



CLAUSE 4.6 VARIATION TO THE HEIGHT OF BUILDINGS DEVELOPMENT STANDARD

Alterations and Additions

23 Baroona Road, Church Point

Prepared on behalf of

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1.0 INTRODUCTION

This Exception to Development Standards Submission accompanies a Development Application (**DA**) proposing alterations and additions to the existing dwelling house and its surrounds at 23 Baroona Road, Church Point (the **site**).

Calculations in this submission are based on plans and information provided by Lifestyle Home Designs. 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 standard at Clause 4.3(2) and 4.3(2D) of Pittwater Local Environmental Plan 2014 (**LEP 2014**).

As required pursuant to Clause 4.6(3) of LEP 2014, this submission provides a written request to the Northern Beaches Council (the **Council**) that seeks to justify the proposal's departure from the height of buildings development standard (**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?

Pittwater Local Environmental Plan 2014 (LEP 2014).

2.2 What is the zoning of the land?

The land (the site) is zoned R5 Large Lot Residential.

2.3 What are the objectives of the zone?

The objectives of the R5 Large Lot Residential zone are:

- *To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.*
- *To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.*
- *To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.*

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) and 4.3(2D) of LEP 2014 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 development standard is typically listed at Clause 4.3(2) of LEP 2014.

However, and subject to certain criteria, of which the site is considered to meet, the site is subject to the height standard at Clause 4.3(2D) of LEP 2014.

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) of LEP 2014 and are:

- (a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*
- (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (c) to minimise any overshadowing of neighbouring properties,*
- (d) to allow for the reasonable sharing of views,*
- (e) to encourage buildings that are designed to respond sensitively to the natural topography,*
- (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

Figure 3 overleaf provides a 3D building envelope of 10m projected against the site's proposed to be altered dwelling house. Its maximum height is 10.725m to the top of the void on the right hand side as measured from ground level. All areas which depart from the standard are shown coloured. Only a minor portion of the altered dwelling is located above the 10m height standard.



Figure 2 – Existing dwelling's 10m height plane departure

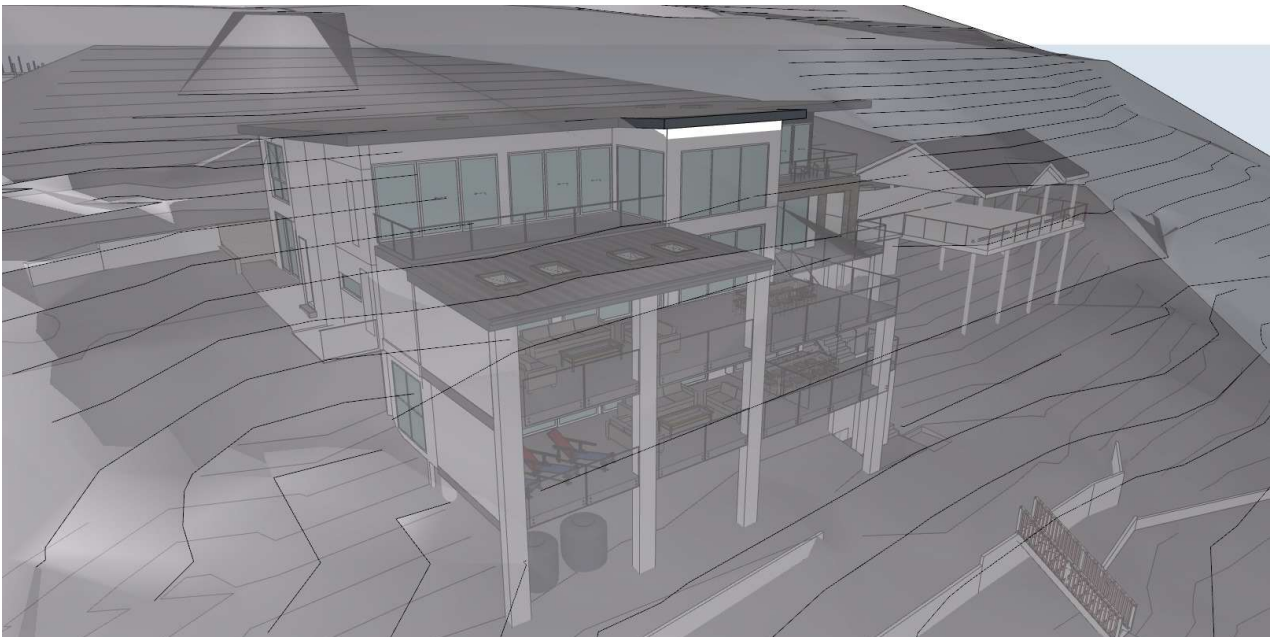


Figure 3 – Proposed dwelling's 10m height plane departure

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

Relative to the 8.5m standard (which would apply should Council disagree with that contained at Section 2.9 above):

- the existing departure is 1.99m or 23.4%;
- the proposed departure is 2.225m or 26.2%.

Relative to the 10m height standard:

- the existing departure is 49cm or 4.9%.
- the proposed departure is 72.5cm or 7.25%.

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 2014, the objectives of the R5 Large Lot Residential zone are:

- *To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality*
 - A single dwelling house plus a secondary dwelling (as approved under DA 2020/1278 and currently under construction) land use is maintained on a large allotment of land. The overall built form will sit within a secluded garden landscape setting. 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 DCP 21 complementary development guidelines. The overall built form sits comfortably within its established and likely future built form context as desired by the planning controls.
 - The proposal provides for a low density single dwelling house for a family household.
- *To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.*
 - Alterations to the existing subdivision pattern or density of development are not proposed. The site has frontage to Baroona Road, a dead end cul-de-sac. A varied subdivision pattern exists. The existing lot size and its established characteristics including the existing (including approved) built form will not have any identifiable impact on the future orderly development of nearby urban areas.
- *To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.*
 - A low density rural residential land use is maintained. Although the principal dwelling house is altered and extended, there will be no additional or unreasonable demand for public services and / or public facilities. The maintained land use is consistent with that of neighbouring and nearby properties.
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
 - The site's continued use for the purposes of a single dwelling house with an under construction secondary dwelling will not lead to any conflict with any other land use within the R5 zone and land to the site's south and east zoned E4 Environmental Living.
- *To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.*
 - Not applicable for this site. It does provide the opportunity for the occupants to work from home as/if required.

The site may be developed with the stated variations to the height standard. Consistency is not readily quantifiable in absolute numerical terms. The site's built form despite its existing and proposed departure from the height standard is consistent with the stated objectives of the R5 Large Lot Residential zone and is therefore considered to be a suitable and appropriate redevelopment of the site as it:

- a low density residential land use is maintained within a garden / park like setting;
- maintains an appropriate mix of rural residential land uses in the locality;
- does not alter the established subdivision pattern;
- 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 the standard's objectives and therefore provides an appropriate planning outcome for the following reasons:

Objective (a) - to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality

Objective (b) - to ensure that buildings are compatible with the height and scale of surrounding and nearby development

- A low density residential land use is maintained on a relatively large rural residential allotment. The site's built form sits within a garden like setting. This low density built form and land use is desired by the site's R5 Rural Residential zoning, its proximity to land zoned E4 Environmental Living and the site's associated planning standards and guidelines.
- The surrounding locality is characterised by multi level elevated dwellings set on large allotments of land influenced by the locality's topographical characteristics and mature/thick vegetation. A variety of housing types and architectural styles are provided within a relatively consistent subdivision pattern to the site's north and east. The subdivision pattern to the site's south and west varies as it contains numerous battle-axe allotments. Baroona Road is a dead end cul-de-sac with the site being at its end. The integrity of dwellings varies considerably. There is little architectural, aesthetic, social or cultural built form significance. Dwellings are typically adjusted to the natural topography or are provided with large undercroft areas. They are oriented to take advantage of their easterly views and vistas. The altered built form sits comfortably within its established and likely future built form context;
- The site and its built form is not readily visible from the surrounding public domain. The desired future character of the locality is determined by the relevant (existing) planning controls. The proposal presents as a part two storey, part three storey dwelling that follows the site's relatively steep (20.2° over the principal dwelling's building footprint) topographical characteristics. A skillion style 'flat' roof is proposed which sits comfortably within the locality's varied roofscape. A new integrated double garage replaces the existing detached double carport. A secondary dwelling is currently under construction and there is appropriate curtilage internal to the site relative to the principal dwelling and neighbouring dwellings. The proposed design is re-interpreting established roof shapes and slopes, whilst integrating

contemporary materials and an architectural aesthetic and making an improved use of external spaces and the lower ground floor level generally. This type of built form and presentation is desired by the planning controls. The existing finished floor levels (FFL) have been retained. As demonstrated at **Figure 3**, the height variation is centrally located over a void area and new flatter roof from located in the mid-section of the ridge line and toward the front of the dwelling, where the site falls sharply. Notwithstanding the departure from the height 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 DCP 21 complementary development guidelines.
- All habitable accommodation is provided below the height standard.
- Moreover, the dwelling's height is also consistent with the locality's topography. The altered built form appropriately follows the site's natural landform without the need for excessive excavation and when viewed from both the front and rear of the site, the proposal is of a similar height and number of storeys as the neighbouring and nearby properties. Thus, the proposal has a height which is consistent with the desired future character of surrounding buildings and is compatible with the streetscape (where it is visible).
- 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 expression of the built form is adjusted to respond to:
 - solar access and the site's orientation;
 - the site and surrounding locality's topographical characteristics;
 - the design and character of existing adjacent development;
 - an improved connection to external areas and the lower ground floor level;
 - the integration of a double garage within the principal dwelling;
 - maintaining the amenity of the adjacent property owners;
 - internal and external amenity for the occupants and the retention of amenity for neighbours;
- 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. The site's appropriate redevelopment will enable the realisation of Council's strategic direction for the locality's future built form and a resultant built form which is not inconsistent with the established and likely future character.

Objective (c) - to minimise any overshadowing of neighbouring properties

- There is no overshadowing impact to any public open space or public domain.
- There is no unreasonable overshadowing of neighbouring properties. That part of the dwelling towards its front that departs from the height standard does not in any way cast unreasonable shadows over the neighbouring properties, including openings to primary living rooms, solar collectors or private open space. 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.

- 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.
- Development on adjacent properties overshadows itself, including established mature vegetation (although unable to be technically used in the assessment of the overshadowing impacts);
- 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. Separation between the site and the neighbouring properties has been maintained.

Objective (d) - to allow for the reasonable sharing of views

- Given the location of the work, the orientation and consistent building alignment of the neighbouring built form to the north and the associated level differences of the nearby built form, particularly that to the site's northwest, existing views and vistas will be equitably retained. There is no identifiable impact to views and vistas from properties to the site's east (lower down the ridge) or south.
- Filtered long distance vistas from the neighbouring property are provided, pending their location partly across a side boundary, however, they are interrupted by existing built form (and likely future) and mature vegetation.
- There is no loss of views or vistas from the surrounding public domain.
- 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 (e) - to encourage buildings that are designed to respond sensitively to the natural topography,

- The site slopes steeply at 20.2° within the dwelling's footprint. This is steeper than the 16.70 or 30% gradient line threshold. The proposal conforms to and reflects the site's natural landforms. Excessive excavation is not required proposed, rather use and enlargement of the existing lower ground floor level and existing undercroft areas. As demonstrated at **Figure 3**, the height variation is centrally located over a void area and new flatter roof from located in the mid-section of the ridge line and toward the front of the dwelling, where the site falls sharply. The non-compliance with the height standard is the result of the site's topographical characteristics.
- Existing FFL's have been retained. 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 expression of the built form is adjusted to respond to:
 - the site’s locational context;
 - the site’s topography;
 - an improved connection to external areas;
 - the design and built form character of the adjoining and adjacent development;
 - solar access and the site’s orientation; and
 - internal and external amenity for the occupants. In this regard, the design of the proposed built form specifically responds to the location of its adjacent built form relative to the retention of existing amenity levels for those properties.
- Required site works, including minor excavation (as shown at Section CC, **Figure 1**):
 - will not be structurally detrimental to the existing or adjacent building structure;
 - will not significantly alter the underground flows of water;
 - retains the ability of stormwater to connect to existing infrastructure;
 - does not have any impact on natural features or rocky outcrops;
 - maintains the approved residential use of the site, in accordance with the zone objectives;
 - where practicable, some of the excavated material will be re used on site however any remaining excavated material will be removed off site for disposal to a suitable landfill; and
 - will result in an acceptable level of impact to surrounding properties and the excavation is not considered to result in any amenity impact to the neighbouring properties.

Objective (f) - to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

- There will be no conflict between the site and the neighbouring E4 Environmental Living zoned land as curtilage to this land has been retained. Similar built form is provided on land between the site and any property within the E4 Environmental Living zone.
- the site is not an identified heritage item, is not located within the visual catchment of an identified heritage and is not located within a heritage conservation area;
- the proposal undertakes works which maintain and/or improve the site’s natural landscape features;
- a built form is provided which is integrated into its landscape;
- The site does not comprise scenic protection land, does not contain terrestrial biodiversity, riparian lands or watercourse, is not bushfire prone, is not floodprone and is not environmentally sensitive land. There are no environmental factors that would deem the proposal inappropriate.
- the building volume has been designed to be articulated, and to facilitate a contextually appropriate massing to maintain a human scale. The extent of the departure from the height standard is minor and is not readily visible from the surrounding public domain. There is no unreasonable visual impact.
- 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.

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 23 Baroona Road, Church Point that strictly complies with the height standard is unreasonable or unnecessary given the following presented circumstances:

- The existing built form departs from the standard.
- The departure from the standard is a direct function of the site's steep (20.2° slope within the dwelling footprint) and predominantly unaltered topographical characteristics.
- Compliance with the standard would require demolition of an existing built form that despite its departure from the height standard, nonetheless sits comfortably within its established and likely future built form context.
- As demonstrated at **Figure 3**, the departure from the standard is minor. The height variation is centrally located over a void area and new flatter roof from located in the mid-section of the ridge line and toward the front of the dwelling, where the site falls sharply.
- Compliance is maintained with the DCP 21 complementary development guidelines.
- The built form is not readily visible from the surrounding public domain. There is no unreasonable visual impact or visual built form dominance.
- All habitable accommodation is provided below the height standard.
- Established FFL's are not altered.
- The bulk and scale of the built form although departing has been reduced at the south east elevation, being the location of the departure from the standard.
- Appropriate curtilage to neighbouring properties 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 2014 but which exceeds the LEP 2014 height 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 desired future character of the locality is determined by the relevant (existing) planning controls. The proposal presents as a part two storey, part three storey dwelling that follows the site's relatively steep (20.2° over the principal dwelling's building footprint) topographical characteristics. A skillion style 'flat' roof is proposed which sits comfortably within the locality's varied roofscape. A new integrated double garage replaces the existing detached double carport. A secondary dwelling is currently under construction and there is appropriate curtilage internal to the site relative to the principal dwelling and neighbouring dwellings. The proposed design is re-interpreting established roof shapes and slopes, whilst integrating contemporary materials and an architectural aesthetic and making an improved use of external spaces and the lower ground floor level generally. This type of built form and presentation is desired by the planning controls.

- The height, bulk and scale of the dwelling will not set an undue precedent. A highly articulated and visually interesting built form is maintained.
- The scale is broken down by the articulation of a traditional and integrated façade design. Setbacks and the use of different materials including quality and durable landscaping reduces the perception of any apparent bulk. The retained portions of the dwelling with an integrated first floor addition will positively contribute to the likely future built form character.
- 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.
- Although the proposal departs from the height standard, the altered built form is consistent with the locality's desired, established and likely future character and the departure does not result in any adverse environmental impacts to neighbouring properties or the surrounding public domain. The altered dwelling 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 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 / 10m 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.

The resultant altered dwelling exhibits a quality architectural and landscape design solution within a large lot rural residential 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 online Variations Register, demonstrates that the height standard cannot said to be abandoned, however, there is numerous built form in the surrounding locality and throughout the Northern Beaches LGA (including Church Point) subject to the provisions of LEP 2014 that have been permitted to depart from the 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 large dwellings set within established landscaped gardens on large 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 23 Baroona Road, Church Point, there are sufficient environmental planning grounds to justify contravening the height of buildings standard being:

- The departure from the standard is a direct function of the site's steep (20.2° slope within the dwelling footprint) and predominantly unaltered topographical characteristics.
- The existing built form departs from the standard.
- As demonstrated at **Figure 3**, the departure from the standard is minor. The height variation is centrally located over a void area and new flatter roof from located in the mid-section of the ridge line and toward the front of the dwelling, where the site falls sharply.
- The desired future character of the locality is determined by the relevant (existing) planning controls. The proposal presents as a part two storey, part three storey dwelling that follows the site's relatively steep (20.2° over the principal dwelling's building footprint) topographical characteristics. A skillion style 'flat' roof is proposed which sits comfortably within the locality's varied roofscape. A new integrated double garage replaces the existing detached double carport. A secondary dwelling is currently under construction and there is appropriate curtilage internal to the site relative to the principal dwelling and neighbouring dwellings. The proposed design is re-interpreting established roof shapes and slopes, whilst integrating contemporary materials and an architectural aesthetic and making an improved use of external spaces and the lower ground floor level generally. This type of built form and presentation is desired by the planning controls.
- The built form is not readily visible from the surrounding public domain. There is no unreasonable visual impact or visual built form dominance.
- All habitable accommodation is provided below the height standard and established FFL's are not altered.

- The bulk and scale of the built form although departing has been reduced at the south east elevation, being the location of the departure from the standard.
- 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 R5 Rural Residential zone;
 - the proposal satisfies the stated objectives of the height standard;
 - compliance is maintained with the relevant DCP 21 complementary development guidelines.
- Only limited works are proposed above the height standard. They do not add to its bulk and scale, rather provide visual interest, amenity for the occupants and are environmentally beneficial / sustainable.
- 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;
- It has been demonstrated within the separate SEE that the height standard non-compliance will not result in adverse environmental impacts to neighbouring properties and the surrounding public domain. In this regard the resultant built form 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 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 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 resultant built form is one that exhibits architectural merit on an existing low density 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 economically impractical. Considering demolition of the existing dwelling, in that sense it can be said that compliance with the standard would hinder the attainment of the objects of Section 1.3 of the Act. The departure from the standard is minor and does not result in any unreasonable environmental or amenity related impacts.

The site's redevelopment and subsequent 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 purpose other than to impose numerical inflexibility and economic impracticality. A rigid and inflexible compliance based approach to the development standard forgoes the opportunity to provide a high quality architectural design solution for the site's occupants whilst maintaining the amenity of neighbours, a desirable planning outcome.

As demonstrated at Section 3.2 above, 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 R5 Rural 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 R5 Rural Residential zone;
- the proposal satisfies and achieves the stated objectives of the height standard;
- the departure from the standard is a direct function of the site's steep (20.2° slope within the dwelling footprint) and predominantly unaltered topographical characteristics.
- the departure from the standard is minor. The height variation is centrally located over a void area and new flatter roof form located in the mid-section of the ridge line and toward the front of the dwelling, where the site falls sharply.
- habitable accommodation is not provided above the height standard;
- compliance is maintained with the relevant DCP 21 complementary development guidelines.
- 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; and
- improved amenity for the occupants whilst not presenting any unreasonable amenity impacts to neighbours.

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 the proposal 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 2014 in the circumstances of this application.