

# Statement of Environmental Effects

67 MARS ROAD  
LANE COVE WEST

31 MARCH 2022



## QUALITY ASSURANCE

**PROJECT:** *Statement of Environmental Effects: Industrial Complex*

**ADDRESS:** *Lot 10 in DP1036457: 67 Mars Road, Lane Cove West*

**COUNCIL:** *Lane Cove Council*

**AUTHOR:** *Think Planners Pty Ltd*

<i>Date</i>	<i>Purpose of Issue</i>	<i>Rev</i>	<i>Reviewed</i>	<i>Authorised</i>
<i>August 2021</i>	<i>Client Review</i>	<i>Draft</i>	<i>SK</i>	<i>JW</i>
<i>March 2022</i>	<i>DA Lodgment Issue</i>	<i>Final</i>	<i>JW</i>	<i>JW</i>

## ***Integrated Development (under S4.46 of the EP&A Act). Does the development require approvals under any of the following legislation?***

<i>Coal Mine Subsidence Compensation Act 2017</i>	<i>No</i>
<i>Fisheries Management Act 1994</i>	<i>No</i>
<i>Heritage Act 1977</i>	<i>No</i>
<i>Mining Act 1992</i>	<i>No</i>
<i>National Parks and Wildlife Act 1974</i>	<i>No</i>
<i>Petroleum (Onshore) Act 1991</i>	<i>No</i>
<i>Protection of the Environment Operations Act 1997</i>	<i>No</i>
<i>Roads Act 1993</i>	<i>No</i>
<i>Rural Fires Act 1997</i>	<i>No</i>
<i>Water Management Act 2000</i>	<i>No</i>

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## EXECUTIVE SUMMARY

This Statement of Environmental Effects has been prepared in support of a Development Application for the demolition of all existing structures in-order to construct a large contemporary light industrial complex (Business Park) at 67 Mars Road, Lane Cove.

The development itself will comprise of one large industrial building accommodating a total of 19 industrial units over two levels with 44 self-storage units and 244 car parking spaces over 3 basement levels.

The key aspects of the proposal are as follows:

### ***Key Controls:***

The key control are as follows:

- Built upon area: 6,525m<sup>2</sup>
- Site coverage: 69.2%
- GFA: 7,851m<sup>2</sup>
- FSR: 0.832:1
- Landscape area: 2,789m<sup>2</sup> or 29.6% of the site area

### ***Commercial Units:***

A total of 44 self-storage units with an overall GFA of 2,710m<sup>2</sup>.

### ***Industrial Units:***

A total of 19 industrial/warehouse units with an overall GFA of 7,520m<sup>2</sup> of GFA (net).

### ***Parking:***

A total of 244 carparking spaces provided with the following breakdown:

- Basement Level 1: 85 car parking spaces including 4 accessible car parking space
- Basement Level 2: 85 car parking spaces including 4 accessible car parking space
- Basement Level 3: 70 car parking spaces including 4 accessible car parking space



Situated within an established industrial precinct, the development site is located on the intersection of Mars Road and Sirius Road, Lane Cove West. Surrounded by industrial land uses, the development site is within close proximity to Blackman Park with a bus stop located on the site's frontage to Sirius Road with services to Lane Cove with a second bus stop on the southern side of Mars Road with services to Sydney CBD.

The site itself can be best described as a large regular shaped corner allotment with a frontage of 70.095m to Mars Road and a frontage of 134.67m to Sirius Road with a total site area of 9,431m<sup>2</sup>. The development experiences a large cross-fall from Mars Road towards the rear of the site that has informed the design of the proposal and the relevant access points.

The site itself is zoned IN2 Light Industrial under the Lane Cove Local Environmental Plan 2009. *'Light Industrial'*, *'Self Storage Units'* and *'Warehouse or Distribution Centres'* are permissible with consent within the IN2 Zone with the subject site benefitting from a building height of 18m and an FSR of 1:1.

It is further noted that the future use of each individual industrial unit and associated signage will be subject to future application, with the proposal limited to the approval of the land uses and construction of the buildings.

The development also aims to set the tone and standards for new industrial development within established business estates. This includes developments that are designed to address its frontages, articulated and landscaped in-order to improve the built form character within the industrial estates.

The development is to remove an aging industrial building and replace it with a modern industrial complex that will provide 19 new industrial units with modern facilities with over 244 car parking spaces on-site.

The site is ideal for accommodating an industrial complex as it is located within an established industrial estate. At the end of the project, the current proposal will increase valuable industrial units and job opportunity for local residents, whilst supporting the function and operation of the industrial park as a whole.

As detailed further in this statement the development concept is consistent with the planning principles and controls applying to the site and represents an efficient use of well-located land. Following a review of the relevant planning controls, it is concluded that the proposed development is consistent with the objectives, planning strategies and detailed controls of these planning documents.

Consideration has been given to the potential environmental and amenity impacts that are relevant to the proposed development and this report addresses these impacts.

Having regard to the benefits of the proposal and taking into account the absence of adverse environmental, social or economic impacts, and that the proposal represents an appropriate use of well-located land; the application is submitted to Council for assessment. Think Planners Pty Ltd recommends the approval of the application, subject to necessary, relevant and appropriate conditions of consent.



## SITE AND CONTEXT

The subject site is legally known as Lot 10 in D1036457, but is more commonly known as 67 Mars Road, Lane Cove West.

### SUBJECT SITE

Situated within an established industrial precinct, the development site is located on the intersection of Mars Road and Sirius Road, Lane Cove West.

The site can be described as a large regular shaped corner allotment with a frontage of 70.095m to Mars Road and a frontage of 134.67m to Sirius Road with a total site area of 9,431m<sup>2</sup>. The development experiences a large cross-fall from Mars Road towards the rear of the site that has informed the design of the proposal and the relevant access points, noting the extent of fall is approximately 6m across the site.

At present the large site current accommodates an aging 2 storey industrial building and ancillary structures including at-grade car parking area, vehicular cross-over, driveways and fencing as illustrated by the photograph extract below.

**Photograph 1: 67 Mars Rd as viewed from the intersection of Mars Rd and Sirius Rd**



Residing within an established industrial precinct, the development is surrounded by industrial land uses to the north and east with Sirius Road to the west and Mars Road to the south separating the development site also from industrial land uses.

An aerial photograph is provided below for context of the subject site.

**Figure 1: Aerial Map Extract of the Subject Site (Source: Six Maps)**

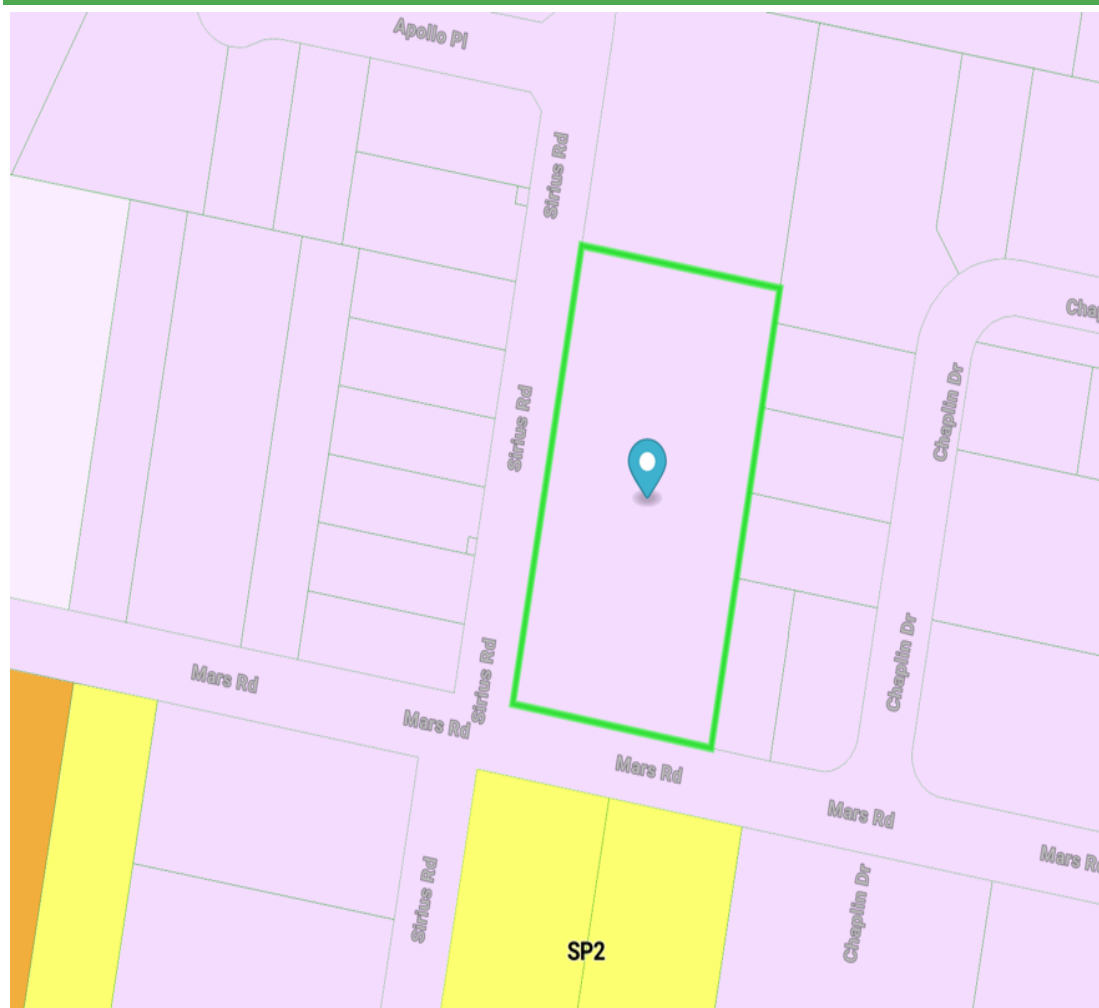




 Subject Site

## ZONING

As evident in the zoning map extract in the following page, the subject site is zoned IN2 – Light Industrial under the provision of Lane Cove Local Environmental Plan 2009. 'Light Industrial', 'Self Storage Units' and 'Warehouse or Distribution Centres' are permissible with consent within the IN2 Zone with the subject site benefitting from a building height of 18m and an FSR of 1:1.

Figure 2: Zoning Map Sheet LZN\_001 (Source: Lane Cove LEP 2009)



-  Subject Site
-  IN2 – Light Industrial

The development is to remove an aging industrial building and replace it with a modern industrial complex that will provide 19 new industrial units with modern facilities with over 244 car parking spaces on-site.



## LOCALITY ANALYSIS

The site is ideal for accommodating an industrial complex as it is located within an established industrial precinct, with the development site being within close proximity to Blackman Park with a bus stop located on the site's frontage to Sirius Road with services to Lane Cove with a second bus stop on the southern side of Mars Road with services to Sydney CBD. This is demonstrated via map extract below.

**Figure 3: Aerial Map Extract of the Subject Area (Source: Google Maps)**



At the end of the project, the current proposal will increase valuable industrial units and job opportunity for local residents, whilst supporting the function and operation of the industrial park as a whole.

Photographs are provided overleaf and within the following pages that give context to the locality.



Photograph 2: Shows the northern portion of the site which includes a vehicle crossover, driveway and at-grade car park as viewed from Sirius Rd looking eastwards



Photograph 3: Shows the development site as viewed from Mars Rd looking eastwards





Photograph 4: Shows streetscape viewed from Mars Rd looking eastwards



Photograph 5: Shows streetscape viewed from Mars Rd looking eastwards





Photograph 6: Shows streetscape viewed from Mars Rd looking westwards



Photograph 7: Shows streetscape viewed from Sirius Rd looking northward





Photograph 8: Shows streetscape viewed from Sirius Rd looking southward



The site is not identified as a heritage item or is it located within a heritage conservation area, however there are two local heritage items located near the subject site, as illustrated by a heritage map extract below.

The map displays the City of Ryde, LGA, with a network of streets and highlighted areas. Key streets include Orion Rd, Mars Rd, Apollo Pl, and others. Highlighted areas are labeled A6, I214, and I219. A green rectangle highlights a specific area on Mars Rd. The map also shows a coastline on the left side.

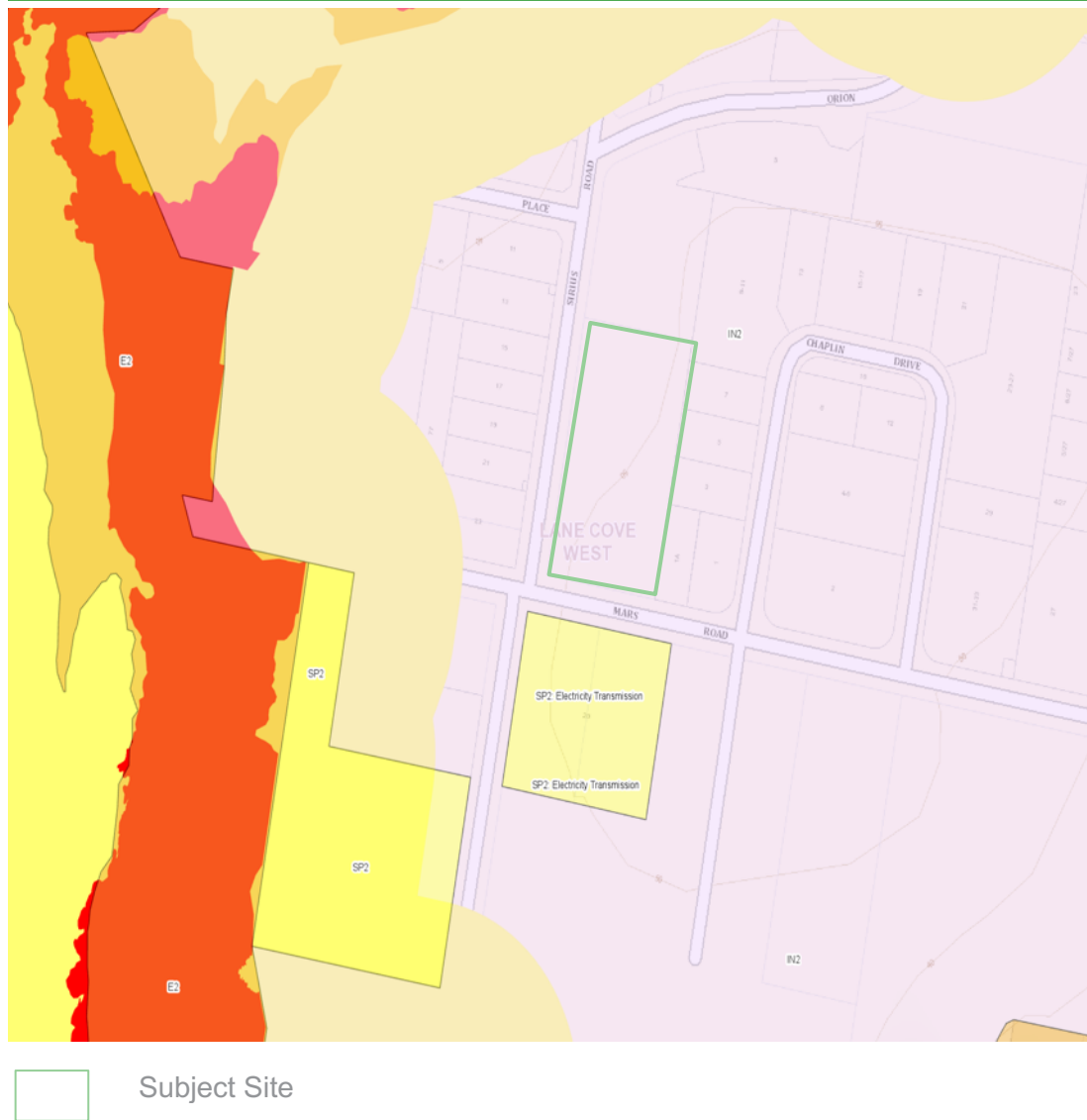
The development site is sufficiently separated from the local heritage items with existing urban development and road networks provides adequate buffer and therefore the proposal will have no impact on the curtilage associated with the heritage items.

As a result, the subject site will not have any associated heritage restriction and subsequently the preparation of Heritage Impact Statement/Report is not deemed to be necessary.

## BUSHFIRE

The site is not identified as being a bushfire prone land as illustrated by the bushfire map extract below.

Figure 5: Bushfire Map Extract (Source: NSW Government Planning Portal)



## DESCRIPTION OF PROPOSAL

This Development Application proposes to demolish all existing structures in-order to construct a large contemporary light industrial complex (Business Park) at 67 Mars Road, Lane Cove.

The development itself will comprise of 9 separate buildings accommodating a total of 19 industrial units with 44 self-storage units and 244 car parking spaces over 3 basement levels.

### ***Key Controls:***

The key controls are as follows:

- Built upon area: 6,525m<sup>2</sup>
- Site coverage: 69.2%
- GFA: 7,851m<sup>2</sup>
- FSR: 0.832:1
- Landscape area: 2,789m<sup>2</sup> or 29.6% of the site area

### ***Commercial Units:***

A total of 44 self-storage units with an overall GFA of 2,710m<sup>2</sup>.

### ***Industrial Units:***

A total of 19 industrial/warehouse units with an overall GFA of 7,520m<sup>2</sup> of GFA (net).

### ***Parking:***

A total of 244 carparking spaces provided with the following breakdown:

- Basement Level 1: 85 car parking spaces including 4 accessible car parking space
- Basement Level 2: 85 car parking spaces including 4 accessible car parking space
- Basement Level 3: 70 car parking spaces including 4 accessible car parking space

The development also provides 16 motorcycle parking spaces and 28 bicycle parking spaces over the 3 basement levels.

### **Self-Store Unit Configuration:**

A summary of the self-store unit configuration is provided below.

- Basement Level 03
  - Unit 1: 79m<sup>2</sup> with 394m<sup>3</sup> of storage capacity
  - Unit 2: 78m<sup>2</sup> with 390m<sup>3</sup> of storage capacity
  - Unit 3: 78m<sup>2</sup> with 390m<sup>3</sup> of storage capacity
  - Unit 4: 79m<sup>2</sup> with 394m<sup>3</sup> of storage capacity
  - Unit 5: 94m<sup>2</sup> with 471m<sup>3</sup> of storage capacity
  - Unit 6: 78m<sup>2</sup> with 390m<sup>3</sup> of storage capacity
  - Unit 7: 78m<sup>2</sup> with 390m<sup>3</sup> of storage capacity
  - Unit 8: 78m<sup>2</sup> with 390m<sup>3</sup> of storage capacity
  - Unit 9: 79m<sup>2</sup> with 394m<sup>3</sup> of storage capacity
  - Unit 10: 72m<sup>2</sup> with 359m<sup>3</sup> of storage capacity
  - Unit 11: 78m<sup>2</sup> with 390m<sup>3</sup> of storage capacity
  - Unit 12: 78m<sup>2</sup> with 390m<sup>3</sup> of storage capacity
  - Unit 13: 78m<sup>2</sup> with 390m<sup>3</sup> of storage capacity
  - Unit 14: 94m<sup>2</sup> with 471m<sup>3</sup> of storage capacity
  - Unit 15: 79m<sup>2</sup> with 394m<sup>3</sup> of storage capacity
  - Unit 16: 78m<sup>2</sup> with 390m<sup>3</sup> of storage capacity
  - Unit 17: 79m<sup>2</sup> with 394m<sup>3</sup> of storage capacity
- Basement Level 02
  - Unit 18: 79m<sup>2</sup> with 394m<sup>3</sup> of storage capacity
  - Unit 19: 78m<sup>2</sup> with 390m<sup>3</sup> of storage capacity
  - Unit 20: 78m<sup>2</sup> with 390m<sup>3</sup> of storage capacity
  - Unit 21: 79m<sup>2</sup> with 394m<sup>3</sup> of storage capacity
  - Unit 22: 94m<sup>2</sup> with 471m<sup>3</sup> of storage capacity
  - Unit 23: 78m<sup>2</sup> with 390m<sup>3</sup> of storage capacity
  - Unit 24: 78m<sup>2</sup> with 390m<sup>3</sup> of storage capacity
  - Unit 25: 78m<sup>2</sup> with 390m<sup>3</sup> of storage capacity
  - Unit 26: 79m<sup>2</sup> with 394m<sup>3</sup> of storage capacity
  - Unit 27: 72m<sup>2</sup> with 359m<sup>3</sup> of storage capacity
  - Unit 28: 78m<sup>2</sup> with 390m<sup>3</sup> of storage capacity
  - Unit 29: 78m<sup>2</sup> with 390m<sup>3</sup> of storage capacity
  - Unit 30: 78m<sup>2</sup> with 390m<sup>3</sup> of storage capacity
  - Unit 31: 94m<sup>2</sup> with 471m<sup>3</sup> of storage capacity
  - Unit 32: 79m<sup>2</sup> with 394m<sup>3</sup> of storage capacity
  - Unit 33: 78m<sup>2</sup> with 390m<sup>3</sup> of storage capacity
  - Unit 34: 79m<sup>2</sup> with 394m<sup>3</sup> of storage capacity
- Basement Level 01
  - Unit 35: 78m<sup>2</sup> with 390m<sup>3</sup> of storage capacity
  - Unit 36: 78m<sup>2</sup> with 390m<sup>3</sup> of storage capacity

- Unit 37: 78m<sup>2</sup> with 390m<sup>3</sup> of storage capacity
- Unit 38: 78m<sup>2</sup> with 390m<sup>3</sup> of storage capacity
- Unit 39: 79m<sup>2</sup> with 394m<sup>3</sup> of storage capacity
- Unit 40: 72m<sup>2</sup> with 359m<sup>3</sup> of storage capacity
- Unit 41: 78m<sup>2</sup> with 390m<sup>3</sup> of storage capacity
- Unit 42: 78m<sup>2</sup> with 390m<sup>3</sup> of storage capacity
- Unit 43: 78m<sup>2</sup> with 390m<sup>3</sup> of storage capacity
- Unit 44: 78m<sup>2</sup> with 390m<sup>3</sup> of storage capacity

### **Industrial Unit Configuration:**

A summary of the unit configuration is provided below.

- Ground Floor
  - Unit 1: 720m<sup>2</sup> and includes a loading area.
  - Unit 2: 467m<sup>2</sup> and includes a loading area.
  - Unit 3: 363m<sup>2</sup> and includes a loading area.
  - Unit 4: 471m<sup>2</sup> and includes a loading area.
  - Unit 5: 363m<sup>2</sup> and includes a loading area.
  - Unit 6: 522m<sup>2</sup> and includes a loading area.
  - Unit 7: 510m<sup>2</sup> and includes a loading area.
  - Unit 8: 392m<sup>2</sup> and includes a loading area.
  - Unit 9: 515m<sup>2</sup> and includes a loading area.
- First Floor
  - Unit 10: 385m<sup>2</sup> and includes a loading area.
  - Unit 11: 338m<sup>2</sup> and includes a loading area.
  - Unit 12: 467m<sup>2</sup> and includes a loading area.
  - Unit 13: 363m<sup>2</sup> and includes a loading area.
  - Unit 14: 471m<sup>2</sup> and includes a loading area.
  - Unit 15: 304m<sup>2</sup> and includes a loading area.
  - Unit 16: 223m<sup>2</sup> and includes a loading area.
  - Unit 17: 511m<sup>2</sup> and includes a loading area.
  - Unit 18: 392m<sup>2</sup> and includes a loading area.
  - Unit 19: 514m<sup>2</sup> and includes a loading area.

A brief description of the various aspects of the development is provided overleaf.

Level	Inclusions
Basement Level 3	<p><b>Access Arrangements</b></p> <p>Graded vehicular ramp from Basement Level 2 provides vehicle access to Basement Level 3.</p>

	<p>The basement level includes internal circulation areas with turning areas to allow vehicles to enter and exit the basement in a forward direction.</p> <p>The internal circulation areas also include pedestrian pathways and pedestrian crossings.</p> <p><b>Parking</b></p> <p>A total of 85 car parking spaces including 4 accessible car parking space.</p> <p>A total of 6 motorcycle bays and 8 bicycle parking spaces within Basement Level 3.</p> <p><b>Self-Store Unit</b></p> <p>A total of 17 self-store units</p> <p>A total of 4 lobby area within Basement Level 03, with each lobby area provided with a lift core and fire escape stairwells.</p> <p>The development also provides 4 x fire escape stairwell, with each stairwell provided within the 4 end corners of the basement level.</p>
<p><b>Basement Level 2</b></p>	<p><b>Access Arrangements</b></p> <p>Graded vehicular ramp from Basement Level 1 provide vehicular access to Basement Level 2, with access to Basement Level 3 provided from this level via an internal graded ramp.</p> <p>The basement level includes internal circulation areas with turning areas to allow vehicles to enter and exit the basement in a forward direction.</p> <p>The internal circulation areas also include pedestrian pathways and pedestrian crossings</p> <p><b>Parking</b></p> <p>A total of 85 car parking spaces including 4 accessible car parking space.</p> <p>A total of 6 motorcycle bays and 8 bicycle parking spaces within Basement Level 3.</p>



	<p><b>Self-Containing Unit</b></p> <p>A total of 17 self-store units</p> <p>A total of 4 lobby area within Basement Level 02, with each lobby area provided with a lift core and fire escape stairwells.</p> <p>The development also provides 4 x fire escape stairwell, with each stairwell provided within the 4 end corners of the basement level.</p>
<p><b>Basement Level 1</b></p>	<p><b>Access Arrangements</b></p> <p>Graded vehicular ramp from Sirius Road provides direct vehicular access to Basement Level 1, with access to Basement Level 2 and beyond from this level via an internal graded ramp.</p> <p>The basement level includes internal circulation areas with turning areas to allow vehicles to enter and exit the basement in a forward direction.</p> <p>The internal circulation areas also include pedestrian pathways and pedestrian crossings</p> <p><b>Parking</b></p> <p>A total of 70 car parking spaces including 4 accessible car parking space.</p> <p>A total of 6 motorcycle bays and 12 bicycle parking spaces within Basement Level 3.</p> <p><b>Self-Containing Unit</b></p> <p>A total of 10 self-store units</p> <p><b>Service</b></p> <p>Services areas provided within Basement Level 1 is listed below:</p> <ul style="list-style-type: none"> <li>- Sprinkler pump room</li> <li>- Hydrant room</li> <li>- Fan room</li> <li>- Meter room</li> <li>- O.S.D room</li> <li>- Comms room</li> <li>- Rain water tank storage area</li> </ul>

	<p>The development also provides 2 x accessible toilet within the upper basement level.</p> <p>A total of 4 lobby area within Basement Level 01, with each lobby area provided with a lift core and fire escape stairwells.</p> <p>The development also provides 4 x fire escape stairwell, with each stairwell provided within the 4 end corners of the basement level.</p> <p>Also, a direct egress to Sirius Road is provided from the Basement Level.</p>
<b>Ground Floor</b>	<p><b>Access Arrangements</b></p> <p>Vehicular access to the ground floor is via a new vehicular access and graded driveway from Sirius Road.</p> <p>The two way pathway provides access to all 9 units with internal circulation areas with turning areas to allow vehicles to enter and exit the ground floor in a forward direction.</p> <p>The primary pedestrian entry point to the building is via a centrally located pedestrian pathway which includes a graded pathway from Sirus Road with direct access to Unit 02 and Unit 03 and also Lobby 2 which includes a lift core with access to both the first floor and to the basement levels. Lobby 2 will provide access to the internal driveway and to the other lobby areas.</p> <p>Direct access to Unit 01 is via a pedestrian pathway and pedestrian pathway which includes stairwell from Mars Road with a second graded pathway from Sirius Road providing a secondary access to Unit 01.</p> <p>Development also provides egress to Mars Road and Sirus Road associated with the fire stairwells.</p> <p><b>Parking</b></p> <p>A total of 2 accessible internal located car parking spaces is provided within the ground floor</p> <p><b>Industrial/Commercial Units</b></p> <p>A total of 9 industrial units are located within the ground floor. All 9 units are provided with a loading area.</p>

	<p><b>Landscaping</b></p> <p>A total of 2,789m<sup>2</sup> or 29.6% of the site dedicated as landscaping.</p> <p>The development also provides a total of 960m<sup>2</sup> or 10.2% of the site as soft landscaping area.</p> <p><b>Deep Soil Zone</b></p> <p>A total of 1,829m<sup>2</sup> or 19.4% of the site dedicated as deep soil zones.</p> <p><b>Waste</b></p> <p>Waste/recycling bins provided to each unit in accordance with the Waste Management Report.</p> <p>A total of 4 lobby area within the ground floor, with each lobby area provided with a lift core and a stairwell.</p>
<p><b>Level 1</b></p>	<p><b>Access Arrangements</b></p> <p>Vehicular access to the first floor is via a new graded vehicular cross-over, driveway and graded ramp from Mars Road, with the vehicular crossover to be located towards the south eastern corner of the site.</p> <p>An internal two way pathway provides access to all 10 units with internal circulation areas with turning areas to allow vehicles to enter and exit the first floor in a forward direction.</p> <p><b>Parking</b></p> <p>A total of 2 accessible internal located car parking spaces is provided within the first floor.</p> <p><b>Landscaping</b></p> <p>Planter boxes.</p> <p><b>Waste</b></p> <p>Waste/recycling bins provided to each unit in accordance with the Waste Management Report.</p> <p>A total of 4 lobby area within the first floor, with each lobby area provided with a lift core and a stairwell.</p>

## PLANNING CONTROLS

The following summarises the relevant planning controls in relation to the proposal and the compliance of each.

### STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS)

This SEPP came into effect on 1 March 2022 and incorporated the provisions of three now repealed SEPP's being:

- State Environmental Planning Policy (Coastal Management) 2018;
- State Environmental Planning Policy No 33—Hazardous and Offensive Development; and
- State Environmental Planning Policy No 55—Remediation of Land.

Chapter 2 of the SEPP contains controls for coastal management and it not applicable to this development.

Chapter 3 of the SEPP contains controls for Hazardous and Offensive Development. This development is not for Hazardous and Offensive development and accordingly this chapter is not applicable to this development.

Chapter 4 of the SEPP contains a state-wide planning framework for the remediation of contaminated land and to minimise the risk of harm.

The following table considers the risk of the site being contaminated:

Matter for consideration	Yes	No
Does the application involve re-development of the site or a change of land use?	X	
Is the development going to be used for a sensitive land use (e.g. residential, educational, recreational, childcare or hospital)?	X	
Does information available to you indicate that an activity listed below has ever been approved, or occurred at the site?		X
acid/alkali plant and formulation, agricultural/horticultural activities, airports, asbestos production and disposal, chemicals manufacture and formulation, defence works, drum re-conditioning works, dry cleaning establishments, electrical manufacturing (transformers), electroplating and heat treatment premises, engine works, explosive industry, gas works, iron and steel works, landfill sites, metal treatment, mining and extractive industries,		

oil production and storage, paint formulation and manufacture, pesticide manufacture and formulation, power stations, railway yards, scrap yards, service stations, sheep and cattle dips, smelting and refining, tanning and associated trades, waste storage and treatment, wood preservation	
Is the site listed on Council's Contaminated land database?	X
Is the site subject to EPA clean-up order or other EPA restrictions?	X
Has the site been the subject of known pollution incidents or illegal dumping?	X
Does the site adjoin any contaminated land/previously contaminated land?	X
Has the appropriate level of investigation been carried out in respect of contamination matters for Council to be satisfied that the site is suitable to accommodate the proposed development or can be made suitable to accommodate the proposed development?	NA.

A review of aerial photographs indicates that the development site has historically been utilised for light industrial purposes with no known potentially contaminating activities being conducted on the site. If any contaminated material or suspected contaminated material is unearthed during the construction process, then actions consistent with the legislative requirements and guideline document will be undertaken.

## STATE ENVIRONMENTAL PLANNING POLICY (TRANSPORT AND INFRASTRUCTURE) 2021

This SEPP came into effect on 1 March 2022 and incorporated the provisions of four now repealed SEPP's being:

- State Environmental Planning Policy (Infrastructure) 2007;
- State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017;
- State Environmental Planning Policy (Major Infrastructure Corridors) 2020; and
- State Environmental Planning Policy (Three Ports) 2013.

Chapter 2 – contains planning rules and controls from the former Infrastructure SEPP for infrastructure in NSW, such as for hospitals, roads, railways, emergency services, water supply and electricity delivery.

In accordance with this chapter, it is not anticipated that Council will refer the application to an electricity supply authority as works will not occur within 5m of an exposed overhead electricity power line.

In accordance with this chapter, the application is not required to be referred to Trains NSW as the proposal is not in the vicinity of rail infrastructure. Given the distance from Rail infrastructure and in accordance with this chapter, an acoustic and vibration report is not required to be prepared.

Schedule 3 identifies a number of types of development that require concurrence from Transport for NSW where development is identified as 'traffic generating development'.

**The current proposal is identified as traffic generating development as the site area does trigger the threshold requirements being a site area of greater than 8000m<sup>2</sup>.** Therefore concurrence will be required from Transport for NSW.

## STATE ENVIRONMENTAL PLANNING POLICY (BIODIVERSITY AND CONSERVATION) 2021

This SEPP came into effect on 1 March 2022 and incorporated the provisions of eleven now repealed SEPP's being:

- SEPP (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP)
- SEPP (Koala Habitat Protection) 2020 (Koala SEPP 2020)
- SEPP (Koala Habitat Protection) 2021 (Koala SEPP 2021)
- Murray Regional Environmental Plan No 2—Riverine Land (Murray REP)
- SEPP No 19—Bushland in Urban Areas (SEPP 19)
- SEPP No 50—Canal Estate Development (SEPP 50)
- SEPP (Sydney Drinking Water Catchment) 2011 (Sydney Drinking Water SEPP)
- Sydney Regional Environmental Plan No 20 – Hawkesbury – Nepean River (No 2 – 1997) (Hawkesbury–Nepean River SREP)
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Sydney Harbour Catchment SREP)
- Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment (Georges River REP)
- Willandra Lakes Regional Environmental Plan No 1 – World Heritage Property (Willandra Lakes REP).

Chapter 2 of the SEPP contains planning rules and controls from the former Vegetation SEPP relating to the clearing of native vegetation in NSW on land zoned for urban and environmental purposes that is not linked to a development application. This chapter seeks to protect the biodiversity values of trees and other vegetation in non-rural areas of the state, and to preserve the amenity of non-rural areas of the State through the appropriate preservation of trees and other vegetation.

The development proposes to removal all existing structures in-order to construct a contemporary two storey industrial building, noting that where appropriate existing trees are to be retained.

Furthermore, appropriate landscape embellishment works are to be undertaken within an industrial context in-accordance with the Lane Cove DCP 2010 and attached Landscape Plan. Refer to attached Landscape Plan for detail.



## LANE COVE LOCAL ENVIRONMENTAL PLAN 2009

As demonstrated via zoning map extract overleaf, the subject site is zoned IN2 – Light Industry under Lane Cove Local Environmental Plan 2009.

‘*Light Industrial*’, ‘*Self Storage Units*’ and ‘*Warehouse or Distribution Centres*’ are permissible with consent within the IN2 Zone with the proposal being consistent with the definition contained within the LEP:

***light industry*** means a building or place used to carry out an industrial activity that does not interfere with the amenity of the neighbourhood by reason of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or otherwise, and includes any of the following

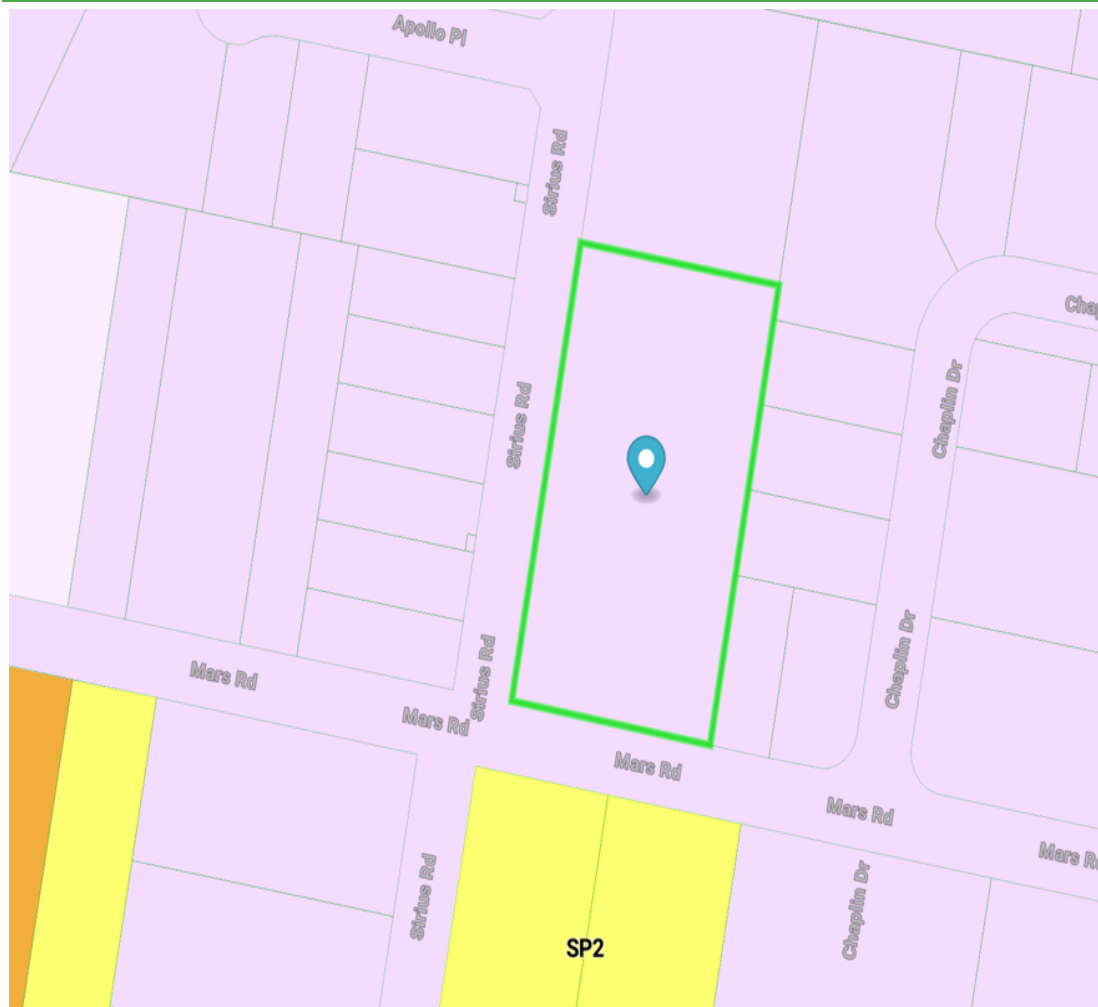
- (a) high technology industry,
- (b) home industry,
- (c) artisan food and drink industry.



***self-storage units*** means premises that consist of individual enclosed compartments for storing goods or materials (other than hazardous or offensive goods or materials).

***warehouse or distribution centre*** means a building or place used mainly or exclusively for storing or handling items (whether goods or materials) pending their sales, but from which no retail sales are made, and includes local distribution premises.

The future use will be subject to separate application – either CDC or a DA and the development has been designed to maximise flexibility for the future uses.

Figure 6: Zoning Map Sheet LZN\_001 (Source: Lane Cove LEP 2009)



-  Subject Site
-  IN2 – Light Industrial

The proposal is also consistent with the prescribed zone objectives that are:

- *To promote a wide range of light industrial, warehouse and related land uses.*
- *To encourage employment opportunities and to support the viability of centres.*
- *To minimise any adverse effect of industry on other land uses.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.*
- *To support and protect industrial land for industrial uses.*

- *To ensure that landscaping is a significant element in development viewed from the public domain and neighbouring properties.*
- *To recognise the close proximity of this zone to adjoining residential areas and seek to mitigate potential conflict between industrial and residential uses.*

At the completion of this proposal, the development is to deliver a modern industrial complex that will increase the stock of modern industrial units and storage facilities that will support the industrial estate in increasing employment opportunities within East Lane Cove.

The development also aims to set the tone and standards for new industrial development within established business estates. This includes developments that are designed to address its frontages, articulated and landscaped in-order to improve the built form character within the industrial estates.

The table below provides detail on the development standards relevant to the current proposal as well as other relevant LEP provisions.

Lane Cove Local Environmental Plan 2009			
Clause	Control	Comment	Complies
<b>Zoning</b>	IN2 – Light Industrial	<i>Light industries, self-storage units and warehouse/distribution centers are permissible with Council consent in the IN2 – Light Industrial Zone.</i>	<b>Yes</b>
<b>Part 2 Permitted or Prohibited Development</b>			
<b>2.3</b>	Zone Objectives and Land Use Table	<p>The development application is consistent with the zone objectives of the IN2 – Light Industrial Zone, in that the proposal will promote light industrial and warehouse uses within an established industrial precinct whilst also contributing towards increase employment opportunities via the delivery of 19 industrial units.</p> <p>The development also aims to set the tone and standards for new industrial development within established business estates. This includes developments that are designed to address its frontages, articulated and landscaped in-order to improve the built form character within the industrial estates.</p>	<b>Yes</b>

2.7	Demolition Requires Consent	The development is seeking Council consent to remove all identified structures on-site including an aging industrial building in-order to accommodate the proposed industrial development.	Yes
Part 4 Principal Development Standards			
4.1	Minimum Subdivision Lot Size	No subdivision is proposed as part of this application. Not applicable.	N/A
4.3	Height of Buildings: 18m	<p>A maximum building height of 18m is identified for the site under Lane Cove Local Environmental Plan 2009 Maximum Building Height Map Sheet HOB_001.</p> <p>The development proposes two storey buildings that predominantly complies with the prescribed 18m maximum building height control with the exception of 6 x vents. It is further noted that the vents in question are recessed so that they are not readily visible from the street level, therefore the minor non-compliance to the prescribed height control is considered appropriate.</p> <p>We also note that as per the definition of building height that 'chimneys, flues, and the like' are excluded from the building height definition. These ventilation elements would reasonably be akin to a flue/chimney element and excluded. However a Clause 4.6 variation request is provided for caution.</p>	Yes Clause 4.6 provided for Caution
4.4	Floor Space Ratio: 1:1	<p>A maximum floor space ratio of 1:1 is identified for the site under Lane Cove Local Environmental Plan 20109 Floor Space Ratio Map Sheet FSR_001.</p> <p>It is noted that the development proposes an FSR of 0.832:1 and as such is compliant with this control. See Discussion at End of Table.</p>	Yes

Part 5 Miscellaneous Provisions			
5.10	Heritage Conservation	<p>The site is not identified as a heritage item or is it located within a heritage conservation area, however there are two local heritage items located near the subject site.</p> <p>The development site is sufficiently separated from the local heritage items with existing urban development and road networks provides adequate buffer and therefore the proposal will have no impact on the curtilage associated with the heritage items.</p> <p>As a result, the subject site will not have any associated heritage restriction and subsequently the preparation of Heritage Impact Statement/Report is not deemed to be necessary.</p>	N/A
Part 7 Additional Local Provisions			
6.1	Acid Sulfate Soils	The development site is not identified as being affected by Acid Sulfate Soils as per Lane Cove Local Environmental Plan 20109 Acid Sulfate Soils Map Sheet ASS_001.	N/A
6.1A	Earthworks	<p>This application seeks Council consent for the excavation of the site as per the attached plans.</p> <p>It is considered that the proposed excavation, particularly for the car parking area will have minimal adverse environmental or amenity impact.</p> <p>Furthermore, the development has been designed to follow the natural contours of the site to minimise excessive cut and fill.</p> <p>The proposal results in an appropriate outcome when considering the nature of the development, the unique characteristics of the site and compliance with relevant Council controls.</p>	Yes

		<p>The proposal will not adversely affect or disrupt drainage and flood patterns, flood storage or soil stability in the area.</p> <p>The proposed excavation is consistent with the future use of the land and will develop the site into context with its surrounds and in accordance with Councils current and proposed planning strategies. It is considered unlikely due to the location of the site as well as previous development that excavation will lead to the disturbance of relics.</p>	
<b>6.2</b>	Foreshore Building Line	Council's Foreshore Building Line Map indicates that the development site is not within close proximity of the foreshore and is not located within the foreshore building line. Not relevant.	<b>N/A</b>
<b>6.3</b>	Riparian Land	Council's Riparian Land Map indicates that the development site is not identified as containing Riparian Land.	<b>N/A</b>
<b>6.4</b>	Environmental Protection Land	Council's Environmental Protection Land Map indicates that the development site is not identified as an environmental protection land.	<b>N/A</b>
<b>6.7</b>	Airspace Operations	The development site will not impact on airspace operation	<b>N/A</b>

## DISCUSSION IN RELATION TO FSR

The proposal excludes the calculation of the storage units from the total FSR. This is because 'storage within a basement' is excluded from the definition of GFA.

### Clause 4.6 Calculation of FSR

Clause 4.5 of the LEP prescribes how to calculate floor space ratio and site area. This clause says that "The floor space ratio of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area".

The gross floor area is then defined in the LEP as meaning *"the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:*

- a. the area of a mezzanine, and*
- b. habitable rooms in a basement or an attic, and*
- c. any shop, auditorium, cinema, and the like, in a basement or attic,*
- d. but excludes:*
- e. any area for common vertical circulation, such as lifts and stairs, and*
- f. any basement:*
  - (i) storage, and*
  - (ii) vehicular access, loading areas, garbage and services, and*
- g. plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and*
- h. car parking to meet any requirements of the consent authority (including access to that car parking), and*
- i. any space used for the loading or unloading of goods (including access to it), and*
- j. terraces and balconies with outer walls less than 1.4 metres high, and*
- k. voids above a floor at the level of a storey or storey above."*

There is also floor area associated with the proposed self-storage facility which is all located below the natural ground level and within the proposed basement. It is our position that the proposed self-storage facility is not included in the calculation of GFA which is based on 2 key factors relating to categorisation of the self-storage facility as storage within a basement and also habitability.

The LEP outlines the calculation of floor space ratio which of course is based on the calculation of gross floor area. The LEP specifically refers to gross floor area (GFA) as defined above.



## Gross Floor Area Details

- *Basement Storage*

We have taken further external advice on this issue and confirm that the GFA associated with the self-storage facility that is within the proposed basement should not be included in GFA. The definition of GFA excludes all storage areas that are located within a basement. The definition of GFA does not require such storage to be ancillary storage rather the LEP provision has intentionally used the word “storage”. To simplify the definition of GFA excludes “storage” not “ancillary storage”.

- *Habitability*

The proposed self-storage rooms are non-habitable rooms. The GFA definition refers specifically to habitable rooms in a basement or attic. Habitability is clearly a test for whether the area is to be included in GFA and the proposed self-storage facility is not considered to be habitable space. The BCA defines habitable areas as ‘a room used for normal domestic activities’ and the inclusion of the habitable areas in GFA is intended to apply to situations where habitable domestic rooms are located in a basement or attic area.

- *Objectives of the FSR controls*

Clause 4.4 of the LEP sets out the sole objective of the FSR controls as follows:

*(a) to ensure development is compatible with the bulk, scale and character of existing and future surrounding development,*

Only below ground storage is specifically excluded from the GFA calculation and therefore FSR. If the proposed storage were above ground, then it would be included in GFA as it would also be expected to have an impact on the bulk, scale and character – meaning it should be included in GFA.

Therefore the proposal is considered to comply with FSR. In the alternate a ‘without prejudice’ Clause 4.6 is provided that would demonstrate the objective of the control is satisfied regardless.

## LAND COVE DEVELOPMENT CONTROL PLAN 2010: PART B – GENERAL CONTROLS

All relevant Council controls, applying to this proposal are addressed in the table below.

Lane Cove Development Control Plan 2010: Part B General Controls – Compliance Table			
Clause	Controls	Comment	Complies
<b>B.2 Public Domain</b>			
2.1	General	The development aims to set the tone and standards for new industrial development within established business estates. This includes developments that are designed to address its frontages, articulated and landscaped in-order to improve the built form character within the industrial estates and its interaction with the public domain.	<b>Yes</b>
<b>B.3 Site Amalgamation and Development on Isolated Sites</b>			
		Not applicable, noting that the development is a large site, and it is unnecessary for it to amalgamate with adjoining properties. Furthermore, the development will not result in isolating or restriction adjoining developments to undertake development to their full zoning potential.	<b>N/A</b>
<b>B.4 View Sharing</b>			
		<p>The proposed development will not impact on significant views due to the nature of the proposal as well as its location within an established industrial estate. It is noted that the proposal is to be of a size and scale that is consistent with Council's controls.</p> <p>The proposal fulfils the subject site's zoning potential and will not impact on views to and from significant sites or on existing significant view corridors.</p> <p>The proposed development is to be appropriately landscaped within an industrial context and is of a form and style that will positively contribute to the cohesiveness and visual appreciation of the streetscape.</p> <p>Refer to attached Landscape Plan for detail.</p>	<b>Yes</b>

B.5 Development in Foreshore Areas			
		<p>The development site is not within close proximity to the mean high water mark of Sydney Harbour, or the Lane Cove or Parramatta Rivers.</p> <p>Furthermore, Council's Foreshore Building Line Map indicates that the development site is not within close proximity of the foreshore and is not located within the foreshore building line.</p>	N/A
B.6 Environmental Management			
6.1	Sunlight to Public Spaces	Complies, noting that the development site will not overshadow major public or urban space.	Yes
6.3	Energy and Water Efficiency for Buildings	<p>Where appropriate, the proposed development incorporates design elements to increase energy efficiency and reduce the consumption of natural resources.</p> <p>The development has also been sited to maximise solar access.</p>	Yes
B.7 Development near Busy Road and Rail Corridors			
		The development site is not located near a busy road or a rail corridor.	N/A
B.8 Safety and Security			
		<p>The design of the complex maximises passive surveillance opportunities of pathways and open space throughout the development.</p> <p>The building has been designed to minimise entrapment points and lighting.</p> <p>The proposal also incorporates design elements including clearly defined and controlled access points as well as clearly defined public and private spaces in order to minimise opportunity for criminal activity.</p>	Yes

	<p>The proposal incorporates built elements and landscaping that clearly distinguishes between the public and private domain. Clear entry points are proposed, that are easily read by resident, visitor and passer by alike.</p> <p>The proposed development is appropriate and provides measures, built elements, landscaping and design features that are consistent with CPTED principles.</p>	
<b>B.9 Heritage</b>		
	<p>The site is not identified as a heritage item or is it located within a heritage conservation area, however there are two local heritage items located near the subject site.</p> <p>The development site is sufficiently separated from the local heritage items with existing urban development and road networks provides adequate buffer and therefore the proposal will have no impact on the curtilage associated with the heritage items.</p> <p>As a result, the subject site will not have any associated heritage restriction and subsequently the preparation of Heritage Impact Statement/Report is not deemed to be necessary.</p>	<b>N/A</b>

## LAND COVE DEVELOPMENT CONTROL PLAN 2010: PART E – INDUSTRIAL DEVELOPMENT

Lane Cove Development Control Plan 2010: Part B General Controls – Compliance Table			
Clause	Controls	Comment	Complies
<b>E.4 Site Layout</b>			
		<p>a) The development proposes a more modern industrial complex that addresses its frontages with improved façade presentation then typical industrial buildings of the past.</p> <p>The car parking, manoeuvring areas, loading and unloading areas are to be located within the building itself to minimise impacts to the streetscape.</p>	<b>Yes</b>
		b) Comply, noting that no ancillary office uses do not exceed 49% of any one development.	<b>Yes</b>
		c) Residing within an established industrial estate, the development site is not located within close proximity to residential areas. However, the development has been designed to minimise amenity impacts including overshadowing, overlooking lighting, dust, noise or fumes.	<b>Yes</b>
		d) The internal space per industrial unit have been designed to accommodate a wide variety of light industrial land uses which will maximise flexibility for future tenants.	<b>Yes</b>
		e) The building is of an appropriate scale to reinforce the role of the street.	<b>Yes</b>
		g) Cycle parking is provided within the basement levels.	<b>Yes</b>

## E.5 Building Setbacks

a) The DCP prescribes the following setbacks:

- Front: 8m including a 3m landscaping strip.

**Yes**

However, the site is subject to specific front setback for corner sites.

The development is also subject to a zero side and rear setback when bounding industrial zoned land parcels.

The development provides a 4m setback to the site's northern side boundary from the primary building line and a 12.05m setback to the site's eastern side boundary from the primary building line. The proposed setback provides appropriate building separation whilst also permitting landscaping within the side setbacks.

b) Where appropriate, the landscaping strip are to be free from overhangs, hard elements such as paths, ramps, substation, fire hydrant boosters, signs and advertising structures.

**Yes**

c) The front setback is to be appropriately landscaped in accordance with the attached Landscape Plan which will contribute towards improving the street presence within the established industrial estate.

**Yes**

Development designed to permit loading/unloading areas internally with all car parking is to be provided over 3 basement levels, at-grade and within the first floor.

i) Where appropriate, basement parking is designed to be situated underneath the building footprint and hard surfaces, noting that the development complies with the landscaping on structure requirements under the DCP.

**Yes**

j) For corner sites, the development prescribes an 8m front setback to the main road and a minimum 4m setback to the secondary road frontage.

**Yes**

To the primary front setback along Mars Road, the development provides a minimum front setback of 10m from the primary building line. Complies.

To the secondary front setback along Sirius Road, the development provides a minimum front setback of 4m from the primary building line. Complies.

#### E.6 Cut and Fill

This application seeks Council consent for the excavation of the site as per the attached plans.

**Yes**

It is considered that the proposed excavation, particularly for the car parking area will have minimal adverse environmental or amenity impact.

Furthermore, the development has been designed to follow the natural contours of the site to minimise excessive cut and fill.

The proposal results in an appropriate outcome when considering the nature of the development, the unique characteristics of the site and compliance with relevant Council controls.

The proposal will not adversely affect or disrupt drainage and flood patterns, flood storage or soil stability in the area.

The proposed excavation is consistent with the future use of the land and will develop the site into context with its surrounds and in accordance with Councils current and proposed planning strategies. It is considered unlikely due to the location of the site as well as previous development that excavation will lead to the disturbance of relics.

## E.7 Building Design and Appearance

The development aims to set the tone and standards for new industrial development within established business estates. This includes developments that are designed to address its frontages, articulated and landscaped in-order to improve the built form character within the industrial estates and its interaction with the public domain.

**Yes**

Long blank walls facing the public domain is mitigated with articulation of the built form with broken roof lines with both facades to be appropriately treated.

The building incorporates physical articulation of the built form and a mixed palette of building materials and finishes including brick, glass and other materials consistent within modern industrial units within other Industrial Precincts/Business Parks within the LGA.

The architectural design with the proposed landscaping will facilitate the delivery of a high-quality building that will make a significant and positive contribution to the streetscape along both Mars Road and Sirius Road.

Open storage areas and loading facilities are internal and not visible from the public domain.



## E.8 Parking and Vehicular Access

- |  |            |
|--|------------|
| a) All parking is to be provided within the 3 basement levels with the parking provided within the ground floor and Level 1 to be enclosed and as such will not be visible from the public domain.   | <b>Yes</b> |
| b) Comply, the services areas are incorporated into each industrial unit.  | <b>Yes</b> |
| c) Comply, the access/driveways including vehicular movement to and from the site have been designed to minimise potential conflict with street traffic and pedestrians.   | <b>Yes</b> |
| d) Driveway widths have been designed to minimise its dominance of the street. Furthermore, the development provides three different vehicular crossover with different levels and frontages, which will also contribute towards minimising the dominance of driveways.          | <b>Yes</b> |
| e) All on-site parking is to be either within the three basement levels or enclosed within the building itself and as such will not be visible from the public domain.   | <b>Yes</b> |
| f) The internal circulation areas with turning areas have been designed to allow vehicles to enter and exit the basement in a forward direction.   | <b>Yes</b> |
| g) Comply, no tandem parking is proposed.  | <b>Yes</b> |
| h) Comply, all on-site parking is to be either within the three basement levels or enclosed within the building itself and as such will not be visible from the public domain.   | <b>Yes</b> |
| i) Development provides appropriate visitor car parking on-site. Considering the size of the proposal the delivery of 4 x lobby area with lift core each, will ensure future residents and visitor have direct access to the parking area with their respective industrial unit. | <b>Yes</b> |

	<p>j) Each individual industrial unit is provided with its own loading area that is separated from the vehicle parking. The internal driveway will also ensure that delivery vehicles do not stand on any public roads, footways, laneway or service roads.</p>	<b>Yes</b>
	<p>k) The parking area, driveway, loading areas, vehicular ramps and turning areas are to be cleared of obstruction at all times and be used exclusively for purpose of car parking, loading and unloading and vehicular access. The storage of goods is to be strictly undertaken within the self-store units located within the basement levels.</p>	<b>Yes</b>
	<p>k) Motorcycle parking spaces is provided in accordance with the DCP.</p>	<b>Yes</b>
<b>E.9 Landscaping</b>		
	<p>a) DCP prescribes that a minimum of 20% of the site is to be provided as landscaped area.</p> <p>The development provides 2,789m<sup>2</sup> or 29.6% of the site as landscape area. Complies.</p>	<b>Yes</b>
	<p>b) The DCP further prescribes that a minimum of 10% of the site is to be provided and maintained as landscape area or planting on structures.</p> <p>The development provides 960m<sup>2</sup> or 10.2% of the site area as landscaping on structures.</p>	<b>Yes</b>
	<p>c) Not applicable as an on-site parking is to be provided within 3 basement levels and within the building itself at the ground and first floor, however the development will continue to provide appropriate landscaping in accordance with the DCP.</p> <p>However, it is noted that the development is to provide landscaping including planter boxes adjacent to the vehicle cross-overs to minimise the impacts of hard surfaces whilst also seek to integrate with the development.</p>	<b>N/A</b>

d) Appropriate planter beds are providing along the buildings façade. Refer to attached Landscape Plan for detail.	<b>Yes</b>
e) Where appropriate, all unbuilt-upon areas of the site are to be landscaped, noting that the development provides landscaping area in accordance with the DCP. Refer to attached Landscape Plan for detail.	<b>Yes</b>
f) Noted, refer to attached Landscape Plan for detail.	-
g) Storage areas are to be located within the basement levels, with the setback to be landscaping in accordance with the Landscape Plan, noting that no unsightly areas are provided at-grade.	<b>Yes</b>
h) Noted, with all landscaped areas to be separated from vehicular areas by means of a kerb or other effective physical barriers.	-
i) Not applicable, all parking on-site is to be provided within the basement levels and within the building itself at the ground and first floor, noting that the development will continue to provide appropriate landscaping in accordance with the DCP.	<b>N/A</b>
j) The vehicle cross-overs are not located within close proximity to the site boundaries; however the development is to provide a continuous landscaped buffer strip between the driveways in accordance with the Landscape Plan.	<b>Yes</b>
k) Not applicable, all parking on-site is to be provided within the basement levels, noting that the development will continue to provide appropriate landscaping in accordance with the DCP.	<b>N/A</b>
<b>E.10 Fences</b>	
Development is to provide appropriate fencing in accordance with the DCP.	<b>Yes</b>
Proposed fencing is to be consistent with the character and style of the proposal as well as being compatible within an industrial context.	

## **LANE COVE DEVELOPMENT CONTROL PLAN 2010: PART F – ACCESS AND MOBILITY**

DCP Part F set outs Council's specific objectives and development controls to ensure relevant accessibility requirements are achieved.

Development has been designed to be accessible to and within the building in accordance with all relevant legislation, with direct equitable access provided. This includes the provision of graded pedestrian ramps.

Lift core provides accessible entry to all levels of the building from Basement Level 03 up to Level 1.

Refer to Access Report for more detail.

## **LANE COVE DEVELOPMENT CONTROL PLAN 2010: PART G – ACID SULPHATE SOILS**

The development site is not identified as being affected by Acid Sulfate Soils as per Lane Cove Local Environmental Plan 2010/9 Acid Sulfate Soils Map Sheet ASS\_001.

## **LANE COVE DEVELOPMENT CONTROL PLAN 2010: PART H – BUSHLAND PROTECTION**

DCP Part C Section 3 set outs Council's specific objectives and development controls to protect both public and private bushlands.

However, Part H of the DCP does not apply to the current proposal as the development site is not identified in the Map – Land Adjoining Bushland.

## **LANE COVE DEVELOPMENT CONTROL PLAN 2010: PART J – LANDSCAPING**

DCP Part J set outs Council's specific objectives and development controls for the provision of landscaping within the Lane Cove Local Government Area.

Appropriate landscaping will be provided on site to ensure a high standard of environmental quality within an industrial context to enhance the overall visual amenity and character of the area, noting compliance with the overall landscaping requirements for industrial developments under the Lane Cove DCP 2010.

Landscaping of the site is to be undertaken in accordance with the attached concept Landscape Plans.

## **LANE COVE DEVELOPMENT CONTROL PLAN 2010: PART N – SIGNAGE AND ADVERTISING**

DCP Part N set outs Council's specific objectives and development controls for the provision of signage on site and also within the Lane Cove Local Government Area.

It is noted that no signage is proposed as part of this application. Signage will be subject to future DAs.

## **LANE COVE DEVELOPMENT CONTROL PLAN 2010: PART O – STORMWATER MANAGEMENT**

DCP Part O set outs Council's specific objectives and development controls for the management of stormwater on site and within the broader Lane Cove Local Government Area.

The proposed development incorporates Water Sensitive Urban Design principles that seek to minimise and manage the impact of stormwater on site and within the area.

The proposed development appropriately addresses the unique characteristics of the site and will allow for the efficient management of stormwater.

The proposal incorporates appropriate setbacks and landscaping that will permit stormwater penetration and will reduce runoff and the impact of stormwater on site and in the area.

Refer to attached Stormwater Management Plan for detail.

## **LANE COVE DEVELOPMENT CONTROL PLAN 2010: PART Q – WASTE MANAGEMENT AND MINIMISATION**

DCP Part Q set outs Council's specific objectives and development controls for the management of waste on site.

A Waste Management Plan is attached as part of this application.

This plan outlines that waste is to be appropriately managed during the demolition and construction stages of the development.

Further, appropriate waste facilities will be provided for future tenancies of the proposal that ensures that recycling of goods is maximised and provides adequate and appropriate areas for waste and recyclables. See attached Waste Management Plan for detail.

## LANE COVE DEVELOPMENT CONTROL PLAN 2010: PART R – TRAFFIC, TRANSPORT AND PARKING

All relevant Council controls, applying to this proposal, are addressed below.

Lane Cove Development Control Plan 2010: Part B Section 6 – Business – Compliance Table			
Clause	Controls	Comment	Complies
<b>R.2 Parking</b>			
<b>2.2</b>	Car Parking Rate	<p>The provision of off-street car parking shall be in accordance with Lane Cove Development Control Plan (DCP) 2010.</p> <p>As set out in the traffic report the proposal requires 181 spaces for the entire development and there are 228 parking spaces provided which meets the minimum required.</p> <p>Detail locations and arrangement refer to Architectural Plans for detail as well as the traffic assessment.</p>	<b>Yes</b>
<b>2.8</b>	Disabled Parking Provisions	The proposal provides for 16 accessible parking spaces which is appropriate as set out in the traffic report.	<b>Yes</b>
<b>2.10</b>	Parking and Access for Service Vehicles	a) Each industrial unit is provided with its own loading area. Regarding access and loading by Council's waste collection arrangements, refer to attached Waste Management Plan for detail.	<b>Yes</b>
<b>2.11</b>	Parking Area Access and Design	All parking areas are designed in accordance with AS 2890.1:2004.	<b>Yes</b>
<b>R.6 Traffic Impact Assessment</b>			
		A Traffic Report has been prepared and accompanies this application.	<b>Yes</b>
<b>R.7 Construction Traffic Management Plan</b>			
		A Construction Traffic Management Plan could form a condition of consent.	<b>Yes</b>

## CONCLUSION

Following a review of the relevant planning controls, it is concluded that the proposed development is consistent with the objectives, planning strategies and detailed controls of these planning documents.

Consideration has been given to the potential environmental and amenity impacts that are relevant to the proposed development and this report addresses these impacts.

Having regard to the benefits of the proposal and taking into account the absence of adverse environmental, social or economic impacts, the application is submitted to Council for assessment and granting of development consent. Think Planners Pty Ltd recommends the approval of the application, subject to necessary, relevant and appropriate conditions of consent.

## ANNEXURE 1: CLAUSE 4.6 VARIATION, BUILDING HEIGHT

### THE VARIATION

As demonstrated by the 18m height plan extract below, the proposed development complies with the 18m maximum building height control with the exception of 6 x vents. Accordingly, a variation pursuant to Clause 4.6 of Lane Cove 2009 is provided for caution only- noting that given it is plant and equipment arguable it does not form part of the 'building height'. In any event a Clause 4.6 is provided in the event Council takes a view it is necessary.



All the habitable floor space and roof form is contained below the maximum building height line which indicates that the variation is not simply a means of achieving additional development yield on the site, but a site-specific design response. In this case the variation stems from the delivery of specific service requirement.

It is noted that the proposal continues to be consistent with the underlying intent of the control and the variation is considered appropriate for the reasons set out in this request.



## JUSTIFICATION FOR THE VARIATION TO THE STANDARD

Clause 4.6 of Lane Cove Local Environmental Plan 2009 provides that development consent may be granted for development even though the development would contravene a development standard.

This is provided that the relevant provisions of the clause are addressed, in particular subclause 3-5 which provide:

*(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

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

*(4) Development consent must not be granted for development that contravenes a development standard unless:*

- (a) the consent authority is satisfied that:*
  - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
  - (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 Director-General has been obtained.*

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

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.*

## RELEVANT CASE LAW

This statement has been prepared with regard to the latest decisions of the NSW Land and Environment Court in relation to Clause 4.6 and the proper approach to justifying a variation of a development standard, including:

- a) *Wehbe v Pittwater Council* [2007] 156 LGERA 446; [2007] NSWLEC 827;
- b) *Four2Five Pty Ltd v Ashfield Council* [2007] 156 LGERA 446; [2015] NSWLEC 90 ;
- c) *Initial Action Pty Ltd v Woollahra Municipal Council* (2018) 236 LGERA 256; [2018] NSWLEC 118;
- d) *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130; and
- e) *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112.

There are also a number of other recent NSW Land and Environment Court cases that are relevant, including *Micaul Holdings Pty Ltd v Randwick City Council* [2015] NSWLEC 1386 and *Moskovich v Waverley Council* [2016] NSWLEC 1015, as well as *Zhang and anor v Council of the City of Ryde* [2016] NSWLEC 1179.

Importantly, in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ held at paragraphs [87] and [90]:

87. ...Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development...

...

90. In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause.

These matters are discussed in the following sections

#### CLAUSE 4.6(3)(A): COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE

In *Wehbe v Pittwater* [2007] NSWLEC 827 (*'Wehbe'*), Preston CJ identified a variety of ways in which it could be established demonstrated that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. This list is not exhaustive. It states, inter alia:

*"An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard."*

While *Wehbe* related to objections made to State Environmental Planning Policy No. 1 – Development Standards (SEPP 1), the reasoning can be similarly applied to variations made under Clause 4.6 of the standard instrument.

The judgement goes on to state that:

*"The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served)."*

Preston CJ in the judgement then expressed the view that there are at least 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1, 2 and 3 for the purposes of this Clause 4.6 variation [our underline]):

- The objectives of the standard are achieved notwithstanding non-compliance with the standard;
- The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
- The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
- 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 zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

It is sufficient to demonstrate **only one** of these ways to satisfy clause 4.6(3)(a) (*Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118 at [22], *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [28]) and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31].

**First Way: The objectives of the standard are achieved notwithstanding non-compliance with the standard**

This Clause 4.6 variation statement establishes that compliance with the maximum building height development standard is considered unreasonable or unnecessary in the circumstances of the proposed development because the underlying objectives of the standard are achieved despite the non-compliance with the numerical standard. The objectives of Clause 4.3 Height of Buildings pursuant to the are responded to as follows:

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

- (a) to ensure development allows for reasonable solar access to existing buildings and public areas,*
- (b) to ensure that privacy and visual impacts of development on neighbouring properties, particularly where zones meet, are reasonable,*
- (c) to seek alternative design solutions in order to maximise the potential sunlight for the public domain,*
- (d) to relate development to topography.*

The current development proposal is predominantly consistent with the building height except for a small portion of 6 x vents with the proposal remaining consistent with the objectives based on the following:

- The development proposal is consistent with the intent of the maximum height control and will provide a contemporary 2 storey building that addresses both Mars Road and Sirius Road.
- The non-compliance is minor in nature, noting it is limited to 6 x vents.

Considering that the building and roof form itself complies with the building height control and that the vents have been recessed, the potential visual impacts associated with the encroachment to the height control to the

streetscape is negligible as it will be visually unnoticeable when viewed from the streetscape.

- Due to the minor nature of the variation it will not have any adverse amenity impacts. In this regard it is noted:
  - The variation will be visually unnoticeable and will have no adverse impact on the physical bulk, height or scale of the development.
  - The variation will not lead to a reduction in solar penetration on site or to adjoining properties nor will it lead to sunlight loss or overshadowing.
  - The proposed variation will not lead to view loss or interrupt on views to and from the site.
- The proposed development will permit the site to develop to its full zoning potential while complementing the future vision envisioned for the site by delivering a new business park that is to increase both commercial and industrial activities along main roads whilst also increasing local job opportunities.
- The proposal is not located within a low-density area and the proposal represents an appropriate built form on the site.

As outlined above the proposal remains consistent with the underlying objectives of the control and as such compliance is considered unnecessary or unreasonable in the circumstances.

#### **CLAUSE 4.6(3)(B): SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD**

Clause 4.6(3)(b) of the *LEP* requires the contravention of the development standard to be justified by demonstrating that there are sufficient environmental planning grounds to justify contravening the development standard.

The following factors demonstrate that sufficient environmental planning grounds exist to justify the proposed variation to the maximum building height standard in Clause 4.3. It is reminded at the outset that as confirmed by Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [24], the focus is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds :

- As noted above, the visual impact of the building element which in this case is limited to 6 x vents is limited and will not be highly discernible from the street given its minor nature and also recessed;

- The additional overshadowing caused by the building elements above the maximum building height development standard (6 x vents) will not have an adverse impact to adjoining properties in terms of overshadowing and privacy.
- The variation to the maximum building height control enables delivery of specific service requirements of the industrial building (which in this case is the delivery of vents) that despite it encroaching upon the height control .
- The variation to the maximum building height standard enables the 'Objects' of the *EP&A Act* to be achieved, specifically:

*(c) to promote the orderly and economic use and development of land,*

- the absence of adverse environmental, social or economic impacts

The above discussion demonstrates that there are sufficient environmental planning grounds to justify the proposed variation to the maximum building height standard .

#### **CLAUSE 4.6(4)(A)(II): CONSISTENCY WITH OBJECTIVES OF THE STANDARD AND THE ZONE AND THE PUBLIC INTEREST**

As the provisions of Clause 4.6(4)(ii) requires, the Consent Authority must be satisfied that the proposed development will be in the public interest because it is consistent with:

1. the objectives of the particular standard and
2. the objectives for development within the zone in which the development is proposed to be carried out.

In respect of the first matter, it has already been established above that the proposal achieves the objectives of the objectives of the maximum building height development standard.

In accordance with the provisions of Clause 4.6(4) Council can be satisfied that this written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3).

As addressed the proposed development is in the public interest as it remains consistent with the objectives of the building height control.

In addition, the proposal is consistent with the objectives of the IN2 zone, being:

- *To promote a wide range of light industrial, warehouse and related land uses.*
- *To encourage employment opportunities and to support the viability of centres.*
- *To minimise any adverse effect of industry on other land uses.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.*
- *To support and protect industrial land for industrial uses.*
- *To ensure that landscaping is a significant element in development viewed from the public domain and neighbouring properties.*
- *To recognise the close proximity of this zone to adjoining residential areas and seek to mitigate potential conflict between industrial and residential uses.*

The proposal is consistent with the objectives of the IN2 – Light Industry zone, insofar as the development is not antipathetic to the zone objectives (per *Schaffer Corporation v Hawkesbury City Council* (1992) 77 LGRA 21).

The site is ideal for accommodating an industrial complex as it is located within an established industrial estate. At the end of the project, the current proposal will increase valuable industrial units and job opportunity for local residents, whilst supporting the function and operation of the industrial park as a whole.

Furthermore, the development also aims to set the tone and standards for new industrial development within established business estates. This includes developments that are designed to address its frontages, articulated and landscaped in-order to improve the built form character within the industrial estates.

## CONCURRENCE OF THE SECRETARY

As the provisions of Clause 4.6(4)(ii) requires, the Consent Authority must be satisfied that the proposed Subclause 4.6(4)(b) of the *LEP* requires that the concurrence of the Planning Secretary be obtained for development consent to be granted to development that contravenes a development standard. The Secretary has given written notice dated 5 May 2020, attached to the Planning Circular PS 20-002 that the Secretary's concurrence may be assumed for exceptions to development standards, subject to certain conditions contained in the notice.

The points in Clause 4.6 (5) are responded to as follows:

- The contravention of the maximum building height development standard does not raise any matter of significance for State or regional environmental planning given the nature of the development proposal
- There is no public benefit in maintaining the maximum building height development standard as it relates to the current proposal. The proposed variation is acceptable in the circumstances given the underlying objectives of the control are achieved and it will not set an undesirable precedent for future development within the locality as any future development on another site would require consideration of the relevant merits and circumstances of the individual application.

## CONCLUSION

For the reasons set out above, the Applicant says that:

1. the matters canvassed in this request have adequately addressed the requirements of Clause 4.6(3) and
2. The Consent Authority should be satisfied that the proposed development is in the public interest, as it is consistent with both the objectives of the development standard, and the objectives of the IN2 zone.

The variation is well founded and should be upheld.



## ANNEXURE 1: CLAUSE 4.6 VARIATION, FSR

### THE VARIATION

As set out above we maintain the view the proposal meets the FSR standard on the basis of the relevant definitions. In any event a Clause 4.6 is provided in the event Council takes a view it is necessary.

If the basement floor area is to be included the GFA is 11360m<sup>2</sup> and this equates to 1.2:1 and presents a 20% variation to the standard.

The 'above ground' FSR of the development is 0.832:1 and well below the standard of 1:1.

### JUSTIFICATION FOR THE VARIATION TO THE STANDARD

Clause 4.6 of Lane Cove Local Environmental Plan 2009 provides that development consent may be granted for development even though the development would contravene a development standard.

This is provided that the relevant provisions of the clause are addressed, in particular subclause 3-5 which provide:

*(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

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

*(4) Development consent must not be granted for development that contravenes a development standard unless:*

- (a) the consent authority is satisfied that:*
  - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
  - (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 Director-General has been obtained.

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

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- (b) the public benefit of maintaining the development standard, and
- (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

## RELEVANT CASE LAW

This statement has been prepared with regard to the latest decisions of the NSW Land and Environment Court in relation to Clause 4.6 and the proper approach to justifying a variation of a development standard, including:

- f) *Wehbe v Pittwater Council* [2007] 156 LGERA 446; [2007] NSWLEC 827;
- g) *Four2Five Pty Ltd v Ashfield Council* [2007] 156 LGERA 446; [2015] NSWLEC 90 ;
- h) *Initial Action Pty Ltd v Woollahra Municipal Council* (2018) 236 LGERA 256; [2018] NSWLEC 118;
- i) *Rebel MH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130; and
- j) *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112.

There are also a number of other recent NSW Land and Environment Court cases that are relevant, including *Micaul Holdings Pty Ltd v Randwick City Council* [2015] NSWLEC 1386 and *Moskovich v Waverley Council* [2016] NSWLEC 1015, as well as *Zhang and anor v Council of the City of Ryde* [2016] NSWLEC 1179.

Importantly, in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ held at paragraphs [87] and [90]:

87. ...Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development...

...

90. In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause.

These matters are discussed in the following sections

**CLAUSE 4.6(3)(A): COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE**

In *Wehbe v Pittwater* [2007] NSWLEC 827 (*'Wehbe'*), Preston CJ identified a variety of ways in which it could be established demonstrated that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. This list is not exhaustive. It states, inter alia:

*“An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.”*

While *Wehbe* related to objections made to State Environmental Planning Policy No. 1 – Development Standards (SEPP 1), the reasoning can be similarly applied to variations made under Clause 4.6 of the standard instrument.

The judgement goes on to state that:

*“The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).”*

Preston CJ in the judgement then expressed the view that there are at least 5 different ways in which an objection may be well founded, and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1, 2 and 3 for the purposes of this Clause 4.6 variation [our underline]):

- The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
- The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
- The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
- 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 zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

It is sufficient to demonstrate **only one** of these ways to satisfy clause 4.6(3)(a) (*Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118 at [22], *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [28]) and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31].

**First Way: The objectives of the standard are achieved notwithstanding non-compliance with the standard**

This Clause 4.6 variation statement establishes that compliance with the maximum FSR development standard is considered unreasonable or unnecessary in the circumstances of the proposed development because the underlying objectives of the standard are achieved despite the non-compliance with the numerical standard .

The objectives of Clause 4.4 of the LEP are:

**4.4 Floor space ratio**

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

*(a) to ensure that the bulk and scale of development is compatible with the character of the locality.*

*(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*

*(2A) Despite subclause (2), the maximum floor space ratio for a building containing shop top housing on land in Area 1 on the Floor Space Ratio Map is 2.5:1.*

The single stated objective is satisfied despite the non-compliance because the bulk and scale of the development is completely unchanged by the departure- noting the extent of FSR above ground is 0.832:1 and is well below the 1:1 maximum and it is only that component that contributes to bulk and scale. Because the additional FSR is within the basement there is no impact on bulk and scale and hence the bulk and scale of the development is in fact compatible with the character of the locality.

As outlined above the proposal remains consistent with the underlying objectives of the control and as such compliance is considered unnecessary or unreasonable in the circumstances.

## CLAUSE 4.6(3)(B): SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD

Clause 4.6(3)(b) of the *LEP* requires the contravention of the development standard to be justified by demonstrating that there are sufficient environmental planning grounds to justify contravening the development standard.

The following factors demonstrate that sufficient environmental planning grounds exist to justify the proposed variation to the maximum FSR standard. It is reminded at the outset that as confirmed by Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [24], the focus is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds :

- As noted above, the visual impact of the additional FSR is not observed owing to its location in the basement;
- The extent of impacts arising from the FSR within the basement has no impact to adjoining properties and the extent of traffic generation and traffic impact is acceptable for the development with the quantum of development proposed.
- The variation to the maximum building height standard enables the 'Objects' of the *EP&A Act* to be achieved, specifically:

*(c) to promote the orderly and economic use and development of land,*

- The absence of adverse environmental, social or economic impacts

The above discussion demonstrates that there are sufficient environmental planning grounds to justify the proposed variation to the FSR standard.

## CLAUSE 4.6(4)(A)(II): CONSISTENCY WITH OBJECTIVES OF THE STANDARD AND THE ZONE AND THE PUBLIC INTEREST

As the provisions of Clause 4.6(4)(ii) requires, the Consent Authority must be satisfied that the proposed development will be in the public interest because it is consistent with:

3. the objectives of the particular standard and
4. the objectives for development within the zone in which the development is proposed to be carried out.

In respect of the first matter, it has already been established above that the proposal achieves the objectives of the objectives of the FSR development standard.

In accordance with the provisions of Clause 4.6(4) Council can be satisfied that this written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3).

As addressed the proposed development is in the public interest as it remains consistent with the objectives of the building height control.

In addition, the proposal is consistent with the objectives of the IN2 zone, being:

- *To promote a wide range of light industrial, warehouse and related land uses.*
- *To encourage employment opportunities and to support the viability of centres.*
- *To minimise any adverse effect of industry on other land uses.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.*
- *To support and protect industrial land for industrial uses.*
- *To ensure that landscaping is a significant element in development viewed from the public domain and neighbouring properties.*
- *To recognise the close proximity of this zone to adjoining residential areas and seek to mitigate potential conflict between industrial and residential uses.*

The proposal is consistent with the objectives of the IN2 – Light Industry zone, insofar as the development is not antipathetic to the zone objectives (per *Schaffer Corporation v Hawkesbury City Council* (1992) 77 LGRA 21).

The site is ideal for accommodating an industrial complex as it is located within an established industrial estate. At the end of the project, the current proposal will increase valuable industrial units and job opportunity for local residents, whilst supporting the function and operation of the industrial park as a whole.



Furthermore, the development also aims to set the tone and standards for new industrial development within established business estates. This includes developments that are designed to address its frontages, articulated and landscaped in-order to improve the built form character within the industrial estates.

## CONCURRENCE OF THE SECRETARY

As the provisions of Clause 4.6(4)(ii) requires, the Consent Authority must be satisfied that the proposed Subclause 4.6(4)(b) of the *LEP* requires that the concurrence of the Planning Secretary be obtained for development consent to be granted to development that contravenes a development standard.

The Secretary has given written notice dated 5 May 2020, attached to the Planning Circular PS 20-002 that the Secretary's concurrence may be assumed for exceptions to development standards, subject to certain conditions contained in the notice.

The points in Clause 4.6 (5) are responded to as follows:

- The contravention of the maximum FSR development standard does not raise any matter of significance for State or regional environmental planning given the nature of the development proposal
- There is no public benefit in maintaining the maximum FSR development standard as it relates to the current proposal. The proposed variation is acceptable in the circumstances given the underlying objectives of the control are achieved and it will not set an undesirable precedent for future development within the locality as any future development on another site would require consideration of the relevant merits and circumstances of the individual application.

## CONCLUSION

For the reasons set out above, the Applicant says that:

1. the matters canvassed in this request have adequately addressed the requirements of Clause 4.6(3) and
2. The Consent Authority should be satisfied that the proposed development is in the public interest, as it is consistent with both the objectives of the development standard, and the objectives of the IN2 zone.

The variation is well founded and should be upheld.