



## **Clause 4.6 Variation – Height of Buildings (Clause 4.3)**

### **Proposed Warehouse and Distribution Facility with Additional Proposed Access Road and Bulk Earthworks**

128 & 130-172 Andrews Road, Penrith  
(Lot 20 DP 1216618) & (Lot 13 DP 217705)

Prepared by Willowtree Planning Pty Ltd on behalf  
of Cadence Property

**May 2019**

## CLAUSE 4.6 VARIATION – HEIGHT OF BUILDINGS (CLAUSE 4.3)

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## PART A PRELIMINARY

### 1.1 INTRODUCTION

This Clause 4.6 Variation request has been prepared in support of the Development Application (DA) for a proposed Warehouse and Distribution Facility including an additional proposed access road and bulk earthworks at 128 & 130-172 Andrews Road, Penrith (Lot 20 DP 1216618) & (Lot 13 DP 217705).

This Clause 4.6 Variation has been submitted to assess the non-compliance of the development with *Clause 4.3 Height of Buildings of Penrith Local Environmental Plan 2010* (PLEP2010). This Clause 4.6 Variation has been prepared in accordance with the requirements of Clause 4.6 of PLEP2010, which has the following aims and objectives:

- (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.*

The proposed variation relates to *Clause 4.3 Height of Buildings* of PLEP2010. In summary, the following variations are proposed:

PLEP2010 Clause	PLEP2010 Development Standard	Proposed Development Non Compliance	Percentage of Variation
Clause 4.3 Height of Buildings	Maximum 12 m building height	The proposal seeks development consent for a 13.65 m maximum building height	13.75%

In accordance with Clause 4.6(3) of PLEP2010 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 standard.

## **CLAUSE 4.6 VARIATION – HEIGHT OF BUILDINGS (CLAUSE 4.3)**

Proposed Warehouse and Distribution Facility with Additional Proposed Access Road and Bulk Earthworks – 128 & 130-172 Andrews Road, Penrith (Lot 20 DP 1216618) & (Lot 13 DP 217705)

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## **PART B THE STANDARDS BEING OBJECTED TO**

### **2.1 CLAUSE 4.3 (HEIGHT OF BUILDINGS) OF PENRITH LOCAL ENVIRONMENTAL PLAN 2010**

The development standard requested to be varied is *Clause 4.3 Height of Buildings* of PLEP2010, which provides as follows:

#### **Clause 4.3 Height of Buildings**

- (1) *The objectives of this clause are as follows:*
  - (a) *to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,*
  - (b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development and to public areas, including parks, streets and lanes,*
  - (c) *to minimise the adverse impact of development on heritage items, heritage conservation areas and areas of scenic or visual importance,*
  - (d) *to nominate heights that will provide a high quality urban form for all buildings and a transition in built form and land use intensity.*
- (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 (refer to **Figure 1**).*

The PLEP2010 “Height of Buildings Map” referred to in subclause (2) above, identifies the Site as being subject to a 12 m maximum building height. Pursuant to Clause 4.6, the proposed development, for purposes of a Warehouse and Distribution Facility, seeks exception to the applicable 12 m building height standard prescribed by Clause 4.3 under PLEP2010.

The Site is zoned IN1 General Industrial under the provisions of PLEP2010 where industrial related uses, including Warehouse and Distribution Facilities (being the proposed use), are permitted with development consent.

The subject DA, therefore relies upon what is reasonably concluded to be the underlying objectives of the standard imposed in the IN1 General Industrial zone.

### **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 and purpose of the development standard. Therefore, while there is a specified numerical control for maximum building height, the objectives and underlying purpose behind the development standard are basic issues for consideration in the development assessment process.

**Part C** of this Clause 4.6 Variation addresses the proposed variation to the Clause 4.3 development standard under PLEP2010.

### **2.3 PROPOSED VARIATION TO STANDARDS**

The proposed development seeks development consent for a proposed Warehouse and Distribution Facility and related site works, including a proposed access road and bulk earthworks at 128 Andrews Road, Penrith. The proposed development would result in a building exhibiting a maximum building height of 13.65 m. The proposed 13.65 m building height represents a breach of 1.65 m under Clause 4.3 of PLEP2010.

#### CLAUSE 4.6 VARIATION – HEIGHT OF BUILDINGS (CLAUSE 4.3)

Proposed Warehouse and Distribution Facility with Additional Proposed Access Road and Bulk Earthworks – 128 & 130-172 Andrews Road, Penrith (Lot 20 DP 1216618) & (Lot 13 DP 217705)

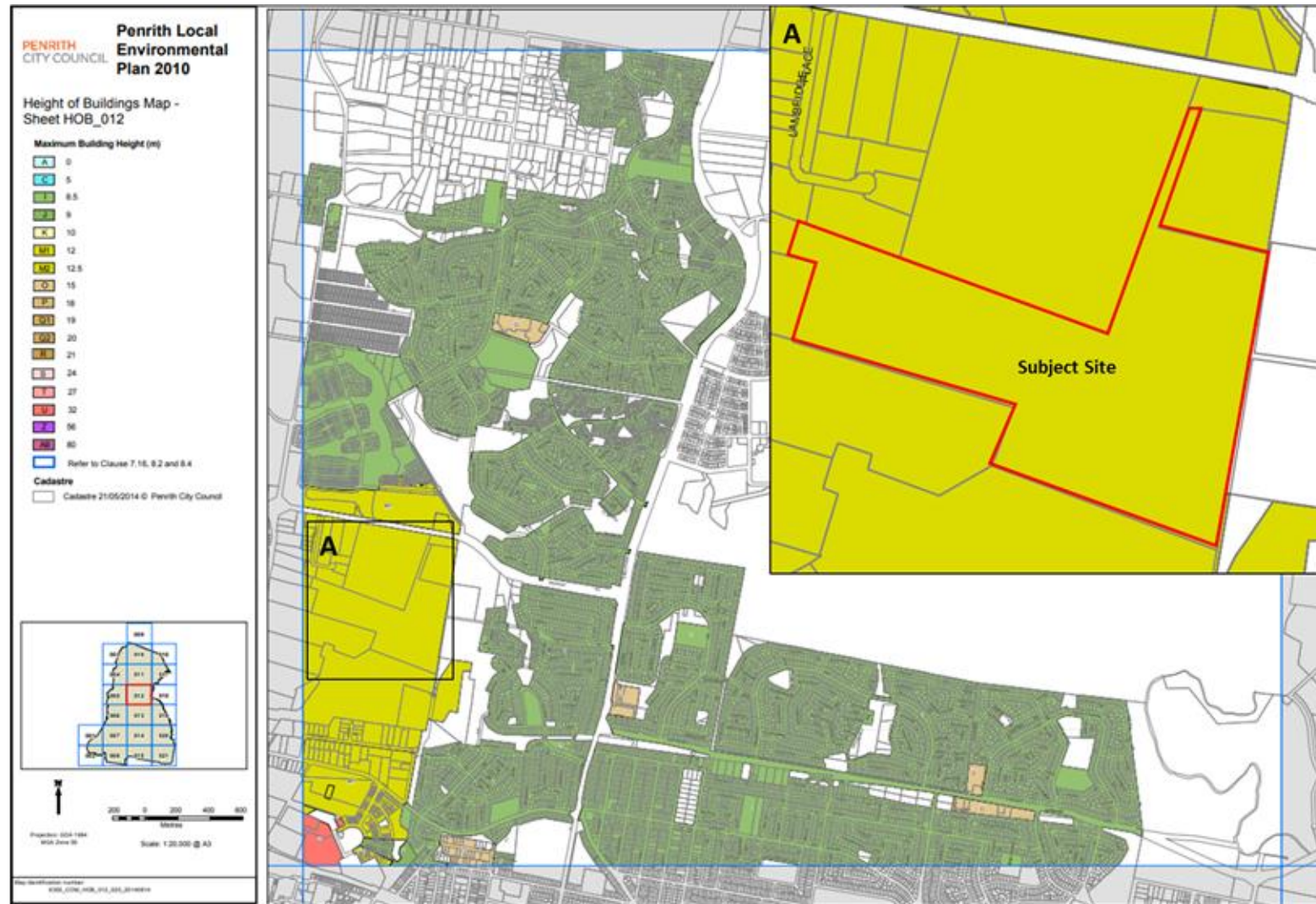


Figure 1 Maximum Building Height of Subject Site and Surrounding Area (NSW Legislation, 2018)

## **CLAUSE 4.6 VARIATION – HEIGHT OF BUILDINGS (CLAUSE 4.3)**

Proposed Warehouse and Distribution Facility with Additional Proposed Access Road and Bulk Earthworks – 128 & 130-172 Andrews Road, Penrith (Lot 20 DP 1216618) & (Lot 13 DP 217705)

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### **PART C PROPOSED VARIATION TO CLAUSE 4.3 HEIGHT OF BUILDINGS**

Pursuant to Clause 4.6 of PLEP2010, exception is sought from the 12 m height of buildings standard applicable to the Site pursuant to Clause 4.3 of PLEP2010. Clause 4.6(4)(a)(ii) requires that such a request must establish that the proposed contravention is consistent with the objectives of the standard of the zone.

#### **3.1 OBJECTIVES OF THE STANDARD**

The objectives of the standard as stated in PLEP2010 are:

*(a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,*

The proposed development for purposes of a Warehouse and Distribution Facility, would remain generally consistent with regard to building height achieved in the IN1 General Industrial zone concerning surrounding developments (northern and western aspects).

Furthermore, the built-form of the Site would be further complemented by the relationship of adjoining built-form; the streetscape; and, amenity of the surrounding area, particularly existing industrial developments in close proximity to the Subject Site.

Additionally, the built-form of the proposed development responds to the operational requirements of the end-user and any future users of the Subject Site. Accordingly, the height of the proposed development is considered highly appropriate for the Site and its context.

*(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development and to public areas, including parks, streets and lanes,*

The built-form, particularly the height of the proposed development would respond to and be further complemented by the height of adjoining industrial developments along the western and northern interfaces; positioned within an area zoned for such permissible purposes. Therefore, as a result of the proposed development, there would be no such impacts anticipated, with regard to visual impact, disruptions of views and amenity impact.

Accordingly, careful selection of building finishes and colours, combined with proposed landscape planting, particularly along the eastern façade of the proposed Warehouse and Distribution Facility, which is considered to be visually pleasing, assisting in filtering and screening the built-form of the proposed development into its surrounding context. As a result, this will assist in reducing the potential visual impacts anticipated for those locations, that are in close proximity to the proposed development and are of the highest sensitivity.

Furthermore, landscaping proposed, as a result of mitigating potentially impacted views, will be most effective after a period of 15 years, which is to the point where the trees are expected to reach maturity.

It is noted, that significant tall areas of existing vegetation are located to the north and northeast of the Site boundary. This provides effective screening of the proposed development and existing development towards a number of potential visual receivers to the north, such as the residential area of Cranebrook. Views looking east towards the proposed development from locations in the west are largely screened by existing industrial and commercial developments.

It is noted, that a supporting Landscape and Visual Impact Assessment was undertaken and prepared by Geoscapes, for which it was issued to Council on 15 April 2019 for further consideration. The



## **CLAUSE 4.6 VARIATION – HEIGHT OF BUILDINGS (CLAUSE 4.3)**

Proposed Warehouse and Distribution Facility with Additional Proposed Access Road and Bulk Earthworks – 128 & 130-172 Andrews Road, Penrith (Lot 20 DP 1216618) & (Lot 13 DP 217705)

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Landscape and Visual Impact Assessment concluded, that the proposed development will not introduce a significant visual impact.

- (c) to minimise the adverse impact of development on heritage items, heritage conservation areas and areas of scenic or visual importance,

The proposed development is not subject to any heritage items of significance including Aboriginal or Historic (European) Heritage items. Under Clause 7.5 of PLEP2010 the Subject Site is identified within an area subject to the protection of scenic value and landscape values. As a result of the proposed development, landscaping would be provided where considered necessary including a combination of exotic and native flora species, creating an activated and welcoming aesthetic to the Subject Site (refer to **Appendix 3**). Notwithstanding, it is important to note, that the Subject Site is zoned IN1 General Industrial for which it is surrounded by existing industrial development's, whose Site's exhibit rather minimalistic landscaping.

Furthermore, the Subject Site is considered to be visually concealed by the existing industrial developments along the northern and western boundaries; densely vegetated wetlands to the east; and, the Penrith Water Recycling Plant to the south.

- (d) to nominate heights that will provide a high quality urban form for all buildings and a transition in built form and land use intensity.

The overall scale of the proposed development seeks to provide a transition from the existing industrial developments along the northern and western interfaces comprising developments of similar nature, which are considered compatible in terms of built-form and scale. Additionally, the proposed development attributes to the IN1 General Industrial zone objective of providing an employment-generating land use that is considered adaptable and responds accordingly to shifting economic conditions. Therefore, the proposed development would be considered compatible with existing built-form of surrounding developments, for which it would provide a smooth and gradual transition accordingly.

### **3.2 OBJECTIVES OF THE ZONE**

The Subject Site is zoned IN1 General Industrial under PLEP2010, for which the proposed development (Warehouse and Distribution Facility / Centre) is considered permissible with development consent.

The proposed development is considered consistent with the IN1 General Industrial zone objectives, in that:

- *To provide a wide range of industrial and warehouse land uses.*

The proposed development provides an industrial premise (incorporating ancillary office space), for purposes of a Warehouse and Distribution Facility on the Subject Site, which is considered highly compatible with regard to the range of industrial land uses in close proximity to the Subject Site. The proposed development would positively contribute to the desired industrial character of the Subject Site and the surrounding area.

It is noted, that the proposed end user (O-I) is contributing a significant investment toward the development of the proposed Warehouse and Distribution Facility at the Subject Site, located within the Penrith Local Government Area (LGA), for which they aim to relocate their existing operation based in St Marys. The proposed development will ultimately improve the overall operational efficiencies of the business, as the existing facility directly to the north is also operated by O-I, ultimately facilitating co-location of the business. By co-locating the business, there will be positive economic and social impacts, through increased employment opportunities, as well as a significant reduction in anticipated traffic impacts on the local and regional road network.

#### **CLAUSE 4.6 VARIATION – HEIGHT OF BUILDINGS (CLAUSE 4.3)**

Proposed Warehouse and Distribution Facility with Additional Proposed Access Road and Bulk Earthworks – 128 & 130-172 Andrews Road, Penrith (Lot 20 DP 1216618) & (Lot 13 DP 217705)

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- *To encourage employment opportunities.*

The proposed development for purposes of a Warehouse and Distribution Facility would provide employment-generating opportunities to the immediate community and wider locality within the Penrith LGA during both the construction and operational phases of development. This further contributing to the viable economic return on the local and regional economy the proposed development offers. The proposal also supports the long term viability of O-I's operation of the manufacturing facility to the north, further encouraging strong employment opportunities.

- *To minimise any adverse effect of industry on other land uses.*

The proposed development is positioned on land that is designated for industrial purposes, and thus would ensure that support is met for the desired outlay of the Site, as-well-as the wider locality. Consideration has also been given to surrounding land uses, for which the proposed development is further complemented by existing industrial developments along the northern and western boundaries. Additionally, the eastern boundary is densely vegetated (further east comprising recreational land uses) and to the south comprises a water recycling facility. Therefore, there are no impacts anticipated on the existing surrounding land uses.

- *To support and protect industrial land for industrial uses.*

The proposed development is located on land that is designated for industrial purposes, and thus would ensure support is met for the desired outlay of the Site, and wider locality. As mentioned above, the proposed development would provide employment-generating opportunities in both the construction and operational phases, further advocating the continued support of industrial land the IN1 zone objectives.

- *To promote development that makes efficient use of industrial land.*

The proposed development would utilise an underperforming and underdeveloped site zoned for such permissible industrial development. Furthermore, the proposed development would be promoted and further complemented by the smooth transition it offers with regard to surrounding industrial developments in close proximity to the Subject Site, particularly along the northern and western boundaries.

- *To permit facilities that serve the daily recreation and convenience needs of the people who work in the surrounding industrial area.*

The proposed development would support the viability of an existing industrial area. As described above, the provision of a proposed Warehouse and Distribution Facility (including ancillary offices) proposed on the Subject Site would positively contribute to the desired industrial character of the Site.

### **3.3 ESTABLISHING IF THE DEVELOPMENT STANDARD IS UNREASONABLE OR NECESSARY**

Compliance with the standard would be unreasonable and unnecessary given that the proposed development generally maintains the height permitted under Clause 4.3 of PLEP2010 with regard to the Subject Site. The non-compliance primarily arises due to the exceedance in height proposed that exceeds the standard imposed under PLEP2010.

The standard is unreasonable and unnecessary in the circumstances of the case on the following basis:

- The proposed development, for purposes of a Warehouse and Distribution Facility, would generally maintain the maximum permitted building height under PLEP2010 with regard to the Subject Site (exceedance by 1.65 m). Accordingly, the density and scale of the built-form

#### **CLAUSE 4.6 VARIATION – HEIGHT OF BUILDINGS (CLAUSE 4.3)**

Proposed Warehouse and Distribution Facility with Additional Proposed Access Road and Bulk Earthworks – 128 & 130-172 Andrews Road, Penrith (Lot 20 DP 1216618) & (Lot 13 DP 217705)

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proposed, would remain generally consistent with the existing industrial buildings surrounding the Site. Additionally, the proposed development would effectively integrate the streetscape and character of the area into the proposed scheme.

- By providing a transition between the existing industrial buildings in close proximity to the Subject Site, the built-form relationship of the Site contrasted to the surrounding built-form, would remain consistent with existing situation currently experienced with the IN1 General Industrial zone.
- The built-form character of the surrounding industrial developments is generally consistent with the built-form proposed under this Application, for which it is considered to respond to the local context. In particular, the existing manufacturing facility to the immediate north is significantly higher than that proposed under this Application and depicted in the Visual Impact Assessment prepared by Geoscapes.
- The proposed development would respond to the existing industrial developments on the northern and western interfaces, for which the protection of amenity would be ensured accordingly. Furthermore, there are no sensitive receptors in close proximity to the Subject Site; however, consideration for solar access, privacy, overshadowing and view / outlook would be considered (where possible). In particular, the Visual Impact Assessment has concluded that the proposal will not introduce any adverse visual impacts to the surrounding visual receptors.
- The proposed development's building height is considered a key attribute in creating an internal building environment that would ensure the delivery of space and amenity that is required to support the operations of the future tenant involved and thereby enabling the productive use of the Site.
- It is noted, that O-I produce pallets of glass bottles, which are required to be prepared to a specific height to suit their customers bespoke needs. Accordingly, these pallets are stacked to maximise the operational efficiencies and improve the utilisation of available floor space encountered through the proposed Warehouse and Distribution Facility. Notwithstanding, the number of pallets which can be stored at any given time, is a function of floor space and available stacking height.
- Furthermore, in addition to the maximum height of any stored product, a clearance height must be maintained for operational tolerances to ensure the safety of forklift drivers is achieved, and more importantly, to ensure the required fire suppression clearances are maintained to demonstrate, that compliance can be achieved with the relevant Building Code of Australia (BCA) and Australian Standards.
- If a reduced building height was to apply, the number of pallets of manufactured goods which can be stacked would be reduced below the amount required by the tenant, for which the operational demands would not be able to be met accordingly. If the tenant cannot generate the required storage volume, the operational efficiencies and outcomes would be considered compromised.
- Despite the specific operational requirements for the end user, it is noted, that the building height nominated (13.65 m) is considered consistent with (as well as less than) current standard practices, demonstrated by modern, high-quality industrial-related developments (including Warehouse and Distribution Facilities), which frequently offer 10 m clear at the eaves. It is noted, that the proposed development exhibits a 9.5 m clearance of the eaves, which is considered consistent and satisfactory for industrial-related development, for the purposes of a Warehouse and Distribution Facility.



#### **CLAUSE 4.6 VARIATION – HEIGHT OF BUILDINGS (CLAUSE 4.3)**

Proposed Warehouse and Distribution Facility with Additional Proposed Access Road and Bulk Earthworks – 128 & 130-172 Andrews Road, Penrith (Lot 20 DP 1216618) & (Lot 13 DP 217705)

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Overall, the above justifications demonstrate that compliance with the standard would be unreasonable and unnecessary. The proposed variation is therefore well-founded and acceptable.

### **3.4 SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD**

The variation to the development standard for building height (Clause 4.3) under PLEP2010 is considered well-founded on the basis that:

- The proposed development is entirely consistent with the underlying objective(s) or purpose of the building height standard, as demonstrated in **Section 3.1**.
- The proposed development fully achieves the objectives of PLEP2010 for the IN1 General Industrial zone, as described in **Section 3.2**.
- Compliance with the standard would be unreasonable and unnecessary for the reasons outlined in **Section 3.3**.
- The proposed development generally maintains the height experienced on surrounding industrial developments in close proximity to the Subject Site, for which the proposed development would provide a smooth transition.
- Materials and finishes would activate and provide a visual outcome that seamlessly integrates with the surrounding industrial character. Additionally, colour and material direction would be utilised (where possible) to blend with the varied architectural forms. The proposed ancillary office would integrate various volumetric shapes and materials, conducive to transparency of function and response to sustainable building practices.
- The overall scale of the proposed development seeks to provide a transition from the surrounding industrial developments in close proximity of the Subject Site, being compatible in terms of built-form and scale. Additionally, the proposed development would provide an employment-generating land use that is considered adaptable and responds accordingly to shifting economic conditions.
- The proposed development, particularly the proposed height would integrate with the local context, specifically the IN1 General Industrial zone that surrounds the Subject Site. The relationship of the proposed development, for purposes of a Warehouse and Distribution Facility with surrounding developments, with respect to height, would remain consistent via the smooth transition offered between sites.
- The proposed development would maintain neighbouring amenity as-well-as the amenity of the public domain. It is important to note, that the proposed development is relatively enclosed and shielded by existing industrial developments to the north which directly face the public domain.
- The proposed development would support the productive economic use of the Site that is ideally located within an area zoned for such permissible industrial use, as-well-as being located within close proximity to major commercial centres (Penrith City Centre) and nearby transport infrastructure, such as rail and bus networks and the wider regional road network.
- As mentioned above, despite the specific operational requirements for the end user, it is noted, that the building height nominated (13.65 m) is considered consistent with (as well as less than) current standard practices, demonstrated by modern, high-quality industrial-related developments (including Warehouse and Distribution Facilities), which frequently offer 10 m clear at the eaves. It is noted, that the proposed development exhibits a 9.5 m clearance of the

**CLAUSE 4.6 VARIATION – HEIGHT OF BUILDINGS (CLAUSE 4.3)**

Proposed Warehouse and Distribution Facility with Additional Proposed Access Road and Bulk Earthworks – 128 & 130-172 Andrews Road, Penrith (Lot 20 DP 1216618) & (Lot 13 DP 217705)

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eaves, which is considered consistent and satisfactory for industrial-related development, for the purposes of a Warehouse and Distribution Facility.

For the reasons outlined above, it is considered that the proposed variation to the building height control under Clause 4.3 is entirely appropriate and can be clearly justified having regard to the matters listed within PLEP2010 Clause 4.6.

## **CLAUSE 4.6 VARIATION – HEIGHT OF BUILDINGS (CLAUSE 4.3)**

Proposed Warehouse and Distribution Facility with Additional Proposed Access Road and Bulk Earthworks – 128 & 130-172 Andrews Road, Penrith (Lot 20 DP 1216618) & (Lot 13 DP 217705)

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### **PART D CONCLUSION**

It is requested that Council supports the proposed variation to *Clause 4.3 Height of Buildings* of PLEP2010 for the following reasons:

- Consistency with the objectives of the standard and zone is achieved.
- Compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.
- There are sufficient environmental planning grounds to justify contravening the development standard.
- No unreasonable environmental impacts are introduced as a result of the proposed development.
- There is no public benefit in maintaining strict compliance with the standard.
- The Landscape and Visual Impact Assessment undertaken by Geoscapes has concluded, that the proposed development will not exhibit any adverse visual impacts to identified surrounding visual receptors.

Given the justification provided above, this Clause 4.6 Variation under PLEP2010 is well founded and should be favorably considered by Council. As each of the relevant considerations are satisfied for the reasons outlined elsewhere in this Report, concurrence can be assumed under Clause 4.6(5).