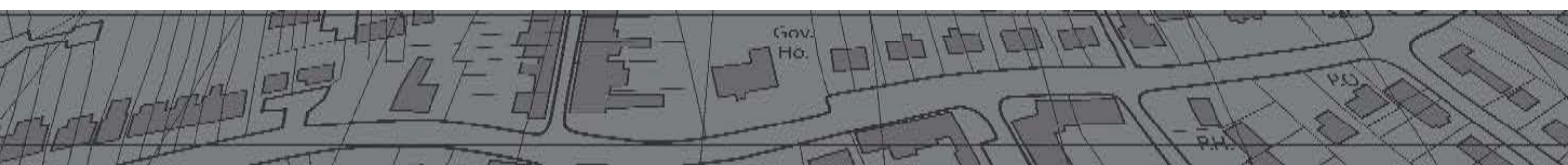




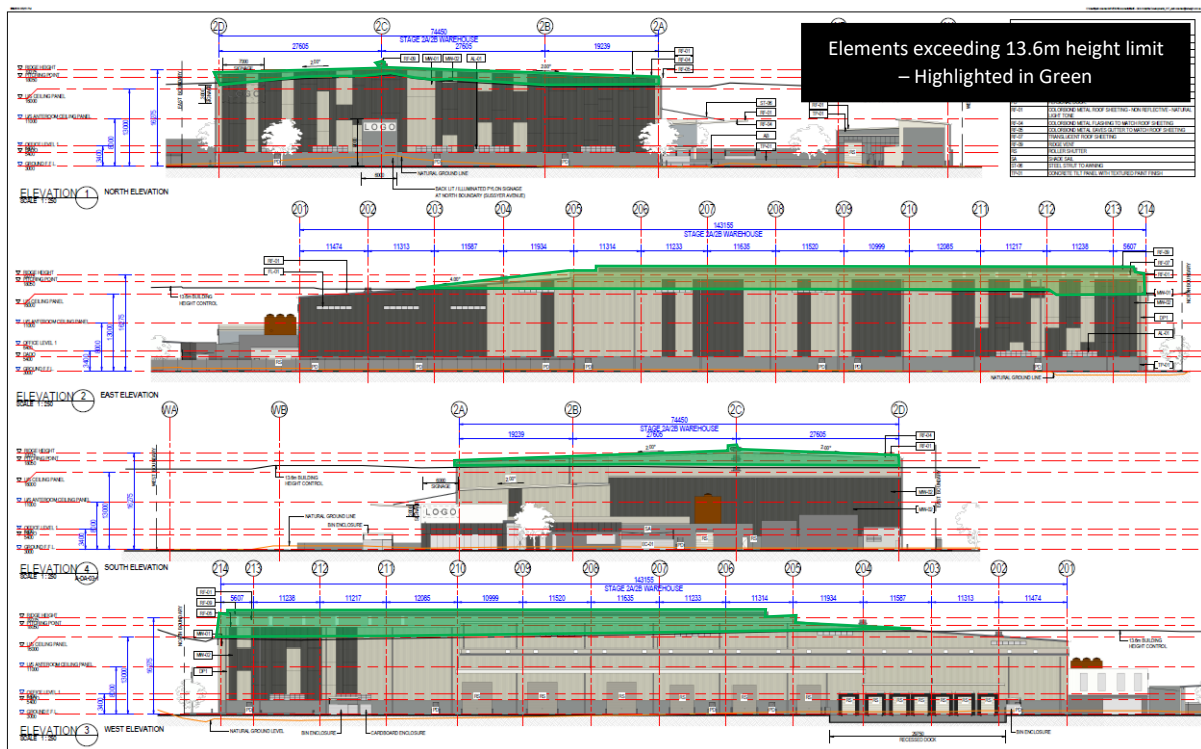
Attachment 21

CLAUSE 4.6 – REQUEST TO VARY DEVELOPMENT STANDARD



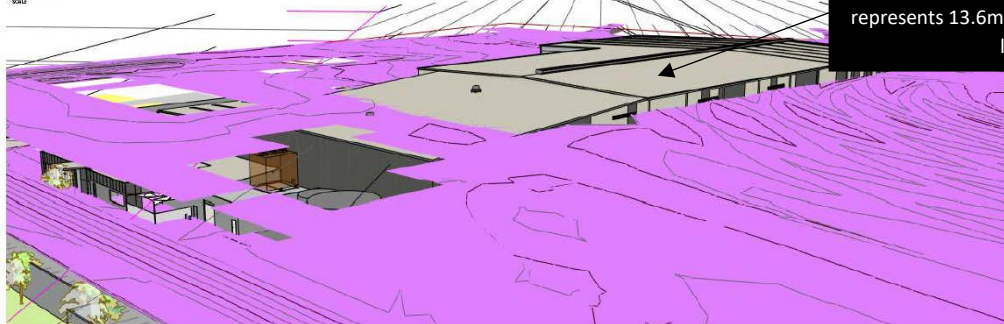
Introduction

Clause 4.6 of the Tweed LEP 2014 provides a mechanism to vary development standards under the local planning instrument. The proposed building height exceeds the maximum prescribed under Clause 4.3 of the Tweed LEP 2014. Clause 4.3 requires a maximum building height of 13.6m, where the proposal provides a height of 16.26m to top of roof and 17.0m to top of ridge vent. The location of the elements that exceed the 13.6m height limit are identified in the figures below. The maximum extent of the variation is identified as 3.4m or 25.0%.



3D VIEW - STAGE 2B - NORTH WEST PERSPECTIVE - 13.6m BUILDING HEIGHT CONTROL

Extend of Stage 2A/2B Building above 13.6m Height Limit. The purple plane represents 13.6m above natural ground level.



3D VIEW - STAGE 2B - SOUTH EAST PERSPECTIVE - 13.6m BUILDING HEIGHT CONTROL

The following justifies a variation to this provision in this instance to demonstrate to Council and the Northern Regional Planning Panel as the consent authority, that it could allow the proposed development on the site. The following forms a written request to vary the development standard under Clause 4.6 of the TLEP 2014.

Request to Vary Under Clause 4.6

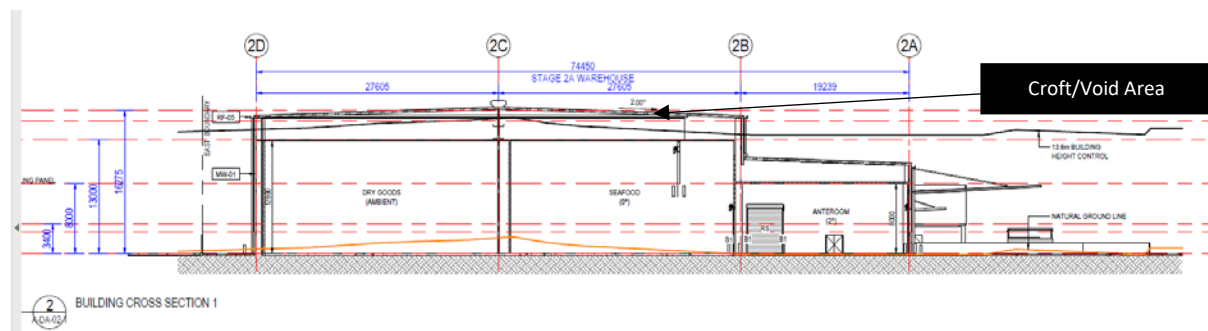
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

The proposal seeks a variation to Clause 4.3 (Height of Buildings) under the TLEP 2014. This clause is not expressly excluded from the operation of Clause 4.6.

- (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*

Compliance with the development standard is unreasonable in this instance. The mapped maximum height of buildings under the TLEP 2014 is 13.6m. The proposed stage 2A/2B building provides a maximum height of 16.26m to top of roof and 17.0m to top of ridge vent. This equates to an additional 3.4m of building height for these two stages of the proposal. The elements which exceed the height are completely comprised of the upper most portion of a ceiling croft/void area, roof structure and ridge vent and do not contain any gross floor area nor are they capable of conversion to provide gross floor area. Refer figure below:



In preparing the proposals design and seeking tenants for it, at the highest level the key considerations were avoiding amenity impact upon the adjoining properties and surrounding environment; achieving the zone objectives via maintaining sufficient land to achieve a mix of land uses; maximising use and employment generating opportunities of the site via the provision of multiple employers; and providing land uses that will ultimately benefit from the sites exceptional connections to transport links including Pacific Highway and Gold Coast Highway, and its close proximity to the Gold Coast Airport.

The height and layout of the elements which must be located over the fridge/freeze sections of the proposed building are dictated by technical specifications of the services which will be installed within thiscroft/void area. The technical specifications are such that the services must have minimum clearance heights, be enclosed by built structure and not exposed to the elements. The Stage 2A/2B building must also provide a minimum storage volume for food distribution tenant operations.

While the proposal could be amended to reduce the building height while still achieving the storage volume required for Stage 2A/2B, this would only be achieved via an enlarged building footprint which would leave insufficient land for Stage 3 and future Stage 4 of the proposal on the site. This would result in a direct and fatal impact on attaining the objectives of the B7 Business Park Zone. In considering all the elements, significant efficiencies and indeed public benefit (via attainment of the zone objectives) is achieved by increasing the storage volume vertically, as opposed to laterally.

Despite the additional building height, the proposal continues to meet the objectives of the building height control. Specifically, it is noted that:

- The proposed development complies with all of Councils overshadowing and privacy requirements, refer Shadow diagrams contained within the Architectural Plan under Attachment 1 of the Statement of Environmental Effects; shadow cast by the Stage 2A/2B building proper, falls totally within the subject site;
- Through clever design and building placement the parts of the development that exceed the building height will either not be visible from the street (at Stage 3 and future Stage 4) or where visible the height variation, given its minimal extent and integration with the overall building form, will be indistinguishable from a compliant 13.6m building height;
- The sites position, low elevation, the surrounding vegetation and elements including the Pacific Highway acoustic barriers contain views of the site to a small local catchment only. Refer Statement of Landscape Intent under Attachment 2 of the Statement of Environmental Effects. As the proposal will not be directly visible from the broader surrounding area the site is clearly capable of accommodation the additional height while maintaining an appropriate urban character, level of amenity and extent of impact upon the adjoining natural and urban environments;
- The site is currently serviced by reticulated water, sewer, power and telecommunications infrastructure and has excellent road transport connections to the Pacific Highway and Gold Coast Highway. The site is in an urbanised environment as envisaged by the objectives of the height control. The provision of additional building height can be completely supported by the existing infrastructure, in fact the benefit of this infrastructure is maximised via the proposed additional building height.

Effectively the proposal continues to meet the objectives of Clause 4.3 despite the non-compliance. Given the proposal continues with meeting the objectives of Clause 4.3, complying with the development standard is unreasonable in this instance.

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

There are sufficient environmental planning grounds to justify the contravention of the standards and that compliance with the standard is therefore unreasonable. While the proposal could be amended to reduce the building height while still achieving the storage volume required for Stage 2A/2B this would only be achieved via an enlarged building footprint which would leave insufficient land for Stage 3 and future Stage 4 of the proposal on the site, not to mention further compromise ability to comply with site cover and landscape area requirements. This would result in a direct and fatal impact on attaining the objectives of the B7 Business Park Zone. In considering all the elements, significant efficiencies and indeed public benefit (via attainment of the zone objectives) is achieved by increasing the storage volume vertically.

In addition to the discussion above around the proposals consistency with building height objectives, at the highest statutory level the additional building height is considered essential to meeting the objects of the Environmental Planning and Assessment Act 1979, namely 'to promote the orderly and economic use and development of land'.

Effectively the proposal continues to meet the objectives of the Clause 4.3 despite the non-compliance, while facilitating attainment of the objectives of the B7 Business Park Zone and achieving higher order development objects, including the orderly and economic use and development of land.

(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

The matters required to be addressed under subclause (3) have been demonstrated above.

(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

The proposal is not inconsistent with the objectives of Clause 4.3 or the objectives of the B7 Business Park Zone. Regarding height of buildings, the objectives of Clause 4.3 are:

- (a) to establish the maximum height for which a building can be designed,*
- (b) to ensure that building height relates to the land's capability to provide and maintain an appropriate urban character and level of amenity,*
- (c) to ensure that taller development is located in more structured urbanised areas that are serviced by urban support facilities,*
- (d) to encourage greater population density in less car-dependant urban areas,*
- (e) to enable a transition in building heights between urban areas comprised of different characteristics,*
- (f) to limit the impact of the height of a building on the existing natural and built environment,*
- (g) to prevent gross overshadowing impacts on the natural and built environment.*

The proposal is consistent with the objectives of the height of buildings control in that:

- The proposal achieves a high-quality visual appearance which is broken up using building articulation, materiality, colour and landscaping;
- The proposed development complies with all of Councils overshadowing and privacy requirements, refer Shadow diagrams contained within the Architectural Plan under Attachment 1 of the Statement of Environmental Effects; shadow cast by the Stage 2A/2B building proper, falls totally within the subject site;
- Through clever design and building placement the parts of the development that exceed the building height will either not be visible from the street (at Stage 3 and future Stage 4) or where visible the height variation will be indistinguishable from a compliant 13.6m building height.
- The sites position, low elevation, the surrounding vegetation and elements including the Pacific Highway acoustic barriers contain views of the site to a small local catchment only. Refer Statement of Landscape Intent under Attachment 2 of the Statement of Environmental Effects. As the proposal will not be directly visible from the broader surrounding area the site is clearly capable of accommodation the additional height while maintaining an appropriate urban character, level of amenity and extent of impact upon the adjoining natural of urban environment,
- The site is currently serviced by reticulated water, sewer, power and telecommunications infrastructure and has excellent road transport connections to the Pacific Highway and Gold Coast Highway. The site is in an urbanised environment as envisaged by the objectives of the height control. The provision of additional building height can be completely supported by the existing infrastructure, in fact the benefit of this infrastructure is maximised via the proposed additional building height.

The proposal is also consistent with the objectives of the zone in which it is located. The site is zoned B7 Business Park. 'Warehouse or Distribution Centre', 'Light Industry', 'Industrial Retail Outlet' and ancillary uses are permitted uses with consent in the B7 zone under the TLEP 2014. The objectives of the zone are:

- *To provide a range of office and light industrial uses.*
- *To encourage employment opportunities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.*
- *To encourage a range of compatible uses, including residential, recreational and community facilities to maximise cross utilisation of urban infrastructure.*
- *To encourage and promote good urban design through the integration of all structures (including buildings) and landscaped areas with strong visual and aesthetic appeal.*

The proposed development is consistent with the above objectives in that the proposal will provide significant employment opportunities (175 jobs), will provide a range of office, light industrial and warehousing and distribution centre uses; provides a high standard of urban design consistent with built form of modern commercial/industrial developments; and provides compatible uses which maximise cross utilisation of the urban infrastructure servicing the area.

While the proposal could be amended to reduce the building height while still achieving the storage volume required for Stage 2A/2B, this would only be achieved via an enlarged building footprint which would leave insufficient land for Stage 3 and future Stage 4 of the proposal on the site. This would result in a direct and fatal impact on attaining the objectives of the B7 Business Park Zone.

The proposal will not conflict with the public interest as it is consistent with the objectives of the standard and the zone in which the development is located. In considering all the elements, significant efficiencies and indeed public benefit (via attainment of the zone objectives) is achieved by increasing the storage volume vertically.

(b) the concurrence of the Director-General has been obtained.

The variation sought is to a numerical standard and the extent of the variation is 3.4m or 25.0%. As per Planning Circular PS18-003 the restrictions on delegates determining development applications involving numerical or non-numerical standards does not apply to Regionally Significant Development. The concurrence of the Secretary may be assumed in this instance as the Consent Authority is a Regional Panel.

(5) In deciding whether to grant concurrence, the Director-General must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

The proposal relates to a 'Warehouse or Distribution Centre', 'Light Industry', 'Industrial Retail Outlet' and ancillary uses development on a B7 Business Park zoned allotment within Tweed Shire Local Government Area. The proposal is seeking a minor height variation as part of a development strategy to minimise land loss, maximise employment generating opportunities and enable a range of land uses to be provided on the site in accord with the zone objective. The proposal does not raise any matters of State or Regional planning significance given the limited application of the B7 Business Park Zone in the Tweed Shire Council area and that the only other parcel of land zoned B7 Business Park in Tweed Shire is provided a 40m height limit.

(b) the public benefit of maintaining the development standard, and

As the proposed development demonstrates consistency with the intent and objective of the development standard, the granting of a variance in this instance would not prejudice the future integrity of that standard nor impact upon the amenity of the locality. The proposal inclusive of height variation will allow the development to minimise land loss, maximise employment generating opportunities and enable a range of land uses to be provided on the site in accord with the zone objective. In this regard there is no public detriment in varying the development standards, rather it could be argued that a public benefit in fact exists in the particulars of this proposal.

(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

There are no other matters required to be taken into consideration by the Secretary's (former Director General's) delegate.

Regarding the above, there are sufficient planning grounds to justify the contravention of the standard and therefore compliance with the standards is unreasonable in the case.

Five (5) Part Test

In accordance with the Department of Planning and Environment's '*Varying development standards: A Guide, 2011*' written applications to vary development standards will not only address the above matters but may also address matters set out in the 'five-part test' established by the NSW Land and Environment Court.

The 5 different ways in which an objection may be well founded, and that approval of the objection may be consistent with the aims of the policy are discussed below.

(1) the objectives of the standard are achieved notwithstanding noncompliance with the standard;

The objectives of the standard are achieved as outlined above. The proposal is well founded on this test.

(2) the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;

N/A - The proposal is not founded on this test.

(3) the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

N/A - The proposal is not founded on this test.

(4) the development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;

N/A - The proposal is not founded on this test.

(5) the compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

N/A - The proposal is not founded on this test.

In consideration of the NSW Land and Environment Court five-part test, it is considered that the proposal would be consistent with first and arguably the primary test and accordingly a departure from the standard is justified.

Conclusion

Considering the matters raised under Clause 4.6 of the Tweed LEP 2014 and the 'Five Part' test, it has been demonstrated that there are sufficient planning grounds to justify the contravention of the standards and therefore compliance with the standards is unreasonable in the case.

Support for the proposed variation is respectfully requested.