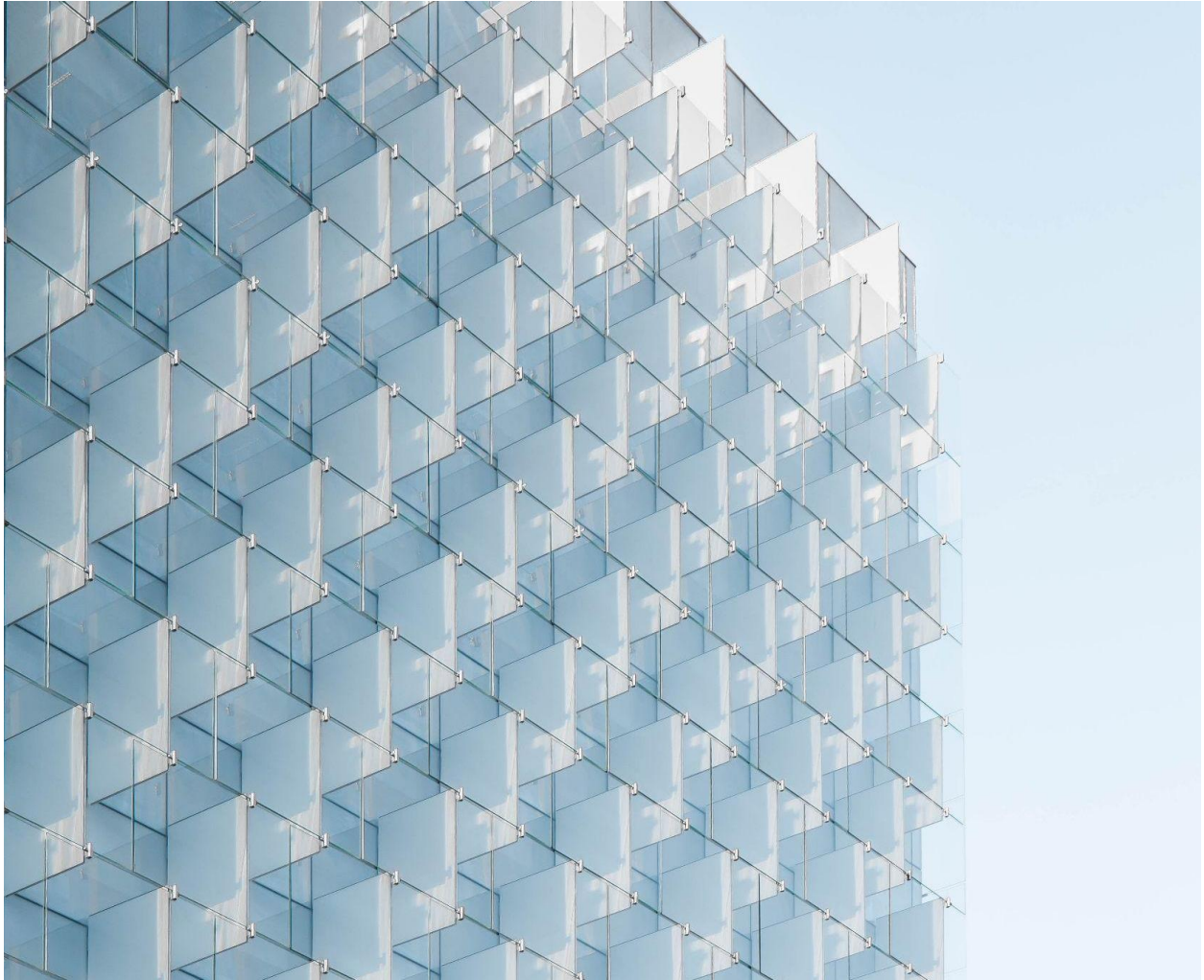


# WILLOWTREE PLANNING



17 November 2025

Ref: WTJ25-151  
Contact: Andrew Cowan



## **CLAUSE 4.6 VARIATION REQUEST HEIGHT OF BUILDING**

**CONCEPT DEVELOPMENT APPLICATION FOR SUBDIVISION,  
EARTHWORKS AND BUILT FORM**

120 Old Pittwater Road, Brookvale, 2100  
Lot 3 DP868761

—  
Prepared by Willowtree Planning Pty Ltd  
on behalf of Centennial Property Group Pty Limited

Clause 4.6 Variation – Height of Buildings

Proposed Subdivision, Earthworks and Built Form / detailed Stage 1 application for subdivision and earthworks

120 Old Pittwater Road, Brookvale (Lot 3 DP868761)



In the spirit of reconciliation and recognition, Willowtree Planning acknowledges the Traditional Owners of this Country throughout Australia and their continuing and ongoing connections to land, waters and community. We show our respect to Elders – past and present. We acknowledge that we stand on this Country which was and always will be recognised as Aboriginal Land. We acknowledge the Traditional Owners of the Lands in this Local Government Area, belonging to the local Aboriginal People, where this proposal is located upon.

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	Marcus Butler	Andrew Cowan	Andrew Cowan

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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 Concept Development Application (DA) that nominates the general Torrens title subdivision arrangement of the Site into 3 lots, including earthworks, clearing of the Site, tree removal, and the built form envelope on the rear lot (Lot C) only.

Built form for the front two lots (Lots A and B) is not the subject of this concept application. For the purposes of assessment, indicative building envelopes have been drawn and assessed, however built form for Lots A and B will be subject to separate approvals according to tenant demand. Lot C will be further subdivided into strata title units as part of the Stage 2 Development Application for built form.

A concurrent detailed Stage 1 application seeks consent for Torrens title subdivision, earthworks and tree removal only. Future built form and strata subdivision of Lot C will be the subject of separate approval.

- Subdivision of Site into 3 Lots – Lot A, Lot B and Lot C (Torrens title)  
Earthworks, clearing and tree removal (142 trees and 3 tree groups as identified in the Arboricultural Impact Assessment)
- Built form envelope on rear lot only (Lot C) – indicative envelopes only for Lots A and B

The concurrent detailed Stage 1 application seeks approval for:

- Torrens title subdivision as described above
- Earthworks and clearing of the site
- Tree removal as identified in the Arboricultural Impact Assessment (**Appendix 2**)

The remaining stages will be the subject of subsequent approvals to include:

- Stage 2 Development Application will seek consent for the built form and strata subdivision on Lot C per the envelope established under the Concept Development Application
- Future separate Development Applications for built form on Lots A and B according to tenant demand (not subject to concept approval).

The Site is zoned E4 General Industrial, pursuant to the Warringah *Local Environmental Plan 2011* (WLEP2011) and is located within the Northern Beaches Local Government Area (LGA). The proposed development is permissible with consent within the E4 – General Industrial zone and is considered contextually appropriate. The proposal is generally consistent with the objectives and provisions of WLEP2011, with the exception of Clause 4.6 – Height of Building, 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 WLEP2011. As required by section 35B of the Environmental Planning and Assessment Regulation 2021, it considers various planning controls, strategic planning objectives and existing characteristics of the Site



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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 Building of WLEP2011 and has been prepared in accordance with the requirements of Clause 4.6 of WLEP2011 which includes the following objectives:

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

Under the provisions of Clause 4.3 of WLEP2011, the Site is subject to a maximum building height of 11m. The proposed building height of 21.09m would exceed the maximum Height of Building. The proposed concept 21.09m building height on Lot C demonstrates substantial consistency with the draft LEP Planning Proposal (submitted June 2024, currently at Gateway Determination stage) which seeks to increase the height control from 11m to 18m, reflecting Council's strategic planning intent to facilitate appropriate scale industrial development within the Brookvale employment precinct.

The minor 3.09m exceedance above the proposed 18m development standard accommodates necessary roof form, building services and functional warehouse ceiling heights required for contemporary logistics operations, whilst the existing 11m development standard is demonstrably unsuitable for modern industrial buildings and does not reflect the Site's development potential or the established built form scale within the surrounding industrial 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 WLEP2011.

1.3 DEVELOPMENT STANDARD VARIATION

Under the provisions of Clause 4.6 of WLEP2011, the Site is subject to a maximum Height of Building of 11m. The proposal will result in a building height of 21.09m. Table 1 below provides a summary of the variation.

TABLE 1: CLAUSE 4.6 OF WLEP2011 VARIATION SUMMARY					
WLEP2011	WLEP2011 Development Standard	Maximum Building Height Proposed	Proposed Development Non-Compliance		
Clause 4.6 – Height of Building	11m.  (18m under draft LEP)	21.09.	The proposal seeks consent for a maximum building height of 21.09m which is a 91.73% variation from the development standard.		



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			When assessed against the Draft LEP, the <b>21.09m</b> building height represents a <b>17.17%</b> variation.
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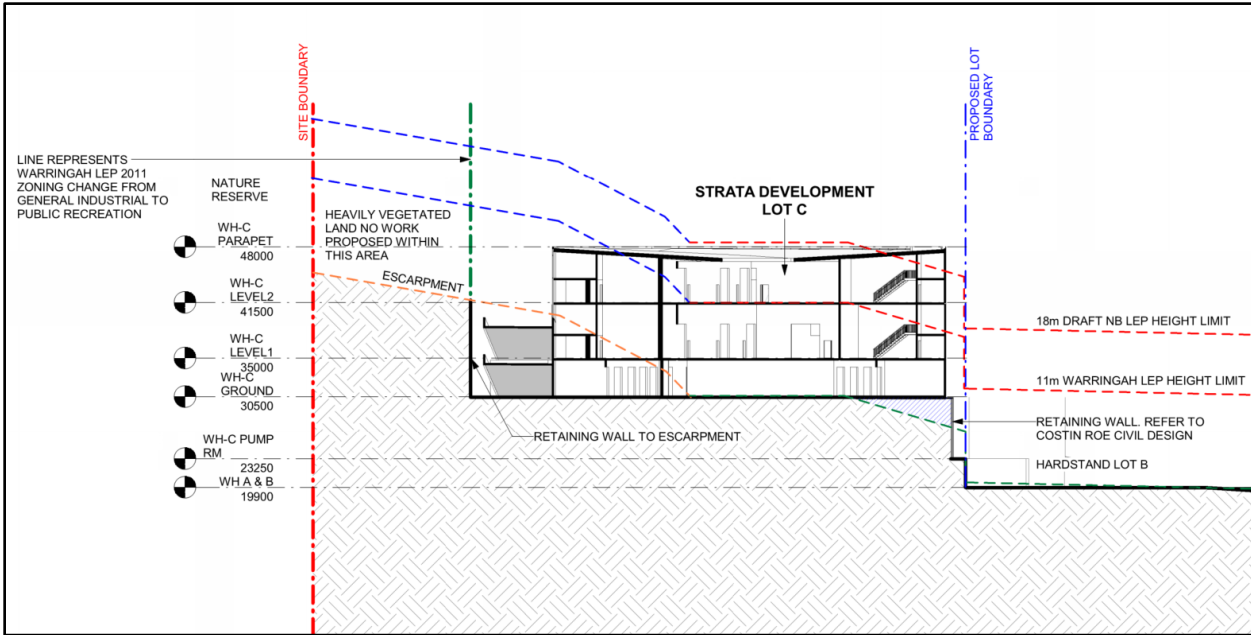


Figure 1: Height Plane Section (Reid Campbell, 2025)

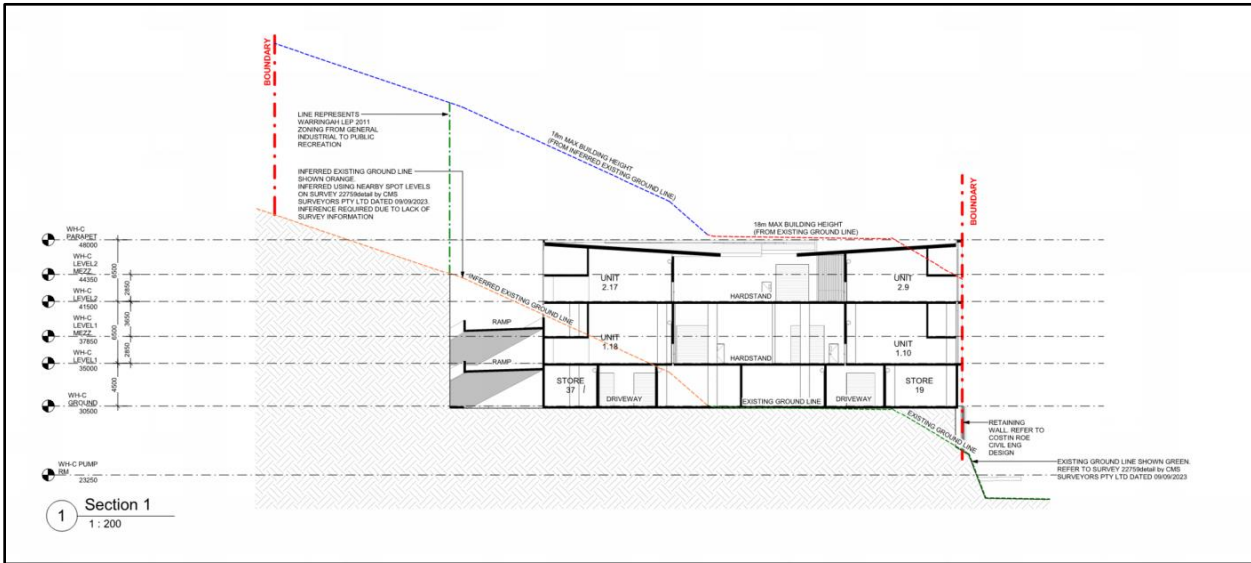


Figure 2: Height Plane Section (Reid Campbell, 2025)

#### **Clause 4.6 Variation – Height of Buildings**

Proposed Subdivision, Earthworks and Built Form / detailed Stage 1 application for subdivision and earthworks

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The Site is subject to a maximum Height of Building of 11m. The development proposes a maximum building height of 21.09m. The proposal would exceed the Height of Building applicable to the Site by a maximum of 10.09m, which represents a 91.73% variation.

Notwithstanding the above, curtailing the building height of the proposal to the current prescribed development standard would prevent the delivery of the proposal. Curtailing to the 11m Height of Building would necessitate eliminating at least 1 full level of the building, fundamentally altering the development's design and reducing its gross floor area, whilst also restricting adequate provision for roof form, building services, and mechanical plant required to service a building of this operational scale.

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 11m Height of Building.





## Clause 4.6 Variation – Height of Buildings

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## PART B THRESHOLDS THAT MUST BE MET

### 2.1 INTERPRETING CLAUSE 4.6

Clause 4.6 of WLEP2011 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 to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—*

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

Clause 4.6(3) requires the consent authority to be satisfied that the applicant has demonstrated two essential requirements:

- 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].

Accordingly, the consent authority must be satisfied that this Variation Request has in fact demonstrated both requirements (a) and (b): *Rebel MH v North Sydney Council* [2019] NSWCA 130. The consent authority must:

- a) That this Variation Request addresses the matters in Clause 4.6(3); and
- b) Of those matters itself—which means the consent authority must undertake its own evaluative assessment and cannot rely merely on the assertion that the matters have been addressed.

These requirements are substantively addressed in **Sections 4.3** and **4.4** of this Variation Request respectively.





## Clause 4.6 Variation – Height of Buildings

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## PART C STANDARDS BEING OBJECTED TO

### 3.1 CLAUSE 4.3 BUILDING HEIGHT CONTROL UNDER WLEP2011

Clause 4.3 of WLEP2011 identifies the following objectives:

- (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.*

Pursuant to Clause 4.6, the proposal seeks exception to the Height of Building of **11m**.

### 3.2 PROPOSED VARIATION TO DEVELOPMENT STANDARDS

The Concept DA seeks approval for the subdivision, earthworks and built form at 120 Old Pittwater Road, Brookvale and a concurrent stage 1 application for subdivision and earthworks on Lot C. The Site is subject to a maximum Height of Building of 11m. The development proposes a maximum building height of 21.09m. The proposal would exceed the Height of Building applicable to the Site by a maximum of 10.09m, which represents a 91.73% variation.

The area of non-compliance is the proposed conceptual warehouse envelope on Lot C, which comprises a 3-storey configuration incorporating ground floor storage and warehouse units, Level 1, Level 2, and integrated office mezzanines, with a total gross floor area of 9,540m<sup>2</sup>. The building extends from ground level (RL 30500) to a parapet level of RL 48000, with the roof form and building services extending to a maximum height of 21.09m. The exceedance occurs across the entire roof profile of the Lot C warehouse, where the building height breaches the 11m plane by 10.09m at its highest point to accommodate the functional requirements of the 3-storey industrial building including adequate floor-to-ceiling heights for warehouse operations, mezzanine office spaces, and essential roof-mounted building services and drainage infrastructure.

The development in its proposed built form and scale will deliver a contemporary warehouse and distribution facility that responds appropriately to the Site's challenging topography whilst integrating with the established character of the Brookvale industrial precinct.

The 3-storey configuration on Lot C optimises the use of the 8,372m<sup>2</sup> lot by providing efficient ground floor warehouse and storage space with integrated mezzanine offices that support operational requirements, whilst the building's positioning and design responds to the steep upward slope from Old Pittwater Road towards the rear Allenby Park boundary.



#### **Clause 4.6 Variation – Height of Buildings**

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The proposed scale enables viable industrial development that accommodates modern logistics operations including adequate internal clearances, loading facilities, and building services infrastructure, whilst landscape buffers along all boundaries, particularly the southern and western interfaces with Allenby Park, ensure appropriate visual and ecological transition between the industrial use and adjoining bushland. The built form aligns with Council's strategic planning intent as evidenced by the draft LEP Planning Proposal (currently at Gateway Determination stage) which seeks to increase the height control from 11m to 18m, recognising that the existing development standard does not reflect the development potential or contemporary requirements of industrial buildings within this established employment precinct.

Curtailing the building height of the proposal to the current prescribed development standard would prevent delivery of the proposed 3-storey warehouse configuration, necessitating elimination of at least one full building level and fundamentally reducing the development's gross floor area and operational capacity.

An 11m height constraint would restrict the building to approximately 2 storeys, compromising the ability to provide integrated office mezzanines that support warehouse operations, limiting internal clearances required for modern industrial logistics activities, and constraining adequate provision for essential roof-mounted building services, mechanical plant, and stormwater drainage infrastructure. This would undermine the economic viability of redeveloping the Site for its intended industrial purpose, result in inefficient use of zoned industrial land within an established employment precinct, and fail to deliver a development that responds appropriately to the site's 8,372m<sup>2</sup> lot size and strategic location within the Brookvale industrial area, ultimately compromising the ability to provide functional warehouse and distribution facilities that meet contemporary business and operational requirements.

In its current form, the proposal therefore represents the most orderly efficient use of the Site which responds to the existing environmental constraints and the form and scale of the existing desired future development on the surrounding properties, compared to a development which is entirely compliant with the Height of Building. The Site is zoned E4 – General Industrial under the provisions of WLEP2011, whereby the proposed subdivision, earthworks and built form is permissible with consent.

This Variation Request has been prepared in accordance with the objectives of Clause 4.6 – Exceptions to development standards and the E4 – General Industrial zone objectives of WLEP2011.



Clause 4.6 Variation – Height of Buildings

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PART D PROPOSED VARIATION TO STANDARDS IN CLAUSE 4.3 OF WLEP2011

Pursuant to Clause 4.6 of WLEP2011 exception is sought from the Height of Buildings standard applicable to the Site pursuant to Clause 4.3 of WLEP2011.

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 4.3 of WLEP2011 sets out specific objectives. Those objectives under WLEP2011 are responded to in **Table 2** below:

TABLE 2: CONSISTENCY WITH THE CLAUSE 4.3 OBJECTIVES	
Objective	Response
(a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,	<p>The proposed 21.09m height is compatible with the established Brookvale industrial precinct. The Site is surrounded by E4 zoned industrial properties which accommodate contemporary warehouse and logistics buildings of similar or greater scale. The existing 11m standard fails to reflect the development potential and built form character of the surrounding industrial area, where modern warehouse facilities routinely exceed this height to accommodate contemporary logistics operations.</p> <p>The draft LEP Planning Proposal (submitted June 2024, currently at Gateway Determination stage) proposes increasing the height control from 11m to 18m, demonstrating Council's recognition that the existing standard is incompatible with contemporary industrial development. The proposed 21.09m represents only a 3.09m (17.17%) exceedance above Council's own proposed height control and is therefore compatible with the strategic direction for the precinct.</p> <p>When assessed against surrounding industrial development in the Brookvale Valley, the proposed warehouse height reflects the scale of existing and contemporary industrial buildings within this established employment area, ensuring visual and functional compatibility with the precinct character.</p>



#### Clause 4.6 Variation – Height of Buildings

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TABLE 2: CONSISTENCY WITH THE CLAUSE 4.3 OBJECTIVES	
Objective	Response
<i>(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,</i>	<p>The proposal minimises visual impact through multiple design and mitigation measures:</p> <p><b>Visual Impact &amp; Integration with Context:</b> The development is positioned within an established industrial precinct surrounded by compatible E4 zoned industrial land. The Site is separated from residential zones by the substantial Allenby Park bushland corridor to the south and west (approximately 50-100 metres). Comprehensive landscape buffers (retention of 83 mature native trees with 1:1 compensatory planting of 142 replacement trees) are concentrated along the Allenby Park interface, providing effective visual screening and integrating the built form within the existing industrial character of the precinct.</p> <p><b>Disruption of Views:</b> The development does not disrupt public views or views from sensitive receivers. Views from Old Pittwater Road (a commercial/industrial thoroughfare) are consistent with the industrial character of the locality. The Site's elevation change (rising steeply from street frontage toward the rear) means the building is positioned progressively further from public view as height increases toward the rear boundary. The Allenby Park bushland buffer provides substantial visual separation from the primary public open space, with the development's visual presence minimal when viewed from parkland areas due to retained mature tree canopy and landscape treatments along the interface.</p> <p><b>Loss of Privacy:</b> Not applicable—the Site is located within an established industrial precinct surrounded by industrial uses and bushland reserves. No residential properties adjoin the Site or are within reasonable proximity to experience privacy impacts. The substantial bushland corridor of Allenby Park ensures privacy separation from any residential areas to the west and south.</p>



#### Clause 4.6 Variation – Height of Buildings

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TABLE 2: CONSISTENCY WITH THE CLAUSE 4.3 OBJECTIVES	
Objective	Response
	<p><b>Loss of Solar Access:</b> The proposal does not result in unreasonable overshadowing of residential properties owing to spatial separation from residential zones and the bushland buffering. The Site's industrial context means solar access considerations are not applicable to surrounding land uses (which are industrial and parkland, not residential). No residential properties are positioned to experience material loss of solar access from the proposed development.</p>
<i>(c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments</i>	<p>The proposal actively protects and enhances scenic quality through comprehensive environmental management:</p> <p><b>Vegetation Retention &amp; Ecological Values:</b> The 21.09m height and vertical development strategy enables retention of 83 mature native trees and approximately 0.15 hectares of significant native vegetation (PCT 3592: Sydney Coastal Enriched Sandstone Forest) beyond the Asset Protection Zone along the western and southern boundaries. Building upward rather than expanding horizontally preserves ecological values of the site, maintains the vegetated interface and habitat corridor connectivity with Allenby Park, and protects threatened species habitat identified in the Biodiversity Development Assessment Report.</p> <p><b>Landscape Integration:</b> Comprehensive landscape buffers along all boundaries, particularly the southern and western interfaces with Allenby Park, provide visual and ecological transition between industrial use and adjoining bushland. The building design responds to site topography by stepping into the slope, reducing visual prominence when viewed from bushland areas. The proposal actually delivers better scenic outcomes than alternative horizontal development would create, as vertical development preserves ground-level vegetation and ecological connectivity.</p>



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TABLE 2: CONSISTENCY WITH THE CLAUSE 4.3 OBJECTIVES	
Objective	Response
	<p><b>Strategic Planting:</b> The development incorporates 1:1 replacement planting (142 trees minimum) concentrated along the Allenby Park interface to strengthen the visual and ecological buffer. This reinforces the scenic quality of the parkland interface by creating a denser, more resilient vegetation corridor that enhances bushland character and visual screening of industrial development.</p> <p><b>Environmental Benefits:</b> By preserving 0.15 hectares of native forest and maintaining habitat connectivity with Allenby Park, the development supports the scenic and ecological integrity of Warringah's coastal and bush environments rather than diminishing them. The vertical built form strategy is entirely consistent with objectives to maintain scenic quality of bushland settings.</p>
<i>(d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.</i>	<p>Visual impact from public places is appropriately managed through strategic design and mitigation measures:</p> <p><b>Allenby Park Interface (Primary Public Viewing Location):</b> The primary public viewing location is Allenby Park to the south and west. The proposed development incorporates 83 retained mature native trees along this boundary providing substantial visual screening, supplemented by 1:1 compensatory planting (142 replacement trees) concentrated along this interface. These measures create an effective visual buffer that integrates the built form within the landscape. The vertical height configuration, combined with landscape buffers and the Site's steep topography, actually presents a more acceptable visual outcome from parkland than horizontal expansion would create.</p> <p><b>Old Pittwater Road (Public Road Frontage):</b> Views from this commercial/industrial thoroughfare are consistent with the industrial character of the precinct. The development represents appropriate</p>



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TABLE 2: CONSISTENCY WITH THE CLAUSE 4.3 OBJECTIVES	
Objective	Response
	<p>industrial built form commensurate with the precinct's strategic purpose as an employment area. Landscape treatment along the frontage (retention of mature vegetation where feasible, supplemented by new native plantings) maintains streetscape quality and visual appeal of the employment area, softening the industrial appearance when viewed from the public road.</p> <p><b>Community Facilities:</b> No community facilities are positioned proximate to the Site to experience visual impacts. The nearest residential areas are separated from the Site by the Allenby Park bushland corridor (50-100 metres), providing effective visual separation and ensuring no unreasonable visual impacts on community settings.</p> <p><b>Public Benefit:</b> The vertical development strategy maximises employment-generating industrial floor space (9,540m<sup>2</sup> on Lot C) on constrained land, advancing strategic objectives to retain and optimise industrial land use whilst minimising horizontal expansion and ground-level disturbance to vegetation and ecological values. From public places, the development presents as an appropriately scaled industrial facility integrated within an established employment precinct through comprehensive landscape screening and environmental management measures.</p>

#### 4.2 ESTABLISHING IF THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY

Subclause 4.6(3)(a) (refer to **Section 2.1**) emphasises the need for the proponent to demonstrate how the relevant development standard is unreasonable or unnecessary in the circumstances.

The ways in which compliance with a development standard may be held to be “unreasonable or unnecessary” are well established. In *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*), Preston CJ provided a non-exhaustive list through which an applicant might establish that compliance with a development standard is unreasonable or unnecessary.

While *Wehbe* related to objections made pursuant to *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1), in *Initial Action Pty Limited v Woollahra Municipal Council* [2018]





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NSWLEC 118 (*Initial Action*) the Court held that the common ways of demonstrating that compliance with a development standard is unreasonable or unnecessary as outlined in *Wehbe* are equally applicable to clause 4.6.

The five methods outlined in *Wehbe* include:

- *The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Method**).*
- *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Method**).*
- *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Method**).*
- *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 (**Fourth Method**).*
- *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 (**Fifth Method**).*

In this case, **the First Method is satisfied**. The objectives of Clause 4.3 are achieved notwithstanding non-compliance with the 11m numerical standard. The proposed development delivers appropriate building compatibility, minimises visual impact through landscape buffers (83 retained trees), protects scenic quality of the bushland environment, and appropriately manages visual impact from public places.

**The Fourth Method is also satisfied.** Council has actively abandoned the 11m standard by submitting a draft LEP Planning Proposal (June 2024, Gateway Determination stage) seeking to increase the height control to 18m. This formal strategic planning action demonstrates Council's recognition that the 11m standard is inappropriate for contemporary industrial development. The proposed 21.09m height represents only a 3.09m (17.17%) exceedance above Council's own proposed 18m standard.

When considering whether a development standard is unreasonable and/or necessary, one must take into account:

- the nature of the proposed variation;
- the Site context; and
- the design of the proposed development.

Following the decision in *Initial Action*, it was established that Clause 4.6 does not require an applicant to demonstrate that a development which contravenes a development standard have a better (or neutral) environment planning outcome than a development that complies with the development standard.



#### Clause 4.6 Variation – Height of Buildings

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By proposing a building at the height proposed, a site layout is achieved that:

- enables plant and equipment to be located away from public view that can be screened.
- facilitates landscaping throughout the site that integrates and reduces the visual presence of the ground plane.
- allows car parking and access/egress provision which improves the road safety outcomes; and
- provides opportunity for architectural treatment at the upper levels that will contribute to set a desirable precedent for future development in the locality.

The standard is unreasonable and unnecessary in the circumstances of the case on the following basis:

- Council has submitted an LEP Planning Proposal (June 2024, currently at Gateway Determination stage) seeking to increase the height control from 11m to 18m, demonstrating Council's recognition that the existing standard does not appropriately reflect the development potential or contemporary requirements of industrial land within the Brookvale employment precinct.
- The 11m standard is incompatible with modern warehouse and distribution facilities, preventing delivery of the proposed 3-storey configuration with integrated mezzanine offices, adequate floor-to-ceiling clearances for logistics operations, and appropriate provision for building services and roof infrastructure.
- The existing 11m standard does not reflect the scale and character of contemporary industrial development within the surrounding Brookvale precinct, where larger warehouse buildings are required to service modern supply chain and logistics operations.
- The proposed 21.09m height represents only a modest 3.09m (17.17%) exceedance above the draft 18m control, with most of the variation attributable to Council's outdated height standard rather than an excessive development proposal, and appropriate landscape buffers along the Allenby Park interface ensure visual and environmental impacts are appropriately mitigated.

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 and E4 – General Industrial 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.

#### 4.3 SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD

The Site is zoned E4 – General Industrial pursuant to WLEP2011. Therefore, consideration has been given to the E4 – General Industrial zone objectives in **Table 3** below:



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TABLE 3: CONSISTENCY WITH THE E4 - GENERAL INDUSTRIAL ZONE OBJECTIVES	
Objective	Response
<i>To provide a range of industrial, warehouse, logistics and related land uses.</i>	The proposed 3-storey warehouse and distribution facility on Lot C directly provides industrial and logistics land uses, delivering 9,540m <sup>2</sup> of functional warehouse, storage and office space within the E4 zone.
<i>To ensure the efficient and viable use of land for industrial uses.</i>	The 21.09m height enables efficient use of the 8,372m <sup>2</sup> lot by optimising vertical development to deliver viable industrial floor space with integrated mezzanines and adequate operational clearances, rather than constraining development to an unviable 11m limit. Having regard to the constraints of the Site this provides the best solution in terms of vehicle circulation, car parking and general operation.
<i>To minimise any adverse effect of industry on other land uses.</i>	Landscape buffers along all boundaries, particularly the Allenby Park interface with 83 retained trees, minimise visual and environmental impacts on adjoining parkland. The development is surrounded by compatible industrial uses within the established Brookvale precinct.
<i>To encourage employment opportunities.</i>	The development creates construction employment in the short term and ongoing operational employment through provision of modern warehouse and distribution facilities within an established employment hub.
<i>To enable limited non-industrial land uses that provide facilities and services to meet the needs of businesses and workers.</i>	The integrated office mezzanines (1,290m <sup>2</sup> ) within the warehouse provide ancillary workspace that supports the primary industrial operations and meets the needs of businesses operating within the facility.
<i>To provide areas for land uses that need to be separated from other zones</i>	The development maintains industrial land within the E4 zone, with a restriction on title preventing residential use, ensuring appropriate separation of industrial activities from incompatible land uses.



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<i>To provide healthy, attractive, functional and safe light industrial areas.</i>	The development provides functional modern warehouse facilities with appropriate landscape treatments, bushfire protection measures, and integration with the surrounding industrial character, contributing to an attractive and safe employment precinct.
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In *Initial Action*, Preston CJ observed that in order for there to be “sufficient” environmental planning grounds to justify a written request under Clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard, not on the development as a whole.

The environmental planning grounds to justify the departure of the development building height development standard are as follows:

- The Site's challenging topography with steep grades rising from Old Pittwater Road (RL 30500) towards the rear Allenby Park boundary, combined with the rock escarpment dividing the eastern and western portions of the 8,372m<sup>2</sup> lot, provides limited developable area for vehicle circulation, truck manoeuvring, loading facilities, car parking provision, and essential stormwater management infrastructure. The 21.09m building height accommodates necessary floor area through vertical development (3-storey warehouse configuration with ground floor storage, Level 1, Level 2, and integrated office mezzanines totalling 9,540m<sup>2</sup> GFA) rather than horizontal expansion across constrained terrain, preserving ground level space for operational requirements including forward ingress/egress arrangements compliant with AS2890.1 standards, whilst responding appropriately to the site's natural landform constraints and maintaining bushfire Asset Protection Zones entirely within the lot boundaries.
- The proposed 21.09m building height enables delivery of viable employment-generating industrial floor space with integrated office mezzanines that provide essential ancillary workspace supporting warehouse operations. This vertical integration of office facilities within the primary industrial use maximises the efficiency of the constrained 8,372m<sup>2</sup> lot, delivering functional warehouse and distribution space that cannot be reasonably achieved within the 11m Height of Building constraint. The ancillary office provision is a necessary operational requirement in modern industrial facilities and supports viable business operations within the E4 General Industrial zone
- The proposed 21.09m building height and vertical built form configuration on Lot C enables retention of 83 mature native trees (comprising 72 trees with standard AS4970-2025 protection measures and 11 trees requiring tree-sensitive construction methods) and approximately 0.15 hectares of significant native vegetation (PCT 3592: Sydney Coastal Enriched Sandstone Forest) beyond the Asset Protection Zone along the western and southern boundaries. The setbacks and landscape buffers along these boundaries manage visual impact and amenity from Allenby Park. The building height, achieved through vertical development rather than horizontal expansion of the building footprint, preserves the ecological values of the Site, maintains the vegetated interface and habitat corridor connectivity with Allenby Park, and protects threatened species habitat



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identified in the BDAR, whilst ensuring appropriate landscape buffers transition between industrial use and adjoining bushland. The vertical configuration is necessary to deliver functional warehouse operations within the constrained Site dimensions whilst the boundary setbacks and retained vegetation provide visual screening and environmental protection.

- The development is located within the established Brookvale industrial precinct surrounded by compatible E4 zoned industrial land along Old Pittwater Road, with the Site separated from residential zones by the substantial bushland corridor of Allenby Park to the south and west. The proposed 21.09m building height does not result in unreasonable overshadowing impacts on residential properties owing to this spatial separation and bushland buffer, does not create undue traffic generation (net reduction of 8-14 vehicles per hour compared to existing use) or visual bulk impacts on surrounding industrial properties within the established employment area, and maintains appropriate amenity through comprehensive landscape buffers (retention of 83 mature trees with 1:1 compensatory planting of 142 replacement trees) concentrated along the Allenby Park interface which provide effective visual screening from public parkland whilst integrating the built form within the industrial character of the precinct.
- The 21.09m building height enables optimal use of E4 zoned industrial land consistent with the Eastern Harbour City District Plan objectives to retain and manage industrial and urban services land, Council's draft LEP Planning Proposal (submitted June 2024, currently at Gateway Determination stage) which seeks to increase the height control from 11m to 18m recognising the existing standard is inappropriate for contemporary warehouse development, and the Site's strategic location within the Brookvale employment precinct identified as a key industrial area in the Northern Beaches Local Government Area. The vertical development delivers 9,540m<sup>2</sup> of functional warehouse and distribution space with integrated mezzanine offices that maximises employment-generating industrial floor area on the constrained 8,372m<sup>2</sup> lot, whilst the Site's irregular shape, steep topography, bushfire Asset Protection Zone requirements along the western bushland interface, and need to retain boundary vegetation limit horizontal development potential, making the proposed height necessary to achieve viable contemporary logistics operations that support the strategic planning framework for land retention.

The abovementioned justifications are considered valid, and in this instance the proposed Clause 4.6 Variation is considered to be acceptable. The proposed development is consistent with the objectives of the E4 – General Industrial zone as set out in this Clause 4.6 Variation Request. The proposed development represents a more efficient use of the Site. The objectives of the relevant clause and E4 – General Industrial 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.

For the reasons outlined above, it is considered that the proposed variation to the Height of Building under Clause 4.3 is appropriate and can be clearly justified having regard to the matters listed within clause 4.6(3)(b) under WLEP2011.



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#### 4.4 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 4** below assesses the proposed development against the objects of the EP&A Act.

TABLE 4: 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 development promotes economic welfare through employment-generating industrial facilities whilst conserving natural resources through retention of 83 mature native trees, comprehensive landscape buffers, and appropriate bushfire and stormwater management measures.
<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 integrates economic considerations (viable industrial development), environmental protection (tree retention, landscape buffers, bushfire measures), and social outcomes (employment generation) to deliver ecologically sustainable industrial development within an established employment precinct.
<i>(c) to promote the orderly and economic use and development of land,</i>	The development promotes orderly use of E4 zoned industrial land by delivering functional warehouse facilities that align with Council's strategic planning intent (draft LEP proposing 18m) and optimise use of the site's 8,372m <sup>2</sup> lot size within the Brookvale employment precinct.
<i>(d) to promote the delivery and maintenance of affordable housing,</i>	Not applicable to industrial development.
<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>	Environmental protection is achieved through retention of 83 mature native trees with AS4970-2025 protection measures, establishment of landscape buffers along the Allenby Park interface, and biodiversity assessment to address potential impacts on threatened species and ecological communities.



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**TABLE 4: EP&A ACT OBJECTIVES**

Objective	Response
<i>(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),</i>	The Site is not identified as a heritage item or within a heritage conservation area. The development does not impact built or cultural heritage.
<i>(g) to promote good design and amenity of the built environment,</i>	The 3-storey warehouse configuration promotes good design through efficient integration of warehouse, storage and office mezzanines, appropriate landscape screening, and built form that responds to site topography whilst maintaining amenity through setbacks and buffers to adjoining parkland.
<i>(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,</i>	The development incorporates bushfire protection measures including Type A construction standards, non-combustible barriers, and Bushfire Emergency Evacuation Plan to protect occupant health and safety, with construction to comply with NCC and Australian Standards.
<i>(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,</i>	The development application is assessed by Northern Beaches Council as the consent authority, with bushfire assessment addressing NSW Rural Fire Service requirements, demonstrating appropriate sharing of planning responsibility between local and state government.
<i>(j) to provide increased opportunity for community participation in environmental planning and assessment.</i>	The development application will be publicly exhibited in accordance with Northern Beaches Council's community participation requirements, providing opportunity for community input into the assessment process.

#### 4.5 MATTERS OF STATE AND REGIONAL SIGNIFICANCE

The proposed non-compliance with Clause 4.3 of WLEP2011 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.

#### 4.6 SUMMARY

For the reasons outlined above, it is considered that the variation to Clause 4.3 of WLEP2011 is well-founded





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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 WLEP2011, *Four2Five Pty Ltd v Ashfield Council* and *Wehbe v Pittwater Council*:

- The development is consistent with the objectives of the particular standard (refer to **Section 4.1**);
- 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**);
- Compliance with the development standard is unreasonable and unnecessary in the circumstances (refer to **Section 4.3**);
- There are sufficient environmental planning grounds to justify contravening the development standard (refer to **Section 4.4**); and
- 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 4.5**);

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 WLEP2011.



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## **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 WLEP2011 for the following reasons:

- The development is consistent with the objectives of the particular standard (refer to **Section 4.1**);
- 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**);
- 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 Proposal is consistent with the objectives of the EP&A Act (refer to **Section 4.5**); and
- 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 4.6**);

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

