



## **Clause 4.6 Variation – Height of Buildings**

### **Proposed Redevelopment**

#### **Lake Macquarie Fair & Mount Hutton Shopping Centres**

46 & 56 Wilsons Road, Mount Hutton  
(Lot 101 & 103 in DP1115833)

Prepared by Willowtree Planning Pty Ltd on behalf of  
Charter Hall

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**1. Introduction**

This Clause 4.6 Variation request has been prepared in support of a Development Application for the proposed redevelopment of Lake Macquarie Fair and Mount Hutton Shopping Centres, Mount Hutton. The site is legally described as Lot 101 and Lot 103 in DP1115833.

This Clause 4.6 Variation has been submitted to assess the proposed non-compliance with the height of buildings standard (Clause 4.3) for the shopping centre redevelopment in accordance with the requirements of *Lake Macquarie Local Environmental Plan 2014* (LMLEP2014) which provides the following aims and objectives:

- (a) to ensure the height of buildings are appropriate for their location,*
- (b) to permit building heights that encourage high quality urban form.*

In summary the following variations are proposed:

<b>LMLEP Clause</b>	<b>LMLEP 2014 Development Standard</b>	<b>Proposed Development Non Compliance</b>	<b>Percentage of Variation</b>
Clause 4.3 Height of Buildings	10m	The proposal seeks development consent for buildings with a height of 13.1m (pertaining to plant)	31%

In accordance with Clause 4.6 of the LMLEP 2014 Council is required to consider the following:

*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.*

This request has been prepared in accordance with the aims and objectives contained within Clause 4.6 and the relevant development standards.

**2. The Standards Being Objected to****2.1 Clause 4.3 (Height of Buildings) of the Lake Macquarie Local Environmental Plan 2014**

The development standard being requested to be varied is **Clause 4.3 (Height of Buildings)** of LMLEP 2014 which provides as follows.

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### 4.3 Height of Buildings

(1) *The objectives of this clause are as follows:*

- (a) *to ensure the height of buildings are appropriate for their location,*
- (b) *to permit building heights that encourage high quality urban form.*

(2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

Pursuant to Clause 4.6, the proposed development seeks exception to the 10m building height standard as identified in the Height of Building Maps.

The site is zoned B2 Local Centre whereby retail premises are permitted with development consent.

#### 2.2 The objectives/underlying purpose of the clause

A key determination of the appropriateness of a variation to a development standard is the proposal's compliance with the underlying objectives of the standard. Therefore while there is a specified numerical control for building height, the objectives and underlying purpose of the development standard are fundamental issues for consideration in the development assessment process.

Section 3 of this Clause 4.6 Variation addresses the proposed variation to the Clause 4.3 development standard.

#### 2.3 Proposed variation to standards

The proposed development seeks consent for the redevelopment of existing shopping centre to provide new retail tenancies and a Coles supermarket. The proposed development exhibits a maximum height of 13.1 which results in a breach of 3.1m under Clause 4.3 of LMLEP 2014.

Other areas of non-compliance includes the roof of the new Coles which is 12.5m high.

### 3. Proposed Variation to Clause 4.3 Height of Buildings

Pursuant to Clause 4.6 of *LMLEP 2014*, exemption to the 10m building height standard applicable pursuant to Clause 4.3 of LMLEP 2014. Clause 4.6(4)(ii) requires that such a request must establish that the proposed contravention is consistent with the objectives of the standard and the zone.

#### 3.1 Objectives of the standard?

The objectives of the standard as stated in the LMLEP 2014 are:

- (a) *to ensure the height of buildings are appropriate for their location*

The subject site is located within an established retail precinct that contains an abundance of retail shops. Accordingly the proposed development is located on land that has been previously developed for such purposes as that proposed under the subject application. Therefore it is considered reasonable that the height of the proposed plant is 13.1m and the roof of the Coles is 12.5m high. It is noted that the existing Lake Macquarie Fair shopping centre presently extends beyond the 10m limit and 12.3m high in parts.

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The site is separated from the nearest residential development by road and infrastructure. Accordingly the site will not be highly visible from any sensitive residential receptors and therefore the transition to a lower building height is considered highly unnecessary.

Therefore the proposed additional 3.1m of height beyond the 10m limit will not cause any undue visual or amenity impacts when viewed from areas of public open space. Accordingly it is considered highly unnecessary to adhere to a lower building height.

*(b) to permit building heights that encourage high quality urban form.*

The proposed development will seamlessly integrate with surrounding development and the existing retail development on the site. Through the provision of articulated facades and material and colour scheme, the proposal shall not result in unacceptable visual impacts. The provision of deep soil landscaping within all setbacks will soften the appearance of the built form and hardstand areas resulting in a further augmented visual product.

**3.2 Objectives of the zone**

The proposal is consistent with the B2 zone objectives in that:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*

The proposal provides a range of retail uses including retail shops, restaurants and takeaway food and drink premises. These uses once operational will serve surrounding residents within the locality and those beyond.

- *To encourage employment opportunities in accessible locations.*

The proposed development provides for a range of retail uses that will generate employment opportunities in the LGA. Given the location of the site, future employment will be generated in close proximity to where residents live which consistent with the objectives of the clause.

- *To maximise public transport patronage and encourage walking and cycling.*

The proposal provides key linkages external to the site that promote walking and cycling. In particular, Wilsons Road which is adjoining is a key pedestrian link and will be directly accessible from the site. The proposal also makes provision for bicycle parking which is consistent with the objectives of the clause.

- *To create spaces that are accessible and are a central focus for the community.*

The proposal seeks to create a space that will be a nodal point within the Mount Hutton Area and will set a desirable precedent for future development. Through the provision of contemporary retail offerings, the centre will be revitalised and will become a central focus within the locality and boarder LGA.

**3.3 Establishing if the Development Standard is Unreasonable or Necessary**

Compliance with this standard would be unreasonable given the desired retail character of the site conveyed by the B2 Zoning. The proposed building height departure will have no undue material impact on the streetscape or surrounding sites and is consistent with the existing and desired character for the area.

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The proposal exhibits a building height of only 3.1 above the building height limit which pertains to the plant, while the Coles roof will be 2.5m above the maximum 10m limit. The proposed development is highly compatible with the established retail character of the site and its surrounds uses in terms of built form and land use.

Furthermore the built form proposed for the site clearly demonstrates the feasibility of developing the site in accordance with relevant environmental planning framework and providing a high-quality, desirable development on the site whilst preserving neighbouring amenity. The proposal is consistent with the controls of LMLEP 2014 and significantly increases the amenity and useability of the site whilst not resulting in any unacceptable impacts.

It is considered that the Clause 4.6 Variation is well founded in this case for the following reasons:

- The proposed redevelopment is consistent with the existing and desired retail character of the site and the surrounding area.
- The development will significantly augment the employment-generating use of the site through the provision of high quality retail uses.
- The proposal is compatible with surrounding development and the environmental planning framework in terms of visual appearance, scale, design and land use.
- The proposed development will not affect any residential areas or sensitive land uses and will not compromise the amenity of any adjoining sites.

### ***3.4 Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard***

The variation to the development standard for height of buildings is considered well founded in this instance as:

- The proposed development is consistent with the underlying objective or purpose of the standard as demonstrated in **Section 3.1**.
- The proposed development is consistent with the development standards of Lake Macquarie Development Control Plan 2014 and LMLEP2014.
- The proposed development will not exhibit any adverse visual impact and will not adversely impact on the amenity of adjoining sites in relation to solar access, privacy or views.
- The proposed development is compatible with the established retail character of the site and its surrounds.

## **4. Conclusion**

It is requested that Council support the proposed variation to Clause 4.3 of LMLEP 2014 for the following reasons:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
- There are sufficient environmental planning grounds to justify contravening the development standard.

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- The proposal will support the use of the site for employment-employment generating activities and therefore will positively contribute to the local and regional economies by supporting the role of retail, providing significant employment and providing retail offerings for end-users.
- No unreasonable environmental impacts are introduced as a result of the proposal.
- There is no public or material benefit in maintaining strict compliance with the standards.

Given the above justification provided above this Clause 4.6 Variation is well founded and should be favorably considered by Council.