



CLAUSE 4.6 VARIATION TO THE HEIGHT OF BUILDINGS DEVELOPMENT STANDARD

Demolition, substantial alterations & additions to the dwelling house, new garage and studio

13 Amiens Road, Clontarf

Prepared on behalf of

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1.0 INTRODUCTION

This Exception to Development Standards Submission accompanies a Development Application (**DA**) proposing demolition works, substantial alterations and additions to the existing dwelling house, a new garage and studio below, retention of the existing swimming pool and its surrounds, landscaping and other required site works at 13 Amiens Road, Clontarf (the **site**).

Calculations in this submission are based on plans and information provided by Case Ornsby Architecture. This submission should be read in conjunction with all documentation submitted with the DA.

As noted in the separate SEE, by LPDS, the existing and proposed built form departs from the Height of Buildings standard (**height standard**) at Clause 4.3 of Manly Local Environmental Plan 2013 (**LEP 2013**), triggering the requirement for the preparation of a Clause 4.6 Exception to Development Standards submission.

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 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 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 of LEP 2013 is clearly a development standard as it relates to:

- the character, location, siting, bulk, scale, shape, size, **height**, density, design or external appearance of a building or work as specified by **subclause (c)**.

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

Yes, as it contains 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 standard is listed at Clause 4.3 of LEP 2013.

2.7 What are the objectives of the development standard?

The objectives of the height standard are stated at Clause 4.3(1) 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 conservation 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?

Existing and proposed height calculation diagrams by Case Ornsby Architecture are contained within the Architectural Drawings submitted separately. Due to substantial topographical variations and the existing benched levels the maximum building height varies.

As existing the dwelling house has a maximum height of 11.64m (ridge RL 36.24 as measured from ground level existing, being the basement FFL 24.60) and which departs from the standard. Through a different skillion roof design, the dwelling house has a reduced maximum height of 9.7m, which still departs from the standard.

The garage / studio has a maximum height of 7.313m and complies with the standard. Its overall envelope is the same as that originally approved under DA 2020/189.

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

The existing percentage variation is 37% (rounded up) or 3.14m.

The proposed **reduced** percentage variation is 14.1% or 1.2m.

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

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

- maintains the existing dwelling house on an existing low density residential allotment of land;
- provides flexible accommodation for a family through the provision of the studio below the new double garage;
- maintains the existing subdivision pattern and therefore the existing allotment density within an established residential locality;
- there are no unreasonable amenity impacts to neighbouring and nearby properties and the surrounding public domain. The environmental amenity of the neighbours has been preserved;
- maintains and enables a built form that is not incompatible with the existing and likely future built form context;
- undertakes works which are not visually intrusive or bulky when viewed from the surrounding public domain and maintains a built form that sits comfortably within the site's locational built form context.
- is located on a site of sufficient size to appropriately accommodate the overall built form; and
- the occupants of the dwelling can work from home as/if required and utilise other land uses that provide facilities or services meeting their day to day needs. There is no identifiable impact to other local centres or non-residential precincts.

3.1.2 Objectives of the height standard

The proposal despite its departure from the height standard is nonetheless consistent with the relevant 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,

- The reduced departure to the height standard and the development generally is not inconsistent with the relevant objectives of the height standard because it does not materially alter the existing correlation

between building height and density, and the correlation is appropriate under the circumstances. Nor does it alter the buildings' compatibility with the bulk, scale, streetscape or desired future character of the locality, and that compatibility is appropriate under the circumstances given the overall lack of adverse impacts to neighbouring properties and the surrounding public domain.

- A single dwelling house plus a separate studio on an existing low density residential allotment of land is maintained. This low density built form and land use is desired by the site's and surrounding locality's R2 Low Density Residential zoning.
- The surrounding locality is characterised by multi level elevated dwellings set on typical 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 varied subdivision pattern that is influenced by the locality's topographical variations (falling from east to west or front to back). The integrity of individual dwellings varies considerably. There is little architectural, aesthetic, social or cultural built form significance. Dwellings are typically adjusted to the natural topography and are oriented to take advantage of their westerly views and vistas. As demonstrated by **Figure 1**, the existing and higher (as compared to that proposed) built form sits is clearly not incompatible considering its established and likely future built form context;
- As two distinct and separate built forms are maintained / proposed the GFA / FSR of the dwelling house if calculated in isolation would comply with the standard, thus providing an acceptable bulk and scale. The garage / studio (compliant relative to height) presents a traditional albeit setback double garage frontage to Amiens Road with the studio contained below the garage. It does not have any identifiable impact on neighbouring properties, does not contribute to the visible overall bulk and scale and furthermore is not readily visible from the surrounding public domain. The garage / studio is the same envelope / form previously approved under DA 2020/189.
- The dwelling's overall height, bulk and scale is less than that of the existing built form. Its overall envelope is similar to that previously approved under DA 2020/189 (see **Figure 17** in the SEE). The scale of the proposal is characterised by the desired future character for the area. The height (reduced from that existing), bulk and scale of the built form does not influence or set a precedent for future buildings along the western side of Amiens Road. This is aptly demonstrated at **Figure 1**. Additionally, the dwelling's height when viewed from Amiens Road is one which complies (7.12m).
- The building volume has been designed to be articulated, and to facilitate a contextually appropriate massing. The elevations are articulated in response to the form and size of the dwelling. The proposed design is re-interpreting established roof shapes (skillion form) and slopes, whilst integrating contemporary materials and an architectural aesthetic.
- The proposed improved roof geometry through the parapet and skillion roof design is not an inconsistent design element and improves views (including water, land and water interface) from the surrounding public domain as compared to the existing varied pitched roof form.
- The building design creates a modern facade treatment to the elevations with a variation of materials, colours, patterns and textures which assist in the delineation of zones within the building and create an aesthetically pleasing development that is consistent with desired future character.
- 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 (see **Figure 1**). The extent of the departure has been reduced from that existing.



Figure 1 – The site (circled) and its neighbours as viewed from the opposite side of the harbour

- The proposal conforms to and reflects the site's natural landforms. Excavation whilst proposed is not excessive and FFL's for the dwelling remain unaltered and are the same as that previously approved for the garage / studio under DA 2020/189.
- 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 neighbouring built form;
 - maintaining the amenity of the neighbours and the surrounding public domain; and
 - internal and external amenity for the occupants.

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),**

- Generally, a similar building alignment is proposed as existing, albeit with an overall reduced maximum height and similar envelope / alignment to that previously approved under DA 2020/189. Dwellings are adjusted to the natural topography and are typically oriented to take advantage of their panoramic westerly views and vistas of the harbour, including land and water interface. The site's only real built form neighbours are to the north and south respectively. These are typically two or three storey

dwelling with elevated external spaces that are also logically oriented to take advantage of their westerly vistas, generally with minimal interruption (see below). View context images for the neighbouring property to the site's north across a side boundary and from southern (side) elevation openings demonstrate that there is no currently no view as a result of the existing built form.

- Council's view assessment of the now approved DA 2020/189 made the following observations:

The proposed development has the potential to impact upon existing views enjoyed by the occupants of 15 Amiens Road.

As raised by the objector, the view that has the potential to be impacted is one of Chinamans Beach on the western foreshore of Middle Harbour. As this is a view that includes the interface between land and water, the view is considered to be highly valuable. However, there are a number of obstructions to this view which reduces its retention value.

The view of Chinamans Beach is obtainable from the rear living area and sunroom of the dwelling at 15 Amiens Road. The view is mostly obtainable from a standing position across the side boundary. The view is generally not attainable from a seating position as the side boundary fencing and hedging completely obscures the view.



As the view of Chinamans Beach is obtained across a side boundary, the complete retention of such a view is generally unrealistic. In the context of the development site, the rear of the site is wider than the front meaning that siting of the dwelling further towards the front is not considered to be feasible.

When considering the full extent of view enjoyed by 15 Amiens Road, the proposed development will have a negligible impact as the existing view towards the west and northwest will not be impacted. This view corridor also contains highly valuable elements including the interface between land and water.



While the proposed development has the potential to cause an impact to part of the existing view enjoyed by 15 Amiens Road, the extent of impact is very minor. The existing view towards the west and northwest is not impacted by the proposed development. While the proposed development incorporates non-compliant side boundary setbacks, the repositioning of the building to demonstrate setback compliance will not fundamentally alter the level of view loss caused by the development. As such, it is considered the view impact caused by the proposed development is reasonable.

- It is noted the setbacks to the northern boundary are greater than that previously approved under DA 2020/189 (see **Figures 13** and **17** in the separately submitted SEE). Any additional built form adjacent to this boundary is at the front (eastern side) of the altered dwelling. The expansive undercroft north western portion of the dwelling remains free of external enclosing walls. Westerly and north westerly views from this property remain completely unaffected.
- The dwelling and its surrounds is not incompatible considering the established and likely future built form relative to height, bulk, scale and envelope including setbacks locational context (see **Figures 5, 6** and **17** in the separately submitted SEE). The proposal exhibits a high quality architectural, urban and landscape design solution for the site and which appropriately responds to the site's constraints. Notwithstanding the departure to the height standard, the dwelling's height has been reduced from that existing and it remains highly articulated and visually interesting. The dwelling maintains a relative human scale given its locational context. Adjacent properties will continue to be provided with vistas out, over and across the site (sometimes via side boundary), particularly those to the site's north and south.
- Views from the Amiens Road carriageway (i.e. the public domain) will be improved due to the proposed dwelling's decreased height and skillion roof design. Its eastern elevation height is only 7.12m. These views are significant and include land and water interface.
- The overall bulk and scale and building envelope of the proposed built form has been reduced from that existing. It is generally consistent with that of its neighbouring and nearby properties and does not in any way preclude the appropriate redevelopment of these properties, nor impinge on existing views and vistas.

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

- As a similar building alignment and reduced overall building height is proposed, the shadows cast by the altered / new built form are not materially different nor do they affect different areas of the neighbouring properties. Generally existing levels of sunlight is retained to the neighbours and their primary living rooms and private open space areas.
- The design is consistent with the objectives of the control as it ensures the form and scale of the dwelling is not excessive and it also maintains a relative continuity of building form. By this the proposal exhibits a similar height, bulk and scale to that of adjacent properties.
- The site's open plan primary living rooms will receive more than adequate levels of direct solar access and natural ventilation which will have a positive impact on levels of residential amenity.
- The site's landscaped and private open space area receive satisfactory levels of direct solar access and thus has a positive impact in relation to residential amenity. Furthermore, the private open space areas of the neighbouring properties maintain appropriate levels of solar access and their useability and functionality is not compromised.
- Due to the existing development density, fencing, topographical and vegetative characteristics of the area, the adjacent development is already overshadowed. The proposed built form does not fully block solar access to any western elevation openings (those which provide significant outlook and amenity) or external elevated open space.
- The shadow cast by the built form is generally expected and typical of existing development in the locality, particularly given the locality's topographical characteristics.
- Primary living rooms generally remain unaffected as they are logically provided with a westerly orientation (and more than one opening) for significant outlook and amenity.
- Small areas of land (typically the battle-axe driveway) are affected and their relative useability is not materially compromised.
- Any existing or proposed overshadowing impact will not preclude an appropriate redevelopment or the redevelopment potential of any nearby property that is zoned to do so.
- 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. Additional solar access would clearly be provided during the equinox, which is often the true test of the acceptability of a building envelope. Overshadowing within a relatively dense locality is inevitable due to the closeness and type of built form, fencing, associated vegetation, topographical and landscape characteristics. Separation between the site and the neighbours has been maintained.

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

- The site is within the R2 Low Density Residential zone. Therefore, this objective is of no relevance to the proposal.

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

A development at 13 Amiens Road, Clontarf, that strictly complies with the 8.5m height standard is unreasonable or unnecessary given the following presented circumstances:

- The existing dwelling house departs from the standard.
- The alterations and additions to the dwelling reduce the dwelling's maximum height by 1.94m.
- Compliance with the standard would require demolition of the existing dwelling. Although demolition has been approved under DA 2020/189, it is economically impractical and therefore inconsistent with the objects of the Act.
- Alterations and additions are proposed to an existing three storey dwelling. A two storey garage and studio replaces an existing two storey garage and separate storage level built form. The built form is therefore relative to storeys essentially no different to that existing, although relative to overall height, the dwelling is less than that existing.
- All existing FFL's for the dwelling remain unaltered. The existing built form, its benched level and the locality's topography clearly accentuates the departure.
- The height of the garage / studio complies.
- The dwelling's roof geometry (skillion roof form) is improved when compared to that existing (multiple pitched roof areas).
- The dwelling's height at its eastern elevation (that visible from Amiens Road) is only 7.12m and therefore is less than that permitted.
- The environmental impacts of the existing higher built form are known. The altered and added to dwelling, lower than existing is unlikely to cause any further environmental impacts above those existing. The overall envelope is similar to that already deemed environmentally acceptable under DA 2020/189.
- The dwelling's overall height, bulk and scale is less than that of the existing built form. Its overall envelope is similar to that previously approved under DA 2020/189 and remains highly articulated and visually interesting.
- The altered and proposed built form exhibits architectural design excellence and an improved landscape condition, a desirable planning and built form outcome. The altered / proposed built form is clearly not incompatible when considering 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.
- Following a rigorous merit based assessment, approval of a building envelope that relates to the locality's existing character but which exceeds the LEP 2013 development standard, will not set a precedent for other non-conforming applications, particularly considering the overall building envelope is not dissimilar to that previously approved under DA 2020/189.
- 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 departure to the height standard has been arranged considering the site's existing built form, the previously approved DA and the neighbouring and nearby context. In this regard and as demonstrated by the DCP 2013

assessment at **Table 5** and Section 4.2 of the separately submitted SEE, the reduced departure to the height standard nonetheless preserves environmental amenity in relation to:

- solar access and overshadowing;
 - access to natural daylight and ventilation;
 - aural and visual privacy;
 - views and vistas from neighbouring and nearby properties and the public domain; and
 - visual impact and massing; and
 - parking or traffic generation.
- Within this context, it is clear the site can accommodate the reduced non-compliant dwelling height as 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 overall dwelling height will not preclude (and hasn't done so in the past) redevelopment of 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 are 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, which has been reduced as compared to that existing.

The altered built form will not be incompatible considering the site's existing locational built form context and that desired by the current and likely future planning controls.

On this occasion (and as demonstrated at **Table 5** and Section 4.2 of the separately submitted SEE) the reduced non-compliance better achieves the objectives by allowing for an architecturally altered dwelling that enables high (improved) internal amenity for the occupants whilst reasonably maintaining the environmental amenity (solar access, visual and aural privacy, views, vistas, outlook, natural daylight and ventilation) of the neighbours. Additionally, it permits the construction of the new height compliant garage / studio entirely consistent (envelope, form, siting etc) with that previously approved under DA 2020/189.

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 stated 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, would require demolition of the existing non-compliant dwelling and would be impractical considering the approval of DA 2020/189, which remains current.

The resultant built form is one that exhibits substantial merit relative to architectural design and an embellished landscape condition. It includes appropriate environmental initiatives and has a positive built form relationship with its neighbouring and nearby elevated multi level built form.

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 most current published Clause 4.6 Variations Register (1 January to 31 March 2023), demonstrates that the height standard cannot be said to be abandoned.

However, and notwithstanding the non-abandonment of the standard, there is numerous built form in the surrounding locality and throughout the Northern Beaches LGA (former Manly) that are zoned R2 Low Density Residential that depart from the current LEP 2013 height standard and others.

Is the zoning of the land unreasonable or inappropriate?

The zoning of the land is reasonable and appropriate given the site's location. The immediate locality's predominant built form character is large two and three storey dwelling houses set on relatively large allotments with established landscaped areas and varied car parking arrangements. The integrity of the locality's building stock varies and demonstrates a range of architectural scale, form, style and detail.

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

This section demonstrates that there are sufficient environmental planning grounds to justify contravening the FSR standard as required by clause 4.6(3)(b) of LEP 2013.

It is noted that in *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118, Preston CJ observed that in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard, not on the development as a whole.

Additionally, it is noted that in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, Pain J observed that it is within the discretion of the consent authority to consider whether the environmental planning grounds relied on are particular to the circumstances of the proposed development on the particular site.

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 proposal at 13 Amiens Road, Clontarf, the particular circumstances of this case distinguish it from others and therefore there are sufficient environmental planning grounds to justify contravening the height standard being:

- As addressed earlier in this report and in the documentation prepared by Case Ornsby Architecture and other technical inputs for the DA, the proposal clearly improves the roof geometry of the dwelling and at the same time reduces its maximum height without resulting in any unreasonable amenity and environmental impacts to neighbours or the surrounding public domain.
- The SEE and supporting documentation submitted with the DA provides a holistic environmental planning assessment of the proposal and demonstrates that subject to adopting a range of reasonable mitigation measures, there are sufficient environmental planning grounds to support the development. In particular, the submitted documentation demonstrates that despite the contravention to the FSR

standard, it nonetheless enables the relatively modest and appropriate redevelopment of the site to occur, which is clearly not incompatible with the established neighbouring built form context.

- Existing FFL's for the dwelling remain unaltered. The benched form and the site's topography accentuates the departure at the western elevation, whereas its compliant height at the eastern elevation is only 7.12m.
- The dwelling's overall height is reduced by 1.94m.
- The height of the garage/studio complies with the standard.
- A similar building envelope / alignment is proposed as that previously approved under DA 2020/189.
- Despite the departure to the FSR standard, the additional GFA/FSR does not materially add to the dwelling's height, bulk and scale when compared to that existing.
- The altered / proposed built form is clearly not incompatible when considering 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 proposed breach of the standard results in an improved amenity outcome for the residents without contributing additional bulk, adverse environmental or amenity related impacts or relative intensification of the altered built form.
- The departure to the height standard has been arranged considering the site's existing built form, the previously approved DA and the neighbouring and nearby context. In this regard and as demonstrated by the DCP 2013 assessment at Table 4 and Section 4.2 of the separately submitted SEE, the non-compliant built form nonetheless preserves environmental amenity in relation to:
 - solar access and overshadowing;
 - access to natural daylight and ventilation;
 - aural and visual privacy;
 - views and vistas from neighbouring and nearby properties and the public domain; and
 - visual impact and massing; and
 - parking or traffic generation.
- Appropriate environmental initiatives are proposed.
- The highly articulated façade treatment and selection of characteristic and recessive external materials and finishes reduces the dwelling's perceived height, bulk and scale when viewed from the surrounding public domain.

The above environmental planning grounds relate specifically to the departure to the height standard which has been reduced, a desirable outcome. The above points warrant the exceedance, are not generic, but rather, specific to the site and circumstances of the proposal. An appropriate and equitable planning outcome results.

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 reduced departure from the height standard relates to local and contextual conditions, including existing built form and topography. The variation sought is responding to the broad brush nature of the control applied across an area that supports a variety of built forms on varying allotment sizes.

The built form's height does not set a precedent or preclude any neighbouring or nearby property from being appropriately redeveloped. It is an existing condition, which has been reduced. Further the dwelling's roof geometry is improved when compared to that existing. The retention of improved housing for a single family will assist in meeting housing and locational context demand. The site has good access to services, facilities and amenities. Amenity for the neighbours has been preserved.

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, despite a current approval for such. Considering demolition of the existing 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.

Compliance with the standard forgoes the opportunity to enable an altered dwelling that has a visually interesting architectural expression that reduces its maximum height by 1.94m and improves the dwelling's roof geometry without unreasonably impacting the amenity of neighbours. The proposal as a whole has planning merit without adverse impacts.

The site's redevelopment and unaltered 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 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 dwelling and would serve no purpose other than to impose numerical inflexibility and economic impracticality. The dwelling's height has been reduced, which is clearly a desirable outcome.

In the current case, strict compliance with the height standard would preclude the opportunity to provide a benchmark architectural design solution and an embellished landscape condition for the site.

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 reduced variation to the height standard is in the public interest because it is not inconsistent with its objectives 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 reduced variation to the height standard is an appropriate use of the provisions of Clause 4.6. Accordingly, there is in the specific circumstances of the case, no public benefit in strictly maintaining the development standard.

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 improve the amenity of surrounding properties or Council's desired future built form character as:

- the dwelling already departs from the standard;
- the departure to the standard has been reduced;
- the dwelling's maximum height is 1.94m less than that existing;
- the proposal satisfies and achieves the objectives of the R2 Low Density Residential zone and is consistent with Council's strategic intent;
- the proposal satisfies and achieves the objectives of the height standard;
- the altered / proposed built form is not incompatible considering its established, desired and likely future built form context;
- it clearly improves the dwelling's roof geometry, reduces its overall height and does not result in any unreasonable amenity and environmental related impacts to neighbours; and
- improved internal amenity for the occupants.

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 objectives of the standard. It is therefore appropriate to exercise the flexibility provided by Clause 4.6 of LEP 2013.