

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2021/0476
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<b>Responsible Officer:</b>	Thomas Burns
<b>Land to be developed (Address):</b>	Lot 16 DP 11214, 21 Gurney Crescent SEAFORTH NSW 2092
<b>Proposed Development:</b>	Alterations and additions to Dwelling House
<b>Zoning:</b>	Manly LEP2013 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	James Andrew Wealleans
<b>Applicant:</b>	The Site Foreman (NSW) Pty Ltd

<b>Application Lodged:</b>	25/05/2021
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	31/05/2021 to 14/06/2021
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 39.06%
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 338,600.00
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The report is submitted to the Northern Beaches Development Determination Panel (DDP) for consideration of Development Application DA2021/0476 for alterations and additions to a dwelling house at 21 Gurney Crescent, Seaforth.

As the variation to the Building Height Development standard exceeds 10%, the application is to be referred to the DDP for determination.

The maximum building height of the development is 11.82m, which represents a 39.06% variation to the prescribed 8.5m building height limit.

The applicant has demonstrated that compliance with the height standard is both unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the 39.06% variation to Clause 4.3 of Manly LEP 2013.

When assessed on its merits, it is concluded that the bulk and scale of the proposed development will be commensurate to the surrounding built environment and that the height breach will not result in unreasonable amenity impacts, specifically having regard to views, solar access, visual and aural privacy and visual impacts.

The development receive one (1) submission, which related to concerns of the proposed fencing and gates encroaching into road reserve. This particular issue has been alleviated through conditions of consent.

The proposed redevelopment represents a modernised and improved built form on the site and is compatible and consistent with surrounding residential developments.

The application is recommended for approval subject to conditions.

## **PROPOSED DEVELOPMENT IN DETAIL**

The applicant seeks development consent for alterations and additions to an existing dwelling house, which includes a first floor addition. Specifically, the proposed works consist of:

### **Lower Ground Floor**

- Small rear addition to provide additional floor space to existing bedrooms.
- New ensuite to service bedroom 4.

### **Ground Floor**

- Internal reconfiguration of the floor plan.
- Replace existing garage door.
- Internal staircase to access first floor addition.
- Replacement fencing within the road reserve.

### **First Floor Addition**

- Master bedroom with associated walk-in-robe, external balcony, study and ensuite.

## **ASSESSMENT INTRODUCTION**

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;

- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

## SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 3.4.3 Maintenance of Views

Manly Development Control Plan - 3.8 Waste Management

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

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

Manly Development Control Plan - 4.1.8 Development on Sloping Sites

Manly Development Control Plan - 4.1.10 Fencing

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 16 DP 11214 , 21 Gurney Crescent SEAFORTH NSW 2092
<b>Detailed Site Description:</b>	<p>The subject site consists of one allotment located on the southern side of Gurney Crescent, Seaforth.</p> <p>The site is irregular in shape with a frontage of 15.325m along Gurney Crescent and respective depths of 41.455m and 46.615m along the eastern and western side boundaries. The site has a surveyed area of 666.3sqm.</p> <p>The site is located within the R2 Low Density Residential zone pursuant to Manly LEP 2013 and accommodates part-1 part-2 storey dwelling house. The dwelling also contains a decked entertaining area below the lower ground floor.</p> <p>The site is significantly landscaped, particularly within the rear yard, where a number of canopy trees are sited.</p> <p>The site is constrained with a steep topography that declines approximately 17.5m from the front boundary towards the rear south-western corner. This represents an approximate slope of 37.4%.</p> <p><b>Description of Surrounding Development</b></p> <p>The surrounding built environment is characterised by detached low density residential development, typically 2-3 storeys in height. The site immediately adjoins a Public Reserve to the east and south.</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:

- Development Application No. 217/2014 for alterations and additions to an existing dwelling house including extension of deck at entry level, extension of existing lower level with new deck, garage alterations, and stairs to new lower level with new deck and facilities approved by Council on 6 May 2015.

## APPLICATION HISTORY

The Assessment Officer examined the site and its surrounds on 17 June 2021.

Following preliminary assessment of the application, which included the aforementioned site visit, Council wrote to the applicant requesting the following:

- Additional section plan to allow Council to accurately calculate the maximum building height.
- Revised Clause 4.6 request. Whilst Council acknowledged that the proposal did have merit to the design, the applicant's written request under Clause 4.6 of Manly LEP 2013 did not adequately demonstrate that there were sufficient environmental planning ground to justify the height breach.
- New works within the road reserve to be deleted from the plans.

The applicant subsequently submitted revised plans and further documentation to demonstrate the following:

- Additional works within the road reserve removed. The works did however comprise new replacement/repairation works to the existing fence within the road reserve.
- A new Clause 4.6 request prepared by a Town Planning Consultancy.

The removal of additional works within the road reserve resulted in a reduced environmental impact. Therefore, the application was not required to be re-exhibited for 14 days, in accordance with the Northern Beaches CPP.

## 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 2013 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to amended plans and a revised Clause 4.6 written request.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely	(i) <b>Environmental Impact</b>

Section 4.15 Matters for Consideration'	Comments
impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan 2013 section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> 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 classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the application (prepared by Bushfire Consulting Services, dated 5 February 2021). The report recommended an alternative solution to comply with Planning for Bush Fire Protection.

The application was referred to the NSW Rural Fire Service for further assessment. The NSW RFS raised no objections to approval, subject to conditions. The recommendations of the Bush Fire Report , along with the conditions from the NSW RFS, have been included as part of the recommended conditions of consent.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 31/05/2021 to 14/06/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

Name:	Address:

Name:	Address:
Mary McCafferty	Address Unknown

Council received one (1) submission objecting to the proposal following the public exhibition period.

The following issue was raised in the submission and has been addressed below as follows:

- **Works within Council Road Reserve**

Comment:

Concern has been raised regarding the proposed fencing and associated works within the road reserve.

Council's Transport and Civil Infrastructure Assets Department, noting that no approval has been granted for previous works within the road reserve, do not support any proposed works within Councils Road Reserve. Accordingly, suitable conditions are recommended with this consent to remove proposed works within the road reserve from the approved scope of works.

Concluding Remarks

The concern raised within the submission has been resolved through conditions. This concern alone does not warrant refusal of the application.

## REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	The proposed development does not require the removal of prescribed trees or native vegetation, nor will it impact on biodiversity values. As such, Council's Biodiversity referrals team raise no objections.
NECC (Development Engineering)	<p>The existing driveway crossing is to remain which is satisfactory. The stormwater is to be in accordance with Council's Water Management Policy.</p> <p>No objection to approval, subject to conditions as recommended.</p> <p><i>It is noted that Road Assets have refused the works in the road reserve which may require amended plans. If the amendments alter the internal design, revised comments will be required from Development Engineering.</i></p>
Road Reserve	<p>The impact on existing road infrastructure is limited to the unauthorised encroachment and privatisation of public road reserve with the enclosure by fencing. The fencing shall be removed from the public road reserve and relocated to the property boundary.</p> <p>The existing "private" formalised parking space on road reserve is noted and no lease could be located in Council records. It is noted</p>

Internal Referral Body	Comments
	<p>former owners enquired to the use/lease of the road reserve in 1999 (2020/540666 pg 40 &amp; 41) however would appear to not have formalised it. No further embellishment of this area will be permitted without Council approval.</p> <p><u>Planner Comment - 19/07/2021</u> Council's Planning Assessment Officer has received further written correspondence from Council's Transport and Civil Infrastructure Department raising concern of replacement fencing within the road reserve, as indicated on the amended plans. Council's Transport and Civil Infrastructure Department requested that all works within the road reserve, inclusive of replacement fencing, be removed from the approved plans. Accordingly, suitable conditions are recommended with this consent to remove any works within the road reserve from the approved plans.</p>
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	<p>The proposal has been referred to Heritage as the subject property is located opposite a heritage item</p> <p><b>1270 - Dalwood Home (principal building and stone outbuilding to Dalwood Home) - 21 Dalwood Avenue, Seaforth</b></p>
	Details of heritage items affected
	<p>Details of the item as contained within the Manly inventory is as follows:</p> <p><u>Statement of significance:</u> Regionally significant historically and socially, and aesthetically as the home of Theodore Gurney and Mr. A.E. Dalwood, and as Dalwood Home for disadvantaged children.</p> <p><u>Physical description:</u> Two storey coursed sandstone Victorian Gothic style villa on large parcel of land, with a semi-rural bushland setting. The building has a large parapeted entrance with Gothic pointed arch; casement lead light windows, timber framed double hung windows, a return verandah facing water views and hipped unglazed terracotta roof, with chimneys. On a landmark site and originally called 'Clavering'. The place also contains a two storey sandstone outbuilding associated with the original villa and is also listed. The stone entrance way to Dalwood Home is also of importance as a landmark in Seaforth as well as the main entry point to the site and villa. The site contains remnant bushland vegetation similar to that found in nearby Gurney reserve located to the south and separated by Gurney Crescent. The site also contains exposed sandstone shelves and boulders. Vegetation communities found in Gurney Reserve and likely to be found on the Dalwood site includes Sydney Sandstone Ridgetop Woodland.</p>



Internal Referral Body	Comments		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	Yes	Dalwood is on the register
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	Yes	Dalwood is on the Health Department's S170 Register
	Consideration of Application		
	<p>The proposal seeks consent for alterations and additions to the dwelling including a new upper storey. The heritage item (including the bushland) is located directly to the north and east of the subject property, across Gurney Crescent. The bushland is considered to be an important part of the curtilage and character of the item. However, given the separation afforded by Gurney Crescent, the proposal is considered to not impact upon the heritage item or its significance.</p> <p>Therefore Heritage raises no objections and requires no conditions.</p> <p>Consider against the provisions of CL5.10 of MLEP.</p> <p>Is a Conservation Management Plan (CMP) Required? No  Has a CMP been provided? No  Is a Heritage Impact Statement required? No  Has a Heritage Impact Statement been provided? No</p>		
	Further Comments		
	<p>COMPLETED BY: Brendan Gavin, Principal Planner</p> <p>DATE: 26 May 2021</p>		

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

External Referral Body	Comments
local branch (s4.14 EPAA)	<p>accordance with Section 4.14 of the EP&amp;A Act 1979.</p> <p>The RFS responded to Council on 8 June 2021, recommending that the application be approved, subject to conditions.</p> <p>The conditions have been included as part of the development consent.</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 19 - Bushland in Urban Areas

The site adjoins land zoned for public open space and therefore, the provisions of SEPP 19 must be considered prior to granting consent.

For land adjoining land zoned or reserved for public open space, Council shall not grant development consent unless it has taken into account:

- (c) the need to retain any bushland on the land,*
- (d) the effect of the proposed development on bushland zoned or reserved for public open space purposes and, in particular, on the erosion of soils, the siltation of streams and waterways and the spread of weeds and exotic plants within the bushland, and*
- (e) any other matters which, in the opinion of the approving or consent authority, are relevant to the protection and preservation of bushland zoned or reserved for public open space purposes.*

#### Comment:

The proposed development does not require the removal of bushland on the site or adjoining public open space. Furthermore, sediment and erosion control measures will be conditioned to be in place during construction works, which will minimise siltation of adjoining lands. It is noted that the works are largely confined to the existing building footprint and therefore, the siltation of streams is unlikely.

Overall, it is concluded that the proposed development is consistent with the relevant provisions within SEPP 19.

### 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 (Building Sustainability Index: BASIX) 2004**

A BASIX Certificate has been submitted with this application (refer Certificate No. A414030, dated 22 April 2021). A condition has been included with this consent to ensure the requirements set out within the BASIX Certificate are complied with.

#### **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.

#### **Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

The subject property is located within the Sydney Harbour Catchment and therefore, the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(1) (aims of the SREP), Clause 13 (nominated planning principles) and Clause 21 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

#### **Manly Local Environmental Plan 2013**

Is the development permissible?	Yes
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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	11.82m	39.06%	No
Floor Space Ratio	FSR: 0.4:1 (266.52sqm GFA)	FSR: 0.395 (263.5sqm GFA)	-	Yes

Note: GFA refers to gross floor area.

#### Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

#### Detailed Assessment

#### **4.6 Exceptions to development standards**

##### Description of non-compliance:

Development standard:	Height of Buildings
Requirement:	8.5m
Proposed:	11.82m
Percentage variation to requirement:	39.06%

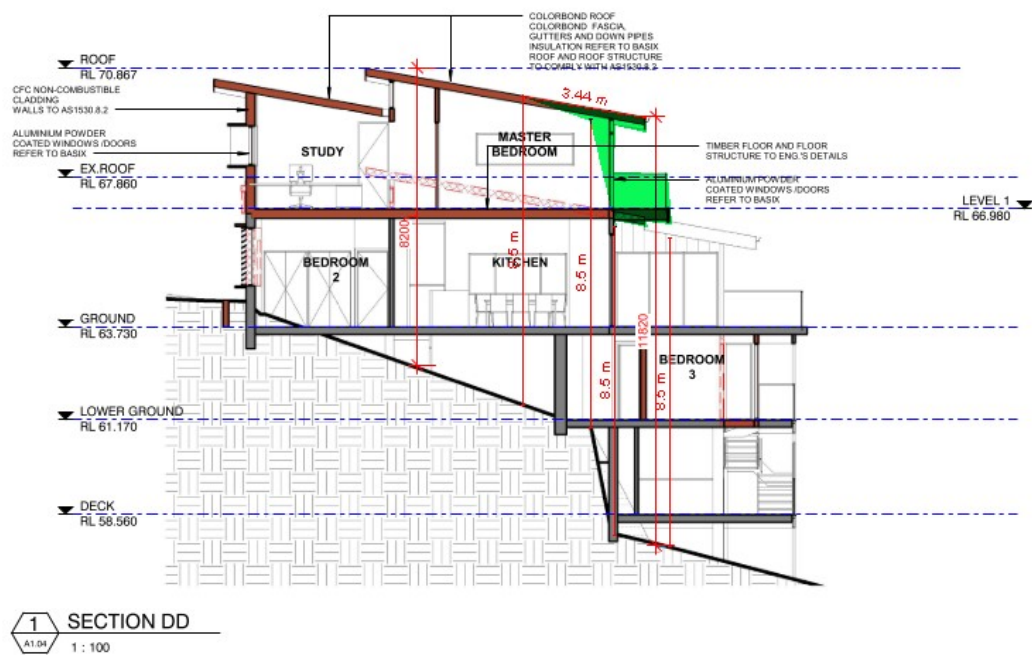
The site is subject to an 8.5m maximum building height under the requirements of Clause 4.3 of Manly LEP 2013. The proposed development contains a maximum building height of 11.82m, which represents a 39.06% variation from the Development Standard.

The extent of the new non-compliance is confined to portions of the upper floor roofline and the proposed rear balcony adjacent to the bedroom on the upper floor.

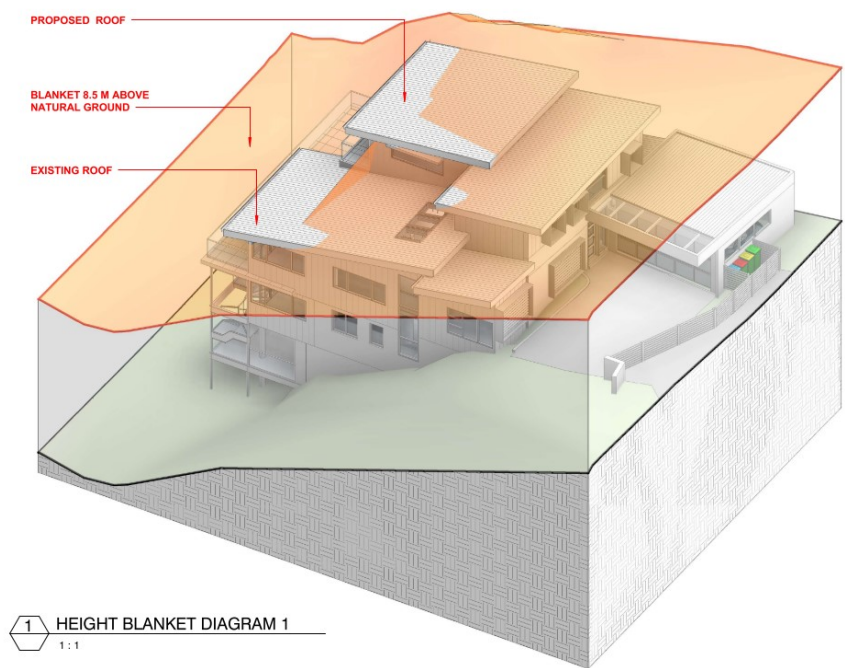
It is noted that portions of the existing dwelling's roofline currently exceeds the 8.5m height limit.

Figures 1 and 2 below demonstrate the area of the development that exceeds the 8.5m statutory height limit.

**Figure 1:** section plan highlighting the proposed building height non-compliance.



**Figure 2:** 3D modelling depicting existing and proposed areas above 8.5m height limit.



The following assessment of the variation to Clause 4.3 – Height of Buildings development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

Clause 4.6 Exceptions to development standards:

*(1) The objectives of this clause are as follows:*

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

*(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Comment:

Clause 4.3 - Height of Buildings development standard is not expressly excluded from the operation of this clause.

*(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

*(4) Development consent must not be granted for development that contravenes a development standard unless:*

*(a) the consent authority is satisfied that:*

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Secretary has been obtained.*

Clause 4.6 (4)(a)(i) (Justification) assessment:

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

Comment:

The Applicant's written request (attached to this report as an Appendix) has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

*(b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

Comment:

In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]*. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

*1.3 Objects of Act(cf previous s 5)*

*The objects of this Act are as follows:*

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The applicant's written request argues:

*"There are numerous and substantive environmental planning grounds to justify contravention of the development standard. These are detailed as follows:*

*1. No significant or unreasonable impacts on surrounding public areas*

*As demonstrated both by this and other points below, in addition to the plans and Statement of Environmental Effects (prepared by The Site Foreman) already submitted to Council, the proposed height variation will have no adverse or unreasonable impacts on the amenity of surrounding sites and the public domain.*

*The location of the proposed height breaches will be at the lowest point of the proposed first floor; such areas will not be visible from the adjoining road reserve, while any visual impact to the rear of the site will be mitigated by the thick vegetation within the adjoining reserve.*

*Aside from being considerably stepped back from the eastern side boundary, any visual impact from the adjoining reserve will be minimal; further, any impact will not be observable, as the steep topography and thickness of vegetation within the reserve impedes public access and any subsequent views across the site.*

*Despite an increase in height, the northern (i.e. street-fronting) elevation of the building will be well within the 8.5 metre building height standard, and will present to Gurney Crescent as a two-storey detached dwelling; such an appearance is consistent with residential development along the southern and eastern sides of Gurney Crescent (as is also demonstrated within Test 2 in the response to consistency with built character).*

## *2. No significant or unreasonable impacts on surrounding residences*

*As demonstrated both above and by submitted information, the proposal will not significantly nor unreasonably affect adjoining and nearby residences to the west of the subject site (noting that there is no residential development on adjoining/nearby sites to the east and north) in terms of visual privacy, overshadowing, view loss and visual amenity. This is reflected by the relative lack of submissions, noting that no residential submissions have been received that object to the proposed development.*

*The additional height proposed correlates to the site's steeply sloped topography; the proposed highest points of the first-floor additions are to be positioned towards the southern side of the dwelling above lower portions of the slope, which will mitigate any adverse impacts on solar access on residential allotments to the west.*

*Further, the only part of the western side of the proposed first floor that will breach the building height standard is the roof; the height variation will subsequently have no effect on the visual privacy of allotments to the west.*

## *3. Retention of site amenity*

*It is acknowledged that areas towards the southern side of the ground and proposed first floors (i.e. areas where the greatest height noncompliances are proposed) have ceiling heights of 2.5 and three metres respectively, and that such heights are greater than the minimum 2.4 metre standards under the Building Code of Australia (BCA). These ceiling heights subsequently contribute to greater overall building height.*

*As indicated elsewhere within this document, the site is uniquely constrained, in that it:*

- Is oriented in a northwest-southeast direction,*
- Has a significant front-to-rear slope, and*
- Is considerably overshadowed by thick tree canopies on sites both to the east and north of the site.*

*As such, there are very few opportunities to obtain direct solar access and natural light to this site. As*



*such, the design has sought to increase the ceiling heights in order to maximise natural light access, particularly for living areas on the ground floor.*

*With regard to the above, it is therefore submitted that greater ceiling heights (which contributes to taller overall building heights) are required in order to maximise natural light access to, and increase the amenity of, living areas on lower levels. This particular site is highly susceptible to reduced solar access due to a unique combination of factors; to require that ceiling heights be lowered in order to reduce the proposed height variation will significantly reduce internal amenity and would therefore be unreasonable, particularly given the current proposal's lack of impact on adjoining sites and presentation to surrounding public areas.*

#### *4. Limited opportunities for the placement of new additions on the site*

*In addition to the site limitations outlined within the previous point, the subject site is also constrained by the placement and design of the existing dwelling, which occupies most of the northern part of the site and progressively steps down the site. Whilst the proposed first floor does not comply with the building height standard, with regard to site constraints its location was selected with regard to the following:*

- As the gradient of the slope progressively increases towards the rear of the dwelling, any further additions of existing levels towards the rear of the site (i.e. at floor levels lower than that currently proposed) would likely result in even greater variations to the building height standard,*
- Placement of the additions towards the northern point of the dwelling will enable a cohesive design that progressively steps up the longitudinal and diagonal slopes of the site in a manner that is consistent with the objectives of the building height development standard,*
- The placement of new additions within the existing development footprint will not increase the development's environmental impact in terms of encroachment on trees and maintaining existing landscaped areas. Any placement of development outside the building footprint will result in further encroachment upon landscaped areas, noting the site's location adjacent to areas of notable biodiversity significance, and*
- To further excavate existing lower levels to provide additional floor space will provide habitable areas that are of very poor amenity (due to lack of natural light access due to filtering at lower levels by surrounding vegetation). Whilst this would likely facilitate works that could comply with the building height standard, further excavation to facilitate such works would be contrary to the objectives of the building height standard, in that the height of the building as a result of any such works would not respect the topography of the site.*

*With regard to the above, it is therefore submitted that the placement of the first-floor additions – whilst noncompliant with the numerical building height standard – are ideal for this site. The design and placement of the modest residential additions have sought to ensure high amenity (both for the subject site and adjoining residual site), minimises environmental impacts and will not significantly nor unreasonably affect surrounding residential sites and the existing and desired character of the locality.*

*For the reasons outlined above, it is evident that there are substantive environmental planning grounds which demonstrate why strict application of the development standard is not appropriate for this proposal".*

#### *Comment:*

Council's Planning Assessment Officer generally concurs with the applicant's justification.

It is agreed that the proposed development will not have an adverse impact upon surrounding public areas. This is justified given the proposal will present as a two storey structure when viewed from the public domain and a three storey structure from the rear.

Additionally, works discernible from the street frontage are sited under the 8.5m height limit and will not present with excessive bulk when viewed from Gurney Crescent. Furthermore, a significant portion of the upper floor addition is setback over 6m from the eastern and southern boundaries, which is in compliance with Clause 4.1.4.5 'Setback for development adjacent to LEP zones RE1, RE2, E1 and E2' of the Manly DCP 2013.

As such, the development will not have an unreasonable visual impact upon the adjoining reserve. It is further noted that the works are largely confined to the existing building footprint and do not impact upon bushland on adjoining public open space.

It is also accepted that the building height non-compliance will not unreasonably impact adjoining and surrounding properties. The proposed development has no impact upon existing views enjoyed from private properties, given the site is located directly to the east of the existing view corridor. Dwellings to the west of the site maintain a southern aspect and enjoy largely unobstructed views of Middle Harbour and the Sydney CBD skyline.

Furthermore, given the north/south orientation of the allotments along the southern side of Gurney Crescent and that only one of the site's boundaries (western boundary) adjoins residential development, the shadowing impacts to adjoining private land are only confined to the morning hours on June 2021 (winter solstice).

The proposal contains a 9sqm elevated balcony located above the 8.5m height limit. Nevertheless, this structure adjoins a room that will receive low volumes of pedestrian movement (a bedroom) and therefore, the overlooking impacts are less significant when compared to a deck that would adjoin a living room, where people spend greater periods of their waking time. It is further noted that the deck is 1.45m in width and not conducive to serve as principal private open space.

The proposal has been designed to allow for adequate internal amenity, without compromising the amenity of adjoining properties. The provision of 2.5m-3m floor to ceiling heights on the upper floor increases the internal amenity for the occupants of the subject dwelling, without resulting in adverse amenity impacts for neighbouring residential land.

In the circumstances of steep site conditions, there are minimal alternative areas to provide additional floor space while continuing to allow for a dwelling house that limits the excavation of the site to protect significant environmental features of the site.

It is agreed that the breach is largely unavoidable due to the considerable slope of the land and that the non-compliance will not result in any unreasonable impacts to any surrounding properties.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying Clauses 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

Clause 4.6 (4)(a)(ii) (Public Interest) assessment:

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

*(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out*

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

**Objectives of development standard**

The underlying objectives of the standard, pursuant to Clause 4.3 – ‘Height of buildings’ of the MLEP 2013 are:

(1) The objectives of this clause are as follows:

*a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*

Comment:

The scale of the development, being a 2-3 storey dwelling, is commensurate with the size of surrounding residential development, noting that there are numerous three storey dwellings along Gurney Crescent. The roofline of the addition corresponds with the slope of the land, which ensures the development appropriately responds to the topographic landscape.

As such, despite the non-compliance with the height of building development standard, the proposed development is consistent with, and complementary to existing development in the locality, particularly in relation to height, roof form and character.

*b) to control the bulk and scale of buildings,*

Comment:

The proposal complies with the Floor Space Ratio development standard, which is the primary statutory control that governs the bulk and buildings. Furthermore, the upper floor additions steps in as the building height increases, which provides further visual relief. The height of the structure is consistent with established residential development along Gurney Crescent, notwithstanding the height breach. For these reasons, the bulk and scale of the development is considered to be acceptable in the context of the site and its immediate surrounds.

*c) to minimise disruption to the following:*

*(i) views to nearby residential development from public spaces (including the harbour and foreshores),*

*(ii) views from nearby residential development to public spaces (including the harbour and foreshores),*

*(iii) views between public spaces (including the harbour and foreshores),*

Comment:

The development has negligible impacts upon existing views from adjoining private property or land zoned for public open space. It is acknowledged that the upper floor addition obscures view lines towards Middle Harbour and the Sydney CBD skyline from the road reserve. However, this particular view can be obtained from other areas of the street and given the scale of the development is consistent with surrounding residential development and that Gurney Crescent does not have a footpath that is conducive for pedestrians to walk along the street and enjoy the view from the road reserve, the impact is considered to be reasonable. This matter is discussed later within the section of this report relating to Clause 3.4.3 of Manly DCP 2013.

*d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*

Comment:

Due to the north/south orientation of the allotments along the southern side of Gurney Crescent and that only one of the site's boundaries (western boundary) adjoins residential development, the shadowing impacts to adjoining private land are only confined to the morning hours on June 2021 (winter solstice). Given the finding in this clause, the development satisfies this objective.

*e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

Comment:

The proposal does not necessitate the removal of trees or significant landscaping.

**Zone objectives**

- *To provide for the housing needs of the community within a low density residential environment.*

Comment:

The proposed alterations and additions cater for the housing needs of the community within a low density residential environment.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment:

The site maintains a residential land use within an area characterised by low density residential development.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone and the objectives of Clause 4.3 of Manly LEP 2013.

**Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:**

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, and in accordance with correspondence from the Deputy Secretary on 24 May 2019, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Height of buildings Development Standard associated with a single dwelling house (Class 1 building).

**Manly Development Control Plan**Built Form Controls

<b>Built Form Controls - Site Area: 666.3sqm</b>	<b>Requirement</b>	<b>Proposed</b>	<b>% Variation*</b>	<b>Complies</b>
4.1.1.1 Residential Density and Dwelling Size	Dwelling Size: 129sqm GFA required based off no. of bedrooms and bathrooms	263.5sqm GFA	-	Yes
4.1.2.1 Wall Height	East: 8m (gradient of slope is greater than 1:4)	10.57m	32.13%	<b>No</b>
	West: 8m (gradient of slope is greater than 1:4)	7.9m	-	Yes
4.1.2.2 Number of Storeys	2 storeys	3 storeys	50%	<b>No</b>
4.1.2.3 Roof Height	Height: 2.5m	skillion roof	-	Yes
	Pitch: maximum 35 degrees	10 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line	new works consistent with prevailing front building line	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	West: 2.63m	2.65m	-	Yes
	Windows: no windows within 3m of side boundaries	no new windows proposed within 3m of side boundaries	-	Yes
4.1.4.6 Setback for development adjacent to LEP Zones RE1, RE2, E1 and E2	East: 6m (common boundary adjoining RE1 zone)	3.74m - 6.64m	up to 37.67%	<b>No</b>
	8m (rear boundary)	27.65m	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area	no change	N/A	N/A
	Open space above ground 25% of total open space	no change	N/A	N/A
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	no change	N/A	N/A

	3 native trees	over 3 canopy trees	-	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	> 18sqm	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	-	Yes

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	No	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	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	No	No
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

#### Detailed Assessment

### 3.4.2 Privacy and Security

Clause 3.4.2.2 of the Manly DCP 2013 notes as follows:

#### 3.4.2.2 Balconies and Terraces

- a) Architectural or landscape screens must be provided to balconies and terraces to limit overlooking nearby properties. Architectural screens must be fixed in position and suitably angled to protect visual privacy.*
- b) Recessed design of balconies and terraces can also be used to limit overlooking and maintain privacy.*

#### Comment:

The upper floor addition contains an elevated balcony on the southern (rear) elevation that adjoins a bedroom. It is noted that the balcony is devoid of privacy screening, nor is a recessed design.

Despite this, the balcony is small in size at 9sqm and has a depth of 1.45m, which is not conducive to serve as principal private open space or main recreational area. Furthermore, the deck adjoins a bedroom and will receive lower volumes of pedestrian movement when compared to a deck that adjoins higher trafficable areas, such as living rooms or kitchens. This is consistent with the NSW Land and Environment Court Case of *Meriton v Sydney City Council [2004] NSWLEC 313*, where Commissioner Roseth SC states that "overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time". As such, potential overlooking impacts will be reasonable.

It is considered that the proposed development is consistent with the intent of this control.

### 3.4.3 Maintenance of Views

#### View Loss from the Public Domain

Consideration has been given to the potential for view loss from the public domain, noting that an existing view line towards Middle Harbour and the Sydney CBD skyline obtained from the Gurney Crescent roadway and road reserve.

In determining the extent of potential view loss from the public domain, the planning principles outlined within the NSW Land and Environment Court Case of *Rose Bay Marina Pty Limited Vs Woollahra Municipal Council and anor (213) NSWLEC 1046* are applied to the proposal.

#### 1. The Nature and Scope of Existing Views

*The first step of this stage is to identify the nature and scope of the existing views from the public domain. This identification should encompass (but is not limited to):*

- *the nature and extent of any existing obstruction of the view;*
- *relevant compositional elements of the view (such as is it static or dynamic and, if dynamic, the nature and frequency of changes to the view);*
- *what might not be in the view - such as the absence of human structures in the outlook across a natural area (such as the view from Kanangra Walls);*
- *is the change permanent or temporary; or*
- *what might be the curtilages of important elements within the view.*

Comment:

The existing views from the public domain, in this case being the Gurney Crescent roadway, consist of Middle Harbour and the distant Sydney CBD skyline. The water views of Middle Harbour are obstructed by the existing dwelling house on the subject site, whilst the Sydney CBD skyline is not obstructed. The existing dwelling house is a permanent obstruction. The view in question is depicted in Figure 3 below.

**Figure 3:** public domain views from the roadway



## **2. Location of View Interruptions**

*The second step is to identify the locations in the public domain from which the potentially interrupted view is enjoyed.*

Comment:

The affected view is available from the Gurney Crescent roadway and road reserve.

## **3. Extent of Obstructions**

*The third step is to identify the extent of the obstruction at each relevant location.*

Comment:

The location where the views are obtained are limited to the roadway and road reserve. The water views can be obtained from a standing position only, whilst portions of the CBD skyline could be obtained from a sitting position within a car whilst travelling along Gurney Crescent.



The upper floor addition will completely obstruct this particular corridor. Whilst the upper floor addition exceeds the 8.5m height limit, it is noted that a significant portion of the roofline is sited under the 8.5m height plane. If the addition was stepped from the rear and eastern facades to comply with the height standard, the water view would remain completely obstructed and the CBD skyline would still be significantly obscured.

#### **4. Intensity of the use of the relevant Public Spaces**

*The fourth step is to identify the intensity of public use of those locations where that enjoyment will be obscured, in whole or in part, by the proposed private development.*

##### Comment:

The site is a cul-de-sac and is devoid of a formal level/paved pedestrian footpath within the road reserve. It is also noted that Gurney Crescent is not a classified road and receives low volumes of vehicular movement.

These factors mean that the nature of the street is not conducive for pedestrians to stop and enjoy the view, nor is the street conducive for passengers in vehicles to regularly enjoy the view.

#### **5. Documentation of the View**

*The final step to be identified is whether or not there is any document that identifies the importance of the view to be assessed. This will encompass specific acknowledgment of the importance of a view (for example, by international, national, state or local heritage recognition) or where the relevant planning regime promotes or specifically requires the retention or protection of public domain views.*

##### Comment:

The Sydney CBD contains a number of local and state heritage listed buildings. However, the site is significantly distanced from the CBD and the Planning Assessment Officer could not identify an individual heritage item, given the significant distance of the view. It is important to note that the impacted view does not contain iconic structures, such as the Opera House or Sydney Harbour Bridge.

Clause 3.4.3 of Manly DCP 2013 requires Council to consider view impacts from the city or waterways from both private and public property, which includes roads and footpaths. However, as noted above, a compliant design would still completely obstruct the existing water views and obscure a significant portion of the existing city views.

##### Concluding Comments from View Impact from Public Domain

Ultimately, as the impacted view from the roadway receives low volumes of pedestrian and vehicular movement, combined with the fact that the scale of the proposal is commensurate with the surrounding built environment, the view impact is considered to be reasonable.

#### **View Loss from Private Property**

Dwellings to the west of the site maintain a southern aspect and enjoy largely unobstructed views of Middle Harbour and the Sydney CBD skyline. The proposed development has no impact upon existing views enjoyed from private properties, given the site is located directly to the east of the existing view corridor.

## **Conclusion**

Overall, it is concluded that the proposal is consistent with the intent of Clause 3.4.3 of Manly DCP 2013.

### **3.8 Waste Management**

The application has not been accompanied by a Waste Management Plan. To ensure the proper disposal of builders' waste, a suitable condition has been included with this consent requiring a Waste Management Plan to be prepared in accordance with Council's waste management guidelines and submitted to the Certifying Authority prior to the issue of the Construction Certificate. Subject to satisfying the above, the proposal will demonstrate consistency with the requirements and objectives of this control.

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

Clause 4.1.2 of Manly DCP 2013 limits the external wall height of dwellings to 8m above natural ground level for sloping sites with a gradient steeper than 1:4. Furthermore, the control limits the number of storeys of a building to two storeys.

The proposed development is a three storey structure and has a maximum wall height of 10.57m, which fails to meet the prescribed requirements.

When considering the proposal on its merits, the control relies upon the objectives specified within Clause 4.3 of Manly LEP 2013. As discussed in detail within the section of this report relating to Clause 4.6 of Manly LEP 2013, the proposed development is found to align with the objectives of the height standard, notwithstanding the numeric non-compliances that pertain to building height, wall height and number of storeys.

Therefore, the proposed development is consistent with the intent of this control and supported on merit.

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

##### Description of non-compliance

The control requires development to be setback at least 6m from boundaries that adjoin properties zoned as RE1, RE2, E1 and E2. The eastern boundary of the site adjoins public land zoned RE1.

A portion of the upper floor addition is setback 3.74m from the eastern side boundary and therefore, fails to meet this requirement. It is important to note that the area of non-compliance relates to the ensuite and occurs for a horizontal length of 3.43m, with the rest of the upper floor addition being setback over 6m from the eastern boundary.

##### 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 proposal presents as a two storey structure when viewed from the road reserve and the upper floor is setback over 6m from the front boundary, which ensures the dwelling is not visually imposing within the streetscape. Furthermore, the proposal is generally confined to the existing building footprint and does not impact upon bushland on the adjacent reserve or the subject site. For these reasons, the proposal is considered to meet this objective.

*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:

As discussed within the section of this report relating to the amenity provisions of the Manly DCP 2013, the privacy impacts of the proposal are reasonable and the view impact from the roadway is considered to be acceptable. Given the site only adjoins one residential property (No. 23 to the west), the overshadowing of adjoining residences is only confined to 9am on June 21 (winter solstice), which complies with the MDCP 2013 solar access control.

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

Comment:

Flexibility is provided in this circumstance as the proposed development will not result in any unreasonable impacts upon adjoining properties.

*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 does not reduce existing areas of total open space or deep soil landscaping.

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

Comment:

The recommendations of the NSW RFS have been included as part of this consent.

### Concluding Remarks

Having regard to the above assessment, it is concluded that the objectives of the control are achieved. Therefore, the application is supported on merit in this particular circumstance.

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

A Geotechnical Report (prepared by Ascent Geotechnical Consulting, dated 5 May 2021) has been submitted with this application. The report concludes as follows:

*"With reference to the Australian Geomechanics Society's definitions, the existing conditions and proposed development are considered to constitute an 'ACCEPTABLE' risk to life and a 'LOW' risk to property provided that the recommendations outlined in Table 2 are adhered to".*

The recommendations of this report will form part of this consent.

#### **4.1.10 Fencing**

The proposal includes replacement fencing and associated works within Council's Road Reserve. Council's Transport and Civil Infrastructure Assets Department are not supportive of these works and therefore, suitable conditions are recommended with this consent requiring these works to be removed from the approved scope of works.

### **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**

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2019.

A monetary contribution of \$3,386 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$338,600.

### **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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

- a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
- b) There are sufficient environmental planning grounds to justify the contravention.

2) The proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

The proposed development involves alterations and additions to an existing dwelling house.

The maximum height of the proposed development is 11.82m, which exceeds the 8.5m height limit. The applicant has provided sufficient justification for the departure from the development standard in that compliance with the standard is unreasonable in the circumstances of this highly constrained site and the encroachment does not result in any unreasonable impacts to surrounding residential properties.

In addition, the assessment of the proposed development against the provisions of the Manly DCP 2013 has found that the proposal does not comply with a number of controls, i.e wall height, boundary setbacks. Given the constraints on the development by virtue of the escarpment location and the presence of environmental features, some flexibility in applying these controls is necessary. There will not be any unreasonable amenity impacts on adjoining properties and the proposal will be consistent with the vegetated character of Gurney Crescent and the Locality.

In summary, the proposal is recommended for approval as the siting and design of the dwelling house responsive and logical and will not result in any unreasonable amenity impacts on surrounding developments or the streetscape and locality character.

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

## **RECOMMENDATION**

That Northern Beaches Council as the consent authority vary Clause 4.3 Height of Buildings

development standard pursuant to Clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2021/0476 for Alterations and additions to Dwelling House on land at Lot 16 DP 11214, 21 Gurney Crescent, SEAFORTH, subject to the conditions printed below:

## DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

### 1. **Approved Plans and Supporting Documentation**

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

#### a) Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
A1.01 (Revision F)	08/07/2021	The Site Foreman
A1.03 (Revision E)	21/04/2021	The Site Foreman
A1.04 (Revision G)	08/07/2021	The Site Foreman
A1.05 (Revision E)	21/04/2021	The Site Foreman
A1.06 (Revision G)	08/07/2021	The Site Foreman
A1.07 (Revision D)	21/04/2021	The Site Foreman
A2.01 (Revision D)	21/04/2021	The Site Foreman
A2.02 (Revision E)	21/04/2021	The Site Foreman
A2.03 (Revision E)	21/04/2021	The Site Foreman
A3.01 (Revision D)	21/04/2021	The Site Foreman
A3.02 (Revision A)	21/04/2021	The Site Foreman
A5.01 (Revision A)	21/04/2021	The Site Foreman

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
BASIX Certificate No. A414030	22/04/2021	CVMA Architects
Geotechnical Assessment Ref. AG 21127	05/05/2021	Ascent Geotechnical Consultants
Bush Fire Assessment Report Ref. 21/0020	05/02/2021	Bushfire Consulting Services

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

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	Ausgrid Referral Response	not dated
New South Wales Rural FIRE Service	NSW Rural Fire Service Referral Response Ref. DA20210528002207-Original-1	8 June 2021

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website [www.northernbeaches.nsw.gov.au](http://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 2018
  - (iv) Australian Standard AS1926 Swimming Pool Safety
  - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
  - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
  - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
  - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

**5. No Approval for Existing Structures within Council Road Reserve**

No approval is granted for any existing fencing and/or associated structures within Council's Road Reserve.

Reason: The works are not included as part of this application.

## **FEES / CHARGES / CONTRIBUTIONS**

**6. Policy Controls**

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$3,386.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$338,600.00.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate where no Construction Certificate is required. If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash contribution payable for this development will be the total unpaid monetary contribution as adjusted.

The proponent shall provide to the Certifying Authority written evidence (receipt/s) from Council that the total monetary contribution has been paid.

The Northern Beaches Section 7.12 Contributions Plan 2019 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au)

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

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

## **7. Security Bond**

A bond (determined from cost of works) of \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

### **8. Stormwater Disposal from Low Level Property**

The applicant is to demonstrate how stormwater from the new development within this consent shall be disposed of to an existing approved system or in accordance with Northern Beaches Council's Water Management Policy in particular the Section 5.5 Stormwater Drainage from Low Level Properties. Details demonstrating that the existing approved system can accommodate the additional flows or compliance with the Northern Beaches Council's Water Management Policy are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

### **9. No Clearing of Vegetation**

Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.

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

Reason: To protect native vegetation.

10. **Traffic Management and Control**

The Applicant is to submit an application for Traffic Management Plan to Council for approval prior to issue of the Construction Certificate. The Traffic Management Plan shall be prepared to RMS standards by an appropriately certified person.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process.

11. **Amendments to the approved plans**

The following amendments are to be made to the approved plans:

- The proposed fencing and associated works within Council's Road Reserve are not approved as part of this application and are to be deleted from the approved plans prior to the issue of the Construction Certificate.

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

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

12. **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.

13. **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.

14. **Certification of Bushfire Requirements**

A suitably qualified bushfire consultant is to provide written certification that the recommendations of the New South Wales Rural Fire Service referenced in Condition 2 of this consent have been incorporated into the Construction Certificate plans.

Documented evidence is to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure compliance with Planning for Bushfire Protection 2019.

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

**15. Road Reserve**

The applicant shall ensure the public footways and roadways adjacent to the site are maintained in a safe condition at all times during the course of the work.

Reason: Public safety.

**16. Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

**17. Survey Certificate**

A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements, floor levels and the finished roof/ridge height are in accordance with the approved plans.

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

Reason: To demonstrate the proposal complies with the approved plans.

**18. Traffic Control During Road Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual (<http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf>) and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

**19. 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.

20. **Dead or Injured Wildlife**

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 protect native wildlife.

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

21. **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 the Occupation Certificate.

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

22. **No Weeds Imported On To The Site**

No Priority or environmental weeds (as specified on the NSW WeedWise website) are to be imported on to the site prior to or during construction works.

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

Reason: To reduce the risk of site works contributing to spread of Priority and environmental weeds.

23. **Certification of Bushfire Requirement**

A suitably qualified bushfire consultant is to provide written certification that the recommendations of the New South Wales Rural Fire Service referenced in Condition 2 of this consent have been incorporated into as-built development.

Documented evidence is to be provided to the Certifying Authority prior to the issue of the Occupation Certificate.

Reason: To ensure compliance with Planning for Bushfire Protection 2019.

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

24. **Geotechnical Recommendations**

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

Reason: To ensure geotechnical risk is mitigated appropriately.