

5 June 2025

SLR Ref No.: 630.031522.00001

Attention: General Manager  
Muswellbrook Shire Council  
PO Box 122  
Muswellbrook NSW 2333

SLR Project No.: 630.031522.00001

**RE: Clause 4.6 Variation Request - Height  
43-45 Enterprise Crescent, Muswellbrook NSW 2333**

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## **1.0 Introduction**

The proposed development to which this written request relates is for the modification of the approved Development Application 50/2019 (as modified 2024) which seeks amendments to the size of the asphalt plant at 43-45 Enterprise Crescent Muswellbrook NSW 2333.

The S4.55(1a) Modification Application seeks approval to amend condition 1 and 2 of the extant consent. The proposed physical modifications proposed are:

- An increase in the height of the proposed plant to 29 metres (m);
- The addition of a cover over the hoppers, increases the overall height of the hopper component to 7.6m;
- The inclusion of two storage silos within the plant; and
- The overall length of the plant has been increased to 62.69m.

Refer to the Architectural Plans prepared by MPC at **Appendix A**.

The development standard sought to be varied is contained in Clause 4.3 of the Muswellbrook Local Environmental Plan 2009 (LEP 2009), which relates to building height.

An assessment of this variation, and justification for contravention of the building height development standard, is provided in the following pages in accordance the requirements of Clause 4.6 of LEP 2009.

For the reasons provided within this written request, compliance with the development standard is considered to be unreasonable or unnecessary in the circumstances of the case; it is considered that there is sufficient environmental planning grounds to justify the contravention and the proposed development will be in the public interest because it is consistent with the objectives of the zone and the building height objectives.

In particular,

- The proposed development satisfies the objectives of the E4 General Industrial Zone and the objectives of Clause 4.3 Height of Buildings;
- The development is considered in accordance with the desired industrial character of the area;

- The variation does not impact on the existing industrial character of the area; and,
- Compliance with the standard is therefore unreasonable or unnecessary.

## 2.0 Site Details

The site is located at Enterprise Crescent Muswellbrook, within the Muswellbrook Shire Local Government Area (LGA). It is legally described as Lot 14 DP1119843, and is commonly known as 43-45 Enterprise Crescent, Muswellbrook NSW 2333. Access to the site is provided via separate gated ingress and egress driveways on Enterprise Crescent.

The site currently contains hardstand areas and generators associated with a previous asphalt plant. The site is located in the E4 General Industrial Zone within the Muswellbrook Local Environmental Plan (LEP) 2009. Land uses within the immediate vicinity of the site are predominantly industrial and agricultural in nature. There is scattered vegetation to the east and south, which provides screening of the site.

Refer to **Figure 1** and **Figure 2** for the site aerial and cadastral plan.

**Figure 1 Site Aerial (Source: Near Maps)**



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The development application does not seek to vary any of the development standards excluded from the operation of Clause 4.6 of the LEP 2009. Accordingly, pursuant to Clause 4.6 it is open to the applicant to make a written request seeking to justify the contravention of the height of building development standard by demonstrating that compliance with the standard is unreasonable or unnecessary.

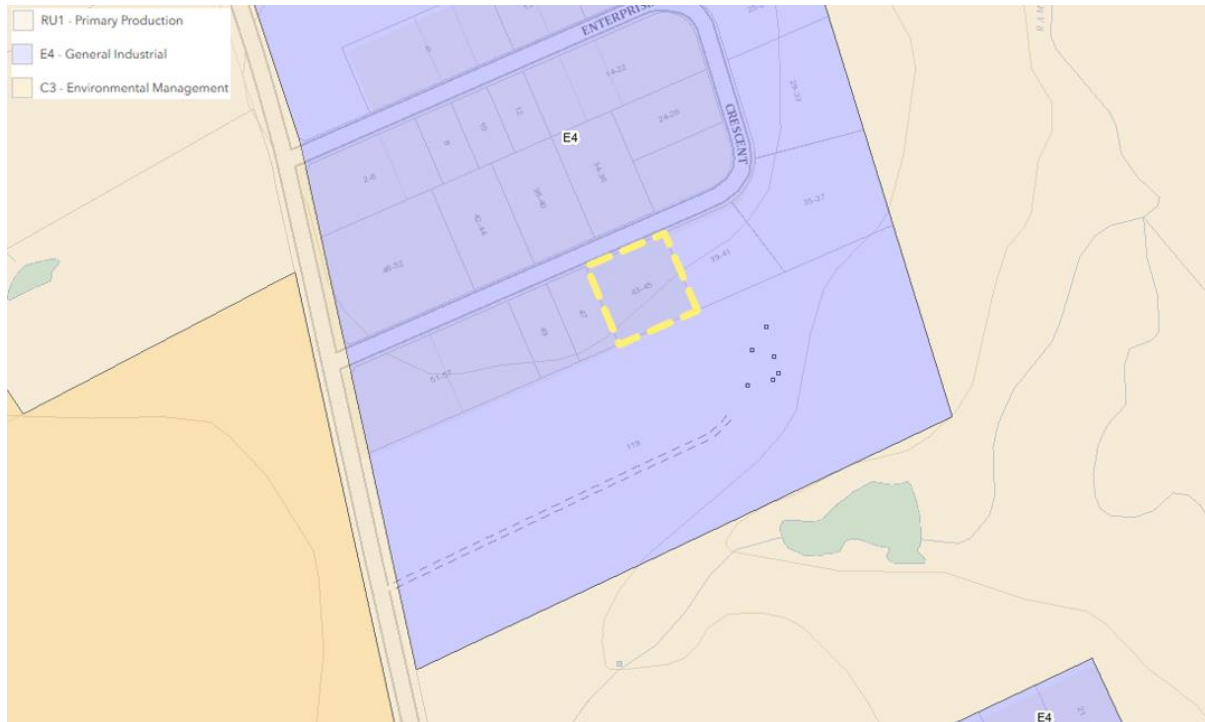
**What is the name of the environmental planning instrument that applies to the land?**

Muswellbrook Local Environmental Plan 2009

### What is the zoning of the land?

LEP 2009 indicates that the site is within the E4 General Industrial Zone, as illustrated in **Figure 3**.

**Figure 3 Zoning Map Extract (Source: ePlanning Spatial Viewer Map)**



**What are the objectives of the zone?**

- *To provide a range of industrial, warehouse, logistics and related land uses.*
- *To ensure the efficient and viable use of land for industrial uses.*
- *To minimise any adverse effect of industry on other land uses.*
- *To encourage employment opportunities.*
- *To enable limited non-industrial land uses that provide facilities and services to meet the needs of businesses and workers.*

**What is the development standard being varied?**

The building height development standard contained in Clause 4.3 of the LEP 2009.

**Is the standard to be varied a development standard?**

Yes, the standard is considered to be a development standard in accordance with the definition contained in Section 1.4 of the *Environmental Planning and Assessment Act 1979* and not a prohibition.

**What are the objectives of the development standard?**

The objectives of Clause 4.3 – Height of Buildings are as follows:

- (a) *to limit the height of buildings,*





(b) to promote development that is compatible with the height of surrounding development and conforms to and reflects natural landforms by stepping development on sloping land to follow the natural gradient,

(c) to promote the retention and, if appropriate, sharing of existing views,

(d) to maintain solar access to new and existing dwellings and public recreation areas and to promote solar access to new buildings,

(e) to maintain privacy for residents of existing dwellings and promote privacy for residents of new buildings.

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

Pursuant to this clause the maximum height of buildings at the site is 15m, refer to **Figure 4** below.

**Figure 4 Height of Buildings Extract (Source: ePlanning Spatial Viewer Map)**



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

The numerical value of the proposed height variation is detailed in **Table 1**.

**Table 1 Numerical Details Relating to Compliance**

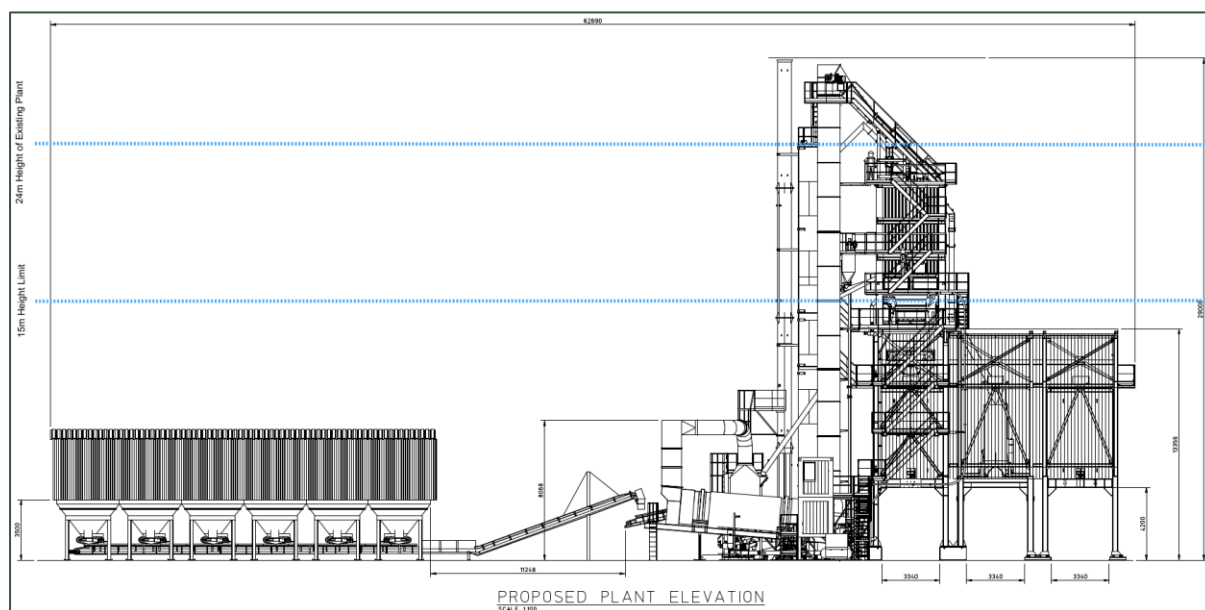
Proposed Heights	MLEP 2009 Height Standard	Variation from MLEP 2009
29m	15m	93%



As demonstrated in **Table 1**, the proposed development is seeking a 93% variation to the height standard within LEP 2009, in proposing a 29m building height for the asphalt plant. The development seeks a 14m variation to the 15m height standard under the LEP. Only a minor component of the site is subject to the area of the plant which exceeds the height limit. Accordingly, the 93% height exceedance only applies to a minor portion of the site.

The non-compliance has arisen as a result of the proposed development seeking efficiencies in its industrial operations, which will in turn provide a better development outcome for the site and business. Refer to **Figure 5** which demonstrates the extent of the building height limits as well as the existing maximum building height at the site, that being 24m.

**Figure 5 Extent of Building Height Exceedance and Comparison to Existing Height Levels**



## 5.0 Justification for the Contravention

### 5.1 Compliance is Unreasonable or Unnecessary

In the decision of *Wehbe v Pittwater Council* [2007] NSW LEC 827, Preston CJ outlined the rationale for development standards and the ways by which a standard might be considered unnecessary and/or unreasonable.

In that decision, Preston CJ identified that one way to establish that compliance with the development standard is unreasonable or unnecessary is on the basis that the objectives of the standard are achieved notwithstanding noncompliance with the standard.

The objectives of the building height development standard in Clause 4.3 of the LEP 2009 are addressed as follows:

- (a) *to limit the height of buildings,*

The proposed height increase is essential for operational efficiencies of the asphalt plant. The increased height will facilitate better processing and storage capabilities, which are crucial for the plant's functionality. This aligns with the Hunter Regional Plan 2041's



Objective 1 *Diversify the Hunter's mining, energy and industrial capacity*, which supports traditional industries and seeks to safeguard existing employment land areas.

*(b) to promote development that is compatible with the height of surrounding development and conforms to and reflects natural landforms by stepping development on sloping land to follow the natural gradient,*

The proposed plant is located in an E4 General Industrial Zone, where industrial structures of varying heights are common. The development will be compatible with the surrounding industrial landscape and will not disrupt the natural landform as the site is relatively flat. This supports the Muswellbrook Local Strategic Planning Statement (LSPS) Planning Priority 3: *ensuring the mineral resource and power generation industry is productive, accountable, and considerate of surrounding land uses.*

The site is relatively flat, and the development will not require significant alterations to the natural landform. This approach aligns with the Hunter Regional Plan 2041's objective of promoting sustainable land use practices and minimizing environmental impact.

*(c) to promote the retention and, if appropriate, sharing of existing views,*

The proposed development will not obstruct any significant views. The site is situated in an industrial area where the primary views are of other industrial facilities. The closest residential dwelling is over 650 meters to the north, ensuring that the development does not impact any residential views or prominent views from the public realm.

*(d) to maintain solar access to new and existing dwellings and public recreation areas and to promote solar access to new buildings,*

The proposed development is in an industrial zone, away from residential areas. Therefore, the increased height will not impact the solar access to existing dwellings.

*(e) to maintain privacy for residents of existing dwellings and promote privacy for residents of new buildings.*

The proposed development is in an industrial zone, significantly separated from residential areas, with the nearest dwellings greater than 650m from the site. Therefore, the increased height will not impact the privacy of any existing dwellings.

Overall, the proposed development achieves the objectives of Clause 4.3 and therefore strict compliance with the height standard would be unreasonable and unnecessary.

## **5.2 Sufficient Environmental Planning Grounds to Justify Contravention**

This request for a variation demonstrates that the proposed height variation sought does not result in significant adverse environmental impacts and that there are sufficient environmental planning grounds to justify this contravention to the height control.

The following environmental planning grounds are considered to justify contravening the development standard:

- The variation will allow for the orderly and economic development of the site, maximising the capability of the site for industrial purposes;
- The variation will enable the retention of industrial land uses within the E4 General Industrial Precinct;
- Only a minor component of the overall plant will exceed the height limit;



- The proposed development is located in an E4 General Industrial zone. It is considered that the industrial zone is the most appropriate zone for the land use;
- Compliance with the control would not enable the industrial land use to operate, as shown previously with approval for a 24m plant tower; and,
- The variation will allow for the orderly and economic development of the site, maximising the capability of the land with negligible impact to the amenity of the area.

There are considered to be sufficient environmental planning grounds to justify varying the height development standard in this instance.

### 5.3 Public Interest

As demonstrated in this request, the proposed development will be in the public interest as it is consistent with the objectives of the height standard and the objectives of the E4 General Industrial zone, for the reasons provided in Section 5.1 and 5.2 of this request. The intent of the E4 zone is to ensure the efficient and viable use of land for industrial uses.

The proposed development is consistent with the zone objectives as it will:

- Enhance an existing industrial use which is unique in the area, which aligns with the objective of providing a range of industrial, warehouse, logistical and related land uses.
- The increased height and operational efficiencies of the new plant will ensure that the land is used effectively, maximizing productivity and supporting the economic viability of the industrial zone.
- The plant is located in an industrial zone, away from residential areas, minimizing any potential adverse effects on other land uses. The closest residential dwelling is over 650 meters away, ensuring no impact on residential areas.
- As outlined in the original DA the development of the new asphalt plant will create job opportunities during both the construction and operational phases, contributing to local employment and economic growth.

It is considered that a contravention of the height standard within Clause 4.3 of the LEP 2009 is justified for the following reasons:

1. The proposed height exceedance does not result in any unreasonable amenity impacts in relation to overshadowing, privacy or view loss, to or from neighbouring properties;
2. The proposed development responds to the envisaged future character of the area;
3. The proposed development satisfies the objectives of the E4 General Industrial zone; and
4. The proposed development satisfies the objectives of Clause 4.3.

The proposed development of the asphalt plant is in the public interest as it will enhance operational efficiencies, leading to more effective production and storage capabilities. This improvement is crucial for supporting local infrastructure projects, which benefit the broader community by ensuring the availability of high-quality asphalt for road construction and maintenance. Additionally, the development aligns with regional planning objectives, promoting economic growth, job creation, and sustainable industrial practices. By replacing an existing plant with a more efficient facility, the project minimizes environmental impact while maximizing the use of industrial land. The plant's location in an E4 General Industrial





Zone ensures compatibility with surrounding land uses, and its design considerations mitigate any potential adverse effects on residential areas, maintaining the community's quality of life.

For the reasons provided above, it is considered that the variation to the development standard is supportable.

## 6.0 Conclusion

This Clause 4.6 Variation to Development Standard request has been prepared in response to numerical non-compliance with the development standard for the site specified in Clause 4.3 – Height of Buildings in LEP 2009.

As demonstrated within this written request, compliance with the development standard is considered unreasonable and unnecessary in the circumstances. There are sufficient environmental planning grounds to justify the contravention of this development standard. The proposed development will be in the public interest because it is consistent with the objectives of the zone and the building height development standard.

It is therefore requested that development consent be granted for the proposed development.

Regards,

**SLR Consulting Australia**



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