

Clause 4.6 Variation – Height of Buildings (Clause 4.3)

Proposed alterations and additions to an existing industrial facility, offices and ancillary café
4 – 10 Inman Road, Cromer (Lot 1 DP1220196)

WTJ19-423

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**Prepared by Willowtree Planning Pty Ltd
on behalf of EG**




March 2020

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Document Control Table

Document Control Table			
Document Reference:	WTJ19-423_Clause 4.6 Variation (Height)		
Contact	Andrew Cowan		
Version and Date	Prepared by	Checked by	Approved by
Version No. 1 – 21/11/2019	Eleisha Burton Senior Planner	Andrew Cowan Director	Andrew Cowan Director
Version No. 2 – 23/03/2020	Eleisha Burton Senior Planner	Andrew Cowan Director	Andrew Cowan Director
			

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PART A PRELIMINARY

1.1 INTRODUCTION

This Clause 4.6 Variation request has been prepared in support of the Development Application (DA) for proposed alterations and additions to an existing industrial facility, offices and ancillary café at 4 – 10 Inman Road, Cromer (subject site), more formally described as Lot 1 DP1220196.

The proposed height contravention would be subject to the proposed building's ridge height from 10.7m to 13.954m, which results in a non-compliance with Clause 4.3 Height of Buildings, under the Warringah Local Environmental Plan 2011 (WLEP2011).

This Clause 4.6 Variation request has been prepared in accordance with the requirements of Clause 4.6 of WLEP2011, which includes the following objectives:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

In accordance with Clause 4.6(3) of WLEP2011, Northern Beaches Council (Council) and the Sydney North Planning Panel is required to consider the following:

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

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

This request has been prepared in accordance with the aims and objectives contained within Clause 4.6 of the WLEP2011 and the relevant Development Standard.

1.2 PROPOSED NON-COMPLIANCES

1.2.1 Clause 4.3 Height of Buildings

Under the provisions of Clause 4.3 of WLEP2011, the site is subject to a maximum building height of 11m.

The proposed development would involve the construction of multi-unit warehouse, including ancillary works, and the adaptive re-use of the former Roche office building and cottage. The proposed multi-unit warehouse would vary in height, due to the topography of the land. However, the maximum building height is proposed to be 13.954m at the ridge height, which would exceed the site's 11m building height control. This measurement has been based on the vertical distance from the ground level (existing: RL 14.24m) to the highest point of the building (ridge height: RL 28.194m), in accordance with the definitions contained within the WLEP2011 and the Standard Instrument.

The current topography of the subject site is considered a key environmental reason as to why strict compliance with Clause 4.3 cannot be achieved. The land slopes in a southerly direction, from an RL of 37m in the north-eastern corner of the site, down towards an RL of 13m at South Creek Road, resulting in a fall approximately 24m over the site.

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The proposed building height would exceed the 11m Height of Buildings control by 3.954m (or by 26.85%), which is considered a reasonable exceedance, given the present constraints of the subject site.

The proposed development would provide a more efficient use of the subject site by allowing greater use of emerging industrial-related technologies, including automation and racking technological improvements, as well as promoting increased verticality within an employment-generating zone.

1.3 STRATEGIC PLANNING JUSTIFICATION

If the proposal were to include a compliant scheme, in accordance with the Clause 4.3 Development Standard of WLEP2011, the built-form potential of the subject site would be significantly under-realised and less capable of catering to future technological advances and improved efficiencies through verticality within the warehousing industry and wider industrial sector of New South Wales. The proposed heights are considered warranted in order to future-proof the site, to allow flexibility of future uses and end users involved. The proposed heights would also allow for improved flexibilities in the operation of the warehouse with the current tenant in mind and would also reflect recent changes to the application of relevant industrial building standards and insurable building configurations in terms of ceiling sprinkler provisions.

While non-compliant, the proposed building height of the new warehouse remains below the general height of the existing buildings of which it intends to replace.

If a height compliant scheme were submitted, it would:

- Not contribute towards meeting the demand for employment-generating opportunities within the Northern Beaches Local Government Area (LGA), as identified within *A Metropolis of Three Cities* and the *North District Plan*, by potentially resulting in a reduction in available building footprint and consequently future industrial and warehouse land uses on the subject site;
- Threaten the commercial viability of the proposed development by reducing the overall achievable maximum height across the height, which would impact on end-user operational requirements;
- Not be able to achieve a height, that is being driven due to securing economic employment lands for a secured end user;
- Create fewer full-time equivalent jobs during the construction and operational phases of development due to a decrease in footprint and potential disinterest in the Site due to preferred end-user ceiling heights not being able to be achieved; and
- Fail to meet the objects of the *Environmental Planning and Assessment Act 1979* (EP&A Act), which seeks to make orderly and economic use of the subject site for its full planning potential.

Notwithstanding, this variation request has been prepared in accordance with the aims and objectives contained within Clause 4.6 and the relevant Development Standards under WLEP2011. It considers various planning controls, strategic planning objectives and existing characteristics of the subject site, and concludes that the proposed non-compliance is the best means of achieving the objectives listed under Section 1.3 of the EP&A Act, seeking:

- (a) *to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) *to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) *to promote the orderly and economic use and development of land,*

1.4 CASE LAW

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Relevant case law on the application of the standard Local Environmental Plan Clause 4.6 provisions has established the following principles:

- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, which emphasised that the proponent must address that:
 - Compliance with the development standard is unreasonable and unnecessary in the circumstances;
 - There are sufficient environmental planning grounds to justify contravening the development standard;
 - The development is in the public interest;
 - The development is consistent with the objectives of the particular standard; and
 - The development is consistent with the objectives for development within the zone;
- *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7, which held that the degree of satisfaction required under Subclause 4.6(4) is a matter of discretion for the consent authority;
- *Wehbe v Pittwater Council* [2007] NSWLEC 827, which emphasised the need to demonstrate that the objectives of the relevant development standard are nevertheless achieved, despite the numerical standard being exceeded. Justification is then to be provided on environmental planning grounds. Wehbe sets out five ways in which numerical compliance with a development standard might be considered unreasonable or unnecessary as follows:
 - The objectives of the standard are achieved notwithstanding the 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 objective or 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; or
 - The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

These matters are considered and responded to in **Part D** of this variation request.

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PART B THRESHOLDS THAT MUST BE MET

2.1 CLAUSE 4.6 OF WLEP2011

In accordance with Clause 4.6 of WLEP2011, Council is required to consider the following Subclauses for exceptions to development standards:

- (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 Secretary has been obtained.*
- (5) In deciding whether to grant concurrence, the Secretary must consider:*
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) the public benefit of maintaining the development standard, and*
 - (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.*

These matters are responded to in **Part D** of this variation request.

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PART C THE STANDARDS BEING OBJECTED TO

3.1 CLAUSE 4.3 (HEIGHT OF BUILDINGS) OF WLEP2011

The Development Standard requested to be varied is Clause 4.3 Height of Buildings of WLEP2011, as outlined below:

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

- (a) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
- (c) *to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
- (d) *to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

(2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

Pursuant to Clause 4.6 of WLEP2011, the proposed development seeks exception to the 11m Height of Buildings maximum, required under item (2). **Table 1** below outlines the proposed variation sought to Clause 4.3 of WLEP2011.

Table 1 Proposed WLEP2011 Development Standard Variation			
Clause	Development Standard	Proposed Non-compliance	Variation Percentage
Clause 4.3(2) – Height of Buildings	<i>The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.</i> – maximum 11m building height	Maximum 13.954m building height	26.85%

It is important to note, that the proposed development would not result in a 13.954m tall warehouse building across the whole of the site. **Figure 1** overleaf demonstrates the areas of the proposed warehouse roofline(s), that would extend beyond the prescribed 11m height.

The portion of the subject site that is proposed to be developed, is for the primary purpose of alterations and additions to an existing industrial facility, for warehouse, industry and self storage, office premises and ancillary café. The part of development that is the subject of this Clause 4.6 Variation request is attributed to the warehouse, industry and self storage components, which are permitted with consent in the IN1 General industrial zone of the WLEP2011. This request therefore relies upon what is reasonably attributed to the underlying objectives of the relevant Development Standard and the IN1 General industrial zone objectives, for which it is consistent with.

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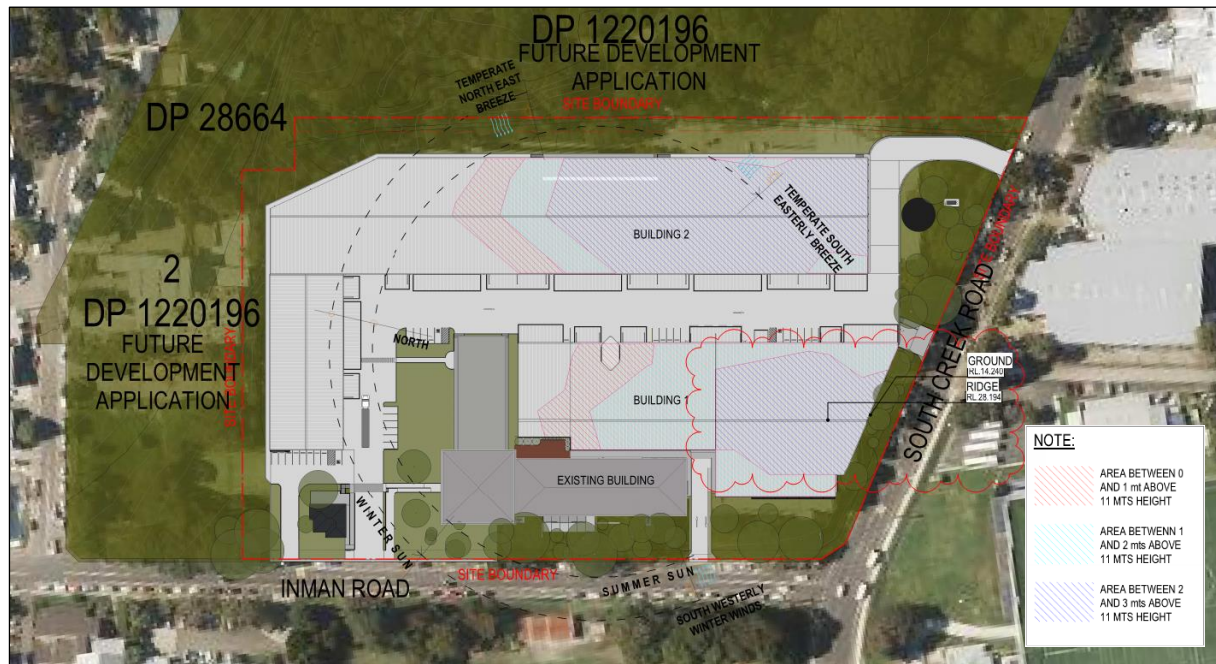


Figure 1: Site Plan (Source: SBA Architects, 2019)

3.2 HYPOTHETICAL COMPLIANT DESIGN

As mentioned in **Section 1.3**, the proposed building height exceedance is sought to achieve a development that responds the site's existing characteristics of topography, vegetation and drainage corridor, whilst future-proofing the site to allow flexibility for future uses. An alternative, hypothetical design compliant with Clause 4.3 would:

- Limit the developable area of the subject site, due to the large grade change over the land;
- Not contribute towards meeting the demand for employment-generating opportunities within the Northern Beaches Local Government Area (LGA), as identified within *A Metropolis of Three Cities* and the *North District Plan*, by potentially resulting in a reduction in available building footprint and consequently future industrial and warehouse land uses on the subject site;
- Threaten the commercial viability of the proposed development by reducing the overall achievable maximum height across the height, by which would impact on end-user operational requirements; and
- Not be able to achieve a height, that is being driven due to securing economic employment lands for a secured end user;
- Create fewer full-time equivalent jobs during the construction and operational phases of development due to a decrease in footprint and potential disinterest in the Site due to preferred end-user ceiling heights not being able to be achieved;
- Fail to meet the objects of the *Environmental Planning and Assessment Act 1979* (EP&A Act) by making orderly and economic use of the subject site for its full planning potential.

If the proposal were to include a compliant scheme in accordance with the relevant Development Standard of WLEP2011, the built-form potential of the subject site would be significantly under-realised. Overall, an alternative, hypothetical design, compliant with Clause 4.3 is not considered justified for the subject site.

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PART D PROPOSED VARIATION TO CLAUSE 4.3 HEIGHT OF BUILDINGS

4.1 OBJECTIVES OF THE STANDARD

A key determinant of the appropriateness of a Clause 4.6 Variation to a Development Standard is the proposed development's compliance with the underlying objectives and purpose of that Development Standard. Indeed, *Wehbe v Pittwater Council* recognised this as one of the ways in which a variation to development standards might be justified (refer to **Section 1.4**). In *Four2Five Pty Ltd v Ashfield Council*, it was found that the proponent must demonstrate compliance with these objectives (refer to **Section 1.4**).

Therefore, while the site is subject to a specified numerical control for building height (Clause 4.3(2)), the objectives and underlying purpose behind these Development Standards are basic issues for consideration in the development assessment process, of which require due attention (refer to **Figure 2**).

The proposed development is consistent with the relevant objectives of the Development Standard, as addressed in **Section 4.1**.

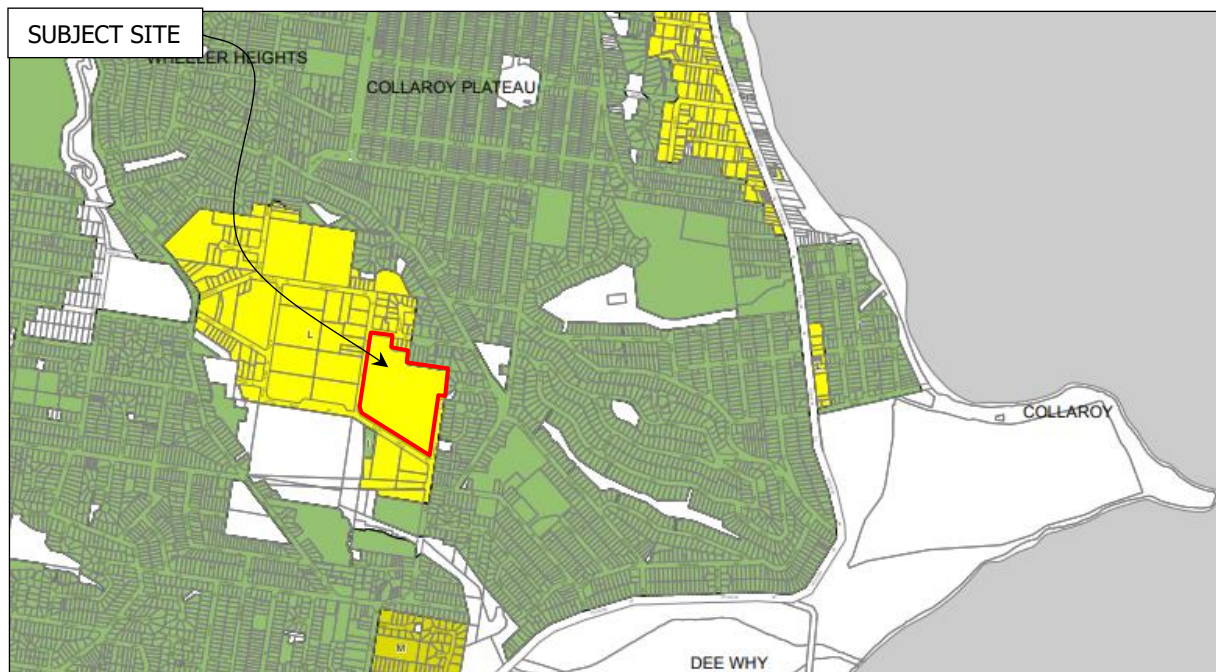


Figure 2 WLEP2011 Height of Buildings Map (Source: NSW Legislation, 2019)

WLEP2011 – Clause 4.3 Height of Buildings

Clause 4.3(1) of WLEP2011 sets out specific objectives for the Height of buildings. Those objectives are responded to as follows:

- (a) ensure that buildings are compatible with the height and scale of surrounding and nearby development;

The intent of the proposed development is to allow for the effective reuse of the former Roche premises, while contributing to the existing industrial character experienced within the IN1 General Industrial zone and within the immediate vicinity of the subject site, consistent with the WLEP2011 and *Warringah Development Control Plan 2011* (WDCP2011).

By setting the proposed warehouses back from the retained former Roche office buildings, the warehouses successfully recede into perspective, with the main focus being the existing office buildings

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and established landscaping, where viewed from Inman Road. The proposed warehouses set behind the retained Roche office buildings is set back further and is lower than the existing Building 07 in this location. It is also lower than the existing Building 03 immediately to the east, which will be demolished and replaced by the 22m wide open space for vehicular access, thus enhancing the setting of the retained single storey building.

The interface with South Creek Road, would present the new warehouse developments, which have been afforded architectural excellence through modulation of materials, colours and design. The current interface contains a large number of established trees, which will be retained and complemented by additional planting.

Compatibility with surrounding and nearby development

The proposal is considered to accord with much of the surrounding developments that offer similar commercial and industrial operations. The following figures provide a representation of the surrounding developments.



Figure 3 21 Orlando Road, Cromer (Source: Google Maps, 2020)



Figure 4 69 Middleton Road, Cromer (Source: Google Maps, 2020)

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Figure 5 93 South Creek Road, Cromer (Source: Google Maps, 2020)



Figure 6 75 South Creek Road, Cromer (Source: Google Maps, 2020)

Furthermore, whilst the proposed development has considered and been sympathetic towards surrounding land uses, the subject site is zoned for such industrial-related uses, which the proposed development responds to, by being entirely consistent with the objectives of the IN1 General Industrial zone. Therefore, the proposed building height is considered to be consistent with the existing industrial development in the locality.

Compatibility with retained development at the subject site

The intent of the proposed development is to allow for the effective reuse of the former Roche premises, while contributing to the existing industrial character experienced within the IN1 General Industrial zone and within the immediate vicinity of the subject site, consistent with the WLEP2011 and WDCP2011.

Figure 7 and **Figure 8** demonstrates how the proposed development integrates with the existing facility, and also provides a visual representation of the existing building heights (to be demolished).

It is important to note, that the predominant building setbacks would be maintained accordingly, with regard to the setback controls articulated within the WDCP2011 for industrial development. The additional height would only read as approximately 2.954m above the permitted maximum height

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control for the subject site; which is generally in accordance with the heights of the existing buildings at the subject site.

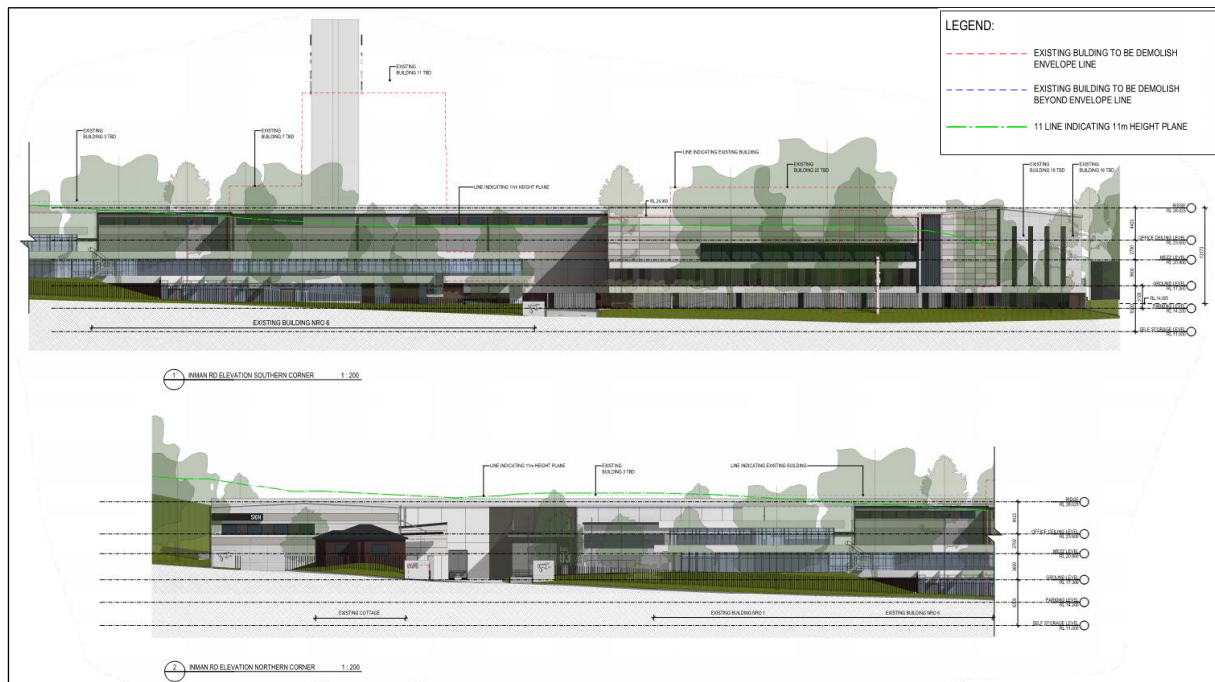


Figure 7 Inman Road Elevation (Source: SBA Architects, 2019)

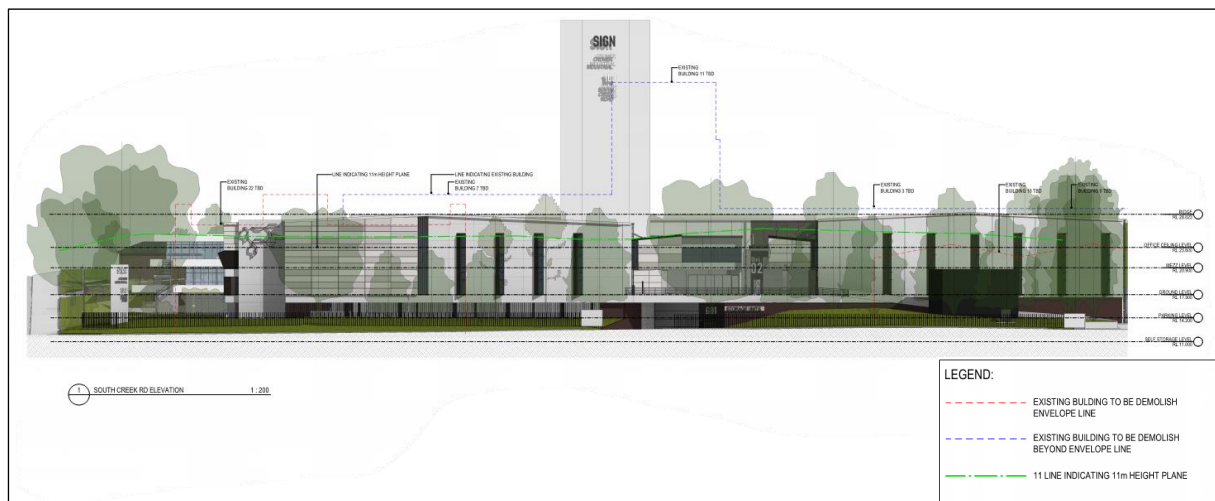


Figure 8 South Creek Road Elevation (Source: SBA Architects, 2019)

With its overall site configuration, a well resolved built-form and potential public realm benefits, the proposed development can create a high quality built-form, which is sympathetic to the existing heritage, as well as being a quality contribution to the urban built-form of the surrounding area, comprising a versatile mix of transitional industrial (north, south and west) and low density residential (north-east) development surrounding the subject site. Through the maintenance of established landscaping, historic buildings and peripheral amenities to preserve the streetscape, the proposed development can achieve a suitable fit within the existing public realm, with positive economic, social and environmental benefits for the wider community.

In order to facilitate high quality resolution of the building envelope, and to enable the best outcome for transitional relationships with the adjoining sites, the proposed development comprises a legible and efficient design with the façade articulation, as well as material and colour selection to complement the existing heritage items and aesthetics.

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Underpinned by the subtly expressive architectural language, the building articulation of the industrial development transitions well both horizontally and vertically in its streetscape and existing heritage setting.

Additionally, the built-form of the proposed development responds to the operational requirements of the end-user and any future users of the subject site. Accordingly, the height of the proposed development is considered highly appropriate for the subject site and its context. Notwithstanding, the height is representative of market needs and demands for modernised industrial warehouse and industrial facilities, for which the average industry standard (based on Fire Engineering and BCA requirements).

(b) minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,

It is important to note, that the most significant breach in height, is towards South Creek Road (southern interfaces), which results from the falling topography towards the south, as described in **Section 1.2.1**.

The proposed warehouse building at the south west corner of the subject site will be generally lower in scale than the existing building and has been designed to complement the retained former Roche office building. The horizontally banded arrangement of the façade is more in harmony with the architectural expression of the former Roche office building than the building that it will replace. Existing canopy trees at the street corner will be retained and augmented by new planting.

Accordingly, careful selection of building finishes and colours, combined with proposed landscape planting, particularly along the southern and western boundaries (South Creek Road and Inman Road frontages) of the subject site, is considered to be appropriately treated from an architectural perspective, as well as being aesthetically pleasing to mitigate any visual impacts. This will assist in screening the built-form of the proposed development within the locality.

The contravention towards the Development Standard is further justified by the Architectural Plans located in **Appendix 6**. The 3D images, prepared as part of this proposal, clearly demonstrate that the proposed warehouse units retain a significant portion of the former office building, maintaining the heritage values of the site. The southern part of the proposed building is located where the land slopes down significantly, presenting to the intersection of Inman Road and South Creek Road and to South Creek Road.

It is noted that the Northern Beaches Secondary College Cromer Campus, to the west, is not impacted by the proposed development as it presents only playing fields and the carpark of the Manly Warringah Football Club in its interface with the subject site. Given the location of the development in context of the existing site, it is considered that there is no residential interface with the proposed works. In these circumstances, compliance with the height control would not achieve a better urban design outcome and would be unreasonable and unnecessary.

Further, the proposed building height exceedance, is limited to the southern portion of the subject site, which is located well away from the northern R2 Low density residential zone. It is therefore considered that the proposed contravention would have no impact on nearby residential housing.

Notwithstanding, the proposed development has incorporated an aesthetically pleasing architectural and landscaped design. Furthermore, whilst the proposed development has considered nearby sensitive land users, the subject site is zoned for such industrial-related uses, which the proposed development responds to, by according with the objectives of the IN1 General Industrial zone.

The architectural and landscape plans for the proposed development are included in **Appendix 6** and **Appendix 7**, demonstrating that there would be no such significant visual impacts on adjoining sites and sensitive receivers.

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(c) minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,

The proposed development is located within an established industrial area and suitably zoned IN1 General industrial. The proposed warehouse units are sought to replace existing buildings at the subject site, which would limit the extent of the vegetation clearing necessary to carry out the resultant works.

The developable area for the proposed warehouse units is generally limited on site due to a number of existing attributes, including (but not limited to):

- the retention of character buildings and areas on site;
- the desire to retain existing vegetation, including significant bushland environments (located in the eastern portion of the subject site);
- the presence of an existing drainage corridor; and
- the depth of the current water table, limiting the depth of any basement levels.

The following figure (**Figure 9**) provides visual representation of the abovementioned attributes.



Figure 9 Site Attributes (Source: Willowtree Planning, 2020)

As a result of the abovementioned existing site attributes, the developable area for the subject site is somewhat constrained. In conjunction with the varied slope (averaging around a 24m fall across the whole site), the proposed development is forced to exceed the prescribed 11m building height limit.

In short, the development footprint for the proposed development is limited on site, with the only logical solution to achieve a suitable built form being to exceed the prescribed building height. That said, the proposed 2.954m exceedance will not impact on the scenic quality of Warringah's coastal and bush environments. However, to further minimise any impacts on scenic quality, the proposal has retained established landscaping along the street frontages and also made provision for additional supplementary planting.

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(d) manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities,

The principle views, from the public domain, towards the subject site are at street level (from Inman Road and South Creek Road), which are predominantly screened by mature plantings.

The proposed development has undergone a significant design process to ensure that the curtilage is retained, including the retention of soft landscaping and the introduction of additional soft landscaping. The proposed retention of the former Roche Office buildings seeks to maintain the Inman Road interface.

It is noted that the Northern Beaches Secondary College Cromer Campus, to the west, is not impacted by the proposed development as it presents only playing fields and the carpark of the Manly Warringah Football Club in its interface with the subject site. Given the location of the development in context of the existing site, it is considered that there is no residential interface with the proposed works. In these circumstances compliance with the height control would not achieve a better urban design outcome and would be unreasonable and unnecessary.

The proposed warehouse building at the south west corner of the subject site will be lower in scale than the existing building and has been designed to complement the retained former Roche office building. The horizontally banded arrangement of the façade is more in harmony with the architectural expression of the former Roche office building than the building that it will replace. Existing canopy trees at the street corner will be retained and augmented by new planting.

Accordingly, careful selection of building finishes and colours, combined with proposed landscape planting, particularly along the southern and western boundaries (South Creek Road and Inman Road frontages) of the subject site, is considered to be appropriately treated from an architectural perspective, as well as being aesthetically pleasing to mitigate any visual impacts. This will assist in screening the built-form of the proposed development within the locality.

The architectural and landscape plans for the proposed development are included in **Appendix 6** and **Appendix 7**.

4.2 OBJECTIVES OF THE ZONE

The subject site is zoned IN1 General Industrial under WLEP2011. The proposed development that is the subject of this variation request (the warehouse and industry component of the proposal) is considered consistent with the IN1 General Industrial zone objectives, in that:

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

The proposed development provides warehouse and industrial uses, which are considered to align with the zone objectives. The proposed development would positively contribute to the desired industrial character of the subject site and the surrounding area.

Furthermore, complementing the zone objective, the proposed development allows for a versatile array of industrial and warehouse land uses. The proposed development would positively contribute to the desired industrial character intended for the subject site, whilst integrating with the existing heritage characteristics and creating positive economic and social impacts, through increased employment-generating opportunities, which also aligns with the subsequent zone objective listed below.

- *To encourage employment opportunities.*

The proposed development would provide employment-generating opportunities to the immediate community and wider locality during both the construction and operational phases of development. This

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would further contribute to the viable economic return on the local and regional economy that the proposed development offers.

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

The proposed development is positioned on land that is designated for industrial purposes, and thus would ensure that support is met for the desired outlay of the subject site, as well as the wider locality. Consideration has also been given to surrounding land uses, for which the proposed development is further complemented by existing industrial developments in the area. Mitigation measures would be implemented to minimise and adverse impacts from occurring on nearby sensitive receptors. Mitigation measures include:

Noise:

The Noise Impact Assessment undertaken and prepared by Acoustic Dynamics, demonstrates that the proposed development is capable of meeting the relevant NSW EPA noise emission guidelines.

Visual:

As mentioned in **Section 4.1**, with its overall site configuration, a well resolved built-form and potential public realm benefits, the proposed development can create a high quality built-form, which is complementary to the street character of Inman Road and South Creek Road, as well as being a quality contribution to the urban built-form of the surrounding area, and resulting in a sympathetic integrating with the existing character of the subject site. Through generous landscaping and peripheral amenities to help activate the street frontage, the proposed development would achieve a suitable fit within the existing public realm, with positive economic, social and environmental benefits for the wider community.

In order to facilitate high quality resolution of the building envelope, and to enable the best outcome for transitional relationships with the adjoining site, the proposed development comprises a legible and efficient floor plan with the façade articulation, as well as material and colour selection to complement an aesthetic, that is not considered to be visually adverse or obtrusive.

As mentioned above, the subject site would be complemented via an aesthetically pleasing architectural landscape design, maintain significance mature plantings along the Inman Road and South Creek Road frontages, which would be complemented by additional soft landscaping.

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

The proposed development would provide employment-generating opportunities in both the construction and operational phases, further advocating the continued support of industrial land the IN1 General Industrial zone objectives. The proposed development would ensure the continued use of the subject site for industrial purposes, accommodating a range of businesses.

- *To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.*

Whilst the IN1 General Industrial zone allows for a range of non-industrial land uses, the proposed development responds to a development for the purposes of warehousing and industry. The proposed development would provide employment-generating opportunities to the immediate community, as well as the wider locality. It is noted, that the proposed development includes provisions for a café, to result from an adaptive re-use of the existing cottage, which would be utilised by workers and visitors on-site, as well as being accessible to members of the public within the immediate vicinity. The proposal also seeks to retain the former Roche office buildings and maintain their office premises operations.

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Whilst not entirely consistent with the intent of the IN1 General industrial zone, the café and office premises are proposed as follows:

- The café is proposed to allow the adaptive re-use of the existing cottage at Inman Road; and
- The office premises are proposed to be maintained within the former Roche office buildings.

The Statement of Environmental Effects demonstrates further details of the abovementioned land uses, pursuant to Clause 5.10(10) of the WLEP2011.

3 It is noted that the provision of additional non-industrial land uses do not relate to the Clause 4.6 variation request for the height of buildings contravention.

4.3 ESTABLISHING IF THE DEVELOPMENT STANDARD IS UNREASONABLE OR NECESSARY

In *Wehbe v Pittwater Council* [2007] NSWLEC 827, Preston CJ set out the five ways of establishing that compliance with a Development Standard is unreasonable or unnecessary in support of justifying a variation:

1. *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.***
2. *Establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.*
3. *Establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.*
4. *Establish that 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.*
5. *Establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary".*

In applying the tests of *Wehbe v Pittwater Council* [2007] NSWLEC 827, only one of the above rationales is required to be established. Notwithstanding the proposed variation, the development is consistent with the underlying objectives of the Development Standard for Building Height and the relevant Zoning prescribed under WLEP2011.

In view of the particular circumstances of this case, strict compliance with the numerical requirement of Clause 4.3 of WLEP2011 is considered to be both unnecessary and unreasonable. The proposed development does not conflict with the intent of Clause 4.3 as demonstrated in **Section 4.1** and satisfies the objectives, notwithstanding the proposed numeric variation.

The Development Standard is unreasonable and unnecessary in the circumstances of the proposed development on the following basis:

- The current topography of the subject site is considered a key environmental reason as to why strict compliance with Clause 4.3 cannot be achieved. The land slopes in a southerly direction, from an RL of 37m in the north-eastern corner of the site, down towards an RL of 13m at South Creek Road, resulting in a fall approximately 24m over the site. Due to the variation in

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topography, it is noted that the proposed development would not result in a 13.954m tall warehouse building across the whole of the site.

- The subject site and potential development footprint is restricted by the presence of and desire to retain existing vegetation (including significant bushland environments), the location of the existing drainage corridor, and depth of the current water table.
- The proposed development therefore seeks to support the sympathetic reuse of the subject site, including maintenance of the industrial character of the land in its existing landscaped setting. However, there is very limited demand for activities that could be accommodated in existing premises, therefore partial demolition and the construction of a multi-warehouse development is proposed.
- The proposed development would involve the construction of multi-unit warehouse, including ancillary works, and the adaptive re-use of the former Roche office building and cottage. The proposed multi-unit warehouse would vary in height, due to the topography of the land.
- The proposed development would generally maintain the maximum permitted building height, under WLEP2011, of the subject site (exceedance by a maximum of only 2.954m afforded by the land topography). Accordingly, the density and scale of the built-form proposed, would remain consistent with the existing premises and surrounding industrial uses. Additionally, the proposed development would effectively integrate the streetscape and character of the area into the proposed scheme. It is noted, that the height breach pertains to a limited portion of the subject site and would be adequately screened by existing mature vegetation/landscaping and additional soft landscaping.
- The proposed built-form character is generally consistent with the built-form of the former Roche premises; comparative images are included in the Statement of Environmental Effects.
- The proposed development's building height is considered a key attribute in creating an internal building environment that would ensure the delivery of space and amenity that is required to support the operations of the future tenants involved and thereby enabling the productive use of the subject site.

Notwithstanding, reducing the height of the proposed design to strictly meet the WLEP2011 Development Standard is considered unreasonable, as this would result in a less efficient use of the subject site, as well as being unsound for future end-users from an operational perspective. Further, a reduced height may result in a building design that does not respond as well to the subject site's heritage character and prevailing topography, which the proposed heights have been so strategically based on.

Compliance with Clause 4.3 would be unreasonable given that the proposed development has been designed to make the most out of the subject site's heritage attributes, whilst also offering a suitable level of protection to existing vegetation (including significant bushland environments), the location of the existing drainage corridor. A different site configuration would have likely resulted in a less efficient use of these site-specific opportunities and would have guaranteed a lesser level of protection to the existing attributes of the site. Use of a different site would have meant that suitable industrially zoned land is not developed to its full planning potential.

The abovementioned justifications are considered valid and, in this instance, the proposed Clause 4.6 Variation is considered acceptable. The objectives of the relevant clauses and the IN1 General industrial zone would be upheld as a result of the proposed development.

4.4 SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD

The proposed variation to the Development Standard for building height (Clause 4.3) under WLEP2011 is considered well-founded on the basis that:

- The proposed development is consistent with the underlying objective(s) or purpose of the building height standard, as demonstrated in **Section 4.1**.
- The proposed development achieves the objectives of WLEP2011 for the IN1 General industrial zone, as described in **Section 4.2**.

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- The proposed non-compliance would not result in a built form density which is inconsistent with the surrounding local context and character.
- Compliance with Clause 4.3 would be unreasonable and unnecessary for the reasons outlined in **Section 4.3**, and in particular the subject site and potential development footprint is restricted by the presence of and desire to retain existing vegetation (including significant bushland environments), the location of the existing drainage corridor, and depth of the current water table. In conjunction with the slope of the land, strict compliance with Clause 4.3(2) cannot be achieved.
- The proposed development generally maintains the height experienced as part of the existing premises, for which the proposed development would provide quality integration.
- Materials and finishes would activate and provide a visual outcome that seamlessly integrates with the surrounding character. Additionally, colour and material direction would be utilised (where possible) to blend with the varied architectural forms and respond to the maintained character of the subject site.
- The overall scale of the proposed development seeks to provide a seamless, sympathetic transition from the retained character buildings of the subject site, being compatible in terms of built-form and scale.
- The proposed development would provide an employment-generating land use that is considered adaptable and responds accordingly to shifting economic conditions.
- The proposed development incorporates suitable setback controls and separation distances (where required) in accordance with the WDCP2011.
- The proposed development, particularly the proposed height would integrate with the local and regional context, specifically the IN1 General industrial zone. The relationship of the proposed development, with respect to height, would remain consistent due to the transition offered between the surrounding sites.
- The proposed development would maintain neighbouring amenity as-well-as the amenity of the public domain. Additionally, the perimeter mature landscaping would be maintained and further treated with additional soft landscaping.
- The exceedance of the height standard (by only 2.954m) would have minimal impact on the streetscape, on visual privacy and solar access of neighbouring development due to a strategically implemented architectural treatment, which positions the building's forming the most significant height non-compliances away from nearby sensitive receptors, whilst integrating with the retained structures on site.
- The proposed development would support the productive economic use of the subject site that is ideally located within an area zoned for such permissible industrial use.

For the reasons outlined above, it is considered that the proposed variation to the building height control under Clause 4.3 is entirely appropriate and can be clearly justified having regard to the matters listed within WLEP2011, Clause 4.6.

4.5 PUBLIC INTEREST

It is noted, that Subclause 4.6(4)(a)(ii) requires the proposed development 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.

Sections 4.1 and 4.2 have already demonstrated how the proposed development is consistent with the objectives of Clause 4.3 and the IN1 General industrial zone under WLEP2011. Accordingly, the proposed development is in the public interest, as it is consistent with the overarching height objectives and is generally in accordance with the parameters of the existing premises. The proposal would also contribute towards meeting the demand for employment opportunities within the Northern Beaches area, as identified within *A Metropolis of Three Cities* and the *Northern District Plan*. Specifically, the proposed development would be of social benefit, as it would revitalise an otherwise underutilised industrial zoned site, for which it would provide employment-generating opportunities during the construction and operational phases of development.

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There are no identified significant public disadvantages that would result from the proposed development. The proposed development is therefore considered to be justified on public interest grounds.

4.6 MATTERS OF STATE OR REGIONAL SIGNIFICANCE

The proposed noncompliance with Clause 4.3 of WLEP2011 would not raise any matters of significance for State or Regional environmental planning. It would also not conflict with any State Environmental Planning Policies or Ministerial Directives under Section 9.1 of the EP&A Act.

It is noted, that Planning Circular – PS 08-014 – issued by the NSW Department of Planning and Environment (DP&E), requires that all Development Applications including a variation to a standard of more than 10% be considered by Council, rather than under delegation. The proposed development would result in exceedances of the relevant planning controls as follows:

- WLEP2011, Clause 4.3 Height of Buildings by 2.954m (26.85%)

This non-compliance is more than the 10% prescribed in the stipulated planning circular.

Furthermore, by including the non-compliance with Clause 4.3 of WLEP2011, the proposed development would be more susceptible to meeting the objectives of the following State Government planning policies:

- *A Metropolis of Three Cities:*
 - By providing a greater height at the subject site, the proposed development can respond to the Greater Sydney Commission's vision and NSW Government's aim of increasing the availability of employment opportunities in a range of industry sectors.
- *Northern District Plan:*
 - By providing a greater height at the subject site, the proposed development can better respond to the Greater Sydney Commission's vision for continued job growth and economic prosperity across the Northern District.

4.7 PUBLIC BENEFIT IN MAINTAINING THE STANDARDS

It is considered that there is no genuine public benefit in maintaining the strict height of building (Clause 4.3) control at the subject site, based on the following:

- Compliance would limit the subject sites potential to contribute towards meeting the demand for employment-generating opportunities within the area, as identified within *A Metropolis of Three Cities* and the *Northern District Plan*, by potentially resulting in a reduction of available building footprint and consequently future development;
- Compliance would threaten the commercial viability of the proposed development by reducing the overall achievable maximum height across the most interactive portion of the subject site, by which would impact on end-user operational requirements;
- Compliance would result in the inability to achieve a building height, that is being driven due to securing economic employment lands for a secured end user;
- Compliance would create fewer full-time equivalent jobs during the construction and operational phases of development due to a decrease in footprint and potential disinterest in the site due to preferred end-user ceiling heights not being achieved; and
- Compliance may fail to meet the Objects of the EP&A Act by making orderly and economic use of the subject site for its full planning potential.

As such, there is no genuine public benefit in maintaining this strict height of building control at the subject site.

4.8 OBJECTS OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

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All planning determinations made under the EP&A Act are required to be made with regard to the Objects of the EP&A Act, in accordance with Section 1.3. **Table 2** below assesses the proposed development against the Objects of the EP&A Act.

Table 2 Objects of the Act – EP&A Act	
Object	Compliance
<i>(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,</i>	<p>The proposed development is considered in the public interest as it would contribute towards meeting the demand for increased employment opportunities within the area, as identified in <i>A Metropolis of Three Cities</i>, and the <i>Northern District Plan</i>.</p> <p>Specifically, the proposed development would be of social and economic benefit to the community situated within the Warringah area, as it would provide employment-generating opportunities for the immediate locality.</p>
<i>(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,</i>	<p>The proposed development has been assessed against the principles of Ecologically Sustainable Development as set out in the <i>Protection of the Environment Operations (General) Regulation 2009</i> as follows:</p> <ul style="list-style-type: none"> ▪ The proposed development would not create the risk of serious or irreversible damage to the environment. ▪ The proposed development would not create any threats of serious or irreversible environmental damage which would require further scientific study to fully ascertain. ▪ The proposed development would not impact on the conservation of biological diversity or the ecological integrity of the locality. The proposal seeks to retain areas of significant bushland environments (located in the eastern portion of the subject site), and also reinstate the existing drainage corridor that traverses the site. ▪ The proposed development would not require an Environment Protection Licence or other mechanism to compensate for any pollution generating activities at the Site.
<i>(c) to promote the orderly and economic use and development of land,</i>	<p>The proposed development would make use of a site used for similar purposes, that is currently considered to underutilised, for which it would result in orderly and economically beneficial development, without resulting in any unacceptable economic, environmental or social impacts.</p>
<i>(d) to promote the delivery and maintenance of affordable housing,</i>	N/A – not relevant to the proposed development.
<i>(e) to protect the environment, including the conservation of threatened and other</i>	<p>The proposed development is sought to be located within the same building footprint of the existing development.</p>

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Table 2 Objects of the Act – EP&A Act	
Object	Compliance
<i>species of native animals and plants, ecological communities and their habitats,</i>	
<i>(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),</i>	<p>The subject site contains three (3) separate listings of heritage items under the WLEP2011, which are to maintained and conserved as part of this proposal.</p> <p>The proposed development has sought to ensure the continued character of the subject site and would result in the retention of a number character buildings and soft landscaping.</p> <p>Assessments carried out by Heritage 21 conclude that the proposed development, in particular the proposed multi-unit warehouse would not impact on views to the site and the proposed articulation and colours of the faced would not detract from the significance of the subject site.</p> <p>Hertiage 21 have documented their confidence that the proposed development complies with pertinent heritage controls and would have minimal impact on the heritage significance of the subject site.</p>
<i>(g) to promote good design and amenity of the built environment,</i>	Section 4.1 satisfactorily addresses how the proposed development responds to the character of the locality in terms of urban design.
<i>(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,</i>	The proposed development can be constructed and maintained without health and safety risks to future tenants.
<i>(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,</i>	The proposed development has a Capital Investment Value of approximately \$44,590,000. As such, it is classified as Regionally Significant Development, for which it would be determined by the Sydney North Planning Panel.
<i>(j) to provide increased opportunity for community participation in environmental planning and assessment.</i>	The DA for the proposed development would be subject to the relevant public notification requirements.

4.9 SUMMARY

For the reasons outlined above, it is considered that the contravention to Clause 4.3 of the WLEP2011 are well-founded in this instance and the granting of a Clause 4.6 Variation to these Development Standards are appropriate in the circumstances. Furthermore, the objection is considered well-founded for the following reasons, pursuant to Clause 4.6 of WLEP2011:

- Compliance with the Development Standard is unreasonable and unnecessary in the circumstances;
- There are sufficient environmental planning grounds to justify contravening the Development Standard;
- The proposed development is in the public interest;
- The proposed development is consistent with the objectives of the particular standard;

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- The proposed development is consistent with the objectives for development within the IN1 General Industrial zone;
- The objectives of the standard are achieved notwithstanding the non-compliance with the standard;
- The proposed development does not negatively impact on any matters of State or regional significance; and
- The public benefit in maintaining strict compliance with the development standard would be negligible.

It is furthermore submitted, that:

- Strict compliance with the Development Standard would hinder the achievement of the Objects of the Act in accordance with Section 1.3 of the EP&A Act (refer to **Table 2** above);
- The proposed development would contribute toward employment within the area, as identified within *A Metropolis of Three Cities* and the *Northern District Plan*; and
- No unreasonable impacts are associated with the proposed development.

Overall, it is considered that the proposed Clause 4.6 Variation to Clause 4.3 Height of Buildings, pursuant to WLEP2011, is entirely appropriate and can be clearly justified having regard to the matters listed with Clause 4.6 of WLEP2011.

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PART E CONCLUSION

It is considered that compliance with the Development Standard of Clause 4.3 of the WLEP2011 is unreasonable or unnecessary in the circumstances of this proposal and that there are sufficient environmental planning grounds to justify contravening the development standard.

It is requested, that the Sydney North Planning Panel exercise its discretion and find, that this Clause 4.6 Variation adequately addresses the matters required to be demonstrated by Subclause 4.6(3) of the WLEP2011 (refer to **Section 2.1**).

This is particularly the case, given that a hypothetical compliant design at the subject site would:

- limit the subject sites potential to contribute towards meeting the demand for employment-generating opportunities within the area, as identified within *A Metropolis of Three Cities* and the *Northern District Plan*, by potentially resulting in a reduction of available building footprint and consequently future development;
- threaten the commercial viability of the proposed development by reducing the overall achievable maximum height across the most interactive portion of the subject site, by which would impact on end-user operational requirements; and
- fail to meet the Objects of the *Environmental Planning and Assessment Act 1979* (EP&A Act) by making orderly and economic use of the subject site for its full planning potential.

It is requested that the Sydney North Planning Panel support the proposed variation to Clause 4.3 Height of Buildings, pursuant to WLEP2011, on the following basis:

- Consistency with the objectives of the standard and zone is achieved;
- Compliance with the development standard is unreasonable and unnecessary in the circumstances of the case;
- There are sufficient environmental planning grounds to justify contravening the development standard;
- No unreasonable environmental impacts are introduced as a result of the proposed development;
- There is no public benefit in maintaining strict compliance with the standard.

Given the justification provided above, this Clause 4.6 Variation under WLEP2011 is well-founded and should be favorably considered by Sydney North Planning Panel. As each of the relevant considerations are satisfied for the reasons outlined elsewhere in this report, concurrence can be assumed under Clause 4.6(5).