

In addition and regarding the objectives of the zoning, relevant ecological reports have been commissioned and these reports include recommendations to ensure minimal impact upon the ecological value of the site.

4.3 Height of buildings

Comment – The maximum building height stipulated for this area in the 2014 LEP is 5.5 metres, however, the 2004 LEP stipulates a maximum height of 8 metres with a potential exception based on the site attributes. Whilst it is acknowledged that the proposed dwelling units shall exceed the 5.5 metre 2014 LEP limit, it is considered that the site attributes are such that this should be permissible. There are numerous two storey dwellings in the Belmont Area and these proposed dwelling units will not be dissimilar. The slope of the site is such that 2 storey dwellings units shall allow for a more efficient use of the site and the proposed village is separated from any other developments significantly such that there are no adjoining dwellings/developments which may be impacted upon. Ultimately a Landscape and Visual Impact Assessment report has been prepared which provides advice to the effect that the visual impact is acceptable and in reality, the issue of building height is predominantly one of amenity. Lastly, a request under Clause 4.6 *Exceptions to development standards* has been formalised below.

4.6 Exceptions to development standards

- (1) *The objectives of this clause are as follows:*
 - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) *the concurrence of the Secretary has been obtained.*
- (5) *In deciding whether to grant concurrence, the Secretary must consider:*
 - (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*
- (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*
 - (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Note. *When this Plan was made it did not include all of these zones.*

- (7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following:*

- (a) a development standard for complying development,
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
- (c) clause 5.4,
- (ca) clause 2.8, 6.1 or 6.2.

Comment – It is formally requested that the development standard 4.3 *Height of buildings* be relaxed. The reason for this request is that the topography of the site is such that in reality, the efficient use of this site requires two storey buildings and it is specifically noted that two storey buildings are not unusual throughout Belmont and the LMCC LGA overall.

The Clause 4.3 *Height of buildings* is not excluded from this clause and it is considered that the proposal in its current form will provide much needed seniors housing in the location and will be complimentary to the existing nearby residential developments. Relaxing the height clause shall allow for a better outcome for this development and the community as a whole. The building height clause (4.3) is both unnecessary and unreasonable and the relaxation of this clause will not give rise to any matters of state or regional significance.

5.9 Preservation of vegetation

- (1) *The objective of this clause is to preserve the amenity of the area, including biodiversity values, through the preservation of trees and other vegetation.*
- (2) *This clause applies to species or kinds of trees or other vegetation that are prescribed for the purposes of this clause by a development control plan made by the Council.*

Note. *A development control plan may prescribe the trees or other vegetation to which this clause applies by reference to species, size, location or other manner.*

- (3) *A person must not ringbark, cut down, top, lop, remove, injure or wilfully destroy any tree or other vegetation to which any such development control plan applies without the authority conferred by:*
 - (a) *development consent, or*