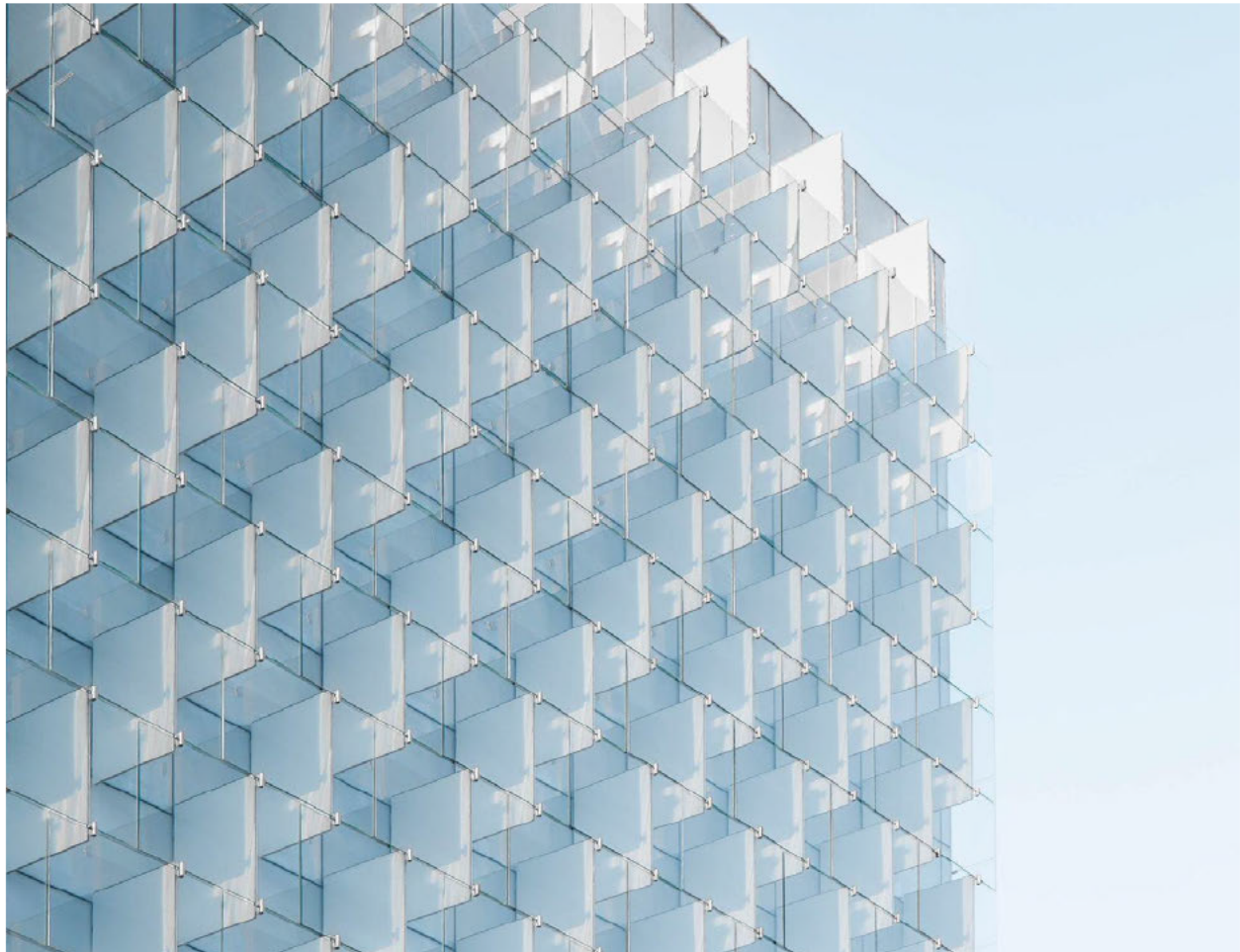


WILLOWTREE PLANNING



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CLAUSE 4.6 VARIATION REQUEST HEIGHT OF BUILDINGS

Proposed Industrial Warehouse Facilities

35-47 Stennett Road, Ingleburn
(Lot 1 DP1092198 & Lot 26 DP863617)

—

Prepared by Willowtree Planning Pty Ltd
on behalf of Stockland

ACN: 146 035 707 ABN: 54 146 035 707
Suite 4, Level 7, 100 Walker Street
North Sydney, NSW 2060

enquiries@willowtp.com.au
willowtreeplanning.com.au
02 9929 6974





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PART A PRELIMINARY

1.1 INTRODUCTION

This Clause 4.6 variation request (Variation Request) has been prepared in support of a Development Application (DA) for the construction and operation of three (3) industrial warehouse facilities (Proposal) at 35-47 Stennett Road, Ingleburn (Lot 1 DP1092198 & Lot 26 DP863617) (Site).

The Site is zoned IN1 General Industrial and SP2 Infrastructure pursuant to the *Campbelltown Local Environmental Plan 2015* (CLEP 2015) and is located within the Campbelltown Local Government Area (LGA). The proposed development is permissible with consent within the IN1 zone and SP2 zone is considered contextually appropriate. The proposal is generally consistent with the objectives and provisions of CLEP 2015, with the exception of Clause 4.3 – Height of Buildings, for which this Variation Request is sought.

This Variation Request has been prepared in accordance with the aims and objectives contained within Clause 4.6 and the relevant development standards prescribed under CLEP 2015. It considers various planning controls, strategic planning objectives and existing characteristics of the Site, and concludes that the proposed building height non-compliance is the best means of achieving the objects of encouraging orderly and economic use and development under the *Environmental Planning and Assessment Act 1979* (EP&A Act).

1.2 RATIONALE OF VARIATION FROM DEVELOPMENT STANDARDS

This Variation Request has been submitted to assess the proposed non-compliance with Clause 4.3 – Height of Buildings of CLEP 2015 and has been prepared in accordance with the requirements of Clause 4.6 of CLEP 2015 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.

Under the provisions of Clause 4.3 of CLEP 2015, the Site is subject to a maximum building height of **19m**. The proposed building height of **21.3m** would exceed the maximum building height. The development in its proposed built form and scale will provide industrial development that is purpose built to satisfy the function of the use and is commensurate in form and scale with the existing warehouse facilities on the Site and the surrounding industrial development. The proposed non-compliance is not likely to have an adverse impact on the area and would simply seek to provide further industrial development consistent with the surrounding area.

This Variation Request has been prepared in accordance with the aims and objectives contained within Clause 4.6 and the relevant development standards prescribed by CLEP 2015.





1.3 DEVELOPMENT STANDARD VARIATION

Under the provisions of Clause 4.3 of CLEP 2015, the Site is subject to a maximum building height of **19m**. The Proposal will result in a building height of **21.3m**. **Table 1** below provides a summary of the variation.

TABLE 1: CLAUSE 4.3 OF CLEP 2015 VARIATION SUMMARY				
CLEP 2015 Clause	CLEP 2015 Development Standard	Maximum Building Height Proposed	Proposed Development Non-Compliance	
Clause 4.3 – Height of Buildings	Maximum height of 19m	21.3m	The Proposal seeks consent for a maximum building height 21.3m which is a 12.1% variation from the development standard.	

Notwithstanding the above, curtailing the building height of the Proposal to the current prescribed development standard would prevent the Proposal from meeting the operational needs of the warehouse use whilst provide consistent floor and road levels for the rear warehouses (Warehouse 6 and 7), therefore restricting the use the land zoned for industrial development.

In its current form, the Proposal therefore represents the most efficient use of the Site which responds to the existing environmental constraints, compared to a development which is entirely compliant with the 19m Height of Buildings control.





PART B THRESHOLDS THAT MUST BE MET

2.1 INTERPRETING CLAUSE 4.6

Clause 4.6 of CLEP 2015 facilitates exceptions to strict compliance with development standards in certain circumstances. Clause 4.6(3) states (our emphasis added):

*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.*

In addition, Clause 4.6(4) states that (our emphasis added):

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.*

Further to the above, Clause 4.6(5) states the following (our emphasis added):

In deciding whether to grant concurrence, the Planning 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 Planning Secretary before granting concurrence.*

Accordingly, a successful Clause 4.6 variation must satisfy three limbs explained in detail below:

First Limb – cl 4.6(4)(a)(i)

Clause 4.6(4)(a)(i) provides that the consent authority must be satisfied that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by Clause 4.6(3).





These matters are twofold:

- a. that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (CI 4.6(3)(a)); and
- b. that there are sufficient environmental planning grounds to justify contravening the development standard (CI 4.6(3)(b)). To this end the environmental planning grounds advanced in the written request must justify the contravention, not simply promote the benefits of carrying out the development as a whole: *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15].

In the decision of *Rebel MH v North Sydney Council* [2019] NSWCA 130 (**Rebel**) Payne JA held (our emphasis added):

*“Although it was unnecessary finally to decide the correct construction of cl 4.6(4) in Al Maha, I agree with the construction advanced in that case by Basten JA, with whom Leeming JA agreed, at [21]-[24]. **Properly construed, a consent authority has to be satisfied that an applicant’s written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).** Clause 4.6(3) requires the consent authority to have “considered” the written request and identifies the necessary evaluative elements to be satisfied. To comply with subcl (3), the request must demonstrate that compliance with the development standard is “unreasonable or unnecessary” and that “there are sufficient environmental planning grounds to justify” the contravention. It would give no work to subcl 4.6(4) simply to require the consent authority to be satisfied that an argument addressing the matters required to be addressed under subcl (3) has been advanced.”*

Accordingly, a consent authority must be satisfied:

- a) that the Clause 4.6 variation application addresses the matters in Clause 4.6(3); and
- b) of those matters itself which means that there is greater scope for a consent authority to refuse a Clause 4.6 variation.

The matters identified in the First Limb are addressed in **Sections 4.3** and **4.4** of this Variation Request.

Second Limb – clause 4.6(4)(a)(ii)

Clause 4.6(4)(a)(ii) provides that the consent authority must be satisfied that the proposed development will be in the public interest because it is consistent with:

- a) the objectives of the particular development standard; and
- b) the objectives for development within the zone in which the development is proposed to be carried out.

The opinion of satisfaction under CI 4.6(4)(a)(ii) differs from the opinion of satisfaction under CI 4.6(4)(a)(i) (ie the first limb) in that the consent authority must be directly satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the development standard and the zone, not indirectly satisfied that the applicant’s written request has adequately addressed those matters.





The matters identified in the Second Limb addressed in **Sections 4.1, 4.2 and 4.6** of this Variation Request.
Third Limb – clause 4.6(4)(b)

Clause 4.6(4)(b) requires that concurrence of the Secretary of the NSW Department of Planning, Industry and Environment has been obtained.

Clause 4.6(5) outlines the matters to be considered by the Planning Secretary in deciding whether to grant concurrence.

The matters identified in the Third Limb are addressed in **Sections 4.7 and 4.8** of this Variation Request.

Other relevant legal matters

The language used in a Clause 4.6 variation application is of paramount importance. In the decision of *Rebel MH Neutral Bay Pty Ltd v North Sydney Council* [2018] NSWLEC 191 the court held that the applicant had inferred an entitlement to floor space and had asserted, expressly or by necessary inference, that floor space that would be forgone as a result of a variation not being permitted, would be required to be relocated elsewhere in a revised development. The court did not look favourably on this assertion and refused the variation to the development standard. Accordingly, the building envelope set by the development standards should be viewed as a maximum area and not an entitlement and language that infers an entitlement has the potential to jeopardise the success of the application.

The case law also outlines that it is important to focus on whether the exceedance that arises as a result of the variation to the development standard (in this case the exceedance of the maximum height of buildings standard) is consistent with the objectives rather than the totality of the whole development.

This written request has been prepared under Clause 4.6 to request a variation to the "Height of Buildings" development standard at Clause 4.3 of CLEP 2015.





PART C STANDARDS BEING OBJECTED TO

3.1 OVERVIEW

The Site is zoned IN1 General Industrial and SP2 Infrastructure and is subject to the underling objectives of the varied standard as well as the IN1 zone and SP2 under CLEP 2015.

3.2 CLAUSE 4.3 BUILDING HEIGHT CONTROL UNDER CLEP 2015

Clause 4.3 of CLEP 2015 identifies the following objectives:

- (1) *The objectives of this clause are as follows—*
- (a) *to nominate a range of building heights that will provide a transition in built form and land use intensity across all zones,*
 - (b) *to ensure that the heights of buildings reflect the intended scale of development appropriate to the locality and the proximity to business centres and transport facilities,*
 - (c) *to provide for built form that is compatible with the hierarchy and role of centres,*
 - (d) *to assist in the minimisation of opportunities for undesirable visual impact, disruption to views, loss of privacy and loss of solar access to existing and future development and to the public domain.*

Pursuant to Clause 4.6, the Proposal seeks exception to the maximum permissible Height of Building of 19m.

3.3 PROPOSED VARIATION TO DEVELOPMENT STANDARDS

The DA seeks approval for the construction and operation of three (3) industrial warehouse facilities at 35-47 Stennett Road, Ingleburn (Lot 1 DP1092198 & Lot 26 DP863617). The Site is subject to a maximum building height of 19m. The development proposes a maximum building height of **21.3m**. The Proposal would **exceed the 19m height limit applicable to 35-47 Stennett Road, Ingleburn by 2.3m, which represents a 12.1% variation**. It is noted that the additional height is due to the need to accommodate the effective use and operation of the proposed Warehouse 6 whilst also providing floor and parking levels consistent with the Warehouse 7 at the rear of the Site. Given the slope of the Site, considerable fill is required to provide consistent levels which results in the minor variation of the height above existing ground level. Furthermore, Warehouse 6 will be 14.6m in height above the proposed ground level which is consistent with the heights of Warehouse 5 and Warehouse 7.

In its current form, the Proposal therefore represents the most efficient use of the Site which responds to the existing environmental constraints, compared to a development which is entirely compliant with the 19m Height of Buildings controls. The Site is zoned IN1 General Industrial under the provisions of CLEP 2015, whereby warehouse or distribution centres are permissible with consent. It is noted that the western most portion of the Site is zoned SP2 Infrastructure and pursuant to Clause 5.3 of CLEP 2015 is proposed to be





used for the purposes of vehicle access and landscaping associated with the warehouse or distribution centres.

This Variation Request has been prepared in accordance with the objectives of clause 4.3 Height of Building and the IN1 General Industrial and SP2 Infrastructure zone objectives of CLEP 2015 as required in clause 4.6(4)(a)(ii).

This DA therefore relies upon what is reasonably concluded to be the underlying objectives of the standard and the IN1 zone and SP2 zone.

PART D PROPOSED VARIATION TO STANDARDS IN CLAUSE 4.3 OF CLEP 2015

Pursuant to Clause 4.6 of CLEP 2015, exception is sought from the height of buildings standard applicable to the Site pursuant to Clause 4.3 of CLEP 2015. Clause 4.6(4)(a)(ii) requires the consent authority to be 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.

4.1 OBJECTIVES OF THE STANDARD

A key determinant of the appropriateness of a Clause 4.6 Variation to a development standard is the Proposal's compliance with the underlying objectives and purpose of that development standard.

Clause 4.6(4)(a)(ii) requires that a request to vary a development standard must establish that the proposed contravention will be in the public interest because it is consistent with the objectives of the development standard and the zone. Pursuant to Clause 4.6 of CLEP 2015, the Proposal seeks exception to the 19m Height of Building development standard pursuant to Clause 4.3 of CLEP 2015.

Clause 4.3 of CLEP 2015 sets out specific objectives. Those objectives under CLEP 2015 are responded to in **Table 2** below:

TABLE 2: CONSISTENCY WITH THE CLAUSE 4.3 OBJECTIVES	
Objective	Response
<i>to nominate a range of building heights that will provide a transition in built form and land use intensity across all zones,</i>	The proposed development is of a height and scale that is generally consistent with the neighbouring industrial built forms and provides an appropriate transition in height and density from the development on the eastern side of the Site to the industrial development to west and north.
<i>to ensure that the heights of buildings reflect the intended scale of development appropriate to the locality and the proximity to business centres and transport facilities,</i>	The proposed development is of a height and scale that is generally consistent with the development within the surrounding industrial locality. Given the location of Warehouse 5, between Stennett Road





	and Warehouse 6, the proposed height variation will largely not be visible from the public domain.
<i>to provide for built form that is compatible with the hierarchy and role of centres,</i>	The proposed development is of a form that allows for the effective function of industrial use whilst respecting the scale and nature of the surrounding development within the surrounding industrial area.
<i>to assist in the minimisation of opportunities for undesirable visual impact, disruption to views, loss of privacy and loss of solar access to existing and future development and to the public domain.</i>	Given the location and scale of the proposed development, it will not result in any adverse impacts to views, privacy and solar access to existing and future development. Given the location of Warehouse 5, between the streetscape and Warehouse 6, the proposed height variation will largely not be visible from the public domain.

4.2 OBJECTIVES OF THE ZONE

The Site is zoned IN1 General Industrial pursuant to CLEP 2015. Therefore, consideration has been given to the IN1 zone objectives in **Table 3** below:

TABLE 3: CONSISTENCY WITH THE IN1 GENERAL INDUSTRIAL ZONE OBJECTIVES	
Objective	Response
<i>To provide a wide range of industrial and warehouse land uses.</i>	The proposed development will provide three (3) industrial warehouse facilities.
<i>To encourage employment opportunities.</i>	The proposed development will provide additional employment opportunities through the provision of three (3) industrial warehouse facilities.
<i>To minimise any adverse effect of industry on other land uses.</i>	The proposed development will not result in any adverse impact on the surrounding land uses. In particular, the proposed height variation will not result in any additional impacts to neighbouring land given the location of Warehouse 6.
<i>To support and protect industrial land for industrial uses.</i>	The proposed development will provide for an industrial land use on industrial land and will not inhibit the use of surrounding industrial land for industrial uses.
<i>To provide for a range of facilities and services to meet the day-to-day needs of workers in the area.</i>	The proposed development has been designed to provide all necessary facilities and services to meet the day-to-day needs of workers on the Site.
<i>To enable non-industrial land uses that are compatible with and do not detract from industrial and warehouse uses or impact on the viability of existing centres.</i>	The proposed development will not inhibit non-industrial land uses within the locality.





<i>To ensure that any commercial, retail or other non-industrial development is not likely to adversely affect employment generating activities or opportunities.</i>	The proposed development includes ancillary office spaces which will provide further employment generating opportunities.
<i>To facilitate diverse and sustainable means of access and movement.</i>	The proposed development includes the provision of appropriate bicycle parking and end of trip facilities which will encourage diverse and sustainable means of access and movement.
<i>To maximise public transport patronage and encourage walking and cycling.</i>	The proposed development includes the provision of appropriate bicycle parking and end of trip facilities which will encourage walking and cycling. A bus stop is located immediately to the north of the Site on Stennett Road which will encourage public transport patronage.

The Site is also zoned SP2 Infrastructure pursuant to CLEP 2015. Therefore, consideration has been given to the SP2 zone objectives in **Table 4** below:

TABLE 4: CONSISTENCY WITH THE SP2 INFRASTRUCTURE ZONE OBJECTIVES	
Objective	Response
<i>To provide for infrastructure and related uses.</i>	Pursuant to Clause 5.3 of CLEP 2015, the western portion of the Site which is zoned SP2 is proposed to be used for the purposes of internal vehicle access and landscaping.
<i>To prevent development that is not compatible with or that may detract from the provision of infrastructure</i>	The proposed development will not detract from the provision of infrastructure.
<i>To encourage activities involving research and development.</i>	The proposed development will provide additional industrial development on the Site.
<i>To optimise value-adding development opportunities, particularly those associated with research.</i>	The proposed development will provide additional value to the Site through the generation of employment and additional economic activity.
<i>To provide for the retention and creation of view corridors.</i>	The proposed development will not impact any existing view corridors.
<i>To preserve bushland, wildlife corridors and natural habitat.</i>	The proposed development will not result in adverse impacts to bushland, wildlife corridors or natural habitats.
<i>To maintain the visual amenity of prominent ridgelines.</i>	The proposed development will not impact the visual amenity of prominent ridgelines.





4.3 ESTABLISHING IF THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY

Subclause 4.6(3)(a) and the judgement in *Four2Five Pty Ltd v Ashfield Council* (refer to **Section 2.1**) emphasise the need for the proponent to demonstrate how the relevant development standard is unreasonable or unnecessary in the circumstances.

In view of the particular circumstances of this case, strict compliance with Clause 4.3 of CLEP 2015 is considered to be both unnecessary and unreasonable. Should strict compliance with the development standard be enforced, Warehouse 6 will not satisfy the function and operational demands of the warehouse. In addition, reduction in the extent of fill would result in inconsistent floor levels, parking levels and access levels which would significantly reduce the operational efficiency of the entire Site, particularly having regard to vehicle access and movement. The Proposal has been designed and sited to minimise any adverse impacts on the adjoining properties and surrounding industrial lands and is generally compliant with all other relevant built form controls, including setbacks, landscaping and parking.

The Proposal does not conflict with the intent of the development standard and zone as demonstrated above, notwithstanding the proposed numeric variation. The proposed building height variation will retain compatibility with surrounding development and continue to support a wide range of industrial and warehouse land uses in the locality, consistent with the objectives of the IN1 General Industrial zone and SP2 Infrastructure zone.

The abovementioned justifications are considered valid, and in this instance the proposed Clause 4.6 Variation is considered to be acceptable. The proposed development represents a more efficient use of the Site. The objectives of the relevant clause, IN1 General Industrial zone and SP2 Infrastructure zone would be upheld as a result of the proposed development. In light of the above, the application of the height of building development standard is therefore unreasonable and unnecessary in response to the proposed development.

4.4 SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD

The Variation Request is considered well founded because, notwithstanding the proposed non-compliance with the maximum permissible building height:

- The proposal is entirely consistent with the underlying objectives and purposes of the standard, as demonstrated in **Section 4.1**.
- The proposal is entirely consistent with the underlying objective or purpose of the IN1 General Industrial zone and SP2 Infrastructure zone, as demonstrated in **Section 4.3**.
- Compliance with the standard would be unreasonable and unnecessary for the reasons outlined in **Section 4.3**;





- The proposed non-compliance results in a built form and land use, which is permitted at the Site.
- Should compliance with the development standard be enforced, the effective operation of Warehouse 6 and efficiency of the entire Site would be significantly reduced.
- The proposal is consistent with the desired future character of the Site within the area and generally complies with the relevant built form controls including setbacks, landscaping and car parking.
- The proposal has been designed to be sympathetic and respectful to the existing surrounding amenity, particularly in regard to visual bulk, privacy, overshadowing and sunlight access whilst expanding on the functional industrial land use on the eastern side of the Site.

For the reasons outlined above, it is considered that the proposed variation to the building height control under Clause 4.3 is appropriate and can be clearly justified having regard to the matters listed within clause 4.6(3)(b) under CLEP 2015.





4.5 OBJECTIVES OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

All planning determinations made under the EP&A Act are required to be made with regard to the objects of the Act in accordance with section 1.3 of the EP&A Act. **Table 5** below assesses the proposed development against the objects of the EP&A Act.

TABLE 5: EP&A ACT OBJECTIVES	
Objective	Response
<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>	The Proposal will positively contribute to the existing employment generating industrial land use on the Site within the Campbelltown LGA. The proposal can furthermore be progressed without any significant environmental impacts.
<i>(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,</i>	The Proposal has been designed to include appropriate ecologically sustainable measures and has adequately considered environmental impacts on the surrounding locality.
<i>(c) to promote the orderly and economic use and development of land,</i>	The Proposal will make use of the currently underutilised western portion of the Site, resulting in an economically beneficial development without an unacceptable economic, environmental or social impact.
<i>(d) to promote the delivery and maintenance of affordable housing,</i>	The Proposal will not impact the delivery and maintenance of affordable housing.
<i>(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,</i>	The Proposed development has been sited so as to result in minimal impacts on the surrounding environment.
<i>(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),</i>	The existing Site is not identified as a Heritage Item, within a heritage conservation area or as containing Aboriginal or cultural heritage significance. The Proposal will not impact any Aboriginal or cultural heritage significance of the surrounding land.
<i>(g) to promote good design and amenity of the built environment,</i>	The Proposal will provide an appropriate transition in height to the industrial development on the Site and is of a form and scale that provides a transition in urban form to the surrounding development within the locality. An appropriate mix of finishes and materials have been employed to ensure a high quality urban form is achieved when viewed from the street and surrounding sites with minimal impacts on the amenity of the built environment.





<i>(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,</i>	The proposal 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>	Given the extent of variation to the Height of Buildings Development Standard, the application will be required to be determined by the Independent Hearing and Assessment Planning
<i>(j) to provide increased opportunity for community participation in environmental planning and assessment.</i>	The DA would be subject to the relevant public notification requirements.

4.6 PUBLIC INTEREST

As outlined in **Section 2.2**, *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 emphasised that it is for the proponent to demonstrate that the proposed non-compliance with a development standard is in the public interest. Clause 4.6(4)(a)(ii) requires the proposal 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** above demonstrate how the proposal is consistent with the objectives of the development standards, as well as the IN1 zone and SP2 zone objectives under CLEP 2015.

In *Lane Cove Council v Orca Partners Management Pty Ltd (No 2)* [2015] NSWLEC 52, Sheahan J referred to the question of public interest with respect to planning matters as a consideration of whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development.

The Proposal provides the following public benefits:

- The proposed industrial warehouse facilities will make a positive contribution to the surrounding industrial area and the surrounding locality;
- Provide opportunities of greater employment generation in the Campbelltown LGA;
- Provide a development outcome that is compatible with the existing and emerging area that is a permissible land use and consistent with the land use zone objectives.

There are no identifiable public disadvantages which will result from the proposal in terms of amenity impacts on adjoining neighbours and streetscape or environmental impacts on the locality.

The proposal is therefore reasonably considered to be in the public interest.





4.7 MATTERS OF STATE AND REGIONAL SIGNIFICANCE

The proposed non-compliance with Clause 4.3 of CLEP 2015 will not give rise to any matters of significance for State or regional environmental planning. They will also not conflict with any State Environmental Planning Policy or Ministerial Directives under section 9.1 of the EP&A Act.

Planning Circular PS 08-014, issued by the former NSW Department of Planning, requires that all development applications including a variation to a standard of more than 10% be considered by full Council rather than under delegation.

4.8 PUBLIC BENEFIT IN MAINTAINING THE STANDARD

Strict compliance with Clause 4.3 of CLEP 2015 will result in:

- A less efficient employment generating land use to respond to the employment needs of the Campbelltown LGA; and
- Preventing the Site being developed to its full potential.

Further to the above, in the event the development standards were maintained, the resulting benefits to the adjoining properties and wider public would be nominal.

As such, there is no genuine or identifiable public benefit to be achieved in maintaining the building height development standard for the Site.

4.9 SUMMARY

For the reasons outlined above, it is considered that the variation to Clause 4.3 of CLEP 2015 is well-founded in this instance and is appropriate in the circumstances. Furthermore, the Variation Request is considered to be well-founded for the following reasons as outlined in Clause 4.6 of CLEP 2015, *Four2Five Pty Ltd v Ashfield Council* and *Wehbe v Pittwater Council*:

- Compliance with the development standard is unreasonable and unnecessary in the circumstances (refer to **Section 4.3** as part of the First Limb satisfied);
- There are sufficient environmental planning grounds to justify contravening the development standard (refer to **Section 4.4** as part of the First Limb satisfied);
- The development is in the public interest (refer to **Section 4.6** as part of the Second Limb satisfied);
- The development is consistent with the objectives of the particular standard (refer to **Section 4.1** as part of the Second Limb satisfied);
- The development is consistent with the objectives for development within the zone and long term strategic intentions to maintain and preserve employment land (refer to **Section 4.2** as part of the Second Limb satisfied);
- The development does not give rise to any matter of significance for the State or regional





environmental planning and is consistent with the visions and objectives of the relevant strategic plans (refer to **Section 4.7** as part of the Third Limb satisfied);

- The public benefit in maintaining strict compliance with the development standard would be negligible (refer to **Section 4.8** as part of the Third Limb satisfied); and
- The objectives of the standard are achieved notwithstanding the non-compliance with the standard.

Overall, it is considered that the proposed variation to the maximum building height control is entirely appropriate and can be clearly justified having regard to the matters listed within Clause 4.6 of CLEP 2015.





PART E CONCLUSION

For the reasons outlined above, it is requested that Council support the Variation Request, which seeks approval for non-compliance with Clause 4.3 of CLEP 2015 for the following reasons:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- There are sufficient environmental planning grounds to justify contravening the development standards;
- The Proposal will capitalise on the Site's full planning potential;
- The Proposal satisfies the objectives of the IN1 General Industrial zone and SP2 Infrastructure zone and Clause 4.3 of CLEP 2015;
- No unreasonable environmental impacts are introduced as a result of the Proposal; and
- There is no public benefit in maintaining strict compliance with the standards.

Given the justification provided above, the Variation Request is well founded and should be favourably considered by Council.

