

PPSSSH-104 – 72-78 Box Road Taren Point

DA21/1131

ASSESSMENT REPORT APPENDICES

Appendix	A	DCP 2015 Compliance Table
	B	Submissions Summary
	C	Clause 4.6 Request for Building Height Exceedance

APPENDIX A – DCP2015 Controls table

Sutherland Development Control Plan 2015		
CONTROL	COMMENT	COMPLIANCE
1. Subdivision		
1. The minimum gross floor area of each unit is 150 m ² for a warehouse/factory unit within a strata subdivision effected under the Strata Schemes (Freehold Development) Act 1973.	<p>The proposed development includes 56 of the 116 units (48.3%) that are less than the minimum 150 m². Any future strata subdivision would not be able to meet the minimum gross floor area of 150 m² for all of the units within the development.</p> <p>The objective of the provision is to provide sites of sufficient size to accommodate a large range of industrial activities.</p>	Not applicable as no subdivision is proposed in this application. The small sizes remain of concern, given the objective of the control.
2. Streetscape and Building Form		
1. Facades are to be composed with an appropriate scale, rhythm and proportion responding to the building's context and use.	The scale, rhythm and proportion of the building façade are in keeping with the building's industrial context and use.	Yes
2. Where visible from the street, the façade should be articulated. Where blank walls are unavoidable, landscape screen planting is to be utilised to reduce visual impact of the building when viewed from the public domain or residential development.	The front façade is appropriately articulated and reflects the industrial use of the development.	Yes
3. Building entrances are to be clearly defined and located so that visitors can readily distinguish the public entrance to each building, with entrances oriented to the street. Access to each entrance is to be provided by a safe direct route, avoiding potential conflict with vehicles manoeuvring on site.	The building entrance would be clearly visible from Box Road.	Yes
4. Highly reflective materials are not acceptable for roof or wall cladding.	The proposal does not include highly reflective materials, however the extent of glazing facing Box Road is a concern as it has the potential to limit the uses of the units, in a zone where retail is strictly limited.	Yes
5. Incorporate passive solar building design principles into development, including optimising of sunlight access and natural ventilation and minimising heat loss, to avoid the need for additional artificial heating and cooling. For example, give careful consideration to the orientation and layout of the building and the location and design of window openings to incorporate sun shading devices	A large number of the units and associated office spaces are internalised and receive no daylight, access to direct natural ventilation, or have any desirable outlook to provide reasonable amenity for future occupants. Internalised spaces are likely to be dark and reliant on artificial lighting and mechanical ventilation rather than passive means.	No

and to facilitate summer cooling by cross ventilation.		
<p>6. For sites in excess of 1,000m², an outdoor staff recreation area is to be provided. This area:</p> <ul style="list-style-type: none"> a. must be a minimum of 16m² in area with a minimum dimension of 3m; b. may be located within the front building setback, but not within the required 3m landscaped setback. The area may also be located within an upper floor balcony or in an enclosed courtyard; c. should be designed to accommodate a table and chairs; d. should be sited so that 6m² receives direct sunlight for the four hours between 10am and 2pm during mid winter; e. should provide shading in summer. 	A communal staff recreation area is provided which meets the minimum dimension requirement and has a northerly aspect for solar access and trees for shade.	Yes
<p>7. Each unit within an industrial unit complex must provide an office space of at least 12 m². This space should:</p> <ul style="list-style-type: none"> • be located close to the entry of each premises; • have commercial floor space ceiling heights; • have easy access to toilet and kitchen facilities; • attain natural daylight. 	Every unit has an office which exceeds 12 m ² . However, not all offices obtain natural light. The ceiling heights of some areas which are not bathrooms are less than 2.4m (such as the areas below the offices on level 1 (A-101 – A111 which is shown as having a ceiling height of 2.2m)	No
<p>8. Where an industrial unit complex consists of more than 10 units:</p> <ul style="list-style-type: none"> a. building layout must allow for visual connections through and beyond the site to assist in breaking down the visual scale of the development and provide more legible site access for visitors; b. consideration should be given to the use of varying architectural resolutions to further assist in breaking down visual scale and improving legibility for visitors. 	The design of the development allows for visual connection. A well considered signage strategy could be required as a condition of consent.	Yes
<p>9. An external energy efficient lighting system is to be provided for pedestrian access and driveways.</p>	The applicant notes that an energy efficiency system lighting would be provided for pedestrian access and driveways, which could be conditioned.	Yes
<p>10. Frontage works for all developments must be in accordance with the SSC Public Domain Design Manual. A minimum street tree planting rate is set at one indigenous canopy tree that will attain a minimum height of 6 m to be planted at maximum spacing of 7.5 m.</p>	The application was referred to Council's Internal Referral Assets Team for proposed works in the public domain. No objections were raised, and standard conditions recommended	Yes

11. For commercial or industrial development where high voltage power lines are not located in the site frontage, frontage works must include the bundling of local distribution power lines and other utilities and the provision of street lighting requirements of the SSC Public Domain Design Manual.	The applicant notes this requirement, which could be conditioned.	Yes
12. Where there are powerlines which are not being undergrounded to meet the or bundled, street tree planting will only be required if they can be located 2 m away from the wires. Where power lines are bundled, suitable trees can be planted underneath the bundled wires.	The applicant notes this requirement, which could be conditioned.	Yes
3. Building Setbacks		
1. A minimum setback from the street frontage of 9 m is required.	9 m front setback is provided.	Yes
2. In the case of corner properties, the 9 m setback applies to the primary street frontage, which is taken to be the narrowest street frontage, except for development on Captain Cook Road Kurnell.	N/A	N/A
3. Where a corner site has two or more street frontages a minimum setback of 3m applies to the secondary street frontage. However, a transitional setback greater than 3m may be required along part of a secondary frontage where a corner site adjoins a property with a 9m primary setback	N/A	N/A
4. Nil setbacks to side and rear boundaries are permitted.	The proposal provides nil side and rear boundary setbacks, with the exception of the area on the western boundary which is adjacent to residential uses, where a 3 metre setback is provided.	Yes
5. Despite the provisions of clause 4, development adjoining public reserves must have a minimum landscaped setback of 3m to the public reserve or public walkway/cycleway.	N/A	N/A
6. Despite the provisions of clause 4, development adjoining residential development must have a minimum landscaped setback of 3m from the residential development.	3 m setback to western boundary adjacent to the residential development on Shirley Road is provided.	Yes
4. Daylight Access		
1. Wherever possible, provide for the potential use of solar energy collectors by incorporating pitched roofs with optimal solar access.	Many of the units and associated office spaces are internalised and receive no daylight, access to direct natural ventilation, or have any desirable outlook to provide reasonable amenity for future occupants. Internalised spaces	No

	will be dark and reliant on artificial lighting and mechanical ventilation rather than passive means.	
2. Office space within each separate industrial unit should be designed so that daylight is provided to office areas.	As above.	No
3. Provide skylights wherever possible to improve energy efficiency.	As above. One skylight is provided to the Level 2 mezzanine for A-207 and to units B-116 – B-122 on the ground level. Similar skylights could have been provided to the ground floor units on the southern side A-112 - A-118, however that has not been adopted	No
5. Acoustic Privacy		
1. All noise generating equipment must be designed to protect the acoustic amenity of neighbours and surrounding land uses. All noise generating equipment must be acoustically treated and/or screened to meet the project specific noise criteria as determined by the NSW Industrial Noise Policy.	<p>An acoustic report accompanies the application and identifies that the proposal will meet the specific noise criteria determined by the NSW Industrial Noise Policy.</p> <p>The application was referred to Council's Environmental Health Unit who did not raise any objections to the proposal in terms of potential acoustic impacts. Given the potential for additional generation of mechanical noise once fit out of the individual units are complete it was recommended that a further acoustic assessment would need to be submitted and further noise mitigation measures may be required, which could be conditioned.</p>	Yes
6. Landscaping		
1. A landscaped strip with minimum width of 3m must be provided adjacent to the front boundary (see Figure 1)	A community open space area is proposed within the front setback which would provide for an adequate landscape strip. Amended plans have removed some of the other structures in the front setback, allowing for improved landscaping	Yes
2. Where site area permits, planting beds of minimum 1.5m width must be provided to side boundaries within the front setback (see Figure 1).	Planting is proposed within the 3 m setback to the residential properties on the western side boundary.	Yes
3. Landscaping should consist of a mix of small to large indigenous canopy trees informally spaced at 3 m intervals, in conjunction with screen shrubs and ground covers. At least 50% of the trees must be capable of achieving a height of at least 6 m at maturity (see Figure 1).	Council's landscape architect did not object to the revised application and included recommended conditions to achieve relevant Council landscape requirements.	Yes
4. All trees and 50% of the understorey species used in landscaping must be chosen from the species list in the Sutherland Shire Council Native Plant Selector	As above. This can be conditioned	Yes

database except in Greenweb 'Core' and 'Support' areas where a greater percentage is required. Potentially invasive exotic species must not be used.		
5. In car parking areas, tree blisters 5.0 x 2.5m between every six (6) car spaces or a continuous planting bed 3m wide between rows of cars must be provided (see Figure 2). The area must be capable of supporting large trees and ground cover.	Car parking is covered or roof top and therefore this requirement is not relevant to the proposal.	N/A
6. All landscaped areas are to be separated from hard paved areas by a dwarf wall or kerb to minimise damage caused by vehicles.	This is a matter of detailed design and could be conditioned.	Yes
7. On Taren Point Road, Captain Cook Drive and the Princes Highway fencing is permitted where required for security reasons, but must be located 3m behind the front boundary.	N/A	N/A
8. Any fencing built within a front or side setback or the boundary of a public reserve is to have maximum height 1.8m, be open form and finished in black to ensure it is visually recessive.	The applicant commits to these fencing requirements, which could be conditioned.	Yes
9. All new developments will be required to install street frontage works including street trees and/or footpath in accordance with the Public Domain Design Manual.	As described in response to Control 2.10 above, the application was referred to Council's Internal Referral Assets Team for proposed works in the public domain. No objections were raised, and standard conditions recommended.	Yes
7. Access		
1. Continuous, independent and barrier free accessways must be incorporated into the building design, including effective signage, sufficient illumination, tactile ground surface indicators and pathways with limited cross-falls, sufficient width, seating and slip-resistant floor surfaces.	Wayfinding (and especially street signage) lacks detail and requires simplification. Vehicle movements are likely to dominate the internal circulation areas, which raises concerns regarding pedestrian safety. A well-considered and integrated design strategy for signage was requested as part of Council's RFI to the applicant and has not been provided.	No
2. Entrances are to enable convenient access for all.	The proposed entrance to the site is generally in the position of the existing entrance to the site and will be easily accessible.	Yes
3. Safe emergency egress is to be provided for all users.	As described in response to Control 7.1 above, vehicle movements are likely to dominate the internal circulation areas, which raises concerns regarding pedestrian safety.	No
4. Ramps, walkways, lifts and stairs are to be conveniently located and safe for all users.	As above.	No

5. Signage is to be provided that clearly identifies and directs access routes.	Refer comment in response to Control 71 above.	No
6. Building controls, services and amenities are to be located in accessible positions and be of a suitable design to allow operation by all people.	Proposed building controls, services and amenities located in accessible positions.	Yes
8. Safety and Security		
1. Development should be in accordance with CPTED Guidelines.	The applicant has not demonstrated that the proposal is in accordance with CPTED guidelines.	No
9. Parking Requirements		
1. Industries including Light Industries Car parking shall be provided in accordance with the following: 1 space per 100m ² , with a minimum of 2 spaces for each industrial unit. Any ancillary office component to an industrial development shall provide 1 space per 30m ² of gross floor area.	<p>The proposed 245 car parking spaces is inadequate and does not meet the following minimum DCP 2015 requirements for Industries, including light industries which are:</p> <ul style="list-style-type: none"> - 116 units = 232 car parking spaces; and - 4,952.6 m² office space = 165 car parking spaces <p>Total car parking spaces = 397</p> <p>The applicant has calculated the warehouse units at 1 space per 300 m². This requirement relates to warehouse or distribution centres, not small individual units as proposed. Therefore, the minimum 2 spaces for each unit need to be applied.</p> <p>The proposal therefore includes a shortfall of 152 car parking spaces.</p>	No
2. Where a development is identified as Traffic Generating Development, then the parking requirement specified in the RTA Guide to Traffic Generating Development shall apply.	The traffic assessment identified the parking requirement specified in the RTA Guide to Traffic Generating Development.	Yes
3. Where a proposed development is not listed in the table, or where the development proposal raises unique traffic and parking issues, or where development is identified as Traffic Generating Development, then a Traffic Report shall be completed.	A traffic report and supplementary traffic and parking information was completed.	Yes
4. Where a site has more than one street frontage, vehicle access should be from the lowest order road. Vehicle entry points from classified roads are only acceptable where no other access point is possible. Reciprocal rights of carriageway will be required where	The site has one street frontage to Box Road.	N/A

they can assist in achieving this outcome.		
5. Bicycle parking spaces must be provided at the rate of 1 space per 10 car parking spaces for the first 200 car spaces, then 1 space per 20 parking spaces thereafter. In addition, 1 unisex shower is required per 10 employees.	The applicant states that there is sufficient room within each warehouse or industrial unit for bicycle parking although no further details are provided to demonstrate compliance with this control.	No
6. Bicycle parking facilities are to be installed in accordance with Australian Standard AS2890.3 – Bicycle Parking Facilities (as amended), Austroad's Guide to Traffic Engineering Practice – Part 14 Bicycles and the Austroads Bicycle Parking Facilities: Guidelines for Design and Installation (AP-R527-16).	As above.	No
7. Bicycle parking facilities must address the following design principles: a. Accommodate all usual types of bicycles such that damage to them is minimised during storage and retrieval. b. Not pose a hazard to bicycle users, pedestrians or motorists. c. Be well lit, safe and secure, easy to access and use. d. Cater for the different needs of residents, employees and visitors to the development. e. Be located in convenient and accessible locations within the development that allow for good passive surveillance; such as near key building entrances, the lobby and the lift core. f. When located within a car park, preferably be situated at street level and in a manner that provides the most direct, safe and convenient access while minimising conflict with vehicles and pedestrians. g. Where a bicycle parking and storage facility cannot be located at street level, it must be located no more than one level above or below street level. Access to street level entry and exits must be direct, safe and minimise potential conflicts with vehicles.	As above.	No
8. Where the car parking requirement is expressed as a minimum number of spaces, the development shall not exceed that minimum.	The proposal includes a shortfall of parking that does not exceed the minimum.	Yes
9. When the calculations for the numbers of parking spaces results in a part or fraction of a parking	Parking calculations have been rounded up to the actual number.	Yes

space of 0.5 or greater for the whole development, then the actual number shall be rounded up. For example 1.5 spaces shall be rounded up to 2 spaces for the whole development.		
10. Where a development proposal contains two or more land uses the parking requirement shall be the sum of parking required for the individual land uses.	Parking requirements have been calculated for warehouse, industrial and office uses.	Yes
11. Where a proposed development comprises two or more land uses with different peak parking demands, the total requirement may be reduced such that the peak demand is met at any one time where supported by a study by a suitably qualified traffic engineer.	The peak parking demands do not differ for the different uses proposed.	N/A
12. Car parking layout and vehicular access requirements and design are to be in accordance with the Australian Standards, in particular AS 2890.12004.	The car parking layout and vehicular access requirements and design have been prepared in accordance with relevant Australian Standards.	Yes
13. The location of driveways is to be determined with regard to orientation, street gully pits and street trees, and is to building maximize design and the availability of on street parking.	The driveway design was revised as part of the amended application and is acceptable.	Yes
14. Planting and walls adjacent to driveways must not block lines of sight for pedestrians, cyclists and vehicles.	The proposed driveway is not obscured by planting or block lines.	Yes
11. Waste		
1. A waste storage area is to be provided for all developments to store bins for general waste and recyclables.	A waste storage area is provided withing the development.	Yes
2. Waste storage areas must not be within: a. the front setback; or b. the parking area; or c. the landscaping area; or d. within 3 metres of the waterway, and must not interfere with manoeuvrability, efficiency and safety of site access.	The waste storage area is within the ground floor parking area.	Yes
3. Developments must be designed so that bins do not need to be wheeled more than 75 metres.	The waste storage area is within 75 m of the frontage to the site.	Yes
4. The location and design of the waste storage area must not detract from the amenity and character of the streetscape.	The waste storage area is not visible from the streetscape.	Yes
5. Bin storage and access requirements should take into	The waste storage area has bene calculated based on Council's specified waste generation rates.	Yes

consideration the future servicing requirements of the building.		
6. Signage in waste storage areas must be encouraged and explain Council requirements for the separation of recyclable material and waste. Standard bin bay signage is available at cost through Council's Waste Services.	Could be conditioned as required.	Yes
7. A tap must be provided in close proximity to the bin room/area.	Could be conditioned as required.	Yes
8. A floor waste trap connected to the sewer shall be provided within the bin room area. Stormwater shall not be permitted to enter this floor waste trap.	Could be conditioned as required.	Yes
9. Commercial and industrial premises require waste storage areas for 240L and/or 750L garbage bins and 240L recycling bins, having regard to the size of development and intensity of use.	Could be conditioned as required.	Yes

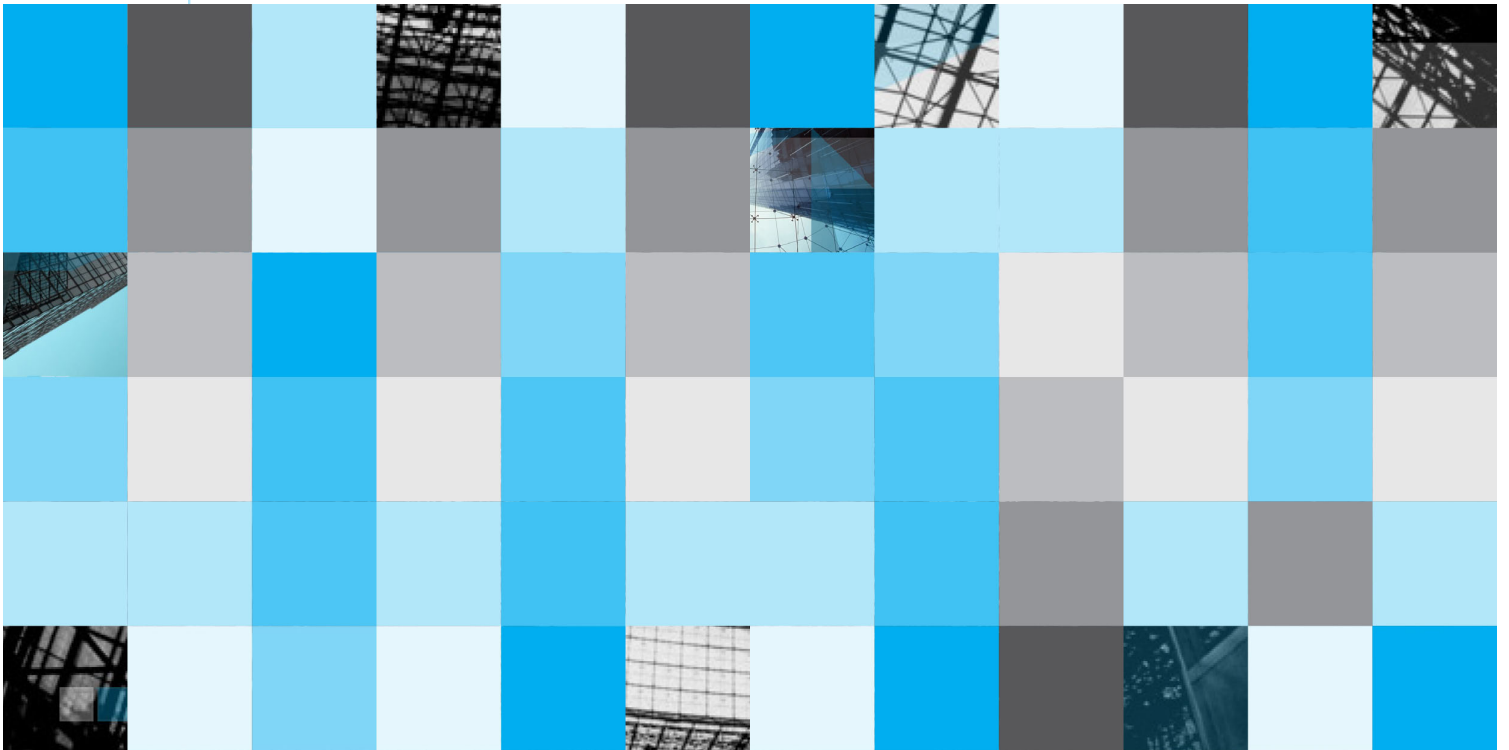
APPENDIX B – Summary of Submissions

NO.	DATE	NAME	ADDRESS	ISSUE
1	11/1/22	Mr and Mrs Stibbard	58-60 Box Road	Insufficient parking Flooding (previous developments not supported)
2	9/1/22	Geoffrey Gould	17/80 Box Road	Parking (unclear)
3	10/1/22	Laura Richards	10 Shirley Road, Miranda	Height (insufficient justification) Noise (gap on west elevation driveway exacerbates noise to Shirley Road residences) Pollution (details on ventilation in relation to residences) Traffic (number of vehicle movements/location of access) Flooding (not possible to raise landscaping – possible flooding of residential properties – development to be moved back beyond flood zone and flood wall installed) Rubbish (How much?) Landscaping (3 m inadequate to Shirley Road residences; western façade needs to be articulated)
4	11/1/22	Philip Treloar	27, 28 & 29/58 Box Road	Flooding/drainage (inadequate detail on easement under development; impact to adjoining properties if drainage inadequate)
5	6/1/22	Belinda Doyle	10a Shirley Road, Miranda	Flooding (constrained and in proximity to residential – cannot meet flood requirements) Design (long walls/no articulation – western elevation 61 m) Height (increasing development for flood is inadequate justification for exceeding height limit) Flooding (not possible to raise landscaping – possible flooding of residential properties) Noise (gap on west elevation driveway exacerbates noise to Shirley Road residences) Landscaping 3 m inadequate to Shirley Road residences)
6	8/1/22	Finlay Grounds	20/58 Box Road	Overdevelopment of site (unacceptable development over easement ie maintenance; unacceptable precedent)

NO.	DATE	NAME	ADDRESS	ISSUE
				<p>Height (excessive – 6 storeys not 3; out of keeping with existing area)</p> <p>Overshadowing of adjoining properties</p> <p>Solar access (over half of the unit will not have access to natural sunlight)</p> <p>Traffic (unacceptable increase on local roads/9 m trucks cannot access upper levels which will result in trucks unloading on Box Road)</p> <p>Parking (inadequate impact on local streets)</p>
7	10/1/22	Yvette Allum	19/58 Box Road	<p>Height</p> <p>Overshadowing</p> <p>Solar access (natural daylight; fumes)</p> <p>Flooding (loss of vegetation/increase in impervious areas; maintenance of easement; stormwater discharge onto neighbouring lots; requirement for bund around site)</p> <p>Parking (inadequate onsite provision; impact on local streets including access to Gwawley Park)</p> <p>Access (No 9 m trucks on upper levels/too steep for forklifts/ – only small area on ground floor to unload; restricted rubbish truck area)</p> <p>Traffic (upgrade ie additional turning lanes required Box Road/Taren Point intersection)</p>
8	10/1/22	Lila Bosevska	24/58 Box Road	<p>Height (excessive)</p> <p>Parking (inadequate)</p> <p>Traffic safety (Limited parking, narrow street, no footpaths, buses double parked for sporting events at Gwawley Park)</p> <p>Safety (Proximity of large LPG tank at rear of 58 Box Road, during construction and from being closed in/limited airflow from the development; smokers in outdoor sitting area)</p>
9	10/1/22	Rebecca Edgell	12 Shirley Road, Miranda	<p>Height (insufficient justification)</p> <p>Noise (gap on west elevation driveway exacerbates noise to Shirley Road residences)</p> <p>Pollution (details on ventilation in relation to residences)</p> <p>Traffic (number of vehicle movements/location of access)</p> <p>Flooding (not possible to raise landscaping – possible flooding of residential properties –</p>

NO.	DATE	NAME	ADDRESS	ISSUE
				development to be moved back beyond flood zone and flood wall installed) Rubbish (How much?) Landscaping (3 m inadequate to Shirley Road residences; western façade needs to be articulated)
10	10/1/22	Vlad Halaska	8 Hall Drive, Menai (owner of 25/58 Box Road)	Height Overshadowing Solar access (natural daylight; fumes) Flooding (loss of vegetation/increase in impervious areas; maintenance of easement; stormwater discharge onto neighbouring lots; requirement for bund around site) Parking (inadequate onsite provision; impact on local streets including access to Gwawley Park) Access (No 9 m trucks on upper levels/too steep for forklifts/ – only small area on ground floor to unload; restricted rubbish truck area) Traffic (upgrade ie additional turning lanes required Box Road/Taren Point intersection)
11	10/1/22	Michael Kazacos	11/58 Box Road	Height (6 storeys excessive) Overshadowing Flooding (no additional provision) Parking (inadequate – impact on users of Gwawley Park)
12	10/1/22	Charmaine Lau	Unit 1D, 1-3 Endeavour Road, Caringbah (owner 10/58 Box Road)	Flooding drainage (exacerbated by loss of green space and climate change) Parking/congestion (impact on Gwawley Park)
13	21/12/21	Jennifer Wood	2 Shirley Road, Miranda	No mention of replacement fence Height/overshadowing/views Parking inadequate Noise (operation to be limited to 8-5 Monday-Friday / mechanical plant not shown)

APPENDIX C – Clause 4.6 Variation Request – Building Height



72-78 Box Road, Taren Point

Clause 4.6 – Building Height Development Standard

Clause 4.6 – Building Height Development Standard

72-78 BOX ROAD, TAREN POINT

April 2022

Prepared under instructions from
[Landmark Group](#)

by

[Aaron Sutherland](#)
B Town Planning UNSW

aaron@sutherlandplanning.com.au
Tel: 0410 452 371
PO BOX 814 BOWRAL NSW 2576

1.0	CLAUSE 4.6 REQUEST – BUILDING HEIGHT	4
1.1	Introduction	4
1.2	Site Description	4
1.3	Flooding Solution	5
1.4	Clause 4.6 Exceptions to development standards	7
1.5	Development Standard to be varied	7
1.6	Extent of Variation to the Development Standard	8
1.7	Clause 4.6(3)(a) Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?	9
1.8	Clause 4.6(3)(b) Are there are sufficient environmental planning grounds to justify contravening the development standard?	12
1.9	Clause 4.6(4)(a)(i) consent authority satisfied that this written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3)	14
1.10	Clause 4.6(4)(a)(ii) consent authority satisfied that the proposal is in the public interest because it is consistent with the zone and development standard objectives	14
1.11	Clause 4.6(5) Secretary Considerations	15
1.12	Objectives of Clause 4.6	15
1.13	Conclusion	16

1.0 CLAUSE 4.6 REQUEST – BUILDING HEIGHT

1.1 Introduction

Landmark Group is an Australian property development company with more than 20 years of experience and a strong reputation for delivering quality developments. Landmark Group acquires prime development sites within Sydney's growth and transport corridors and as a builder/developer aim to deliver projects in a timely fashion and ensure a high quality outcome is achieved.

The proposed development is for demolition of existing structures and construction of a new warehouse and industrial unit complex at 72-78 Box Road, Taren Point.

The vision for the site is based on the following key principles:

- Establish a dynamic commercial industrial precinct based on current best practice and innovation;
- Create employment opportunities for the region by delivering a unique benchmark precinct that creates long-term growth; and
- Introduce water management strategies to mitigate overland flows and flooding and reduce flooding impacts to surrounding lots. In particular, the proposal will:
 - have a flood benefit for 9.4 Ha of immediate surrounding area
 - significantly reduced flooding 142 lots
 - significantly reduced flooding for 3 local roads, being Taren Point Road, Parraweena Road, Shirley Road
 - remove risks to property damage and risks to life in a flood event
 - remove risks of loss of business and significant cost of clean up during a regular flood event
 - provide a remedy for council, which otherwise would not be available to resolve flood problems in the area.

1.2 Site Description

The development site comprises a single allotments legally described as Lot 44 Section C DP 8529 and is known as 72-78 Box Road, Taren Point. The site is irregular in shape with a frontage of 74.02 metres to Box Road, a variable width of between 50 metres and approximately 85 metres and the total site area is 11,430.6 square metres. There is a very minor fall from rear (south) to front (north) of approximately 100mm.

There is a 20 metre wide easement for trunk stormwater drainage of which Council is the beneficiary which runs diagonally through the site from the south-eastern corner to north-western corner. At the southern of the site, the easement contains an open watercourse for a short length which extends from the southern neighbouring properties at Lot 16 Sec C DP 8529 and Lot 1 DP 532021. Shortly into the site the water course is converted into an enclosed box culvert of approximately 4 metres in width for the remaining of the site extent. The box culvert is a Council asset. The site is currently occupied by a large warehouse and office building which covers a large part of the box culvert and which blocks overland flow across the site. The floor levels of the existing building are at or just above existing ground levels and as such, are regularly inundated by minor floods causing significant damage to goods, vehicles and disruption to not only operations on the subject site, but the wider flood catchment area of 9.4Ha.

There is a hard stand car parking area at the front portion of the side along the western boundary which provides for vehicular parking. The majority of the rear of the site is also occupied by hard stand parking areas which is accessed via a gate which quarantines the rear of the site. There is vegetation along the unmade watercourse at the rear of the site comprising a range of trees, whilst there are also other trees along the western boundary of the site.

The culvert which occupies the site has very limited flow capacity given that its invert is low with the majority of the pipe drowned in normal high tides. Flood flows readily exceed the culverts capacity leading to most of the flood flows travelling overland on the site. However, the existing industrial warehouse blocks 90% of the site width and hence removes the functional capacity of the flood overland flow path which causes increased flood levels upstream (to the south) affecting the subject site and adjacent sites. There is a solid brick fence along the site frontage which also significantly obstructs the overland flood flows and causes higher flood levels.



Figure 1:

Aerial view of the site (Source: Six Maps, Department of Lands 2021)

1.3 Flooding Solution

The subject site and surrounds are significantly flood affected.

The culvert which occupies the site has very limited flow capacity given that its invert is low with the majority of the pipe is drowned in normal high tides. Flood flows readily exceed the culverts capacity leading to most of the flood flows travelling overland on the site. However, the existing industrial warehouse blocks 90% of the site width and hence removes the functional capacity of the flood overland flow path which causes increased flood levels upstream (to the south) affecting the subject site and adjacent sites. There is a solid brick fence along the site frontage which also significantly obstructs the overland flood flows and causes higher flood levels.

In order to address the flooding issue, the proposal involves a suspended ground floor to provide a clear 1.1 metres underneath the ground level slab to form a 50 metre wide flood overland flow path through the site. (The elevated nature of the ground floor slab also means that the slab needs to be thicker than normal at 0.5m). In addition, the driveway has been located over the alignment of the Council drainage culvert with lift out concrete

panels (7m wide) should access be required by Council in the future for maintenance or replacement of the culvert. The driveway has a clearance to the upper floor slab of 5.4m in order to accommodate cranes and excavators for any future works on the culvert.

Detailed discussions have been held with Council's engineers in relation to the proposed stormwater and flood solution for the development and Council has indicated in-principle support for the proposed solution.

The flood report prepared by Tooker + Associates which accompanies this application provides the following explanation in relation to the design of the project to address the existing flooding issues on site and precinct:

The proposed development meets Council's requirements for flood management while providing significant benefits in terms of large reductions in flood levels on the site as well as over the 10ha of flood affected area around the site.

This is the only site in the flooded area with one owner which could provide the significant flood benefits by widening the flood overland flow path. This provides Council with a flood improvement not available for this location in any other way.

These wide ranging benefits have been achieved by suspending the ground floor level above existing ground levels to provide a flood flow path across the whole site. This results in a 10 fold increase in the flood flow width compared to existing conditions. Also, the solid front fence has been removed to remove further flood flow obstructions.

This 10 fold increase in the flood flow path (50m wide) removes the blockage caused by existing buildings and lowers flood levels by up to more than 300mm on and around the site on both industrial and residential properties.

At the site frontage, the underside of the ground floor will be approximately 1.1m above ground levels and any landscaping will also be elevated in the same manner. A palisade type fence will be installed between the ground level and the underside of the ground floor. This will permit flood flows to flow unimpeded onto Box Rd

Access to both ends on the Council drainage culvert will still be available post the development. In addition, the driveway has been located over the alignment of the Council drainage culvert with lift out concrete panels (7m wide) should access be required by Council in the future for maintenance or replacement of the culvert. The driveway has a clearance to the upper floor slab of 5.4m in order to accommodate cranes and excavators for any future works on the culvert.

The palisade type fencing installed between the ground and the underside of the floor slab will stop any large floating debris in floods however, given the piping of most of the creekline in upstream areas, this extent of floating debris will be limited. The clearance under the ground floor will be sufficient for manual clearance of any accumulated debris on an annual basis or as required after flood events. It will also allow considerable air flow to permit drying of this area after a flood event and avoidance of extensive odours.

The Council's Sea Level Rise Policy dated November 2016 requires consideration of the impact of future sea level rises on flood levels and selected floor levels. The likely economic life of the development is 50 years and the Council prediction of sea level rise by 2070 is 0.39m. When this rise is added to the post development 100 yr ARI flood levels, the resulting flood levels would be RL 2.55m AHD and RL 3m AHD at the front and rear boundaries of the site respectively. These flood levels are below the finished floor levels at RL 3.3m AHD and RL 3.6m AHD. Even if the sea level rise at 2100 of 0.72 was adopted, the

100yr ARI flood levels would be RL 2.87m AHD and RL 3.32m AHD at the front and rear boundaries respectively. These flood levels are still below the proposed finished floor levels.

The flood benefits of the proposal are summarised as:

- 9.4 Ha of area of land will benefit which contains 30 Residential Lots and 112 Industrial Lots will directly benefit from a lowering of flood levels
- 3 local roads will benefit including Taren Point Road, Parraweena Road, and Shirley Road
- The proposal removes risk to property damage and risk to life during floods on the site and many properties in adjacent areas
- The proposal removes significant cost of cleanup and loss of business during the regular flooding on this site
- The proposal provides a remedy for Council, which otherwise would not be available, of the existing regular flood problems on this site and adjacent sites
- Flooding on adjacent residential properties is lowered by up to 300mm

1.4 Clause 4.6 Exceptions to development standards

Clause 4.6(2) of the SSLEP provides that development consent may be granted for development even though the development would contravene a development standard imposed by the SSLEP, or any other environmental planning instrument.

However, clause 4.6(3) states that 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 circumstance of the case, and
- (b) there are sufficient environmental planning grounds to justify contravening the development standard.

In accordance with clause 4.6(3) the applicant requests that the height of buildings development standard be varied.

1.5 Development Standard to be varied

Clause 4.3 states:

- (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.

Building height (or height of building) is defined in the dictionary of SSLEP as the vertical distance between ground level (existing) at any point to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like. The maximum height shown for the site is 16 metres as shown in Figure 2.

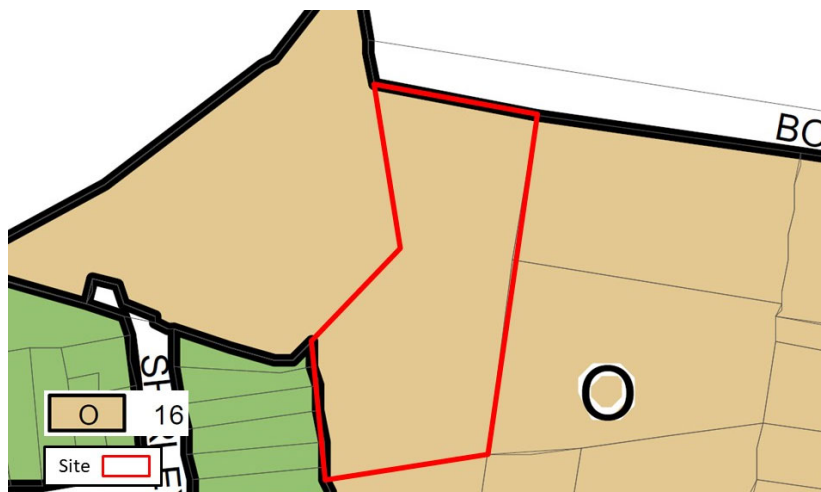


Figure 2:

Extract from the
SSLEP Height of
Buildings Map

1.6 Extent of Variation to the Development Standard

The proposal provides for a 3 storey scale which is consistent with the scale of new industrial development within the industrial zones of Taren Point. However, as a direct result of the proposed flooding solution which provides a profound improvement for many surrounding properties within the catchment of the site, and to create functional head clearance heights within the units, the proposed development exceeds the height control by between 2 metres to 2.8 metres (17.5%) as illustrated in Figure 3 below.

Importantly, it is noted that the proposal has been designed with a compliant wall and roof height along the south-western edge of the site adjacent to the residential properties. The design of the development along this interface in fact results in a reduced level of shadow when compared with a compliant height. Accordingly, the proposed height variation does not result in any adverse impact to the adjacent residential properties when compared with a height compliant design.

3D Height plane

Historically the most commonly invoked way to establish that a development standard was unreasonable or unnecessary was satisfaction of the first test of the five set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827 which requires that the objectives of the standard are achieved notwithstanding the non-compliance with the standard.

Whilst it is only necessary to address the first method of the five part test described in *Wehbe v Pittwater Council*. [2007] NSWLEC 827, which alone is sufficient to satisfy the ‘unreasonable and unnecessary’ requirement, all five tests are addressed below followed by a concluding position which demonstrates that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case:

The specific objectives of Clause 4.3 of the SSLEP are identified below. A comment on the proposal's consistency with each objective is also provided.

-

(ii) is consistent with the desired scale and character of the street and locality in which the buildings are located or the desired future scale and character, and

(iii) complements any natural landscape setting of the buildings,

The height control which applies to the site is usually facilitates a 3 storey contemporary industrial and warehouse development, as evidenced by several recently approved developments under the same height control elsewhere in Taren Point. The subject proposal also has a height of 3 storeys and is consistent with the intended scale of development. The proposed height variations are a direct result of lifting the buildings up to create an overland flow path underneath the entire site. Notwithstanding, the proposed height variations are relatively minor such that the proposed development remains compatible with the height and scale of surrounding and nearby development, and consistent with the desired scale and character of the street and locality notwithstanding the height variations.

In relation to the scale of the development when viewed from the adjacent residential properties, it is noted that the proposed design achieves a fully compliant wall height along this interface, which is in fact slightly below the height control in some areas. Accordingly, the proposal presents to the adjacent residential properties exactly as anticipated by the 16 metre height control.

(b) to allow reasonable daylight access to all buildings and the public domain.

The proposed development ensures a high level of solar access is available to all buildings and the minor nature of the height variations does not result in any meaningful difference in relation to solar access impact to the street.

Importantly, it is noted that the proposal has been designed with a compliant wall and roof height along the south-western edge of the site adjacent to the residential properties. The design of the development along this interface in fact results in a reduced level of shadow when compared with a compliant height. Accordingly, the proposed height variation does not result in any adverse impact to the adjacent residential properties when compared with a height compliant design.

(c) to minimise the impacts of new buildings on adjoining or nearby properties from loss of views, loss of privacy, overshadowing or visual intrusion.

The proposed height variations are particularly minor and do not result in any meaningful loss of views, or any meaningful shadow impacts as discussed above. The proposed areas of height encroachment do not result in any loss of privacy. In relation to the scale of the development when viewed from the adjacent residential properties, it is noted that the proposed design achieves a fully compliant wall height along this interface, which is in fact slightly below the height control in some areas. Accordingly, the proposal presents to the adjacent residential properties exactly as anticipated by the 16 metre height control.

Furthermore, The design of the development along this interface in fact results in a reduced level of shadow when compared with a compliant height.

(d) to ensure that the visual impact of buildings is minimised when viewed from adjoining properties, the street, waterways and public reserves.

The proposed height variations are particularly minor such that the visual impact of the proposed areas of variation is not greatly dissimilar from a compliant height. Notwithstanding this, in relation to the scale of the development when viewed from the adjacent residential properties, it is noted that the proposed design achieves a fully compliant wall height along this interface, which is in fact slightly below the height control in some areas. Accordingly, the proposed development results in a scale as viewed from the adjacent residential properties entirely as anticipated by the height control.

(e) to ensure, where possible, that the height of non-residential buildings in residential zones is compatible with the scale of residential buildings in those zones.

The site is not in a residential zone.

(f) to achieve transitions in building scale from higher intensity employment and retail centres to surrounding residential areas.

This objective is not applicable to the proposed development.

2. **the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;**

The underlying objectives and purpose of the height control are relevant to the proposed development. However, the proposed development is consistent with those objectives as discussed above. The proposed height is compatible with the existing and future scale of the surrounding buildings and will sit comfortably with the context of the site with no unreasonable impacts to adjacent properties.

3. **the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;**

The underlying objectives and purpose of the standard relates to compatibility and impact and are relevant to the proposed development. The underlying objective and purpose would in this instance be compromised by a compliant proposal because it would discourage the achievement of a significant public benefit as a result of the lifting of the development to create an overland flow path through the entire site and substantially reduce flooding on adjacent properties.

4. **the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;**

The development standard has not been virtually abandoned or destroyed by Council's own actions.

5. **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 would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.**

The zoning of the land is not considered to be unreasonable or inappropriate.

Strict compliance with the maximum 16m height of buildings development standard is considered to be unnecessary and unreasonable in the circumstance of this site as discussed below:

- The proposed development provides for a flooding solution which directly benefits a significant number of surrounding properties with reduction in flooding levels by more than 300mm. This is achieved by elevating the entire development on a suspended ground level slab to allow the entire site to become an overland flow path, with a 1.1m clearance under the slab. The elevated nature of the ground floor slab also means that the slab needs to be thicker than normal at 0.5m. As a consequence, this pushes the proposed development through the height control by a proportionate amount.
- The development presents as 3 storey scale to the streets in accordance with the envisaged scale of development for the site by the planning controls and other recently approved developments under the same controls.
- The areas of variation are only relatively minor and do not result in any significant adverse impact to adjacent properties, noting that the development has been deliberately designed with a wall height which does not exceed the height control adjacent to the residential properties to the west. The proposal in fact results in a reduced shadow impact when compared with a strictly compliant height along this interface.
- The proposed variation allows for the most efficient and economic use of the land.
- Strict compliance with the development standard would result in an inflexible application of the control that would not deliver any additional benefits to the owners or occupants of the surrounding properties or the general public, and in fact would undermine the achievement of a substantial public benefit being the reduction in flood levels within the catchment.
- Having regard to the planning principle established in the matter of Project Venture Developments v Pittwater Council [2005] NSWLEC 191 most observers would not find the proposed development offensive, jarring or unsympathetic to its location and the proposed development will be compatible with its context.

1.8 [Clause 4.6\(3\)\(b\) Are there are sufficient environmental planning grounds to justify contravening the development standard?](#)

The Land & Environment Court matter of Initial Action Pty Ltd v Woollahra Council [2018] NSWLEC 2018, provides assistance in relation to the consideration of sufficient environmental planning grounds whereby Preston J observed that:

- in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and
- there is no basis in Clause 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development

The environmental planning grounds to support the proposed height variation are discussed below.

The subject site and surrounds are significantly flood affected.

The culvert which occupies the site has very limited flow capacity given that its invert is low with the majority of the pipe is drowned in normal high tides. Flood flows readily exceed the culverts capacity leading to most of the flood flows travelling overland on the site. However, the existing industrial warehouse blocks 90% of the site width and hence removes the functional capacity of the flood overland flow path which causes increased flood levels upstream (to the south) affecting the subject site and adjacent sites. There is a solid brick fence along the site frontage which also significantly obstructs the overland flood flows and causes higher flood levels.

In order to address the flooding issue, the proposal involves a suspended ground floor to provide a clear 1.1 metres underneath the ground level slab to form a 50 metre wide flood overland flow path through the site. (The elevated nature of the ground floor slab also means that the slab needs to be thicker than normal at 0.5m). In addition, the driveway has been located over the alignment of the Council drainage culvert with lift out concrete panels (7m wide) should access be required by Council in the future for maintenance or replacement of the culvert. The driveway has a clearance to the upper floor slab of 5.4m in order to accommodate cranes and excavators for any future works on the culvert.

Detailed discussions have been held with Council's engineers in relation to the proposed stormwater and flood solution for the development and Council has indicated in-principle support for the proposed solution.

Strict compliance with the height control across the site would discourage the capacity to achieve this flooding solution because the need to elevate the development and provide sufficient clearance over the upper floor slab are directly responsible for the height variation.

Notwithstanding the above, the areas of height breach are still relatively minor and the development still presents as a 3 storey scale to Box Road in accordance with the envisaged scale of development for the site by the planning controls and other recently approved developments under the same controls. In addition, the proposal has been deliberately designed to ensure that a compliant height is maintained along the western edge and the interface with the adjacent residential properties, to ensure that the development does not result in any greater shadow to those properties when compared with a strictly height compliant development.

The Land & Environment Court matter of Adam Hughes Pty Ltd v Penrith City Council [2018] NSWLEC 1369 recognises that a height non-compliance as a result of a need to respond to a flood constraint is an environmental benefit.

The objects specified in section 5(a)(i) and (ii) of the EP&A Act are:

'to encourage:

- i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,
- ii) the promotion and co-ordination of the orderly and economic use and development of land..'

The proposed development is consistent with the aims of the Policy and the objects of the EP&A Act in that:

- Strict compliance with the development standard would result in an inflexible application of the control that would not deliver any significant additional benefits to the owners or occupants of the surrounding properties or the general public.
- Strict compliance would require a prevent the achievement of a flooding solution for the surrounding properties.
- The proposed variation allows for the most efficient and economic use of the land.

On the basis of the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed height non-compliance in this instance.

1.9 Clause 4.6(4)(a)(i) consent authority satisfied that this written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3)

Clause 4.6(4)(a)(i) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).

These matters are comprehensively addressed above in this written request with reference to the five part test described in *Wehbe v Pittwater Council* [2007] NSWLEC 827 for consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. In addition, the establishment of environmental planning grounds is provided, with reference to the matters specific to the proposal and site, sufficient to justify contravening the development standard.

1.10 Clause 4.6(4)(a)(ii) consent authority satisfied that the proposal is in the public interest because it is consistent with the zone and development standard objectives

Clause 4.6(4)(a)(ii) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that 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.

Objective of the Development Standard

The proposal's consistency with the objectives of the development standard have been addressed in detail in this clause 4.6 request.

Objectives of the Zone

Clause 4.6(4) also requires consideration of the relevant zone objectives. The site is located within the IN1 General Industrial zone.

The objectives of the IN1 General Industrial zone are:

- To provide a wide range of industrial and warehouse land uses.
- To encourage employment opportunities.
- To minimise any adverse effect of industry on other land uses.
- To support and protect industrial land for industrial uses.
- To enhance the visual appearance of the employment area by ensuring new development achieves high architectural and landscape standards.
- To minimise the impact of development in the zone on areas of environmental significance.

The proposed development provides for a an industrial and warehouse development which will provide significant employment opportunities. The proposal has been designed with a 3 metre landscaped setback from the adjacent residential dwellings. Furthermore, the proposal only provides small industrial units in this part of the site which will generate a lower level of impact when compared to the alternative potential for heavy manufacturing on the site. Finally, the proposed design will actually reduce flooding to the adjacent residential properties by more than 300 mm and therefore the proposal provides an especially sensitive outcome for the adjacent residential properties having regard to the zoning of the site.

The proposal provides an attractive and contemporary architectural expression. The proposed development includes a comprehensive design for the landscaping of the site that will result in an industrial development within a suitably landscaped setting having regard to the industrial context of the site. The landscaping proposed represents an integral element in ensuring the development has an appropriate contextual fit and will positively contribute to the character of Taren Point.

For the reasons the proposal is considered to be consistent with the objectives of the IN1 General Industrial zone

The proposal has been demonstrated to be consistent with both the objectives of the building height development standard as well as the objectives of the zone and therefore the consent authority can be satisfied that the proposal is in the public interest. Furthermore, the public interest is appropriately served by providing a flood solution for many surrounding sites.

1.11 Clause 4.6(5) Secretary Considerations

The matters for consideration under Clause 4.6(5) are addressed below:

(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,

The contravention of the standard does not raise any matters of significance for state or regional environmental planning. The development does not impact upon or have implications for any state policies in the locality or impacts which would be considered to be of state or regional significance.

(5) In deciding whether to grant concurrence, the Secretary must consider:

(b) the public benefit of maintaining the development standard,

This Clause 4.6 request has demonstrated there are significant environmental planning benefits associated with the contravention of the standard. There is no material impact or benefit associated with strict adherence to the development standard and in my view, there is no compelling reason or public benefit derived from maintenance of the standard.

1.12 Objectives of Clause 4.6

The specific objectives of Clause 4.6 are:

(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.

As demonstrated above the proposal is consistent with the objectives of the zone and the objectives of Clause 4.3 notwithstanding the proposed variation to the maximum height of buildings development standard.

Requiring strict compliance with the height of buildings development standard on the subject site would not result in any meaningful benefit to the streetscape or the amenity of adjoining properties. However, strict compliance would prevent the ability to elevate the building to create a 50 metre wide overland flow path through the site.

Allowing the flexible application of the maximum height of buildings development standard in this instance is not only reasonable but also desirable given the positive flood solution which can only be achieved by lifting the development.

Accordingly, it is considered that the consent authority can be satisfied that the proposal meets objective 1(a) of Clause 4.6 in that allowing flexibility in relation to the maximum height of buildings development standard and will achieve an acceptable and better urban design outcome in this instance in accordance with objective 1(b).

1.13 Conclusion

Strict compliance with the maximum height of buildings development standard contained within clause 4.3 of the Sutherland Shire Local Environmental Plan 2015 has been found to be unreasonable and unnecessary in the circumstances of the case. In addition, there are sufficient environmental planning grounds to justify the variation. Finally, the proposed development and height variation is in the public interest because it facilitates a development which is consistent with the objectives of the standard and the zone and which delivers a significant public benefit beyond that which is anticipated by planning controls. In this regard it is reasonable and appropriate to vary the building height development standard to the extent proposed.