-compliance with the north-western side setback requirement. In this regard, the amended plans increased the proposed side setback to the balcony to 4.79m which is compliant with the 1.5m setback requirement.

- **Visual Privacy**

Comment:

Submissions were received from the adjoining owners at Unit 2/60 Osborne Road, Manly and 64 Osbourne Road, Manly with regard to visual privacy impacts arising from the proposed balcony. In order to limit overlooking towards habitable room windows at 64 Osbourne Road, Manly, a privacy screen has been indicated on the south eastern side of the balcony. Whilst this privacy screen does not extend the full width of the balcony, it is acknowledged that there is a sense of openness that exists towards the rear of these properties in order to access views towards Sydney Harbour. As previously discussed, the size of the proposed balcony has been reduce to limit the extent of privacy impacts towards Unit 2/60 Osborne Road, Manly. Further, an inspection of the site revealed that established vegetation that exists along the shared side boundary also assists to protect privacy.

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	The proposed development is located within declared habitat for the endangered population of Long-nosed Bandicoots at North Head. As such, assessment against Clause 7.3 of the Biodiversity Conservation Act is required. This assessment was undertaken and concluded that, given that works are generally restricted to the existing development footprint, the proposal will not result in a significant impact to the endangered bandicoot population. Conditions are recommended to mitigate potential construction-related impacts.

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

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 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	Proposed	% Variation	Complies
Height of Buildings:	8.5m	Top of privacy screen: 4.76m	-	Yes
Floor Space Ratio	FSR: 0.6:1 (371.82m ²)	FSR: Unchanged	-	N/A

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	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

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 619.7m ²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	NW: 6.5m (based on gradient 0%)	4.51m	-	Yes
	SE: 6.5m (based on gradient 0%)	4.76m	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line	Consistent with prevailing setback	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	NW: 1.5m (based on wall height) SE: 1.59m (based on wall	NW: 4.79m SE: 2.46m	-	Yes

	height)			
4.1.4.4 Rear Setbacks	8m	17.9m	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements	Open space 55% of site area	55.5% (344.3m ²)	-	Yes
Residential Open Space Area: OS3	Open space above ground 40% of total open space	3.7% (13m ²)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	74.8% (257.7m ²)	-	Yes
	3 native trees	1 trees	2 trees	No
4.1.5.3 Private Open Space	12sqm per dwelling	>12sqm per dwelling	-	Yes

***Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: 38/40 x 100 = 95 then 100 - 95 = 5% variation)

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
3.4.4 Other Nuisance (Odour, Fumes etc.)	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
3.10 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

Clause	Compliance with Requirements	Consistency Aims/Objectives
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	Yes	Yes
4.1.5 Open Space and Landscaping	No	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
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
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
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

The control requirements under this clause are to ensure the maintenance of solar access into living rooms of adjacent properties. The level of solar access presently enjoyed must be maintained to windows or glazed doors to these living rooms for a period of at least 2 hours from 9am to 3pm on the winter solstice (21 June). In this regard, the proposed balcony is seen to be compliant with regards to its shadowing impacts on Unit 2/60 Osborne Road, Manly and 64 Osbourne Road, Manly. Consideration was given to maintaining solar access for the below apartment directly below the proposed balcony being Unit 1/62 Osborne Road, Manly. Concerns were initially raised with regards to loss of light and sunshine towards the kitchen and living room windows of this apartment. In response to these concerns, the applicant submitted amended plans reducing the size of the proposed balcony to maintain light towards these windows (Figure 1). Whilst afternoon light will be reduced to the bedroom window of Unit 1/62 Osborne Road, Manly, consideration has been given that the amended proposal is acceptable. With regard to overshadowing of private open space of adjacent properties and the subject site, the proposal is seen to comply with the requirement to ensure that no more than one-third of the existing sunlight accessed to these areas are eliminated.

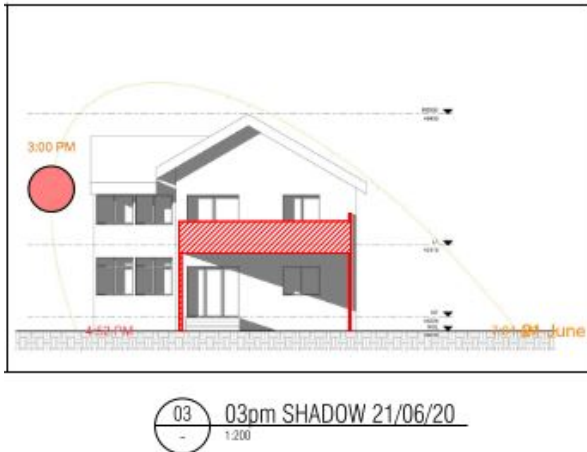


Figure 1: South-West elevation shadow diagram depicting the extent of shadowing effecting the bedroom window of the Unit 1/62 Osborne Road at 3pm on 21st June 2020. (Source: Drawn4U Building Design)

3.4.2 Privacy and Security

The control requirements under this clause are that architectural or landscape screens are provided to balconies in order to limit overlooking of nearby properties. Concerns were raised in submissions from the owners of Unit 2/60 Osborne Road, Manly relating to privacy impacts resulting from the proposed balcony. In this regard, existing vegetation help to limit overlooking (Figure 2). A submission was also received from the property owners of 64 Osbourne Road, Manly with regards to privacy concerns arising from the proposed balcony (Figure 3). In this regard, a fixed architectural privacy screen is indicated along the south-eastern side of the balcony to prevent direct views into a habitable room window. While the screen does not extend the full width of the balcony, it should be acknowledged that there is a sense of openness that exists towards the rear of these properties to better access views towards Sydney Harbour. As previously discussed in this report, the size of the proposed balcony has been reduce through amended plans being submitted in order to limit the extent of privacy impacts. In summary, the application is seen to be appropriately designed for privacy and to mitigate direct overlooking of adjacent properties.



Figure 2: Image taken from rear garden facing 60 Osborne Road, Manly.



Figure 3: Image taken from rear garden facing 64 Osborne Road, Manly.

4.1.5 Open Space and Landscaping

The proposed development is technically non-compliant with the requirement for at least three (3) native trees to be provided on site. With only one (1) tree being located within the rear yard, the application seeks to vary the control by two (2) trees. In considering this variation, it should be acknowledged that the application does not seek to removal of any native trees or bushland. Further, the proposal has demonstrated that landscaping and water infiltration on-site has been maximised on site by providing a landscaped area of 74.8% (257.7m²) of open space. Consideration has also been given that established shrubs, including a large frangipani tree to the front of the site help to maintain the landscaped character and amenity of the site. Further tree plantings to rear of the site may also result in future issues with solar access and maintaining views. The application has also been reviewed by Council's Biodiversity Officer, who has recommended the application be supported, subject to conditions protecting the endangered population of Long-nosed Bandicoots in the area.

Based on the above, the proposed development is seen to comply with the objectives of this clause and is supported on merit.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

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

CONCLUSION

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

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

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

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

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

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 DA2020/0300 for Alterations and additions to a residential flat building on land at Lot 3 SP 13150, 3 / 62 Osborne Road, 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
A01, Rev. B (Site Plan)	25.07.2020	Drawn4U Building Design
A02, Rev. B (Floor Plan)	25.07.2020	Drawn4U Building Design
A03, Rev. B (Elevation & Section)	25.07.2020	Drawn4U Building Design

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:

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. **Compliance with Other Department, Authority or Service Requirements**

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Response Ausgrid Referral	18.05.2020

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

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) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of

any Authorised Officer.

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

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable

cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 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 are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION

CERTIFICATE

6. 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.

7. 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.

8. 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.

9. Details of Privacy Screen

The privacy screen to the balcony is to result in no more than 25% overlooking when viewed from perpendicular to the side boundary with 64 Osbourne Road, Manly.

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

Reason: To maintain sufficient visual privacy.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

10. Site Induction Required – Penguin and Bandicoot Habitat

All workers, including site inspectors and sub-contractors, are to be made aware of the potential presence of bandicoots through a site induction prior to commencement of works. The site induction is to include information about their conservation significance, potential activities on-site, means of identification and the measures to be implemented for their protection. Evidence

of the site induction is to be documented and provided to the Principal Certifying Authority.

Reason: To prevent impacts to threatened species, endangered ecological communities and their habitats in accordance with the Biodiversity Conservation Act 2016.

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.

12. Pre-clearance Survey Required – Bandicoot Habitat

A pre-clearance survey for Long-nosed Bandicoot activity and presence is required prior to the removal or relocation of any stockpiles. Clearing may only proceed if the survey concludes that no Long-nosed Bandicoots are present within the area to be cleared. A record of each inspection is to be made in the daily inspection register log-book. The log-book is to be made available to the Principal Certifying Authority.

Reason: To avoid injury or death of Long-nosed Bandicoots which may be utilising stockpiles of vegetation, materials or debris.

13. Report Dead or Injured Bandicoots – Bandicoot Habitat

Any injured or dead Long-nosed Bandicoots found within the worksite must be reported to the National Parks & Wildlife Service (9457 9577) or Northern Beaches Council (1300 434 434).

Reason: To prevent impacts to Long-nosed Bandicoots in accordance with the Biodiversity Conservation Act 2016.

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

14. Stormwater Disposal

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development.

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

15. Dead or Injured Wildlife – Manly LEP Clause 6.5

If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To mitigate potential impacts to native wildlife resulting from construction activity.

16. **Maintaining Sufficient Privacy**

The privacy screen as referred to under condition 9 of this consent is to be maintained for the life of the development.

Reason: To reduce impacts on visual privacy.

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

Signed



Kent Bull, Planner

The application is determined on 07/10/2020, under the delegated authority of:



Tony Collier, Manager Development Assessments