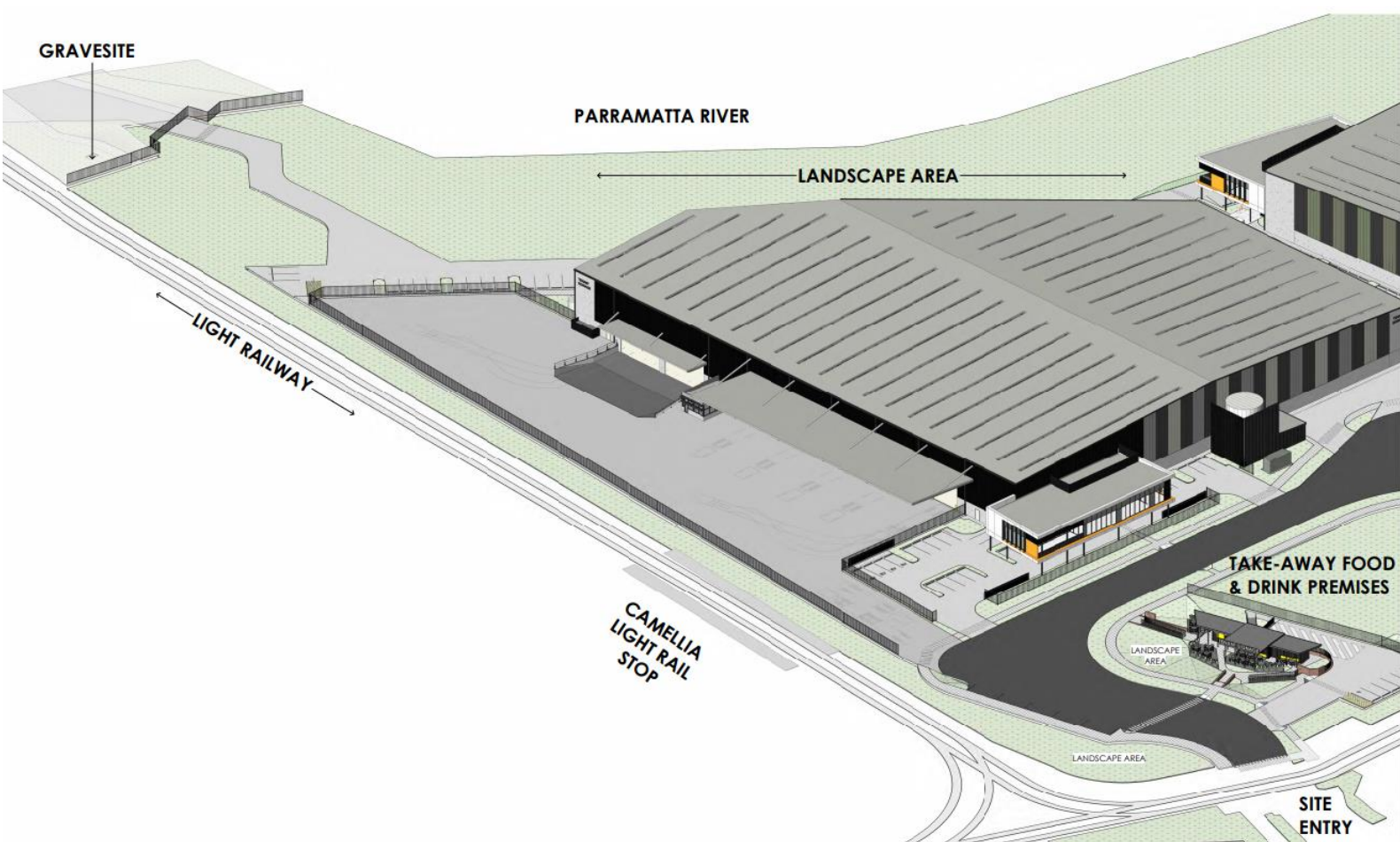


Clause 4.6 Request to vary a Development Standard

Camellia Industrial Estate
1 Grand Avenue, Camellia



Submitted to the City of Parramatta Council
on behalf of Billbergia Group

October 2024



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Cover image: CGI Aerial of Lot 1 Warehouse (Source: Pace Architects)

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Table of Contents

1. Introduction	5
2. Planning Overview	6
3. Proposed Development.....	9
4. Legislative Context	10
4.1. Clause 4.6 Exceptions to Development Standards	10
4.1.1. Clause 4.6(3)	10
4.1.2. Clause 4.6(4)	10
4.1.3. Clause 4.6(5)	10
4.2. Relevant Judgements - NSW Land and Environment Court	11
4.2.1. Winten Property Group Limited v North Sydney Council (2001)	11
4.2.2. Wehbe v Pittwater Council (2007)	12
4.2.3. Four2Five Pty Ltd v Ashfield Council (2015)	12
4.2.4. Initial Action Pty Ltd v Woollahra Municipal Council [2018]	12
4.2.5. SJD DB2 Pty Ltd v Woollahra Council (2020)	13
5. Assessment of the Variation to Clause 4.3 Height of buildings development standard	14
5.1. Clause 4.6(3)(a) – Compliance is Unreasonable or Unnecessary	14
5.1.1. Urban Design Outcomes	14
5.1.2. Impact on Neighbouring Properties	14
5.1.3. Building Functionality	15
5.2. Clause 4.6(3)(b) – Grounds to Justify Contravening the Development Standard	15
5.2.1. Consistency with the Strategic Context and Structure Plan	15
5.2.2. Improved Urban Design outcomes	15
5.2.3. Improved relationship with the local context.....	15
5.3. Wehbe Tests	16
5.3.1. Wehbe Test 1	16
5.3.2. Wehbe Test 2	16
5.3.3. Wehbe Test 3	16
5.3.4. Wehbe Test 4	17
5.3.5. Wehbe Test 5	18
5.4. Clause 4.6(4) – Consistency with Objectives	18
5.5. Clause 4.6(5)(a) – Matters of Significance for State of Regional Planning	19
5.6. Clause 4.6(5)(b) – Public Benefit in Maintaining the Development Standard	20
5.7. How Would Strict Compliance Hinder the Attainment of the Objectives Specified in Section 5(a)(i) and (ii) of the Act	20
5.8. Is the Objection Well Founded.....	21
6. Conclusion	21

Figures

Figure 1: PLEP 2023 zoning map excerpt (Source: PLEP 2023)	7
Figure 2: PLEP 2023 Height of buildings development standard map excerpt	7
Figure 3: Proposed height variations	8
Figure 4: Photomontage of Lot 1 building as viewed at south-western corner	9
Figure 5: Photomontage of Lot 4 building as viewed at north-western corner.....	9
Figure 6: Consents in the vicinity of the Site with approved Clause 4.6 Variations for height	17

Tables

Table 1: DPIE Guide recommended planning information and numeric overview	7
Table 2: Consistency with E5 Heavy Industrial zone objectives	18
Table 3: Consistency with Clause 4.3 Height of buildings development standards objectives ..	19

1. Introduction

This is a written request (the Request) to seek a variation to a development standard in accordance with the provisions of Clause 4.6 Exception to Development Standards of the *Parramatta Local Environmental Plan 2023* (PLEP 2023).

This Request relates to Clause 4.3 Height of Buildings of the PLEP 2023.

This Request is prepared in accordance with the NSW Department of Planning and Environment (DP&E) guideline *Varying Development Standards: A Guide, August 2011* (DP&E Guide) and planning system circular PS 20-002 *Varying Development Standards, May 2020*.

This Request also addresses the findings and established principles (as relevant) of the following judgements of the NSW Land and Environment Court (LEC):

- *Winten Property Group Limited v North Sydney Council* [2001] NSWLEC 46;
- *Wehbe v Pittwater Council* [2007] NSWLEC 827; and
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 and [2015] NSWCA 248.
- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118
- *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112

The following sections of this Request critically analyses the proposed height variation, its impact and reasonableness. This analysis demonstrates that an exception to the height of buildings development standard is warranted in this instance and will provide for a significantly better urban outcome than a compliant development.

2. Planning Overview

The *Standard Instrument (Local Environmental Plans) Order 2006* was introduced to create a common format for local environmental plans across NSW and all councils have now adopted local environmental plans based on the Standard Instrument (SI). The SI includes various development standards as a means to achieving environmental planning objectives and these standards can be numerical or performance based.

Clause 4.6 of the SI allows a consent authority to grant consent to a development even in the circumstance where that development contravenes a development standard.

The DPE Guide confirms that the NSW planning system allows for flexibility in planning controls, in certain circumstances, through the provisions of Clause 4.6 of the SI. The DPE Guide recommends that any Request to vary a development standard should confirm the planning context and relevant controls to assist the consent authority's assessment. The Table 1 provides a summary of the relevant planning context and provides a key numerical overview of the proposed variation.

Information Requirement	Comment
Relevant Applicable Planning Instrument	<i>Parramatta Local Environmental Plan 2023</i>
Zoning of the Land	E5 Heavy Industrial (Figure 1)
Objectives of the Zone	<p>The objectives of zone E5 are:</p> <ul style="list-style-type: none"> To provide areas for industries that need to be separated from other 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 allow a wide range of industrial uses serving the Six Cities Region. To preserve opportunities to create future foreshore access on contaminated land not suitable for public access.
Development Standard to be Varied	Height of buildings
Nature of the Development Standard	A numerical height control (9m and 12m).
Relevant Development Standard Clause	Clause 4.3 of the PLEP 2023
Objectives of the Development standard	<p>The objectives of Clause 4.3 Height of buildings development standard are:</p> <ul style="list-style-type: none"> to provide appropriate height transitions between buildings, to ensure the height of buildings is compatible with the height of existing and desired future development in the surrounding area,

Information Requirement	Comment
	<ul style="list-style-type: none"> to require the height of future buildings to be appropriate in relation to heritage Sites and their settings, to reinforce and respect the existing character and scale of low density residential areas, to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development, to preserve historic views, to maintain satisfactory sky exposure and daylight to – <ul style="list-style-type: none"> existing buildings in commercial centres, and the sides and rear of tower forms, and key areas of the public domain, including parks, streets and lanes
Development Standard Numeric Control for the Site	Northern half of Site: 9 metres and 12 metres Southern half of Site: 12 metres (refer to Figure 2).
Proposed Building Height	Maximum height of 14.3 metres (refer to Figure 3).
Percentage Variation Between the Proposal and the Planning Instrument	An increase of 5.3 or 2.3 metres represents a 59% and 19% increase respectively over the PLEP 2023 development standard of 9 and 12 metres.

Table 1: DPIE Guide recommended planning information and numeric overview



Figure 1: PLEP 2023 zoning map excerpt (Source: PLEP 2023)



Figure 2: PLEP 2023 Height of buildings development standard map excerpt (Source: PLEP 2023)

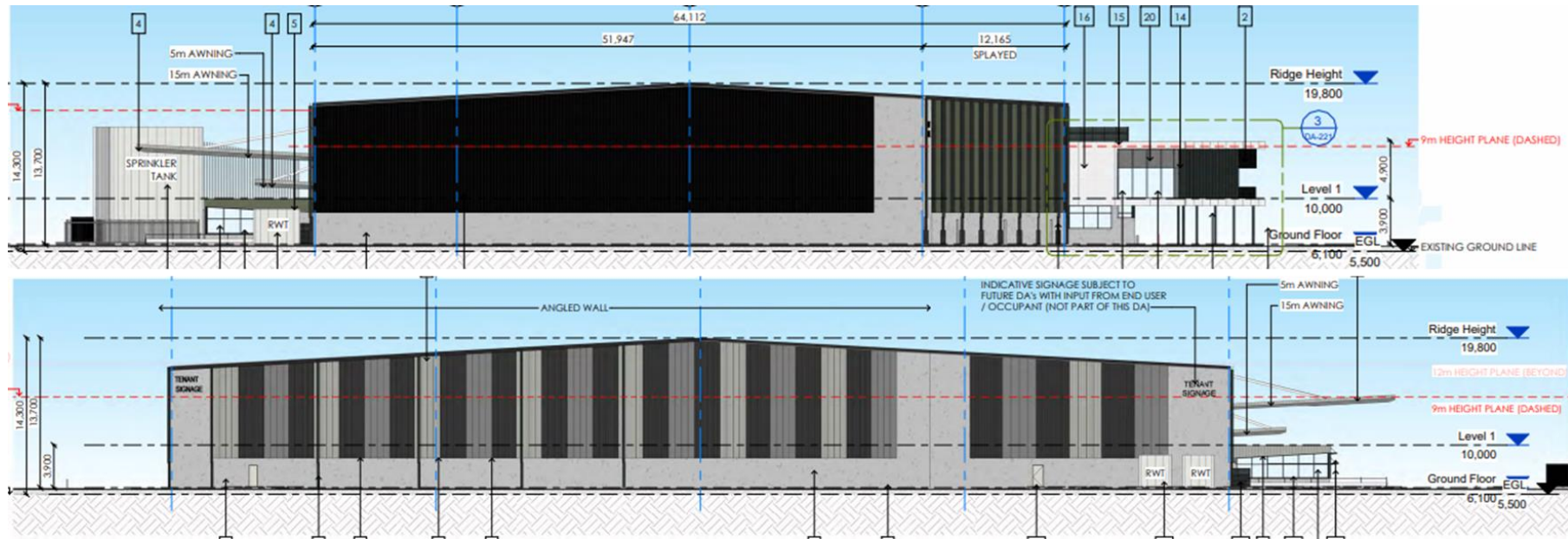


Figure 3: Proposed height variations with Lot 4 western elevation above and Lot 1 southern elevation below (Source: Pace Architects)

3. Proposed Development

The proposal seeks the construction of an industrial estate at 1 Grand Avenue, Camellia. Specifically, the proposal involves:

- construction of two warehouses for warehouse and distribution uses and associated works including:
 - associated hardstand, road network and landscaping
 - enhancement of Parramatta River Foreshore through the provision of a Vegetated Riparian Zone with dense landscaping
 - construction of a café for takeaway food and drinks
 - residue land



Figure 4: Photomontage of Lot 1 building as viewed at south-western corner (Source: Pace Architects)



Figure 5: Photomontage of Lot 4 building as viewed at north-western corner (Source: Pace Architects)

4. Legislative Context

4.1. Clause 4.6 Exceptions to Development Standards

Clause 4.6 of the PLEP 2023 sets out key assessment criteria which enables Council to consider and grant development consent for a development that contravenes a development standard. The overarching objectives of this clause are contained in subclause (1) as detailed below:

- (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.*

Subclauses (3), (4) and (5) of Clause 4.6 are relevant and development consent can only be granted subject to their consideration.

4.1.1. Clause 4.6(3)

Clause 4.6(3) requires that development consent must not be granted for a 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 that:

- (a) *compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *there are sufficient environmental planning grounds to justify contravening the development standard.*

4.1.2. Clause 4.6(4)

Clause 4.6(4) requires that 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.*

4.1.3. Clause 4.6(5)

Clause 4.6(5) requires that 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.*

The written notification of assumed concurrence, dated 27.11.2017 states:

- (2) *Prior to assuming my concurrence Council must have consideration of the matters set out in subclause 4.6(5) of the SILEP or clause 8 of SEPP 1.*

These matters are outlined in Section 5.

4.2. Relevant Judgements - NSW Land and Environment Court

The following key Land and Environment Court (NSW LEC) judgements provide guidance on key considerations in the assessment of a Clause 4.6 variation Request. These judgements focus on the degree to which a consent authority may be satisfied about the matters in Clause 4.6 and therefore further refine the requirements for variation Requests:

- *Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46*
- *Wehbe v Pittwater Council [2007] NSWLEC 827*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 and [2015] NSWCA 248*
- *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*
- *SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112*

The key findings and established principles (as relevant) of the above judgements of the Land and Environment Court are summarised below.

4.2.1. Winten Property Group Limited v North Sydney Council (2001)

The *Winten Property Group Ltd v North Sydney Council (2001)* case posed the following questions to be addressed when considering objections to development standards:

- Is the planning control in question a development standard?
- If so, what is the underlying object or purpose of the standard?
- Is compliance with the standard consistent with the aims of the policy, and in particular, does compliance with the standard tend to hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the *Environmental Planning & Assessment Act 1979*
- Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? (A related question is: would a development which complies with the standard be unreasonable or unnecessary?)
- Is the objection well founded?

4.2.2. Wehbe v Pittwater Council (2007)

This case expands on the findings of *Winten Property Group Limited v North Sydney Council (2001)* case and establishes a five-part test 'Wehbe tests' to ascertain whether strict compliance with a development standard is unreasonable or unnecessary, as follows:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
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; or
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.

It is noted that the DP&E Guide was formulated on the basis of the findings of the *Winten Property Group Limited v North Sydney Council (2001)* case and the Wehbe Tests.

4.2.3. Four2Five Pty Ltd v Ashfield Council (2015)

The outcome of these cases (initially heard and then upheld at appeal) concluded that in addition to considering the Wehbe Tests, Requests must also demonstrate that:

- the grounds for departing from the development standard must be particular to the circumstances of the proposed development on the subject Site; and
- compliance with the development standard is unreasonable or unnecessary, in addition to demonstrating that the proposal was consistent with the objectives of the development standard and/or land use zone.

4.2.4. Initial Action Pty Ltd v Woollahra Municipal Council [2018]

Initial Action Pty Ltd v Woollahra Municipal Council [2018] (Initial Action) further clarified the correct approach to the consideration of clause 4.6 requests including that the clause does not require that a development that contravenes a development standard must have a *neutral or better* environmental planning outcome than one that does not.

The legal consequence of the decision in *Initial Action* is that Clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Initial Action demonstrates the importance of a proper analysis of the basis for a Clause 4.6 request as well as the actual form of the request being 'adequate' to address the relevant Clause 4.6(3) matters. The case confirms that a request that is otherwise meritorious may fail at the first hurdle because it is not well drafted.

The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause that is being varied a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development for in the zone?
4. Has the concurrence of the Secretary of DPE been obtained?
 - (a) where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes the development standard

4.2.5. SJD DB2 Pty Ltd v Woollahra Council (2020)

The *SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112* established greater flexibility in applying clause 4.6 to vary development standards where a better outcome would be achieved in the context of the Site. The outcome of this case concluded the following questions should be asked in relation to the request to vary a development standard:

1. what was the desired future character?
2. is the proposal consistent/compatible with that desired future character?
3. has any visual intrusion been minimised?
4. have the controls been previously abandoned?

5. Assessment of the Variation to Clause 4.3 Height of buildings development standard

The PLEP 2023 contains a maximum height of buildings development standard for both the northern and southern portions of the Site.

The maximum height of buildings development standard constitutes the built form baseline from which any variation request is measured and assessed.

The proposal seeks to increase the maximum height of buildings development standard by 5.3 metres (north) and 2.3 (south) metres respectively to accommodate localised increases in building height across the Site, as shown in Figure 3, and facilitate significant improvements to the development as discussed in the following sections.

The following assessment comprehensively considers the provisions of Clause 4.6 which has also been informed by an analysis of the relevant case law.

5.1. Clause 4.6(3)(a) – Compliance is Unreasonable or Unnecessary

The applicant contends that compliance with the height of buildings development standard is unreasonable and unnecessary for the following reasons:

5.1.1. Urban Design Outcomes

- a strictly compliant development would result in an inferior urban design outcome which is inconsistent with the pattern of development in the Grand Avenue streetscape, as discussed in Section 5.2.2
- the proposed height ensures an appropriate floorplate is delivered, thereby enabling appropriate setbacks and separation distances to be provided,
 - this includes a minimum 40 metre building foreshore setback which enables the provision of the Vegetated Riparian Zone and associated landscaping
- the bulk and scale of the development is consistent with other industrial developments within the area, including the adjoining warehouse development to the east at 11 Grand Avenue, Camellia
 - this warehouse has a height in excess of 14 metres
- the development achieves the objectives of the zone and the development standard as discussed in Section 5.4

5.1.2. Impact on Neighbouring Properties

- the proposed increase in height would have no material impact on the neighbouring properties to the east, west or south
- the increase in height would not cause any additional overshadowing impacts when compared to a height compliant development with consideration to the siting of the proposal
- would not obstruct the outlook or views from neighbouring or nearby properties, more than what would occur from a height compliant development

5.1.3. Building Functionality

- the proposal adopts an industry standard building height to ensure the functionality of its future use for warehouse and distribution purposes
- the increased building height is essential to accommodating the most efficient use of internal systems for warehouse and distribution uses

5.2. Clause 4.6(3)(b) – Grounds to Justify Contravening the Development Standard

The development, including the building height non-compliances, will provide for an appropriate and functional warehousing development which will ensure the provision of a number of employment opportunities aligning with the objectives of the zone. In this context there are sound planning grounds and significant benefits to justify contravening the height of building development standard. In particular, the proposed built form and localised height increase will present a significantly superior urban design outcome for the Site as outlined below.

5.2.1. Consistency with the Strategic Context and Structure Plan

The proposal aligns with the relevant Strategic Plans by providing job opportunities on land zoned for employment uses.

5.2.2. Improved Urban Design outcomes

The urban design benefits of the proposed height of the development include:

- the design response, including the localised increase in building height, will provide for a high quality building that will create an instantly recognisable development, which is desirable for a Site of this size and location
- the minor increase in height will provide a stronger vertical emphasis to each building and will provide for additional physical building articulation in addition to architectural/façade treatments
- the proposed variation ensures cohesion with developments along Grand Avenue resulting in an improved urban design outcome for the broader streetscape
- the proposed height ensures an appropriate floorplate is delivered, thereby enabling appropriate setbacks and separation distances to be provided, facilitating substantial enhancement of Parramatta River Foreshore through the provision of a 40m wide Vegetated Riparian Zone (VRZ)

5.2.3. Improved relationship with the local context

The proposed building height improves the relationship of the development with the surrounding built form context as:

- it is compatible with the established built form character of the area and provides standard warehouse buildings to facilitate warehouse and distribution centre uses at the Site, permitted with consent in the zone; and
- it provides a development of a height and scale suitable for a prominent location adjacent to James Ruse Drive.

5.3. Wehbe Tests

5.3.1. Wehbe Test 1: The objectives of the standard are achieved notwithstanding non-compliance with the standard

The proposed variation to the height of buildings development standard will be achieved notwithstanding the non-compliance with the standard as outlined in detail at Section 5.4.

5.3.2. Wehbe Test 2: The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary

The underlying objective and purpose of the height of buildings development standard, (including transition of built form, minimise impacts, safeguard heritage, respect existing character and satisfactory sky exposure) is considered relevant to the development.

However, as discussed in Section 5.1 and 5.2 above, it is considered that the localised increase in heights at this suitable location will facilitate the achievement of a high quality development that is respectful of the existing urban character, have a substantially positive urban design impact and acceptable amenity impacts.

Therefore, the localised increase in heights represent a significant improvement over a compliant scheme of uniform height and therefore better achieves the objectives of the height of buildings development standard.

5.3.3. Wehbe Test 3: The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable

The provision of a development that strictly complied with the height of buildings development standard would result in a significantly inferior urban design outcome for the Site as discussed in Section 5.1.

The proposal is considered superior to a strictly compliant scheme as:

- the proposal meets the demand for employment uses in a highly accessible location, appropriately co-located with transport options
- the proposal is compatible with the built form character of the area
- the bulk and scale of the development is consistent with other industrial developments within the area, including the adjoining warehouse development to the east at 11 Grand Avenue, Camellia
- the proposed height ensures an appropriate floorplate is delivered, thereby enabling appropriate setbacks and separation distances to be provided, facilitating substantial enhancement of Parramatta River Foreshore through the provision of a 40m wide VRZ
- there is no material impact to adjoining development which would be decreased as a result of a compliant scheme, particularly in relation to solar access
- the objectives of the zone and relevant development standard are met by the proposed development

5.3.4. Wehbe 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

The building height development standard cannot be said to be virtually abandoned or destroyed. Notwithstanding, Council has granted a number of consents within the Camellia Heavy Industrial area in recent years, which demonstrate a departure to the height of buildings development standard (Figure 6). These consents include:

- DA/302/2022 at 2-8 Thackeray Street, Camellia – Construction of a food storage tank with connecting walkway and access stairway to roof within an existing licenced food biomass waste-to-energy (Composting and Electricity Generation) facility. **Height variation of 2 metres (14m v 12m).**
- DA/955/2021 at 10A Grand Avenue, Camellia – Construction of a concrete batching facility on the rear lot of an approved subdivision. The development is Designated Development as defined by Schedule 3 of the Environmental Planning and Assessment Regulation 2000. **Height variation of 9 and 3 metres respectively (21m and 15m v 12m).**
- DA/751/2019 at 8 Grand Avenue, Camellia – Construction of a 3-storey high technology industry building (data centre), access & car parking, landscaping, associated structures, fuel storage area (Stage 1) and concept approval for a Stage 2 building. This application will be determined by the Sydney Central City Planning Panel. **Height variation of 8 metres (20m v 12m).**

The above approvals establish a clear precedent for the variation of heights in the locality along Grand Avenue. In the context of the precedents set by the approvals in the immediate locality, strict compliance with the part 9m/12m height control is considered unnecessary and unreasonable.



Figure 6: Consents in the vicinity of the Site with approved Clause 4.6 Variations for height (Base source: Nearmap)

5.3.5. Wehbe 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

The land has been zoned appropriately and the controls applicable to the Site are generally acceptable, despite the proposed localised increases in height. As discussed at Section 5, the proposed development is consistent with the objectives of the zone. The proposed height of the development, as outlined above, is entirely consistent with and reinforces the wider character of the area.

5.4. Clause 4.6(4) – Consistency with Objectives

The proposed development is consistent with the objectives of the E5 Heavy Industrial zone as outlined in Table 2 and the height of buildings development standard as outlined in Table 3. In addition, the proposed development is a superior development to a strictly height compliant scheme, as detailed in Section 5.3.3, and therefore better achieves the objectives of the height of buildings development standard and the zone. The proposal is therefore in the public interest.

Zone E5 Heavy Industrial	
Objectives	Achievement of Objectives
<i>To provide areas for industries that need to be separated from other land uses.</i>	The proposed warehouse and distribution centre uses are appropriately located within the E5 zone, away from any residential uses to avoid any potential land use conflict.
<i>To ensure the efficient and viable use of land for industrial uses.</i>	The proposal seeks to provide warehouse and distribution centre uses on land zoned for such purposes.
<i>To minimise any adverse effect of industry on other land uses.</i>	Given the majority of surrounding Sites are zoned E5 Heavy Industrial or E3 Productivity Support, there is not anticipated to be any adverse effects of the proposed uses.
<i>To encourage employment opportunities.</i>	The proposed warehouse buildings will provide for a number of construction and ongoing employment opportunities with consideration to the total 19,107m ² of gross floor area proposed for warehouse and distribution centre uses.
<i>To allow a wide range of industrial uses serving the Six Cities Region.</i>	The proposal seeks approval for warehouse and distribution centre uses, permissible within the Heavy Industrial zone.
<i>To preserve opportunities to create future foreshore access on contaminated land not suitable for public access.</i>	The proposal includes the provision of a 40m wide Vegetated Riparian Zone (VRZ) along the foreshore to enhance the amenity the proposal provides. There is nothing proposed that would preclude the foreshore being further developed in the future to provide pedestrian access in this area.

Table 2: Consistency with E5 Heavy Industrial zone objectives

Clause 4.3 Height of buildings Development Standard	
Objectives	Achievement of Objectives
<i>to provide appropriate height transitions between buildings,</i>	The proposed development provides for standard warehouse buildings. It ensures cohesion with neighbouring buildings which are also for warehousing purposes.
<i>to ensure the height of buildings is compatible with the height of existing and desired future development in the surrounding area,</i>	As detailed in Section 5.3.4, the proposed building heights are consistent with the emerging character of the area, whereby Council have granted a number of approvals with height variations along Grand Avenue within the E5 Heavy Industrial zone.
<i>to require the height of future buildings to be appropriate in relation to heritage Sites and their settings,</i>	The proposed development ensures appropriate setbacks and buffers to adjacent heritage items. This is supported by the Heritage Impact Statement (HIS) which accompanies this application.
<i>to reinforce and respect the existing character and scale of low density residential areas,</i>	The proposal is not in proximity to any low density residential areas. The closest residential area is a medium density residential zone which is located 365m to the south-west of the Site.
<i>to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,</i>	The siting of the proposed development along the northern boundary of the Site ensures it is located further away from existing development and is not anticipated to result in any amenity impacts to existing neighbouring industrial development.
<i>to preserve historic views,</i>	The proposal does not hinder any identified historic views or vistas.
<i>to maintain satisfactory sky exposure and daylight to— i. existing buildings in commercial centres, and ii. the sides and rear of tower forms, and iii. key areas of the public domain, including parks, streets and lanes.</i>	The proposal will not hinder solar access for neighbouring developments with consideration to the siting of the proposed warehouse buildings and the preferable Site orientation.

Table 3: Consistency with Clause 4.3 Height of buildings development standards objectives

5.5. Clause 4.6(5)(a) – Matters of Significance for State of Regional Planning

The proposed exceedance of the maximum height of buildings development standard for the Site does not raise any matters of State or Regional Planning significance as:

- the development is not of a size or nature to have more than local impact
- the height exceedances are discrete in nature, considerate of the proposed uses for warehousing and distribution centre purposes
- overall the increase in height is minor in the context of the development and locality
- the exceedance in the height of buildings development standard will have a positive townscape and urban design impact;
- there are no significant amenity or environmental impacts
- the Site is not a Site designated to be of State significance

5.6. Clause 4.6(5)(b) – Public Benefit in Maintaining the Development Standard

As demonstrated in the previous sections of this report, the variation to the height of buildings development standard would establish the best urban design response for the Site and provide appropriate warehouse buildings for the proposed uses which are permissible in the zone and consistent with surrounding development.

In light of the significant public benefits arising from allowing a variation, it cannot be reasonably assumed that there is any public benefit in maintaining the existing height of buildings development standard.

Other public benefits that are unique to the proposal and would be unable to be delivered or significantly reduced in benefit, when compared to a strictly height compliant scheme, include:

- attainment of a suitably high standard of design and appearance to deliver a well design industrial development
- increased areas of landscaping
- provision of a 40m wide VRZ
- increased provision of developer contributions
- provision of both construction and on-going employment opportunities at the Site

5.7. How Would Strict Compliance Hinder the Attainment of the Objectives Specified in Section 5(a)(i) and (ii) of the Act

Sections 5(a)(i) and (ii) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) are quoted below:

The objects of the Act are:

(a) *to encourage:*

- (i) *The proper management, development and conservation of natural and artificial resources, including agricultural land, natural area, forest, mineral, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment.*
- (ii) *The promotion and coordination of the orderly and economic use and development of land.*

The development is wholly consistent with the objectives specified in Section 5(a)(i) and (ii) of the EP&A Act, as:

- the Site is located within an existing industrial area and within a zone that establishes a heavy industrial environment;
- the redevelopment of the Site for warehouse and distribution centre purposes maximises the efficient use of the land and will contribute to the retention of employment uses land as detailed in Strategic Plans; and
- the development promotes the orderly and economic use and development of the land as it delivers employment generating uses within an established employment zone located in a highly accessible area without significant or unreasonable environmental impact.

5.8. Is the Objection Well Founded

For the reasons outlined in previous sections, it is considered that the objection is well founded in this instance and that granting an exception to the development can be supported in the circumstances of the case.

6. Conclusion

Clause 4.6 allows for flexibility in the application of development standards in appropriate circumstance and this Request has been shown to satisfy the provisions of 4.6(3), 4.6(3) and 4.6(4) of the PLEP 2023.

It has been demonstrated that compliance with the height of buildings development standard is unnecessary and unreasonable given the specific circumstances of the proposal. In addition, clear planning grounds have been provided that justify contravening the development standard.

The proposal is consistent with the objectives of the development standard and the E5 Heavy Industrial zone. Given the high standard of the proposal and public benefits the development is in the public interest.

The proposed exceedance of the maximum height of building is justified for the following reasons:

- the proposal continues to meet the objectives of the E5 Heavy Industrial zone and Clause 4.3 Height of buildings development standard;
- the proposed maximum height is compatible with those already approved and built within the Grand Avenue streetscape;
- consistency with the relevant strategic plans and directions is demonstrated by the proposal; and
- the proposal satisfies the Wehbe Tests.

The variation to the height of buildings standard would not result in a breach of the other development standards prescribed under Part 4 of the PLEP 2023 for the Site.

The proposed development is considered to better satisfy the objectives of the height of buildings development standard and the E5 zone by delivering a more appropriate development outcome for the Site and the broader area.

Overall, and for the reasons set out above, our assessment concludes that the proposed development represents a superior outcome for the Site and it is therefore justified and appropriate that the development standard be varied as proposed.