



CLAUSE 4.6 VARIATION TO THE HEIGHT OF BUILDINGS DEVELOPMENT STANDARD

Alterations and additions and conversion of an under garage area to a secondary dwelling

56 Woodland Street, Balgowlah Heights

Prepared on behalf of

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18 JANUARY 2022

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1.0 INTRODUCTION

This Exception to Development Standards Submission accompanies a Development Application (**DA**) proposing alterations and additions to the dwelling house, conversion of an existing under garage area to a secondary dwelling, landscaping and other required site works at 56 Woodland Street, Balgowlah Heights (the **site**).

Calculations in this submission are based on plans and information provided by Bokey-Grant Architects. This submission should be read in conjunction with the detailed supporting technical information (reports and plans) submitted separately with the DA.

As noted in the separate SEE, the proposed built form departs from the height of buildings development standard (**height standard**) at Clause 4.3(2) of Manly Local Environmental Plan 2013 (**LEP 2013**).

As required pursuant to Clause 4.6(3) of LEP 2013, this submission provides a written request to the Northern Beaches Council (the **Council**) that seeks to justify the proposal's existing and proposed departure from the height standard is acceptable from an environmental planning point of view and that compliance with the standard is both unreasonable and unnecessary given the circumstances of the case.

This submission (relative to format and content) takes into consideration relevant (current) NSW Land and Environment Court (**NSW LEC**) judgements.

2.0 DESCRIPTION OF THE PLANNING INSTRUMENT, DEVELOPMENT STANDARD AND PROPOSED VARIATION

2.1 What is the name of the environmental planning instrument that applies to the land?

Manly Local Environmental Plan 2013 (LEP 2013).

2.2 What is the zoning of the land?

The site (land) is zoned R2 Low Density Residential.

2.3 What are the objectives of the zone?

The objectives of the R2 Low Density Residential zone are:

- to provide 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.

2.4 What is the development standard being varied?

Development Standards' are defined under Section 1.4 of the Environmental Planning and Assessment Act, 1979 (the **Act**) as follows:

development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of: ...

- (a) *the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
- (b) *the proportion or percentage of the area of a site which a building or work may occupy,*
- (c) ***the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,***
- (d) *the cubic content or floor space of a building,*
- (e) *the intensity or density of the use of any land, building or work,*
- (f) *the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,*
- (g) *the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,*
- (h) *the volume, nature and type of traffic generated by the development,*
- (i) *road patterns,*
- (j) *drainage,*
- (k) *the carrying out of earthworks,*

- (l) the effects of development on patterns of wind, sunlight, daylight or shadows,*
- (m) the provision of services, facilities and amenities demanded by development,*
- (n) the emission of pollution and means for its prevention or control or mitigation, and*
- (o) such other matters as may be prescribed. (my emphasis)*

The height control at Clause 4.3(2) of LEP 2012 is clearly a development standard as it relates to the height of buildings as specified at **subclause (c)**.

2.5 Is the development standard a performance based control? Give details.

Yes, as it contains stated objectives to which compliance with the standard is targeted to achieve.

2.6 Under what clause is the development standard listed in the environmental planning instrument?

The height of buildings development standard is listed at Clause 4.3(2) of LEP 2013.

2.7 What are the objectives of the development standard?

Relevant to the site and the land use zone it is located within, the objectives of the height standard are expressly stated at Clause 4.3(1)(a) of LEP 2013 and are:

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

2.8 What is the numeric value of the development standard in the environmental planning instrument?

Clause 4.3(2) of LEP 2013 establishes a maximum building height of 8.5m for the site.

2.9 What is the proposed numeric value of the development standard in the development application?

Ostensibly the existing building envelope is retained with minor additions and removal of some elements. The dwelling has an existing maximum building height of 9.687m (RL 63.67). However, and due to the site's topographical characteristics works (the gable roof element) at the rear technically increase the height of the dwelling to 10.475m (RL 62.975).

Figures 1 and 2 provide a comparison of the existing and proposed built form which depart from the height standard. The only new departure (shown coloured green) to the standard is the new gable roof element at the dwelling's rear. It is noted that existing elements departing from the standard will be removed (shown hatched and purple).

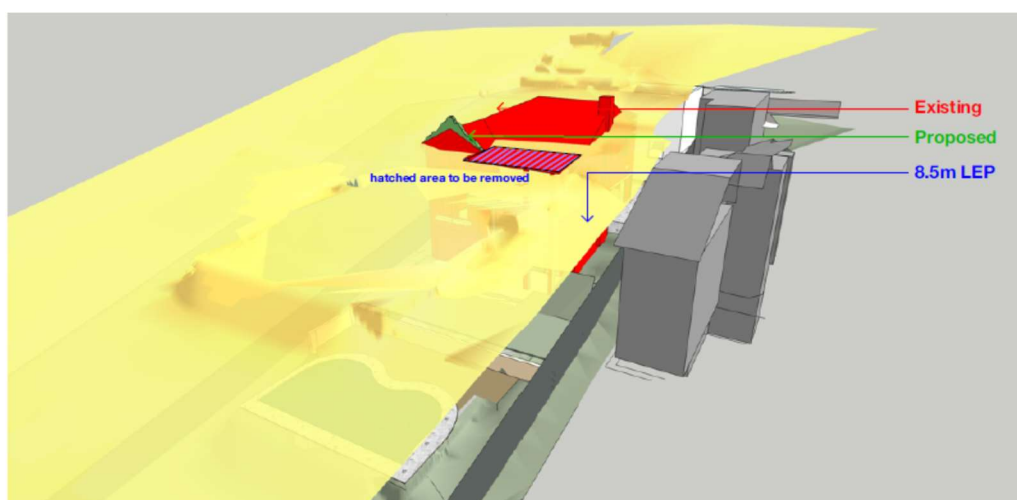


Figure 1 – View 1 comparing the existing and proposed departure from the standard

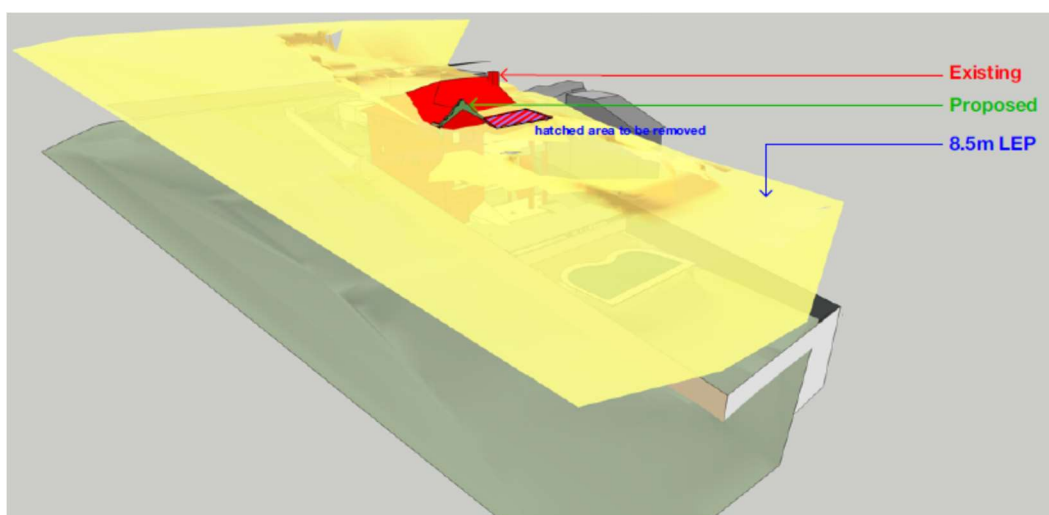


Figure 2 – View 2 comparing the existing and proposed departure from the standard

2.10 What is the percentage variation (between the proposal and the environmental planning instrument)?

Relative to the height standard, the existing departure is 1.187m (rounded to 1.19m) or 14% (rounded up).

Relative to the height standard, the proposed departure is 1.975m (rounded to 1.98m) or 23.2%.

The percentage variation between the existing and proposed height (gable roof element only) is 8.1%.

3.0 ASSESSMENT OF THE PROPOSED VARIATION

3.1 Is the proposed development in the public interest because it is consistent with the objectives for development in the zone and the objectives of the particular standard?

3.1.1 Objectives of the zone

As stated at Clause 2.3 of LEP 2013, the objectives of the R2 Low Density Residential zone are:

- *to provide for the housing needs of the community within a low density residential environment.*
 - o a low density residential (principal dwelling and secondary dwelling) land use is maintained on the existing low density residential allotment of land. This is the desired future character. The proposal maintains and alters a built form that will have an improved relationship to the site's locational characteristics through a high quality architectural, urban and landscape design solution. The built form maintains visual interest and a human scale. Compliance is maintained with the FSR standard and complementary open space and landscaped area guidelines. The existing setback conditions are not materially altered. The overall built form sits comfortably within its established and likely future built form context as desired by the planning controls.
 - o the proposal provides for a low density single dwelling house and maintains flexible housing for a family through the provision of a new secondary dwelling.
- *to enable other land uses that provide facilities or services to meet the day to day needs of residents.*
 - o not applicable for this site. It does provide the opportunity for the occupants to work from home as/if required.
 - o does not threaten existing nearby non-residential land uses that provide daily services to the local community.

The site may be developed with the stated variations to the height standard. Consistency is not readily quantifiable in absolute numerical terms. The proposed development despite its existing and proposed departure from the height standard is consistent with the stated objectives of the R2 Low Density Residential zone and is therefore a suitable and appropriate redevelopment of the site as it:

- a low density built form is maintained within a garden / park like setting;
- maintains an appropriate mix of residential land uses in the locality;
- extends, modernises and improves the internal and external amenity for the occupants;
- is located on a site of sufficient size to appropriately accommodate the proposal;
- responds positively to the site's locational characteristics and complements the existing streetscape character, height, bulk and scale of existing and future dwellings in the immediate vicinity; and
- there are no unreasonable amenity impacts to neighbouring and nearby properties and the surrounding public domain.

3.1.2 Objectives of the height of buildings standard

The proposal despite the departure from the height standard is nonetheless consistent with its objectives and therefore provides an appropriate planning outcome for the following reasons:

Objective (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

Objective (b) - to control the bulk and scale of buildings

- A permissible low density residential use is maintained on an existing low density residential allotment of land.
- The dwelling's maximum roof ridge is not altered. The altered dwelling sits comfortably within its established and likely future built form context when viewed from the surrounding public domain, albeit it is largely screened from view by the locality's topographical characteristics, the street front built form and established vegetation and screen planting (see Section 2 within the SEE). Although the dwelling's height is technically increased, ostensibly the envelope is not dissimilar to that existing (see **Figure 3** below). At the rear it has been reduced through the reconfiguration of the balconies. The altered built form's height, bulk and scale is consistent with that on nearby properties. There will be no visual built form dominance. The dwelling and its surrounds sit within an appropriate landscape (garden / park like) setting (refer **Figure 15** within the SEE).
- The existing built form technically comprises three storeys at its rear. It is for the most part a two storey dwelling as is expected by the relevant planning controls. The existing three storey built is largely a consequence of the site's topographical characteristics, with a fall of approximately 11m from its front to rear boundary. This is a slope exceeding 1:10. This condition enables a lower ground floor level or undercroft area. The principal dwelling's three storey built form does not result in unreasonable amenity or environmental impacts to the neighbouring properties or the public domain. The dwelling (including the lower ground floor level) is largely screened from view (see **Figures 3, 4 and 11** within the SEE). It sits comfortably within its established and likely future built form context. A comparison of the existing and proposed built form relative to storeys is provided at **Figure 3**.

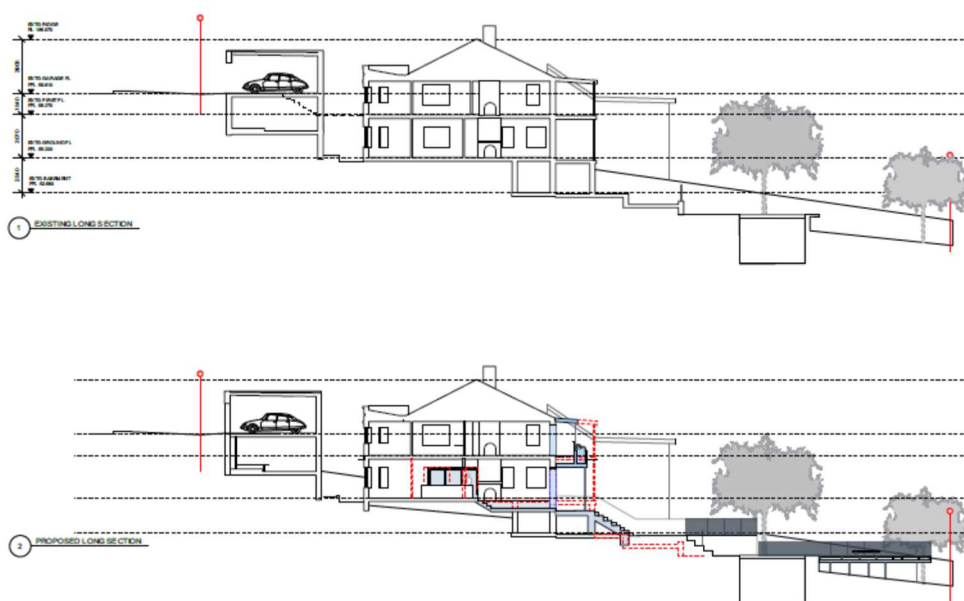


Figure 3 – Comparison section of the existing and proposed built form

- The existing floor finished floor levels (**FFL**) have been retained. The built form generally follows the fall of the land, being an approximate fall of 11m over its 53m length. This is a slope exceeding 1:10. As demonstrated at **Figures 1 and 2**, the additional departure is centrally located at the rear of the dwelling and is the new gable roof element. This is in a section of the site where it falls sharply. Further existing roof areas over the external first floor level balcony which depart from the height standard are to be removed and replaced with roofing that complies. This is a desirable outcome. Notwithstanding the new gable roof element departing from the standard, the resultant built form is expected and anticipated and is therefore consistent with the desired future character of the area as expressed by the relevant planning controls.
- Compliance is maintained with the LEP 2013 FSR standard (0.36:1 proposed v 0.45:1 permitted).
- Compliance is maintained with the total open space and landscaped area (deep soil landscaping) complementary development guidelines within DCP 2013.
- Additional habitable accommodation is not provided above the height standard. Typically, those areas existing and proposed which depart from the height standard are roof elements. They provide interest, not yield.
- The surrounding locality is characterised by leafy streetscapes, stone walling, landscaped gardens, street trees, and a variety of housing types including large modern and contemporary dwellings and traditionally designed dwellings, ranging in height from single to three storeys. Dwellings on the high (western) side of Woodland Street are typically provided with a large setback and garaging to the street and large front yards. They are higher up the ridge and look out and over the site in an easterly direction. Dwellings on the eastern or lower side of Woodland Street are typically provided with garaging at the street level and at least two levels of accommodation beyond and below the street level. Other than their roof forms, they are not readily visible from the public domain. The site's built form is particularly consistent with the prevailing built form character on the lower side of Woodland Street.
- Moreover, the dwelling's height is also consistent with the topography of Woodland Street. In general, built form slopes down from north to south and from west to east. The existing and proposed to be altered built form appropriately follows the site's natural landform (see **Figure 3** above). Existing FFL's are retained and limited site disturbance is proposed. The built form has a similar height and number of storeys as numerous nearby properties. Thus, the proposal has a height (and new rear gable end roof form) which is consistent with the desired future character of surrounding buildings. The street front appearance (or that part of the dwelling visible – its roof form) is not altered.
- The site is proportioned to allow the efficient realisation and internalisation of the impacts of the altered built form without an adverse visual impact or perceived built form dominance. The unformed section of Hilder Road is to the site's south. As such the site does not have a southern boundary built form (residential) neighbour. Rather it is in effect a large informal open space area littered with vegetation and lawn. Substantial curtilage is maintained.
- The dwelling's height does not result in unreasonable environmental impacts to neighbouring properties and the public domain. The largely retained built form (envelope) provides for an acceptable and equitable planning outcome in relation to:
 - solar access and overshadowing;
 - access to natural daylight and ventilation;
 - aural and visual privacy;

- views and vistas; and
- visual and streetscape impact.
- The proposal responds and contributes to its context by engaging its desired future character as envisaged by the proposed land uses and densities permissible in the surrounding locality. The surrounding area is undergoing a period of regeneration and the proposal will provide for a built form which is appropriate.

Objective (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)***

- The site and its surrounds is not a waterfront, harbour or foreshore location.
- Ostensibly the envelope is not dissimilar to that existing. There are no unreasonable view impacts to neighbouring and nearby properties. The site's built form largely remains screened from view. Those dwellings to the site's west and higher up the ridge will continue to look out and over the site (as existing or where interrupted by existing mature vegetation). Given the rear building alignment has been reduced, there is no impact to the neighbour to the north and there is no built form neighbour to the south. The neighbour to the east is lower down the ridge, is oriented to the east and has mature vegetation adjacent the shared boundary, effectively screening the site from view.
- There is no loss of views or vistas from the surrounding public domain.
- There is no loss of view or vistas between public spaces.
- The built form is largely compliant and therefore anticipated by the planning controls. An equitable outcome is provided relative to view / vista sharing and outlook.

Objective (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

- There is no overshadowing impact to any designated public open space and all neighbouring properties are not additionally affected by the proposal.
- That part of the dwelling towards its front that departs from the height standard does not in any way cast unreasonable shadows. The shadows cast by the largely compliant built form are anticipated by the planning controls and do not adversely impact the amenity of the neighbouring owners. The shadow diagrams demonstrate that additional shadows are cast over the unformed section of Hilder Road to the site's south.
- There is no material impact on neighbouring properties at any critical time of the day or year, that is appropriate levels of sunlight have been retained to these properties and their primary living rooms and private open space areas.
- The site's primary living rooms will receive adequate levels of direct solar access.
- An appropriate portion of the site's landscaped and private open space area receives satisfactory levels of direct solar access.
- Relatively small areas of land are affected and their relative useability is not materially compromised.

- The resultant overshadowing impact of the proposal is unlikely to preclude an appropriate redevelopment or the redevelopment potential of the adjoining properties.
- The design is consistent with the objectives of the control as it ensures the form and scale of the built form whilst large is not excessive and sits comfortably within its established and likely future built form context.
- The limited overshadowing of the proposal is acceptable in the circumstances of the case as it occurs for short periods of time and in the winter arc of the sun.

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.

- The site and all neighbouring and nearby properties are zoned R2 Low Density Residential.
- There will be no conflict between the site and recreation and environmental protection zoned land as curtilage to this land has been retained. Similar built form is provided on land between the site and any recreation or environmentally zoned property.
- Compliance is maintained with the LEP 2013 FSR standard (0.36:1 proposed v 0.45:1 permitted).
- Compliance is maintained with the total open space and landscaped area (deep soil landscaping) complementary development guidelines within DCP 2013.
- The proposal:
 - provides for an altered built form that sits comfortably within its established and likely future built form context;
 - maintains the site's existing natural features;
 - proposes minimal or standard earthworks;
 - maintains existing FFL's;
 - maintains existing vegetation and landscaping where required
 - has no identifiable impact on any reserve, foreshore or waterway location;
 - provides a built form that is not inconsistent with the locality's prevailing character;
 - has no identifiable impact on any ecological, scientific or aesthetic values, bushland, natural drainage patterns, generally maintains the site's topographical characteristics; and
 - has no unreasonable amenity impacts.
- The visual catchment contains several buildings that will present a similar bulk and scale and which set the character. Consequently, the non-compliance with the standard does not result in a scale of building that is out of character with the surrounding development.
- The site is proportioned to allow the efficient realisation and internalisation of the impacts of the altered built form without an adverse visual impact or perceived built form dominance.

3.2 Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

3.2.1 *Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?*

A development at 56 Woodland Street, Balgowlah Heights strictly complies with the 8.5m height of buildings standard is unreasonable or unnecessary given the following presented circumstances:

- The existing built form departs from the standard.
- Compliance with the standard would require demolition of the existing dwelling which is economically impractical and inconsistent with the objects of the Act.
- Parts of the dwelling which depart from the standard, are being removed and replaced by new built form which complies.
- The only additional area of departure relates to the new rear gable roof element. This design response provides visual interest, not additional yield.
- The built form generally follows the fall of the land, being an approximate fall of 11m over its 53m length. This is a slope exceeding 1:10. As demonstrated at **Figures 1 and 2**, the additional departure is centrally located at the rear of the dwelling and is the new gable roof element. This is in a section of the site where it falls sharply. The departure is a function of the site's topography.
- Compliance is maintained with the LEP 2013 FSR standard.
- Compliance is maintained with the total open space and landscaped area (deep soil zones) complementary development guidelines within DCP 2013. Significant landscaped areas are retained which maintain the landscape and scenic quality/characteristics of the locality. The site's permeability is increased from that existing.
- Additional habitable accommodation is not provided above the height standard. Typically, those areas existing and proposed which depart from the height standard are roof elements. They provide interest, not yield.
- The maximum roof ridge is not altered. The new rear gable roof element sits behind and below the existing main roof ridge. It is not visible from the site's Woodland Street frontage.
- As the dwelling's envelope is not materially altered, existing curtilage to the neighbours has been retained.
- Following a rigorous merit based assessment, approval of a building height on the site that relates to the existing and in part (by design elements) desired future character for the locality as expressed in LEP 2013 but which exceeds the LEP 2013 development standard, will not set a precedent for other non-conforming applications.
- The altered built form sits comfortably in the site's wider visual context as viewed from the surrounding public domain, given the scale and form of other hillside developments in the vicinity.
- The height, bulk and scale of the dwelling will not set an undue precedent. A highly articulated and visually interesting built form is maintained.

- Within this context the site can accommodate the building height proposed and the development is of an intensity and scale commensurate with the built form character and the prevailing urban conditions and capacity of the locality.
- The dwelling's height does not result in unreasonable environmental impacts to neighbouring properties and the public domain. The largely retained built form (envelope) provides for an acceptable and equitable planning outcome in relation to:
 - solar access and overshadowing;
 - access to natural daylight and ventilation;
 - aural and visual privacy;
 - views and vistas; and
 - visual and streetscape impact.
- The dwelling's height does not preclude (and hasn't done so in the past) redevelopment of the neighbouring and nearby properties.

In *Wehbe v Pittwater Council [2007] NSWLEC 827*, Preston CJ established five potential tests for determining whether a development standard could be considered to be unreasonable or unnecessary. Those tests have been considered below.

Are the objectives of the standard achieved notwithstanding non-compliance with the standard?

See above detailed assessment of the proposal by reference to the objectives of the height standard. That assessment demonstrates that the objectives of the standard are achieved notwithstanding the non-compliance with the standard, and in some cases the non-compliance better achieves the objectives by allowing for additional amenity for the site's occupants whilst maintaining the amenity of neighbouring properties.

The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is not necessary?

On this occasion LPDS does not believe that the underlying objective or purpose is not relevant to the development and therefore LPDS does not rely on this reason.

Would the underlying objective or purpose of the standard be defeated or thwarted if compliance was required?

Compliance with the underlying objectives of the 8.5m height standard would be thwarted if strict compliance with the standard was required in the circumstances as the quality of the residential outcome would be compromised for no sound planning reason and would require demolition of the existing built form which would be inconsistent with the objects of the Act.

The resultant altered dwelling exhibits a quality architectural and landscape design solution within an urbanised environment. It includes appropriate environmental initiatives, improves the amenity of the owners and maintains expected amenity for the neighbours.

Has the development standard been virtually abandoned or destroyed by the Council's own actions in departing from the standard?

A review of Council's published Variations Registers (by year with 30 June 2021 being the latest), demonstrates that the development standard cannot said to be abandoned, however, there is numerous built form in the surrounding locality and throughout the Northern Beaches LGA (including Balgowlah Heights) subject to the provisions of LEP 2013 and zoned R2 Low Density Residential that depart from the current height standard.

Is the zoning of the land unreasonable or inappropriate?

The zoning of the land is reasonable and appropriate given the site's location. Low density multi storey dwellings set within established landscaped gardens on consistently sized allotments of land are the predominant / prevailing built form / land use in the locality. The locality is undergoing periodic regeneration.

3.3 Are there sufficient environmental planning grounds to justify contravening the development standard?

Although the term 'environmental planning ground' is not defined, it is commonly accepted that the objects of the Act constitute 'environmental planning grounds'. Regarding the proposed development at 56 Woodland Street, Balgowlah Heights, there are sufficient environmental planning grounds to justify contravening the height of buildings standard being:

- As demonstrated at **Figures 1 and 2**, the additional departure is centrally located at the rear of the dwelling and is the new gable roof element. The proposed departure is a function of the site's topography (a fall of 11m over its 53m length, being a slope exceeding 1:10), not the size of the built form in terms of GFA. The departure occurs at a point where the site is steep and the provision of the gabled pitched roof form is proposed.
- Existing roofed areas atop the external first floor level balcony which depart from the height standard are to be removed and replaced with a reconfigured balcony design and roof element that complies. This is a desirable outcome.
- Additional habitable accommodation is not provided above the height standard. Typically, those areas existing and proposed which depart from the height standard are roof elements. They provide interest, not yield.
- The maximum roof ridge is not altered. The new rear gable roof element sits behind and below the existing main roof ridge. It is not visible from the site's Woodland Street frontage.
- A low density residential (principal dwelling and secondary dwelling) land use is maintained on the existing low density residential allotment of land. This is the desired future character. The proposal maintains and alters a built form that will have an improved relationship to the site's locational characteristics through a high quality architectural, urban and landscape design solution.
- The development provides for an appropriate environmental planning outcome and is not an overdevelopment of the site as follows:
 - the proposal satisfies the objectives of the R2 Low Density Residential zone;
 - the proposal satisfies the stated objectives of the height of buildings standard;
 - compliance is maintained with the LEP 2013 FSR standard.

- compliance is maintained with the total open space and landscaped area (deep soil zones) complementary development guidelines within DCP 2013. Significant landscaped areas are retained which maintain the landscape and scenic quality/characteristics of the locality. The site's permeability has increased from that existing.
- ostensibly the envelope is not dissimilar to that existing. Existing setback conditions are respected.
- Only new roof elements are proposed above the height standard. They do not add to its bulk and scale, rather provide visual interest.
- The altered built form sits comfortably in the site's wider visual context as viewed from the surrounding public domain, given the scale and form of other hillside developments in the vicinity, including neighbouring built form.
- The dwelling's height does not result in unreasonable environmental impacts to neighbouring properties and the public domain. The largely retained built form (envelope) provides for an acceptable and equitable planning outcome in relation to:
 - solar access and overshadowing;
 - access to natural daylight and ventilation;
 - aural and visual privacy;
 - views and vistas; and
 - visual and streetscape impact.
- The nature of such an urban environment is that all future development will seek to maximise amenity and density through design. In this regard, the proposal represents an appropriate planning outcome without any adverse environmental impacts.
- The proposal generally is of an intensity and scale commensurate with the locality's established and likely future urban conditions.
- The departure from the standard and the resultant built form does not in any way preclude the redevelopment of any neighbouring property.

3.4 Whether contravention of the development standard raises any matter of significance for the State or regional Environmental Planning?

There is no identified outcome which would be prejudicial to planning matters of state or regional significance that would result as a consequence of varying the development standard as proposed by this application as the departure from the height standard relates to local and contextual conditions. The variation sought is responding to the broad brush nature of the control applied across the Northern Beaches LGA under the auspices of LEP 2013.

The resultant built form is one that exhibits architectural merit on an existing low density residential allotment of land. This provision of such built form with associated amenities will assist in meeting housing and locational context demand. The site's overall built form sits comfortably within its established and desired future built form local context.

Finally, LPDS is not aware of any other matters required to be taken into consideration by the Secretary before granting concurrence.

3.5 How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act?

The relevant objects of the Act as specified in Section 1.3, are in our opinion, achieved by the proposed development in that it:

- promotes the social and economic welfare of the community;
- facilitates ESD;
- promotes the orderly and economic use and development of land;
- promotes the sustainable management of built and cultural heritage;
- promotes good design and amenity of the built environment; and
- promotes the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.

A strictly complying development would require demolition of the existing dwelling which is unquestionably economically impractical, given the scope of the external built form works which depart from the standard. Considering demolition of the dwelling, in that sense it may be said that compliance with the standard would hinder the attainment of the objects of section 1.3 of the Act.

The site's redevelopment and subsequent minor additional departure from the height standard does not preclude or isolate an adjacent property(s) from being appropriately redeveloped. The development as proposed is consistent with the provisions of orderly and economic development and would not hinder the objects of the Act in Section 1.3.

3.6 Is there public benefit in maintaining the development standard?

Generally, there is a public benefit in maintaining standards. However, there is public interest in maintaining a degree of flexibility in specific circumstances. In the current case, strict compliance with the height standard is not achievable given the existing departing built form and would serve no planning purpose other than to impose numerical inflexibility. A rigid and inflexible compliance based approach to the standard forgoes the opportunity to provide or encourage an appropriate planning outcome given the presented circumstances.

It is known that Council has considered applications favourably which depart from the height standard. There are no reasons why it is not in the public interest and its refusal based on the standard's departure is not warranted. Under the presented circumstances the variation to the height standard is in the public interest because it is not inconsistent with the stated objectives of the height standard and neither is it inconsistent with the objectives for development in the R2 Low Density Residential Zone. Therefore, it is argued that there is no public benefit in maintaining the adopted height of buildings planning control.

On balance the variation to the height standard is an appropriate use of the provisions of Clause 4.6 and the development is therefore capable of being granted consent.

3.7 Is the objection well founded?

For the reasons outlined in previous sections, it is considered the objection is well founded in this instance and granting an exception to the development can be supported given the presented circumstances of the case. The development does not contravene the objects specified at Section 1.3 of the Act.

4.0 CONCLUSION

The proposed variation to the height standard is based on the reasons contained within this formal request for an exception to the standard. A development strictly complying with the numerical height standard would not significantly alter the development's environmental impacts and therefore impacts to neighbouring properties and the surrounding public domain as:

- the proposal satisfies and achieves the objectives of the R2 Low Density Residential zone;
- the proposal satisfies and achieves the stated objectives of the height standard;
- existing roofed areas atop the external first floor level balcony which depart from the height standard are to be removed and replaced with a reconfigured balcony design and roof element that complies;
- additional habitable accommodation is not provided above the height standard. Typically, those areas existing and proposed which depart from the height standard are roof elements. They provide interest, not yield;
- the maximum roof ridge is not altered. The new rear gable roof element sits behind and below the existing main roof ridge. It is not visible from the site's Woodland Street frontage;
- compliance is maintained with the LEP 2013 FSR standard.
- compliance is maintained with the total open space and landscaped area (deep soil zones) complementary development guidelines within DCP 2013. Significant landscaped areas are retained which maintain the landscape and scenic quality/characteristics of the locality. The site's permeability has increased from that existing;
- ostensibly the envelope is not dissimilar to that existing. Existing setback conditions are respected; and
- the altered built form sits comfortably in the site's wider visual context as viewed from the surrounding public domain, given the scale and form of other hillside developments in the vicinity and that desired / permissible by the relevant planning controls.

It is concluded that the objection:

- is well founded;
- demonstrates that compliance with the standard is both unnecessary and unreasonable;
- demonstrates that there are sufficient environmental planning grounds in which to support the proposal; and
- the concurrence of the Secretary is likely to be forthcoming because there is no identified outcome which would be prejudicial to planning matters of state or regional significance that would result as a consequence of varying the development standard and there are no additional matters which would indicate there is any public benefit of maintaining the development standard in the circumstances of this application.

On that basis, the consent authority can be satisfied that the proposed development is in the public interest because it is consistent with the objectives for development in the zone and the stated objectives of the standard. It therefore is clearly appropriate to exercise the flexibility provided by Clause 4.6 of LEP 2013 in the circumstances of this DA.