



CLAUSE 4.6 VARIATION TO THE HEIGHT OF BUILDINGS DEVELOPMENT STANDARD

# New Dwelling House

33 Evans Road, Hornsby Heights

Prepared on behalf of

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## CONTENTS

<b>1.0</b>	<b>Introduction</b>	<b>1</b>
<b>2.0</b>	<b>Description of the Planning Instrument, Development Standard and Proposed Variation..2</b>	
2.1	What is the name of the environmental planning instrument that applies to the land? .....	2
2.2	What is the zoning of the land? .....	2
2.3	What are the objectives of the zone? .....	2
2.4	What is the development standard being varied?.....	2
2.5	Is the development standard a performance based control? Give details.....	3
2.6	Under what clause is the development standard listed in the environmental planning instrument? .....	3
2.7	What are the objectives of the development standard?.....	3
2.8	What is the numeric value of the development standard in the environmental planning instrument? .....	3
2.9	What is the proposed numeric value of the development standard in the development application? .....	3
2.10	What is the percentage variation (between the proposal and the environmental planning instrument)?.....	3
<b>3.0</b>	<b>Assessment of the Proposed Variation.....</b>	<b>4</b>
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? .....	4
3.1.1	<i>Objectives of the zone</i> .....	4
3.1.2	<i>Objectives of the height standard</i> .....	4
3.2	Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? .....	7
3.3	Are there sufficient environmental planning grounds to justify contravening the development standard? .....	9
3.4	Whether contravention of the development standard raises any matter of significance for the State or regional Environmental Planning?.....	10
3.5	How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act?.....	11
3.6	Is there public benefit in maintaining the development standard?.....	12
3.7	Is the objection well founded? .....	12
<b>4.0</b>	<b>Conclusion</b>	<b>13</b>

## 1.0 INTRODUCTION

This Exception to Development Standards Submission accompanies a Development Application (**DA**) proposing the construction of a new dwelling house and other required site works at 33 Evans Road, Hornsby Heights (the **site**).

Calculations in this submission are based on the Architectural Drawings and information provided by Voytek Trzebiatowski. This submission should be read in conjunction with the detailed Statement of Environmental Effects (**SEE**) prepared by LPDS and other supporting technical documentation.

As noted in the separate SEE, the proposed dwelling departs from the Height of Buildings development standard (**height standard**) at Clause 4.3 of Hornsby Local Environmental Plan 2013 (**LEP 2013**).

As required pursuant to Clause 4.6(3) of LEP 2013, this submission provides a written request to Hornsby Shire 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 height 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?**

Hornsby Local Environmental Plan 2013 (LEP 2013).

### **2.2 What is the zoning of the land?**

The land (the **site**) 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 of buildings 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 objective of the height standard is expressly stated at Clause 4.3(1) of LEP 2013 and is:

- (a) *to permit a height of buildings that is appropriate for the site constraints, development potential and infrastructure capacity of the locality.*

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

Clause 4.3 of LEP 2013 establishes a maximum building height of 8.5m.

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

Resulting from the site's substantial topographical the two storey dwelling's height ranges from 7.3m to 13.9m.

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

The proposed percentage variation is 63.5% (5.4m) to the dwelling's maximum height of 13.9m.

## 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 proposed development 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:

- proposes a new dwelling house on an existing low density residential allotment of land;
- increases the availability of residential accommodation and housing choice/type on residentially zoned land;
- undertakes works which maintain and/or improve the site's natural landscape features;
- proposes a built form which is integrated into its landscape;
- provides for an architecturally designed dwelling house within a bushland / garden setting which is not visually intrusive or bulky when viewed from the surrounding public domain and which is not incompatible considering the site's locational built form context and environmental constraints;
- there are no unreasonable amenity impacts (environmental amenity has been preserved) to neighbours or environmental impacts to the public domain; and
- non-residential land uses are not proposed. However, the occupants are able to work from home as/if required and also utilise nearby non-residential land uses.

#### 3.1.2 Objectives of the height standard

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

##### **Objective (a) - to permit a height of buildings that is appropriate for the site constraints, development potential and infrastructure capacity of the locality**

- The proposed departure to the height standard and the development generally are not inconsistent with the relevant objectives of the standard because they do not materially alter the existing correlation between building height and density, and the correlation is appropriate under the circumstances. Nor do they 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.

- The dwelling presents as a visible single storey built form to its Evans Road frontage. Its height and presentation at this frontage complies with the standard. Therefore, the built form when viewed from the surrounding public domain is consistent with that envisaged (desired) by the planning controls. It establishes the desired character. Only two levels of habitable accommodation are proposed. A modest built form is proposed on a site that is unquestionably subject to severe topographical constraints.
- The dwelling's basic layout is in the form of Pythagorean triangle, with the sharper corner in the north truncated in response to neighbours' privacy needs and the retention of the tree cluster in this area. This shape responds positively to the site's topographical features and the arrangement of the boundaries. The site is moderately to steeply northeast sloping. It is located mid-slope on the northeast face of a steep sided ridge line, effectively a cliff. The dwelling's location has clearly been influenced by the site's topographical and vegetative constraints. It is in the 'most level' of the site, however, this still requires the main structure to be largely suspended via piers and vertical poles (as acknowledged by Council). All footings for the structure will bear onto sandstone bedrock.
- The surrounding locality area is characterised by hillside development (steep topographical characteristics) and leafy streetscapes set in a generally consistent subdivision pattern. Dwellings on both sides of Evans Road within the site's visual catchment are predominantly two storeys. The visible single storey and height compliant built form presented to Evans Road is clearly compatible with the built form character within the site's visual catchment. The departure to the standard is at the site's rear where it falls sharply off the cliff. This part of the site is not readily visible from the Evans Road public domain. It has a negligible impact relative to bulk and scale and furthermore has no identifiable impact relative to the environmental amenity of neighbours.
- The locality's desired future character is determined by the relevant (existing) planning controls. An architecturally designed single dwelling house within a largely unaltered bushland / garden setting on an existing single low density residential allotment of land is proposed. This low density built form and land use is desired by the site's and surrounding locality's R2 Low Density Residential zoning. Unquestionably a human scale is maintained relative to the established built form character on both sides of Evans Road.
- Compliance has been maintained with the complementary development guidelines within DCP 2013 in relation to floor area, site coverage, building footprint and landscaped area. The built form is therefore largely anticipated by the relevant planning controls.
- The scale of the proposal is characterised by the locality's desired future character. The height, bulk and scale of the proposed built form does not influence or set a precedent for future buildings on neighbouring or nearby properties, particularly given Evans Road terminates beyond the site into the Berowra Valley National Park. Rather, the new dwelling is not incompatible with and clearly sits comfortably in the site's wider visual context as viewed from the surrounding public domain, given the scale and form of development in the site's vicinity.
- The site is proportioned to allow the efficient realisation and internalisation of the impacts of the proposed built form without an adverse visual impact or perceived built form dominance. The scale is also broken down by the articulation of facades with the use of different materials and elements which helps reduce the perception of any apparent bulk. Excavation has been limited to a part of the lower floor level and which is not visible from the public domain. The upper floor level sits directly over the top of the excavated zone. The dwelling to the site's west sits higher up the ridge and is deeper within its

block. The site does not have a typical eastern built form neighbour as these properties are much lower down the ridge.

- Essentially, the objective of the height standard (in conjunction with other key built form controls) is to ensure that the intensity of development respects and reflects the overall built form of a locality and does not detrimentally affect the amenity of the area. The maximum height that a site can achieve is determined by its environmental constraints. The site is proportioned to allow the efficient realisation and internalisation of the impacts of the proposed built form without an adverse visual impact or perceived built form dominance. The proposed departure to the height standard has been arranged considering the site's cliff like topographical constraints, existing vegetation, rocky outcrops / boulders and the neighbour's context. In this regard and as demonstrated by the DCP 2013 assessment at **Table 4** of the separately submitted SEE, the proposal 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.
- The site is developed in accordance with its environmental capacity as:
  - the site has an optimal northerly orientation;
  - the proposal is BASIX (thermal, energy and water) compliant;
  - provision of 21 x photovoltaic solar panels;
  - in response to the site's flame zone bushfire rating, as well as goals for thermal comfort and energy efficiency, the composition of building's fabric will consist of:
    - insulated metal panels (Askin) with -/120/120 FRL covering all walls, soffits and under floor insulation;
    - high performance double glazing shielded from summer sun by the eaves. All glazed openings will be equipped with fire shutters rolling down from the soffits and concealed from direct view;
    - external areas (terraces / balconies) will be polished concrete to visually blur the inside with the outside. Internal floors of exposed polished concrete will use in-floor heating reversible to cooling. Thermal break separating inside slab with outside terrace will ensure low transmissions of heat;
    - the green roof will rely on proprietary Fatra Balasted Green Roof System ensuring high R-values, waterproofing, acoustic performance and slower storm-water run-off;
    - Inside - raked ceilings, wall linings and joinery will utilise reclaimed floor boards to provide natural ambience and soften the impact of the concrete floor;
    - ceiling fans will assist with distributing warm/cool air from the floor and efficient cross ventilation will provide healthy air from natural surroundings for occupants' well-being;
  - the provision of the roof garden for water treatment and retention;
  - floor to ceiling glazing;



- the provision of voids and generous stair voids;
- compliant provision of landscaped area and retention of existing vegetation and rocky outcrops;
- low site coverage maintaining the site's permeable characteristics;
- windows, openings and the internal open floor plan ensures appropriate levels of solar exposure to all areas of the dwelling;
- natural cross flow ventilation is provided;
- the landscape design minimises the discharge of stormwater (by drainage or overland flow) from the site;
- the use of water and energy efficient fixtures and finishes; and
- the engagement with the outdoors, the natural ventilation, the increase in natural light and the passive solar controls will reduce energy consumption.

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

A development at 33 Evans Road, Hornsby Heights that strictly complies with the 8.5m height standard at Clause 4.3 of LEP 2013 is unreasonable or unnecessary given the following presented circumstances:

- The departure to the standard is a direct function of the site's moderate to steeply northeast slope. It is located mid-slope on the northeast face of a steep sided ridge line, effectively a cliff. The dwelling's location has clearly been influenced by these topographical and additional vegetative constraints. It is in the 'most level' of the site, however, this still requires the main structure to be largely suspended via piers and vertical poles (as acknowledged by Council). All footings for the structure will bear onto sandstone bedrock. These elements at the rear are not visible from the public domain and do not unreasonably add to the built form's perceived height, bulk and scale, nor its environmental impacts.
- The dwelling presents as a visible single storey built form to its Evans Road frontage. Its height and presentation at this frontage complies with the standard. Therefore, the built form when viewed from the surrounding public domain is consistent with that envisaged (desired) by the planning controls. It establishes the desired character. Only two levels of habitable accommodation are proposed. A modest built form is proposed on a site that is unquestionably subject to severe topographical constraints.
- Compliance has been maintained with the complementary development guidelines within DCP 2013 in relation to floor area, site coverage, building footprint and landscaped area. The built form is therefore largely anticipated by the relevant planning controls.
- The surrounding locality area is characterised by hillside development (steep topographical characteristics) and leafy streetscapes set in a generally consistent subdivision pattern. Dwellings on both sides of Evans Road within the site's visual catchment are predominantly two storeys and elevated. The visible single storey and height compliant built form presented to Evans Road is clearly compatible with the built form character within the site's visual catchment. The departure to the standard is at the site's rear where it falls sharply off the cliff, an inevitable outcome. This part of the site is not readily visible from the Evans Road public domain. It has a negligible impact relative to bulk and scale and furthermore has no identifiable impact relative to the environmental amenity of neighbours.

- Following a rigorous merit assessment, approval of a maximum building height that relates to the desired future character for the locality as expressed in LEP 2013 but which exceeds the LEP 2013 height standard because of site specific environmental constraints (topography, vegetation and rocky outcrops), will not set a precedent for other non-conforming applications.
- The proposed departure to the height standard has been arranged considering the site's cliff like topographical constraints, existing vegetation, rocky outcrops / boulders and the neighbour's context. In this regard and as demonstrated by the DCP 2013 assessment at **Table 4** of the separately submitted SEE, the proposal 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 its locational context, the site can accommodate the built form as proposed and the development is of an intensity and scale commensurate or not incompatible with the built form character and the prevailing urban conditions and capacity of the locality, including neighbouring properties.
- The height of the building does not preclude (and hasn't done so in the past) redevelopment of neighbouring or 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.

On this occasion (and as demonstrated at **Table 4** of the separately submitted SEE) the non-compliance better achieves the objectives by allowing for a reasonable and not incompatible new dwelling house on an allotment of land that has been vacant since its subdivision in 1968. A high level of internal amenity will be provided for the future occupants, and at the same time it preserves / maintains the amenity (solar access, visual and aural privacy, views, vistas, outlook, natural daylight and ventilation) of the neighbouring properties. These properties have benefited from borrowed amenity given the vacant site when compared to the established neighbouring and nearby built form context.

***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 objective of the height standard would be thwarted if strict compliance was required in the circumstances as the quality and internal / external amenity of the residential outcome would be compromised for no sound planning reason. This alone would be inconsistent with the objects of the Act.

The built form which is visible from the public domain is anticipated by the planning controls. The dwelling provides unquestionable high internal residential amenity for the occupants whilst preserving the amenity of the neighbours. A relatively compatible built form relationship with its neighbouring and nearby built form is maintained.

***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 quarterly Variations Registers (April to June 2022 being the most recent), demonstrates that the development standard cannot said to be abandoned, however, there is numerous built form (dwelling houses in specifically in this instance) in the surrounding locality and throughout the Hornsby Shire LGA that are zoned R2 Low Density Residential that depart from the current height standard.

***Is the zoning of the land unreasonable or inappropriate?***

The site is zoned R2 Low Density Residential. This zoning is considered reasonable and appropriate. The predominant or most characteristic built form of the immediate locality is free standing dwelling houses with varying height and architectural / built form integrity.

### **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 33 Evans Road, Hornsby Heights, there are sufficient environmental planning grounds to justify contravening the height standard being:

- The departure to the standard is a direct function of the site's moderate to steeply northeast slope. It is located mid-slope on the northeast face of a steep sided ridge line, effectively a cliff. The dwelling's location has clearly been influenced by these topographical and additional vegetative constraints. It is in the 'most level' of the site, however, this still requires the main structure to be largely suspended via piers and vertical poles (as acknowledged by Council). All footings for the structure will bear onto sandstone bedrock. These elements at the rear are not visible from the public domain and do not unreasonably add to the built form's perceived height, bulk and scale, nor its environmental impacts.
- The dwelling presents as a visible single storey built form to its Evans Road frontage. Its height and presentation at this frontage complies with the standard. Therefore, the built form when viewed from the surrounding public domain is consistent with that envisaged (desired) by the planning controls. It establishes the desired character. Only two levels of habitable accommodation are proposed. A modest built form is proposed on a site that is unquestionably subject to severe topographical constraints.
- An architecturally designed single dwelling house within a largely unaltered bushland / garden setting on an existing single low density residential allotment of land is proposed. This low density built form

and land use is desired by the site's and surrounding locality's R2 Low Density Residential zoning. Unquestionably a human scale is maintained relative to the established built form character on both sides of Evans Road.

- The proposed departure to the height standard has been arranged considering the site's cliff like topographical constraints, existing vegetation, rocky outcrops / boulders and the neighbour's context. In this regard and as demonstrated by the DCP 2013 assessment at **Table 4** of the separately submitted SEE, the proposal 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.
- 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 objective of the height standard;
  - compliance has been maintained with the complementary development guidelines within DCP 2013 in relation to floor area, site coverage, building footprint and landscaped area. The built form is therefore largely anticipated by the relevant planning controls;
  - the site is proportioned to allow the efficient realisation and internalisation of the impacts of the proposed built form without an adverse visual impact or perceived built form dominance;
  - 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 with any unreasonable environmental impacts; and
  - removing the non-compliance would preclude any reasonable built form on the site and would be clearly inconsistent with the objects of the Act.
- Appropriate environmental initiatives are proposed.

### **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. The departure relates to local contextual conditions. The variation sought is responding to the broad brush nature of the control applied across an area that supports a variety of low density residential built form on varying allotment sizes and existing built form.

The proposal involves the desirable provision of an architecturally designed dwelling on an existing vacant (since 1968) low density allotment of land within a largely unaltered bushland / garden setting. The works

enable high internal amenity for the occupants whilst reasonably preserving the environmental amenity (solar access, visual and aural privacy, views, vistas, outlook, natural daylight and ventilation) of the neighbouring properties.

The proposal will assist in meeting the considerable housing and locational context demand, in this case for a single family. The site's overall built form is not incompatible with its established and desired future built form local context, including that when viewed from the surrounding public domain, irrespective of compliance or otherwise with the planning controls. 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 with the height standard, would realistically preclude the site's redevelopment, having regard to the other applicable planning controls. In this sense it can be said that compliance with the standard would hinder the attainment of the objects of section 1.3 of the Act and the development would clearly be economically unviable and further impractical. Compliance will preclude architectural expression such as proposed that has planning merit.

Compliance with the standard forgoes the opportunity to enable an appropriate architecturally designed dwelling house within a largely unaltered bushland / garden setting. A high level of internal amenity will be afforded to the occupants whilst the environmental amenity of the neighbours has been preserved, a desirable outcome.

The proposal as a whole has planning merit. The site's redevelopment and subsequent departure from the height standard does not preclude or isolate an adjacent property(s) from being 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 would serve no purpose other than to impose numerical inflexibility and would preclude the site's reasonable redevelopment for the purposes of a low density dwelling house within a bushland / garden setting.

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 objectives of the height standard and neither is it inconsistent with the objectives for development in the R2 Low Density Residential zone.

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. 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, this objection is well founded and the granting of 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. Relative to the proposal:

- it satisfies and achieves the objectives of the R2 Low Density Residential zone;
- it satisfies and achieves the objective of the height standard;
- the dwelling presents as a visible single storey built form to its Evans Road frontage. Its height and presentation at this frontage complies with the standard. Therefore, the built form when viewed from the surrounding public domain is consistent with that envisaged (desired) by the planning controls. It establishes the desired character. Only two levels of habitable accommodation are proposed. A modest built form is proposed on a site that is unquestionably subject to severe topographical constraints;
- the departure to the height standard has been arranged considering the site's cliff like topographical constraints, existing vegetation, rocky outcrops / boulders and the neighbour's context;
- compliance has been maintained with the complementary development guidelines within DCP 2013 in relation to floor area, site coverage, building footprint and landscaped area. The built form is therefore largely anticipated by the relevant planning controls; and
- a high internal amenity for the occupants and the preservation of environmental amenity for the neighbours and the public domain.

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. For this application, it is therefore appropriate to exercise the flexibility provided by Clause 4.6 of LEP 2013.