

27<sup>th</sup> September 2019

The General Manager  
Northern Beaches Council  
PO Box 82  
Manly NSW 1655

Attention: Mr Nicholas England – Planner

Dear Mr England,

**Development Application DA20190108**  
**Supplementary Statement of Environmental Effects**  
**Updated clause 4.6 variation request – Height of buildings**  
**Demolition and construction of self-storage units**  
**11 – 13 Cook Street, Forestville**

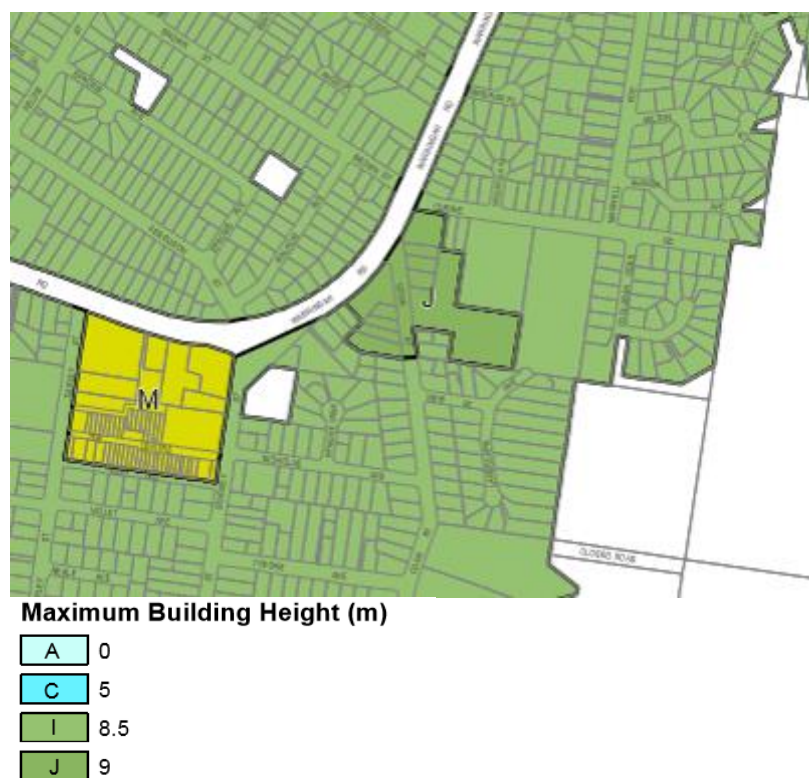
This amended clause 4.6 variation request has been prepared having regard to the following amended architectural plans prepared by SBA Architects:

DRAWING REGISTER		
SHEET No.	SHEET NAME/SCALE	CURRENT REVISION
DA000	COVER PAGE - AS INDICATED	H
DA001	DEMOLITION PLAN - 1:450	E
DA002	PERSPECTIVES - SHEET 1 - NTS	E
DA003	PERSPECTIVES - SHEET 2 - NTS	E
DA004	OVERALL SITE PLAN - 1:450	F
DA200	SITE & ROOF PLAN - 1:250	J
DA201	GROUND FLOOR PLAN - 1:250	K
DA202	LEVEL 1 FLOOR PLAN - 1:250	F
DA203	LEVEL 2 FLOOR PLAN - 1:250	G
DA301	BUILDING ELEVATIONS - 1:250	F
DA305	BUILDING SECTIONS - 1:200	F
DA401	SHADOW DIAGRAMS - 1:500	E

Consideratino has also been given to amended landscape plans L-01(E) and L-02(E), dated 24<sup>th</sup> August 2019, prepared by Site Design Studio.

### **Height of buildings standard and objectives**

Pursunt to clause 4.3(2) of Warringah Local Envriornetal Plan 2011 (WLEP 2011) the site has a maximum building height limit of 9 metres as depicted in Figure 1 below.



**Figure 1 - Height of buildings Map extract WLEP 2011**

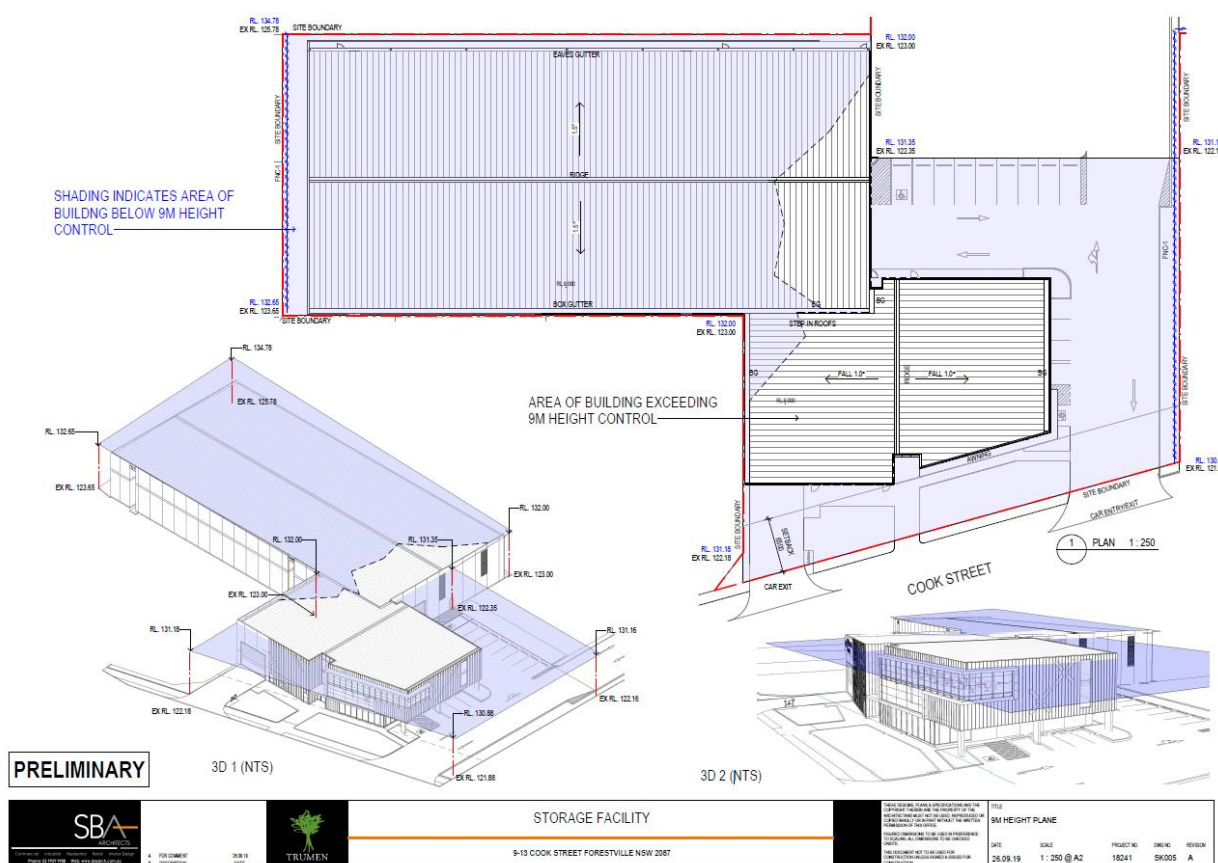
The objectives of this standard are as follows:

- (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.*

**Building height** is defined as follows:

*building height (or height of building) means the vertical distance between ground level (existing) and 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 proposed development has a maximum roof height of 9.8 metres at its southern end with the northern end of the building sitting comfortably below the height standard by up to 2.3 metres. The extent of non-compliance is depicted on the height blanket diagram an extract of which is at Figure 2 below with a larger A4 plan at Attachment 1. The maximum extent of non-compliance is 800mm or 8.8%.



**Figure 2** – Height blanket diagram extract showing extent of building height breach

Clause 4.6 of WLEP 2011 provides a mechanism by which a development standard can be varied. The objectives of this clause are:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and

- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Pursuant to clause 4.6(2) consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

This Clause applies to the Clause 4.3 Height of Buildings Development Standard.

Clause 4.6(3) states that 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.*

Clause 4.6(4) states consent must not be granted for development that contravenes a development standard unless:

- (a) *the consent authority is satisfied that:*
- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Director-General has been obtained.*

Clause 4.6(5) states that in deciding whether to grant concurrence, the Director-General must consider:

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

## **Claim for Variation**

This clause 4.6 variation has been prepared having regard to the Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 and *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

## **Zone Objectives**

The subject property is zoned IN2 Light Industrial pursuant to WLEP 2011 with storage premises permissible with consent. The proposal has been found to be consistent with the zone objectives as follows:

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

Comment: The development provides for a permissible land use in the form of a storage premises. The height breach has no impact on such outcome and is therefore consistent with this objective.

- *To encourage employment opportunities and to support the viability of centres.*

Comment: The proposed use will create employment opportunities in terms of the operation of the premises with the use contributing towards and supporting the viability of the centre. The height breach has no impact on such outcome and is therefore consistent with this objective.

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

Comment: Potential operational impacts are internalised with the height breach not giving rise to any adverse visual (including view loss) or privacy impacts on surrounding land uses including the residential properties to the north and south of the site. The accompanying shadow diagram plan DA401(E) (Attachment 2) demonstrates that the proposed development, notwithstanding the building height breach proposed, maintains compliant levels of solar access to the principal living areas and private open space of the southern adjoining residential properties between 9am and 3pm on 21<sup>st</sup> June. In this regard, the shadowing impact has been minimised with the proposal consistent with this objective.

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

Comment: The proposed storage premises use is available to meet the day to day storage needs of workers in the area consistent with this objective.

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

Comment: The proposed storage premises land use is consistent with this objective.

- *To maintain the industrial character of the land in landscaped settings.*

Comment: The proposed storage premises land use is consistent with this objective as it will sit within a landscaped setting established through implementation of the amended landscape plans L-01(E) and L-02(E), dated 24<sup>th</sup> August 2019, prepared by Site Design Studio.

Council can be satisfied that the proposal is consistent with the zone objectives as outlined.

### **Building Height Objectives**

Having regard to the objectives of the height standard as previously identified, strict compliance has been found to be both unreasonable and unnecessary for the following reasons:

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

Comment: The building heights proposed are compatible with the heights established by development along both Warringah Road and Cook Street and those anticipate by the 9 metre height standard. The non-compliance is limited to the southern portion of the roof form where the site falls away towards Cook Street.

In relation to the sites zone boundary interface with the R2 Low Density Residential zone to the north of the site, we note that the development in this location sits comfortably below the 9 metre height control with a 3 metre wide deep soil landscape setback provided to accommodate screen plantings which will soften and screen the development as viewed from these adjoining residential properties.

In relation to the sites zone boundary interface with the R2 Low Density Residential zone to the south of the site, we note that the portion of the building exceeding the 9 metre height control is located some 18.5 metres from the common boundary with a 2.5 metre wide landscape strip introduced down this boundary to accommodate plantings which will soften and screen the building as viewed from these adjoining residential properties. We note that an 8.5 metre height standard applies to development within the adjoining residential zone with there being a 1.3 height differential between what is permissible on the adjoining land and the highest point of the development as proposed on the subject site.

In this regard, we have formed the considered opinion that the height, bulk and scale of the development are entirely consistent with the height and scale of surrounding and nearby development and that anticipated by the standard.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed development by virtue of its height offensive, jarring or unsympathetic in a streetscape and urban context. In this regard, it can be reasonably concluded that the development is compatible with surrounding and nearby development and accordingly this objective is satisfied.

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

Comment: Having undertaken a detailed site and context analysis and identified available view lines over the site we have formed the considered opinion that the height of the development, and in particular the non-compliant height components, will not give rise to any visual, view, privacy or solar access impacts with appropriate spatial separation maintained to adjoining properties. The accompanying shadow diagrams (Attachment 2) clearly indicate that no unacceptable overshadowing will occur to any adjoining residential zoned land. This objective is satisfied.

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

Comment: The non-compliant building height will not be readily discernible as viewed to or from Warringah's coastal or bush environments. This objective is satisfied.

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

Comment: The non-compliant building height elements will not be visually prominent as viewed from the street or any public area and will certainly not compromise the amenity of these public places.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed development, in particular the non-compliant portions of the building, offensive, jarring or unsympathetic in a streetscape context.

In my opinion there are sufficient environmental planning grounds to justify the variation sought including the topography of the site which falls towards the Cook Street frontage making strict compliance more difficult to achieve for a permissible form of development which due to its usage characteristics requires particular ceiling heights/ internal clearances and level floor plates.

Having regard to *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, the built form outcomes achieved through the minor redistribution of building heights and footprints across the site are consistent with the following objectives at clause 1.3 of the Act:

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

(g) *to promote good design and amenity of the built environment,*

The proposed development will be in the public interest because it is consistent with the objectives of the height development standard, the objectives of the IN2 light industrial zone and the objectives of the Act.

### **Conclusions**

Having regard to the clause 4.6 variation provisions we have formed the considered opinion:

- a) that the site specific and contextually responsive development is consistent with the zone objectives, and
- b) that the site specific and contextually responsive development is consistent with the objectives of the building height standard, and
- c) that there are sufficient environmental planning grounds to justify contravening the development standard, and
- d) that having regard to (a), (b) and (c) above that compliance with the building height development standard is unreasonable or unnecessary in the circumstances of the case, and
- e) that given the design quality of the development, and the developments ability to comply with the zone and building height standard objectives that approval would not be antipathetic to the public interest, and
- f) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning.



As such we have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a height of buildings variation in this instance.

Yours faithfully

**Boston Blyth Fleming Town Planners**

A handwritten signature in black ink, appearing to read 'Greg Boston', with a stylized flourish at the end.

**Greg Boston**

B Urb & Reg Plan (UNE) MPIA

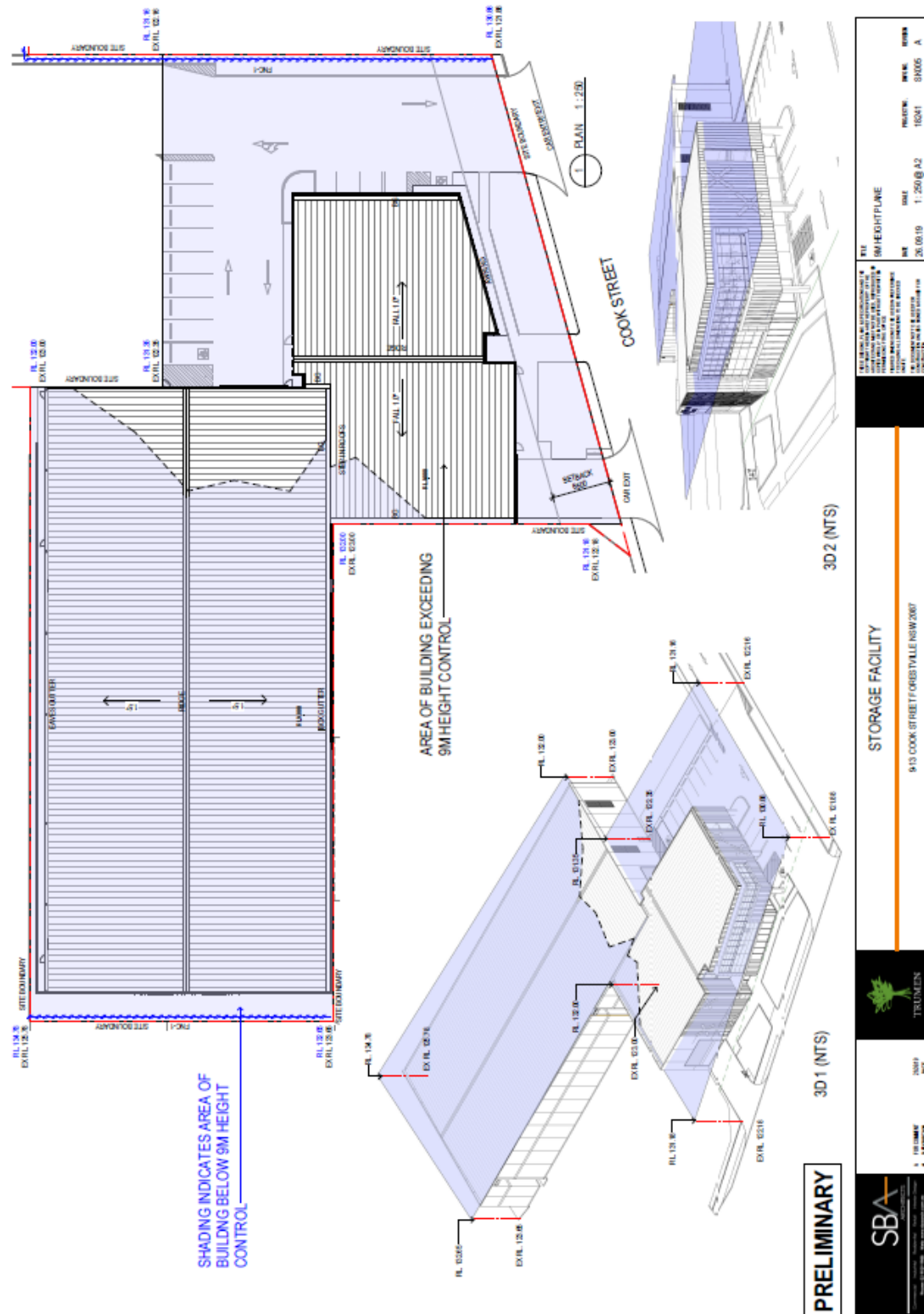
B Env Hlth (UWS)

**Director**

**Attachments**

- 1 Building height compliance blanket diagram
- 2 Shadow diagrams

## Attachment 1



## Attachment 2

