

## **Clause 4.6 Request to vary a Development Standard – Clause 4.3 Height of Buildings**

Warehouses and Distribution Centre  
41 Roberts Road, Greenacre



Prepared for Goodman Property Services (Aust.) Pty Ltd  
Submitted to Strathfield Council

**March 2023**



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Revision	Prepared by	Reviewed by	Date	Revision Type
1	KW	DK	18/8/22	Draft
2	KW	DK	1/9/22	Final
3	DW/KW	DK	5/12/22	Final v2
4	DW/KW	DK	23/3/23	Final v3

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## 1. Introduction

This is a written request (the Request) to seek a development standard variation in accordance with the provisions of Clause 4.6 Exception to Development Standards of the *Strathfield Local Environmental Plan 2012* (SLEP 2012).

The Request relates to Clause 4.3 Height of Buildings of the SLEP 2012.

The Request has considered the detailed guidance within the New South Wales Department of Planning and Environment (DPE) guideline *Varying Development Standards: A Guide, August 2011* and planning system circular PS 17-006 *Varying Development Standards, December 2017*, and addresses the findings and established principles (as relevant) of the following judgements of the Land and Environment Court:

- *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
- *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112

The following sections of the Request critically analyse the proposed exceedance of the height of building control, its impact and reasonableness. This analysis demonstrates that an exception to the height development standard is warranted in this instance and will provide a better outcome in comparison to 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 New South Wales and all councils have now adopted local environmental plans based on the Standard Instrument (SI).

The SI includes various development standards as a means of achieving environmental planning objectives and these standards can be numerical or performance based.

Clause 4.6 of the SI allows a consent authority to consider and grant consent to a development even in the circumstance where that development would contravene a development standard.

The DPE Guide confirms that the New South Wales 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. Table 1 below 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	Strathfield Local Environmental Plan 2012
Zoning of the Land	IN1 General Industrial
Objectives of the Zone	<p>The objectives of IN1 zone are:</p> <ul style="list-style-type: none"> <li>• To provide a wide range of industrial and warehouse land uses.</li> <li>• To encourage employment opportunities.</li> <li>• To minimise any adverse effect of industry on other land uses.</li> <li>• To support and protect industrial land for industrial uses.</li> <li>• To minimise fragmentation of valuable industrial land, and provide large sites for integrated and large floorplate activities.</li> </ul>
Nature of the Development Standard	A numerical height control
Relevant Development Standard Clause	Clause 4.3 Height of buildings of the SLEP 2012
Objectives of the Development standard	<p>The objectives of Clause 4.3 Height of buildings are:</p> <ul style="list-style-type: none"> <li>(a) to ensure that development is of a height that is generally compatible with or which improves the appearance of the existing area,</li> <li>(b) to encourage a consolidation pattern that leads to the optimum sustainable capacity height for the area,</li> <li>(c) to achieve a diversity of small and large development options.</li> </ul>

Information Requirement	Comment
Development Standard Numeric Control for the Site	Maximum height of 12m (refer to Figure 1)
Proposed Numeric Control	Maximum height of 17.75m
Percentage Variation Between the Proposal and the Planning Instrument	A maximum increase of 5.75m represents a 47.9% increase over the SLEP 2012 height of building development standard.

Table 1: DPIE Guide recommended planning information and numeric overview

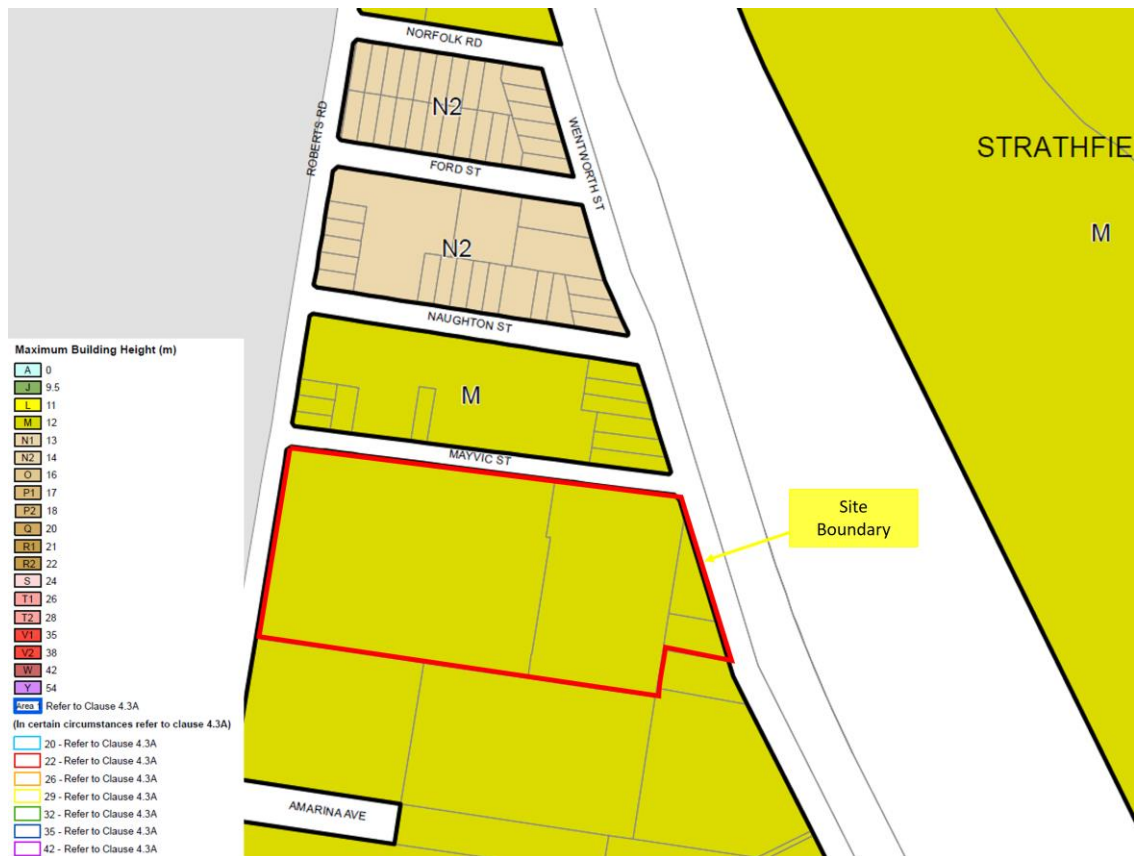


Figure 1: Maximum height of buildings control applicable to the site (Source: SLEP 2012)

### 3. Proposed Development

The request accompanies a development application (DA) for the construction of a multi tenancy warehouse and distribution centre at 41 Roberts Road, Greenacre. The location of the site is shown in Figure 2.

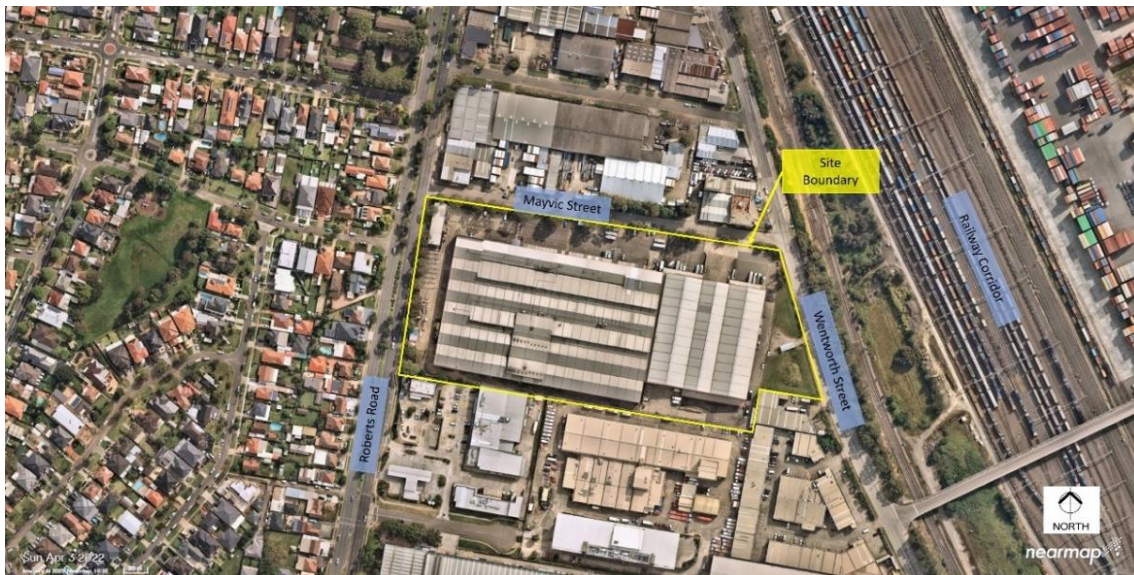


Figure 2: Aerial showing site boundary and surrounding context (Source: Nearmap)

The proposed development comprises the construction, use and fit out of a new warehouse and distribution centre which includes:

- demolition of existing structures
- relocation of Council's stormwater asset
- earthworks to establish a floor level greater than 500mm above the 1% annual exceedance probability (AEP) flood level
- construction and use of four new modular warehouses with separate tenancies
- fit out of warehouses areas (office areas and warehouses racking)
- ancillary office spaces
- car and truck (hardstand) parking
- site landscaping
- electric vehicle charging stations
- solar panels

The proposal also includes ancillary offices, hardstand, car and truck parking, landscaping, electric vehicle charging stations solar panels and the relocation of Council's stormwater asset.

All four warehouse buildings are proposed to be constructed to an internal height of 13.9 m to accommodate typical modern racking systems. Due to the fall of the site to the east, the Warehouse Unit D building will have a maximum height of 17.75 at its eastern elevation to Wentworth Street. The Warehouse Unit A building will present as 13.9m in height when viewed from Roberts Road. The proposed total gross floor area (GFA) of the warehouses is 23,422 m<sup>2</sup> and offices is 2,515 m<sup>2</sup>.



The proposed layout of the site is shown in Figure 3 and elevations shown in Figure 4, Figure 5, Figure 6 and Figure 7.

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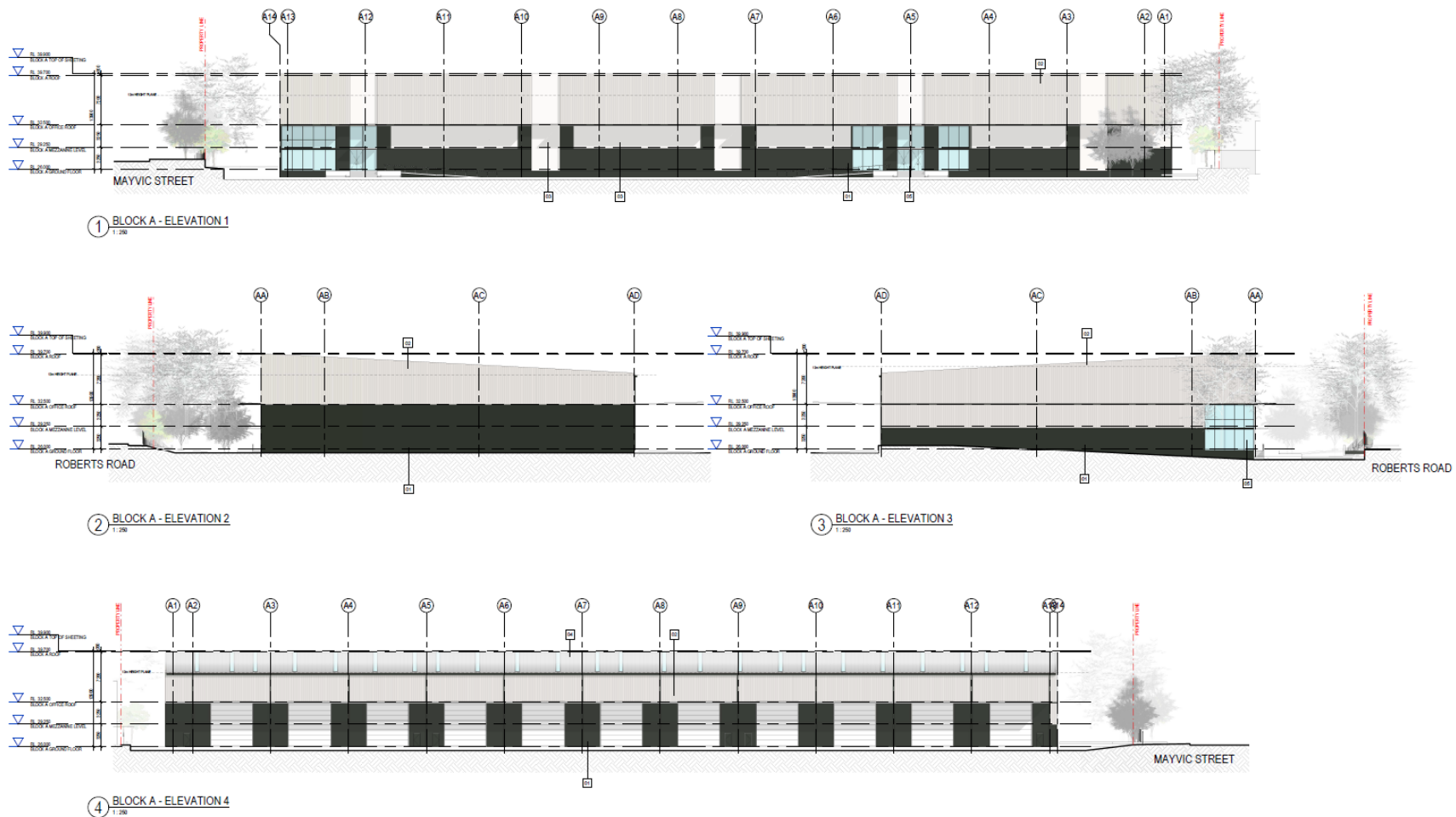


Figure 4: Warehouse A elevation showing proposed building height compared with existing 12m height control (Source: Group GSA)

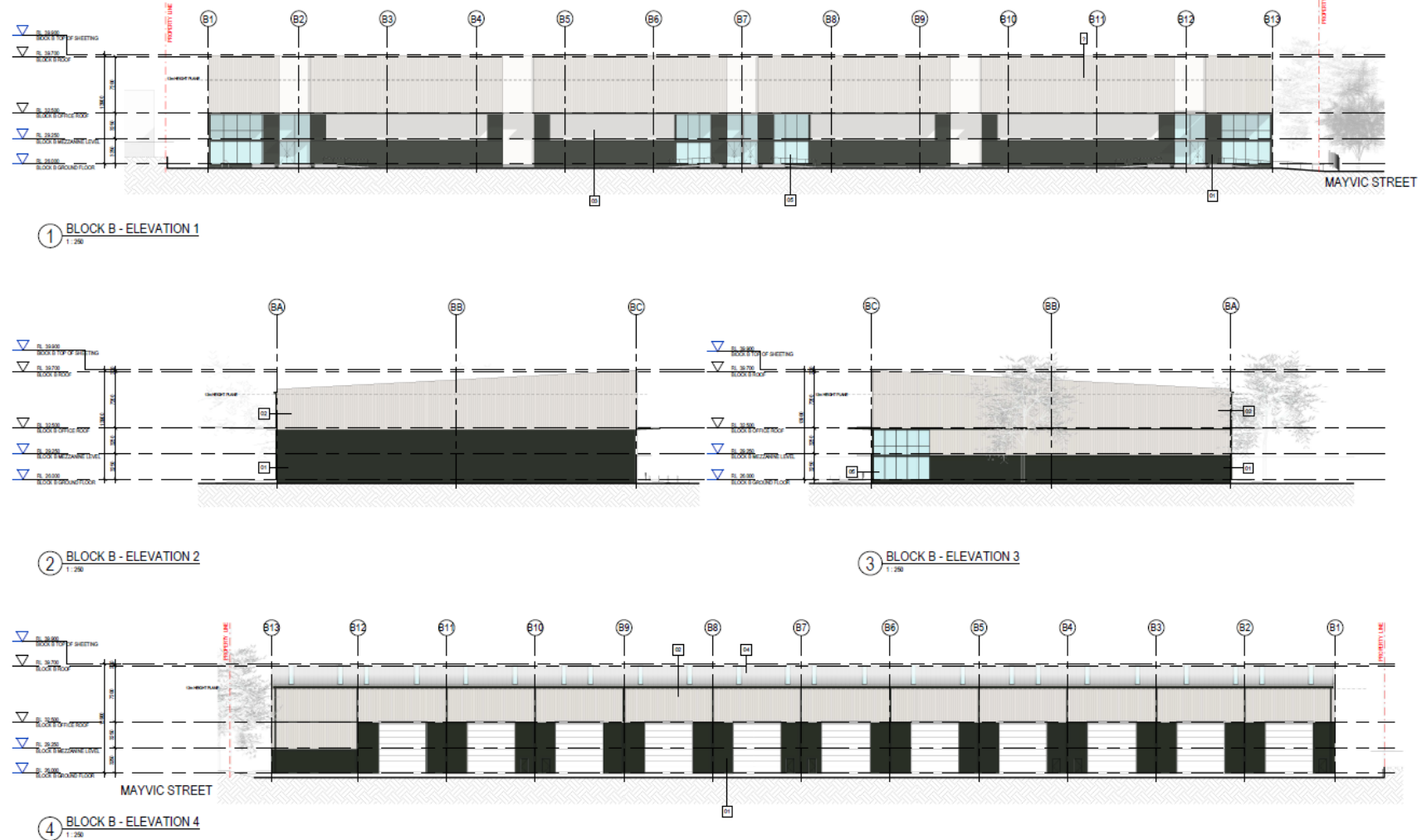


Figure 5: Warehouse B elevation showing proposed building height compared with existing 12m height control (Source: Group GSA)



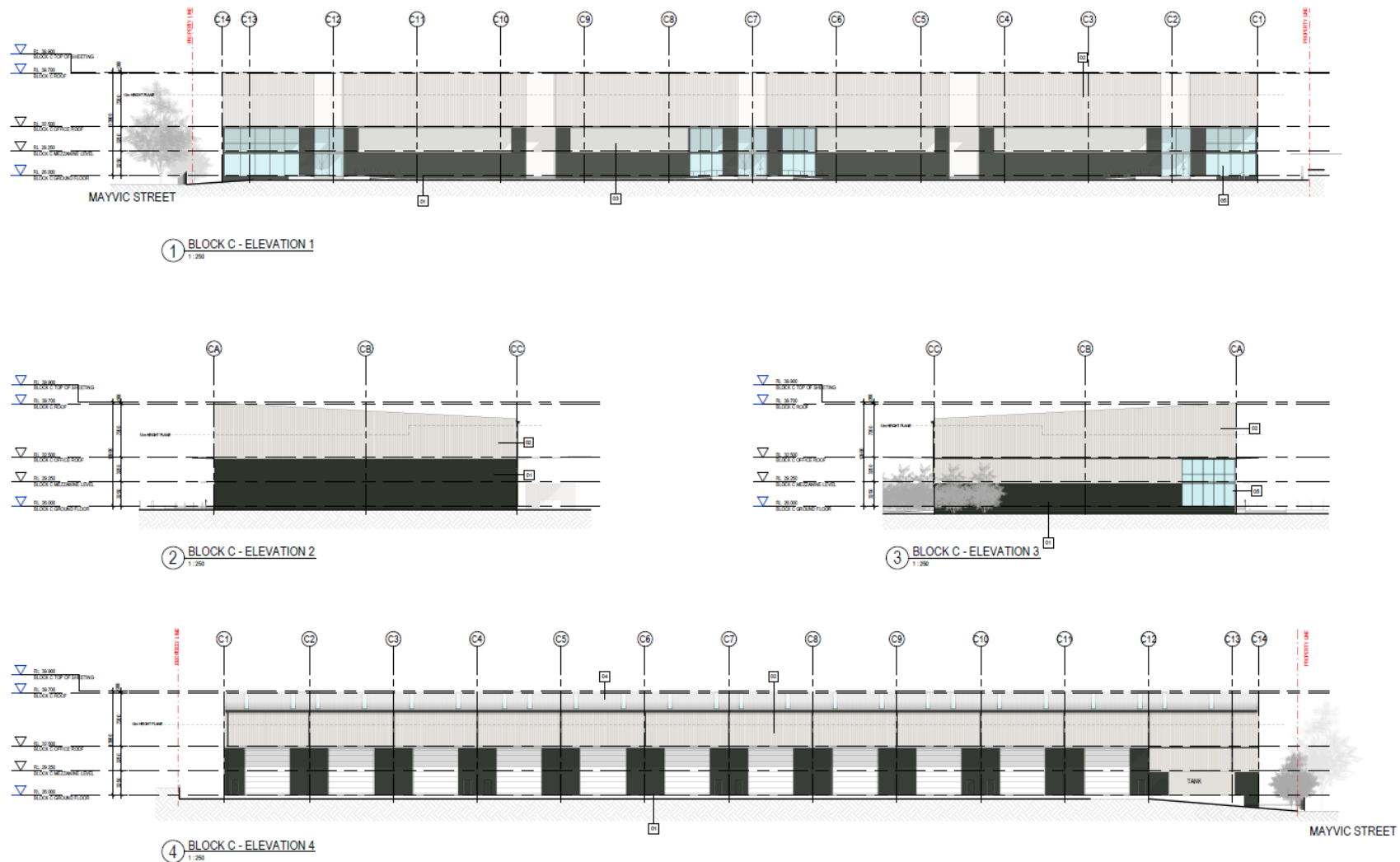


Figure 6: Warehouse C elevation showing proposed building height compared with existing 12m height control (Source: Group GSA)

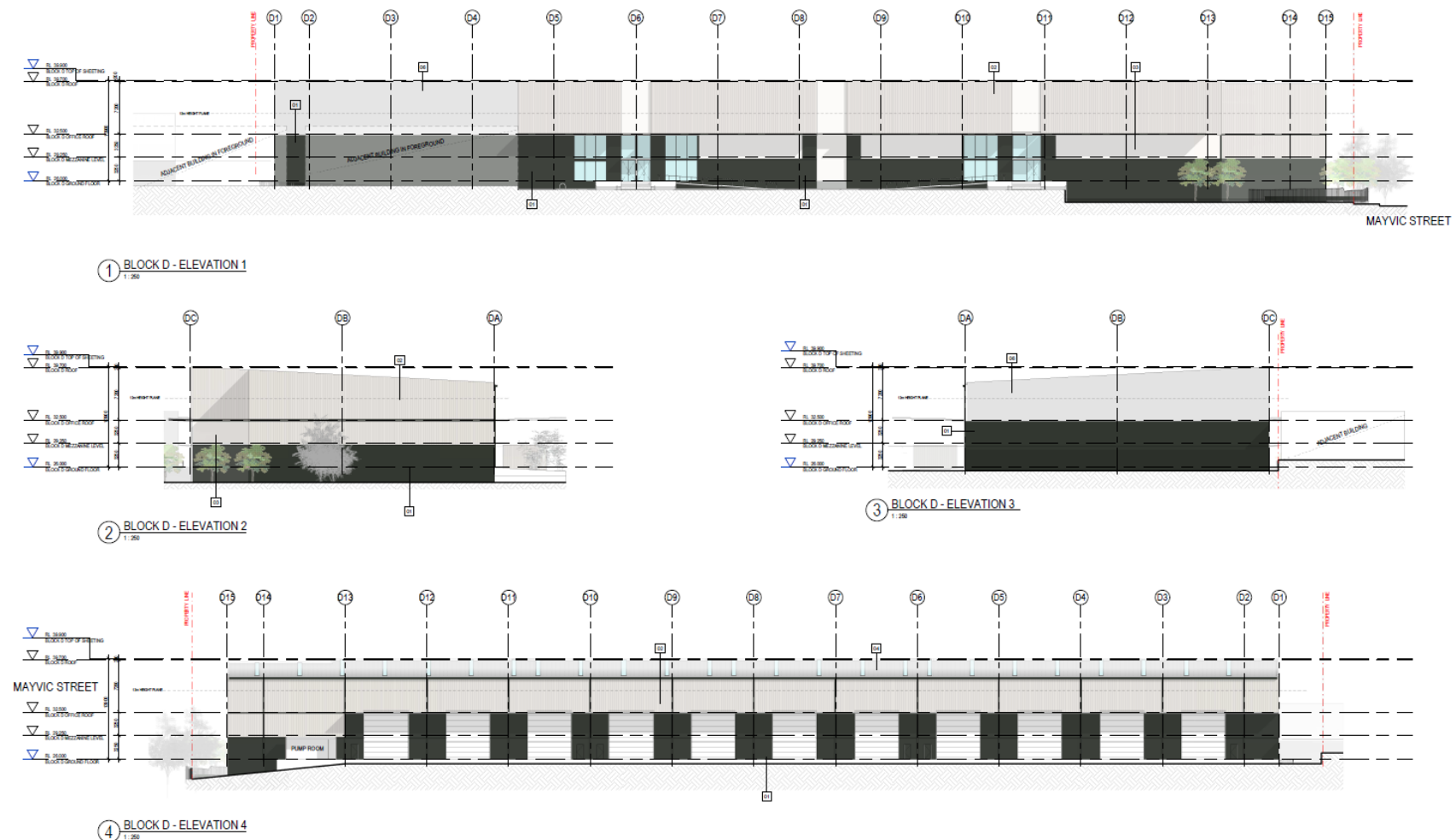


Figure 7: Warehouse D elevation showing proposed building height (including proposed maximum height of 17.75m) compared with existing 12m height control (Source: Group GSA)

## **4. Legislative Context**

### **4.1. Clause 4.6 Exceptions to Development Standards**

Clause 4.6 of the SLEP 2012 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.*

#### **4.1.4. Matters of significance for State or regional environmental planning**

Schedule 6, Clause 2 of the *State Environmental Planning Policy (Planning Systems) 2021* states general development work with a capital investment value over \$30 million is Regionally Significant Development. The proposal's capital investment value is \$47,165,000 and is therefore regionally significant and will be determined by the Eastern City Planning Panel.

#### **4.2. Relevant Judgements – NSW Land and Environment Court**

The following key Land and Environment Court (NSWLEC) 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
- *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112
- *Bettar v Council of the City of Sydney* (2014)

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 *EP&A Act*?
- 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. 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?

#### **4.2.5 Bettar v Council of the City of Sydney (2014)**

The interpretation of height has been considered by the Court in *Bettar v Council of the City of Sydney [2014] NSWLEC 1070 (Bettar)*. In *Bettar*, the Court dealt with a site where a basement existed on some parts of the site, but not others. The Court adopted the approach of measuring height with the main intent of relating the development proposal to its context, and made the following statement:

*It is relevant to consider the objectives of the building height development standard in considering how best to determine the maximum height of the building using the dictionary definitions in LEP 2012. As one of the purposes of the development standard is to relate the proposal to its context, it follows that the determination of the existing ground level should bear some relationship to the overall topography that includes the site.*

The same approach can be undertaken in relation to the subject site, with a focus on how the development will be viewed from the public domain, and neighbouring development.

## **5. Assessment of the Variation to Height of Buildings development standard**

The maximum height of building development standard constitutes the built form baseline from which any variation request is measured and assessed. The SLEP 2012 contains a standard height development control of 12m for the entire site.

The proposal seeks to enable development of four warehouse buildings with a maximum ridge height of 13.9m above a proposed ground floor reduced level (RL) of 26m Australian Height Datum (AHD). As outlined in the civil engineering report prepared in support of the DA, the final floor level of RL 26m AHD ensures the development is greater than 500mm above the 1% AEP Flood Level of RL 25.25m, to comply with Council's flood planning requirements. Establishing a consistent hardstand level of RL 26m AHD is proposed to facilitate access across the site.

This 13.9m internal building height is consistent with modern warehouses and is essential to accommodate modern racking systems for warehouse and distribution use. The 13.9m ridge height includes an additional 200mm roof sheeting and is equivalent to a maximum RL of 39.9 m AHD.

The Site generally slopes from west to east, with the highest point at the south-western part of the site, near Roberts Road (with a RL of 27.60m AHD), on top of an existing retaining wall between the development Site and the adjoining site to the south. The lowest level is approximately RL 22.06m AHD at the north-eastern part of the Site near Wentworth Street. This results in Warehouse Building D having a maximum height of 17.75m/RL 39.9m at its eastern elevation.

The development site is located substantially lower (up to 3.7m) than the existing industrial site to the north and approximately 2m lower than Roberts Road. Generally, levels over the site range within RL 22.0m and 25.0m AHD. The existing western building has a floor level of RL 24.79m AHD and existing eastern building has a ground floor level of RL 22.15m AHD.

With a proposed maximum height of RL 39.9m AHD, the height difference between the existing ground level and the top of building will range from 15.11m to 17.75m. Therefore, an increase to the maximum building height development standard control of up to 5.75m (47.9%) is required to enable the construction of the design floor level of RL 26m and internal building height of 13.9m and to meet the needs of contemporary warehouse occupants. The sought maximum height is 17.75m.

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 site's surrounding context is characterised by a mix of established and emerging industrial typologies to the north and south, the Enfield Intermodal to the east and low density residential to the west beyond the six-lane Roberts Road corridor.

The proposed building floor level is also lower than the level of Roberts Road (by approximately 1.5m), and lower than the industrial buildings to the north (Figure 8).

The proposed building height is consistent with the surrounding industrial building heights and will fit seamlessly into the existing built form, as discussed further in sections 5.1.1 and 5.1.2.

As the floor level of the development needs to be raised to achieve a minimum 500mm freeboard above the 1% AEP flood level, a 12m high building measured from this floor level would exceed the height of building development standard. To establish a modern warehouse building of 13.9m height that complies with the existing controls would require the excavation of the existing ground level which would be below the flood design level and would therefore not be a viable option.

Furthermore, the proposed maximum height of 17.75 m is limited to the eastern façade of Warehouse Building D which has minimal visual exposure facing Wentworth St, the railway corridor and the rail corridor and the Enfield intermodal Logistics Centre.

Given the proposal's minor departure from the height development standard and the surrounding site context, the applicant contends that compliance with the height development standard is unreasonable and unnecessary, as discussed in the following sections.



Figure 8: Site context demonstrating the proposal's compatibility with the adjoining properties (Source: Google)

#### 5.1.1. Urban Design Outcomes

- A strictly compliant development would produce an inferior industrial design outcome and would not meet the operational demands of future warehouse occupants as 13.9m is the standard internal building height for all modern warehouses.
- The proposed height exceedances are relatively minor and will generally be imperceptible, particularly given that the site sits below Roberts Road and Mayvic Street. The most significant height increase will be at the eastern end of the site which adjoins other industrial land uses including the Enfield Intermodal and railway corridor. Therefore, they will not appreciably add to the bulk or scale of the warehouse from the public domain in its existing context.
- The development still achieves the objectives of the zone and the development standard with the minor deviation from the development standard. This is discussed further in Section 5.4.

- The proposal includes substantial areas of landscaping along Roberts Road, Mayvic Street and Wentworth Street frontages providing screening and further reducing visual impact.

#### 5.1.2. Impact on Neighbouring Properties

- The site's surrounding context is characterised by similar industrial typologies to the north and south, a railway intermodal to the east and low density residential to the west.
- The proposed building height for all four warehouses will not adversely impact on the amenity of any surrounding land uses, particularly the residential development to the west for the following reasons:
  - the increase will be imperceptible from adjacent residential uses because of the significant 45m building setback across 6 lanes of traffic
  - the warehouses are screened by the existing street trees on either side of Roberts Road and within the median strip (Figure 9). Additional screening will be provided via deep soil tree planting on the site (Figure 10)
  - The land slopes down from Roberts Road, away from residential properties, reducing visual impact of proposed buildings
- Overshadowing impacts are demonstrated in Figure 11, Figure 12 and Figure 13 and remain largely the same for a development compliant with the height control, noting that any overshadowing is limited to industrial and specialised retail premises on the adjacent site at 51 Roberts Road. In these Figures, the shadows cast by 12m high buildings are graphically shown as orange hatching and the shadows cast by the proposed buildings are shown as the grey shade.
- As shown in Figure 14, the height exceedances will only affect the apex of the roof and accordingly will not exhibit any significant visual impact or significant add to the bulk and scale of the warehouses.



Figure 9: View towards the existing development from residential area (Source: Google)





Figure 10: Additional screening provided via deep soil planting (Source: Place Design Group)

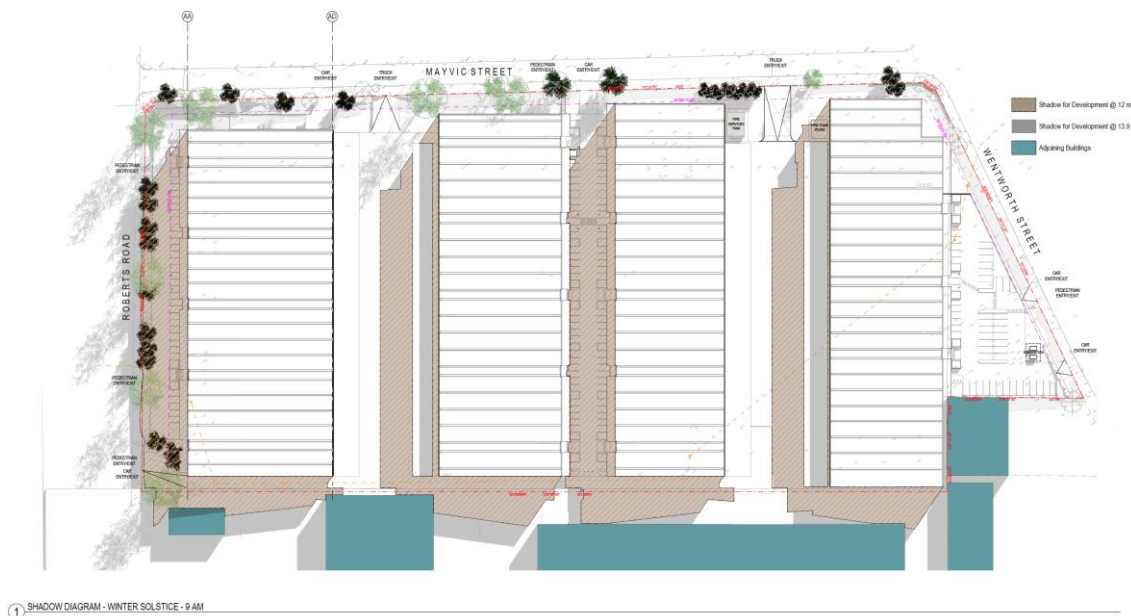


Figure 11: Shadows cast by the development at 9am during mid-winter (Source: Group GSA)



① SHADOW DIAGRAM - WINTER SOLSTICE - NOON

Figure 12: Shadows cast by the development at Noon during mid-winter (Source: Group GSA)



① SHADOW DIAGRAM - WINTER SOLSTICE - 3 PM

Figure 13: Shadows cast by the development at 3pm during mid-winter (Source: Group GSA)

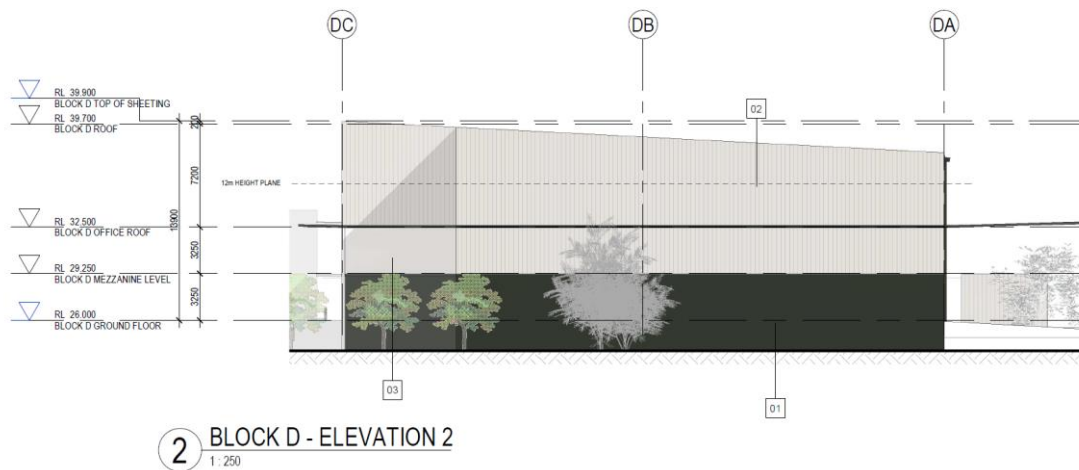


Figure 14: Height exceedances affecting the apex of the roof (Source: Group GSA)

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

The development, including the proposed height non-compliance, will provide for much needed revitalised industrial employment lands. In this context, there is sound planning grounds and significant benefits to justify contravening the maximum height of building development standard, see below.

### 5.2.1. Consistency with the Strategic Context

The proposed development will:

- retain and improve existing industrial lands, support growth of industrial purposes and provide opportunities for increased jobs and economic growth in accordance with the *Greater Sydney Region Plan*.
- reduce waste and carbon emissions through utilising circular economy principles in accordance with the *Greater Sydney Region Plan*
- incorporate Water Sensitive Urban Design strategies to protect local waterways and manage environmental impacts, improves canopy coverage on the site and incorporate sustainable technologies to improve building efficiencies in accordance with the *Eastern City District Plan*
- meet the industrial land desires of the community as detailed in the *Strathfield Local Strategic Planning Statement*.

### 5.2.2. Improved Urban Design outcomes

The proposal has been designed in accordance with the standard 13.9m height for all modern warehouses, which is essential to accommodate modern racking systems for warehouse and distribution use, whilst also providing a visually pleasing building on the site. The minor departure to the control affects only the apex of the roof and accordingly will not result in any significant visual impact as demonstrated in Figure 14. Furthermore, the proposed maximum height of 17.75m is limited to the eastern elevation of Warehouse Building D which has minimal visual exposure and faces the adjacent railway corridor and the Enfield Intermodal Terminal.

The proposed maximum 17.75m building height is considered suitable for the site given the single-storey form of the warehouses, the slope of the site and the limited visual exposure of the eastern part of the site. This is consistent with the built form character of surrounding industrial development, including the nearby Enfield Intermodal Logistics Centre (Figure 15).



Figure 15: Enfield Intermodal Logistics Centre located at 7 Mainline Road (Source: Google)

### **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:

- the proposal revitalises the site through contemporary warehouse buildings of high quality design, which improves the built form character of the locality and could act as a catalyst to stimulate further local revitalisation
- the proposed development is of a height and scale suitable for the location
- the proposal includes deep setbacks and new enhanced landscaping along a Roberts Road, Mayvic Street and Wentworth Street (Figure 10 above). This will assist with beautification and mitigating the urban heat island effect
- the proposal provides an urban design outcome which provides a functional and visually pleasing building on the site and will not result in any significant visual impact.

## **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 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 development standard, (including transition of built form, solar access and visual impacts) are considered relevant to the



development. However, as discussed in Section 5.4, it is considered they still achieve the objectives of the 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**

It is not considered that the underlying object or purpose of the standard would be defeated or thwarted if compliance was required. However, as outlined in Section 5.1, compliance with the standard is unreasonable as:

- a height compliant development would preclude the development of a modern warehouse to an industry standard height that can accommodate contemporary racking systems and meet the needs of modern warehouse occupants
- the proposed RL 26m floor level is required to achieve a floor level at least 500 mm above the flood planning level
- the minor height exceedance is generally imperceptible and it will not add to the bulk or scale of the development, with the proposed maximum 17.75m height limited to the eastern elevation of Warehouse Building D which has minimal visual exposure and faces the adjacent railway corridor and the Enfield Intermodal Terminal
- as demonstrated in Figure 11, Figure 12 and Figure 13 there are minimal additional solar amenity impacts due to the proposed development scheme
- the objectives of the zone and relevant development standards are met by the proposed development

Therefore, a strictly height compliant scheme is not necessary however the request is needed to fulfil the operational requirements of future warehouse occupants.

**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**

It is noted that Council approved a DA for a warehouse distribution facility at 7-39 Wentworth Road, Greenacre (DA2016/194) which approved a 5.05m (42%) variation from the height development standard. This establishes a relevant precedent for exceedances of the development standard.

**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 to reflect the industrial use of the site and locality. However, the 12m height control does not reflect contemporary warehousing requirements and, accordingly, requires variation in this instance. As discussed in Section 5.4, the proposed development is consistent with the objectives of the zone.

**5.4. Clause 4.6(4) – Consistency with Objectives**

The proposed development is consistent with the objectives of the IN1 General Industrial and the Clause 4.3 Height of Buildings development standard as outlined in Table 3.

<b>Zone IN1 General Industrial</b>	
<b>Objectives</b>	<b>Achievement of Objectives</b>
To provide a wide range of industrial and warehouse land uses	The proposal comprises four modular warehouse buildings which will cater for a range of storage and distribution uses.
To encourage employment opportunities	The predominant purpose for the site's redevelopment and subsequent height increase is to provide modern warehouse and office facilities. The employment of workers across 4 warehouses will have wide-spread benefits and stimulate the local economy in the Strathfield LGA.
To minimise any adverse effect of industry on other land uses	The proposed height variation is minor and will not produce adverse effects on surrounding land uses and as discussed in Section 5.1.
To support and protect industrial land for industrial uses	The provision of 4 new warehouses supports and protects employment lands in industrial zones and will increase the economic growth of the Strathfield local government area.
To minimise fragmentation of valuable industrial land, and provide large sites for integrated land use	The proposal will not fragment any industrial land as it is occurring on land within an existing industrial precinct which currently contains a large-scale warehouse. The proposal will retain valuable industrial land by providing 4 warehouses with a total gross floor area of 26,211 square metres.

Table 2: Consistency with IN1 General Industrial zone objectives

<b>Clause 4.3 Height of Buildings Development Standard</b>	
<b>Objectives</b>	<b>Achievement of Objectives</b>
To ensure that development is of a height that is generally compatible with or which improves the appearance of the existing area	Given the surrounding topography and other industrial development, the departure from the height development standard is compatible with the surrounding industrial built form. The proposed increase will not adversely impact on the amenity of the surrounding land uses.
To encourage a consolidation pattern that leads to the optimum sustainable capacity height for the area	<p>The proposal involves the demolition of two existing warehouse buildings and construction of four modular warehouses on the site, with a reduction in GFA of approximately 11,000 m<sup>2</sup>.</p> <p>The proposal does not include consolidation as the site area is large enough to accommodate a development with four modular warehouses, associated hardstand, parking and landscaping.</p> <p>The proposed height is consistent with modern warehouse development and the minor exceedance of the height control does not conflict with surrounding industrial development within the IN1 zone.</p>
To achieve a diversity of small and large development options	<p>The proposal provides a diversity in a range of tenancy sizes, which can be varied to meet market demand.</p> <p>The proposal is a large scale development which</p>

#### Clause 4.3 Height of Buildings Development Standard

comprises four modular industrial warehouse buildings and associated offices which will contribute to the diversity of industrial developments in the locality.

Table 3: Consistency with Clause 4.3 Height of Buildings development standard objectives

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

The proposed exceedance of the maximum height of building 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 localised to discrete locations. Overall the increase in height development standard is minor in the context of the development and broader area
- there are no significant amenity or environmental impacts
- the site is not 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 building development standard would establish an appropriate urban design response for the site and enable the development of a new modular warehouse and distribution centre which will provide public benefits such as:

- retention and renewal of industrial land
- increased employment opportunities
- revitalised landscaping which will activate street frontages
- incorporation of sustainability features to contribute to net zero 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 maximum height of building development standard.

### 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 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 development promotes the proper management of natural and artificial resources as it comprises the redevelopment of existing industrial land and avoids disturbance of natural areas
- the development promotes the orderly and economic use and development of the land as it retains the existing industrial employment land and encourages employment opportunities within the local area; and

Strict compliance with the height of building development standard would hinder the attainment of the objects of the EP&A Act, as such a development would:

- hinder the promotion of orderly economic use in that it would prevent the delivery of a new warehouse with a height essential to meet the needs of contemporary warehouse occupants
- produce an inferior urban design outcome as the setbacks would be decreased to compensate for the lack of height
- not meet the operational demands of contemporary warehouse developments and would preclude the development of the site for this purpose

#### **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 SLEP 2012.

The Request has demonstrated that compliance with the height of building development standard is unnecessary and unreasonable given the relatively minor nature of the variation, impact on amenity and compatibility with the surrounding industrial context.

The key justification for the proposed variation to the height control includes:

- the floor level of the development needs to be raised to achieve a minimum 500mm freeboard above the 1% AEP flood level and a 12m high building measured from this floor level would exceed the height of building development standard
- the proposed 13.9m building height is the standard building height for all modern warehouses and is essential to accommodate modern racking systems for warehouse and distribution use and whilst it results in a maximum building height of 17.75m on the eastern elevation of Warehouse Building D, this building will have minimal visual exposure and will remain compatible in height and scale with other buildings on the site
- the proposed building heights are designed in response to the operational requirements of the future occupants of the warehouses and reflects the Applicant's vast experience relating to tenants' space demands
- the proposed building heights are considered suitable given the single-storey form of the warehouses which is consistent with the built form character of surrounding industrial development, including the adjacent Enfield Intermodal

The proposal is consistent with the objectives of the development standard and the IN1 General Industrial zone and there are clear planning grounds to justify contravening the development standard.

Therefore, an exception to the height development standard is warranted in this instance and will provide a better outcome by providing controls for the construction of a modern industrial warehouse and distribution facility which suits the needs of modern occupants.