



Clause 4.6 Variation – Height of Buildings (Clause 4.3)

Proposed alterations and additions to an existing industrial facility, offices and ancillary café

4 – 10 Inman Road, Cromer
Lot 1 DP1220196

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

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PART A PRELIMINARY

1.1 INTRODUCTION

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

The proposed development results in non-compliances with Clause 4.3 Height of Buildings, under the Warringah Local Environmental Plan 2011 (WLEP2011).

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

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

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

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

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

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

1.2 PROPOSED NON-COMPLIANCES

1.2.1 Clause 4.3 Height of Buildings

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

The proposed development would involve the construction of multi-unit warehouse, including ancillary works, and the adaptive re-use of the former Roche office building and cottage. The proposed multi-unit warehouse would vary in height, due to the topography of the land. However, the maximum exceedance of the 11m height limit would be 2.83m. The land slopes down in a southerly direction towards South Creek Road, resulting in a greater building height above ground level.

The maximum building height proposed as part of this development would be 13.83m; which is a 25% variation.

1.3 STRATEGIC PLANNING JUSTIFICATION

If the proposal were to include a compliant scheme in accordance with the relevant Development Standard of WLEP2011, the built-form potential of the subject site would be significantly under-realised. While non-compliant, the proposed building height of the new warehouse remains below the general height of the existing buildings (to be demolished).

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If a height compliant scheme were submitted, it would:

- Not contribute towards meeting the demand for employment-generating opportunities within the Northern Beaches Local Government Area (LGA), as identified within *A Metropolis of Three Cities* and the *North District Plan*, by potentially resulting in a reduction in available building footprint and consequently future industrial and warehouse land uses on the subject site;
- Threaten the commercial viability of the proposed development by reducing the overall achievable maximum height across the height, by which would impact on end-user operational requirements; and
- Fail to meet the objects of the *Environmental Planning and Assessment Act 1979* (EP&A Act) by making orderly and economic use of the subject site for its full planning potential.

Notwithstanding, this variation request has been prepared in accordance with the aims and objectives contained within Clause 4.6 and the relevant Development Standards under WLEP2011. It considers various planning controls, strategic planning objectives and existing characteristics of the Site, and concludes that the proposed non-compliance is the best means of achieving the objective, which encourages orderly and economic use and development of land under Section 1.3 of the EP&A Act.

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PART B THRESHOLDS THAT MUST BE MET

2.1 CLAUSE 4.6 OF WLEP2011

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

- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.**
- (4) Development consent must not be granted for development that contravenes a development standard unless:
 - (a) the consent authority is satisfied that:
 - i. the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - ii. the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and**
 - (b) the concurrence of the Secretary has been obtained.**
- (5) In deciding whether to grant concurrence, the Secretary must consider:
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) the public benefit of maintaining the development standard, and*
 - (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.**

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

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PART C THE STANDARDS BEING OBJECTED TO

3.1 CLAUSE 4.3 (HEIGHT OF BUILDINGS) OF WLEP2011

The Development Standard requested to be varied is Clause 4.3 Height of Buildings of WLEP2011.

Table 1 below outlines the proposed variation sought to Clause 4.3 of WLEP2011.

Table 1 Proposed WLEP2011 Development Standard Variation			
Clause	Development Standard	Proposed Non-compliance	Variation Percentage
Clause 4.3(2) – Height of Buildings	The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. – maximum 11m building height	Maximum 13.83m building height	25.73%

3.2 HYPOTHETICAL COMPLIANT DESIGN

As mentioned in **Section 1.3**, an alternative, hypothetical design compliant with Clause 4.3 would:

- Not contribute towards meeting the demand for employment-generating opportunities within the Northern Beaches Local Government Area (LGA), as identified within *A Metropolis of Three Cities* and the *North District Plan*, by potentially resulting in a reduction in available building footprint and consequently future industrial and warehouse land uses on the subject site;
- Threaten the commercial viability of the proposed development by reducing the overall achievable maximum height across the height, by which would impact on end-user operational requirements; and
- Fail to meet the objects of the *Environmental Planning and Assessment Act 1979* (EP&A Act) by making orderly and economic use of the subject site for its full planning potential.

If the proposal were to include a compliant scheme in accordance with the relevant Development Standard of WLEP2011, the built-form potential of the subject site would be significantly under-realised.

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PART D PROPOSED VARIATION TO CLAUSE 4.3 HEIGHT OF BUILDINGS

4.1 OBJECTIVES OF THE STANDARD

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

Therefore, while the site is subject to a specified numerical control for building height (Clause 4.3(2)), the objectives and underlying purpose behind these Development Standards are basic issues for consideration in the development assessment process, of which require due consideration (refer to **Figure 1**).

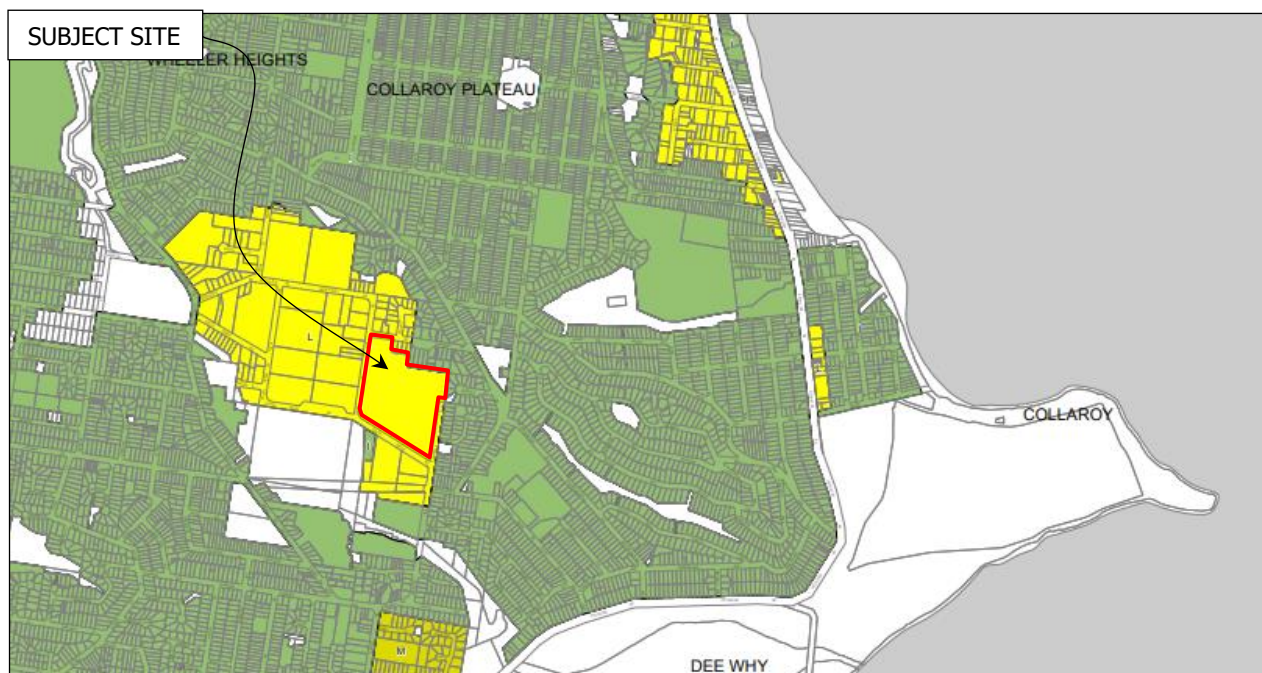


Figure 1 WLEP2011 Height of Buildings Map (Source: NSW Legislation, 2019)

4.1.1 WLEP2011 – Clause 4.3 Height of Buildings

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

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

The intent of the proposed development is to allow for the effective reuse of the former Roche premises, while contributing to the existing industrial character experienced within the IN1 General Industrial zone and within the immediate vicinity of the subject site, consistent with the WLEP2011 and *Warringah Development Control Plan 2011* (WDPC2011).

The design approach for the subject site has evolved following market feedback and considerable consultation with Council. The proposed development would involve the construction of multi-unit warehouse, including ancillary works, and the adaptive re-use of the former Roche office building and cottage.

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

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

It is important to note, that the predominant building setbacks would be maintained accordingly, with regard to the setback controls articulated within the WDCP2011 for industrial development. The additional height would only read as approximately 2.83 m above the permitted maximum height control for the subject site; which is below the existing building height.

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

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

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

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

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

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

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

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

The 3D images, prepared as part of this proposal, clearly demonstrate that the proposed warehouse units retain a significant portion of the former office building, maintaining the heritage values of the site. The southern part of the proposed building is located where the land slopes down significantly, presenting to the intersection of Inman Road and South Creek Road and to South Creek Road.

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

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

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

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

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

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

Further, it is noted that the subject site does contain significant bushland environments (eastern portion of the site), which are intended to be retained as part of this proposal. The proposal also seeks to maintain mature landscaping along the Inman Road and South Creek Road frontages.

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

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

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

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

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

Accordingly, careful selection of building finishes and colours, combined with proposed landscape planting, particularly along the southern and western boundaries (South Creek Road and Inman Road frontages) of

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the subject site, is considered to be appropriately treated from an architectural perspective, as well as being aesthetically pleasing to mitigate any visual impacts. This will assist in screening the built-form of the proposed development within the locality.

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

4.2 OBJECTIVES OF THE ZONE

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

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

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

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

- *To encourage employment opportunities.*

The proposed development would provide employment-generating opportunities to the immediate community and wider locality during both the construction and operational phases of development. This would further contribute to the viable economic return on the local and regional economy the proposed development offers.

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

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

Noise:

The Noise Impact Assessment undertaken and prepared by Acoustic Dynamics, demonstrates that the proposed development is capable of meeting the relevant NSW EPA noise emission guidelines. However, the following mitigation measures are recommended to ensure ongoing compliance with the relevant NSW EPA guidelines:

Forklift Noise Recommendations

Acoustic Dynamics recommends the incorporation of broadband reversing alarms on the forklifts used on site. The broadband reversing alarm would reduce the tonal aspects of the traditional beeping alarm and would maintain the safety of the workers on site.

Additionally, it is recommended that all external forklift activity do not commence before 7am and cease before 10pm.

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General Noise Management

Acoustic Dynamics recommends the following measures to reduce the overall noise impact from the development. Some of the recommendations below may require a review to ascertain the effectiveness of the mitigation measures:

- For any staff requiring access to the ground floor warehouse during the hours of 10pm to 7am (night-time period), preference should be given to the use of the southern driveway entry/exit from South Creek Road, and not the western entry/exit from Inman Road, to reduce the traffic noise levels at the adjacent residence on Orlando Road; and
- Trucks should never use the horn of the vehicle, during the late evening period (8pm to 10pm) and should enter and exit the premises to the south from South Creek Road. Signage indicating the above instructions is to be clearly displayed at the entry and exit to the hardstand and significant penalties should be applied to drivers who ignore this requirement.

Operational noise emissions associated with the proposed development have been assessed with reference to the relevant EPA and WDCP2011 acoustic guidelines. Provided that the recommendations listed above are adopted, operational noise emissions from the subject site would be compliant with relevant EPA and Council noise emission requirements.

Further details are included in the Acoustic Assessment, prepared by Acoustic Dynamics, in **Appendix 12**.

Visual:

As mentioned in **Section 4.1.1**, with its overall site configuration, a well resolved built-form and potential public realm benefits, the proposed development can create a high quality built-form, which is complementary to the street character of Inman Road and South Creek Road, as well as being a quality contribution to the urban built-form of the surrounding area, and resulting in a sympathetic integrating with the existing character of the subject site. Through generous landscaping and peripheral amenities to help activate the street frontage, the proposed development would achieve a suitable fit within the existing public realm, with positive economic, social and environmental benefits for the wider community.

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

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

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

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

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

Whilst the IN1 General Industrial zone allows for a range of non-industrial land uses, the proposed development responds to a development for the purposes of warehousing and industry. The proposed development would provide employment-generating opportunities to the immediate community, as well as the wider locality. It is noted, that the proposed development includes provisions for a café, to result from an adaptive re-use of the existing cottage, which would be utilised by workers and visitors on-site, as well

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as being accessible to members of the public within the immediate vicinity. The proposal also seeks to retain the former Roche office buildings and maintain their office premises operations.

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

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

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

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

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4.3 ESTABLISHING IF THE DEVELOPMENT STANDARD IS UNREASONABLE OR NECESSARY

4.3.1 Height of Buildings

When considering whether a Development Standard is appropriate and/or necessary, one must consider the nature of the proposed variation, the site context, and the design of the proposed development.

Compliance with the standard would be unreasonable and unnecessary given that the proposed development generally maintains the height permitted under Clause 4.3 of WLEP2011 regarding the subject site. The non-compliance relates to the proposed exceedance in height, that exceeds the standard imposed under WLEP2011. The maximum building height proposed as part of this development would be 13.83m; which is a 25% variation.

Furthermore, as shown in **Section 4.1**, the proposed development is considered consistent with the objectives of Clause 4.3 pursuant to WLEP2011.

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

- The proposed development seeks to support the sympathetic reuse of the subject site, including maintenance of the industrial character of the land in its existing landscaped setting. However, there is very limited demand for activities that could be accommodated in existing premises, therefore partial demolition and the construction of a multi-warehouse development is proposed.
- The proposed development would involve the construction of multi-unit warehouse, including ancillary works, and the adaptive re-use of the former Roche office building and cottage. The proposed multi-unit warehouse would vary in height, due to the topography of the land.
- The proposed development would generally maintain the maximum permitted building height, under WLEP2011, of the subject site (exceedance by a maximum of only 2.83m afforded by the land topography). Accordingly, the density and scale of the built-form proposed, would remain consistent with the existing premises and surrounding industrial uses. Additionally, the proposed development would effectively integrate the streetscape and character of the area into the proposed scheme. It is noted, that the height breach pertains to a limited portion of the subject site and would be adequately screened by existing mature vegetation/landscaping and additional soft landscaping.
- The proposed built-form character is generally consistent with the built-form of the former Roche premises; comparative images are included in the Statement of Environmental Effects.
- The proposed development's building height is considered a key attribute in creating an internal building environment that would ensure the delivery of space and amenity that is required to support the operations of the future tenants involved and thereby enabling the productive use of the subject site.

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

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

4.4 SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD

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

- The proposed development is consistent with the underlying objective(s) or purpose of the building height standard, as demonstrated in **Section 4.1**.
- The proposed development achieves the objectives of WLEP2011 for the IN1 General industrial zone, as described in **Section 4.2**.
- Compliance with Clause 4.3 would be unreasonable and unnecessary for the reasons outlined in **Section 4.3**.
- The proposed development generally maintains the height experienced as part of the existing premises, for which the proposed development would provide quality integrated.
- Materials and finishes would activate and provide a visual outcome that seamlessly integrates with the surrounding character. Additionally, colour and material direction would be utilised (where possible) to blend with the varied architectural forms and respond to the maintained character of the subject site.
- The overall scale of the proposed development seeks to provide a seamless, sympathetic transition from the retained character buildings of the subject site, being compatible in terms of built-form and scale.
- The proposed development would provide an employment-generating land use that is considered adaptable and responds accordingly to shifting economic conditions.
- The proposed development incorporates suitable setback controls and separation distances (where required) in accordance with the WDCP2011.
- The proposed development, particularly the proposed height would integrate with the local and regional context, specifically the IN1 General industrial zone. The relationship of the proposed development, with respect to height, would remain consistent due to the transition offered between the surrounding sites.
- The proposed development would maintain neighbouring amenity as-well-as the amenity of the public domain. Additionally, the perimeter mature landscaping would be maintained and further treated with additional soft landscaping.
- The exceedance of the height standard (by only 2.83m) would have minimal impact on the streetscape, on visual privacy and solar access of neighbouring development due to a strategically implemented architectural treatment, which positions the building's forming the most significant height non-compliances away from nearby sensitive receptors, whilst integrating with the retained structures on site.
- The proposed development would support the productive economic use of the subject site that is ideally located within an area zoned for such permissible industrial use.

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

4.5 PUBLIC INTEREST

It is noted, that Subclause 4.6(4)(a)(ii) requires the proposed development be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

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

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industrial zoned site, for which it would provide employment-generating opportunities during the construction and operational phases of development.

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

4.6 MATTERS OF STATE OR REGIONAL SIGNIFICANCE

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

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

- WLEP2011, Clause 4.3 Height of Buildings by 2.83m (25%)

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

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

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

4.7 PUBLIC BENEFIT IN MAINTAINING THE STANDARDS

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

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

4.8 OBJECTS 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 EP&A Act, in accordance with Section 1.3. **Table 2** below assesses the proposed development against the Objects of the Act.

Clause 4.6 Variation – Height of Buildings (Clause 4.3)

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

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Table 2 Objects of the Act – EP&A Act	
Object	Compliance
<i>(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,</i>	<p>The proposed development is considered in the public interest as it would contribute towards meeting the demand for increased employment opportunities within the area, as identified in <i>A Metropolis of Three Cities</i>, and the <i>Northern District Plan</i>.</p> <p>Specifically, the proposed development would be of social benefit to the community situated within the Warringah area, as it would provide employment-generating opportunities for the immediate locality.</p>
<i>(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,</i>	<p>The proposed development has been assessed against the principles of Ecologically Sustainable Development as set out in the <i>Protection of the Environment Operations (General) Regulation 2009</i> as follows:</p> <ul style="list-style-type: none"> ▪ The proposed development would not create the risk of serious or irreversible damage to the environment. ▪ The proposed development would not create any threats of serious or irreversible environmental damage which would require further scientific study to fully ascertain. ▪ The proposed development would not impact on the conservation of biological diversity or the ecological integrity of the locality. It is important to note, the Biodiversity Area identified to the southwest of the Site will not be impacted by the proposed development. ▪ The proposed development would not require an Environment Protection Licence or other mechanism to compensate for any pollution generating activities at the Site.
<i>(c) to promote the orderly and economic use and development of land,</i>	<p>The proposed development would make use of a site used for similar purposes, that is currently considered to underutilised, for which it would result in orderly and economically beneficial development, without resulting in any unacceptable economic, environmental or social impacts.</p>
<i>(d) to promote the delivery and maintenance of affordable housing,</i>	N/A – not relevant to the proposed development.
<i>(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,</i>	<p>The proposed development is sought be located within the same building footprint of the existing development.</p>
<i>(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),</i>	<p>The subject site contains three (3) separate listings of heritage items under the WLEP2011, which are to maintained and conserved as part of this proposal.</p>

Clause 4.6 Variation – Height of Buildings (Clause 4.3)

Proposed alterations and additions to an existing industrial facility, offices and ancillary café
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Table 2 Objects of the Act – EP&A Act	
Object	Compliance
	The proposed development has sought to ensure the continued character of the subject site and would result in the retention of a number character buildings and soft landscaping. Assessments carried out by Heritage 21 conclude that the proposed development, in particular the proposed multi-unit warehouse would not impact on views to the site and the proposed articulation and colours of the faced would not detract from the significance of the subject site. Heritage 21 have documented their confidence that the proposed development complies with pertinent heritage controls and would have minimal impact on the heritage significance of the subject site.
<i>(g) to promote good design and amenity of the built environment,</i>	Section 4.1 satisfactorily addresses how the proposed development responds to the character of the locality in terms of urban design.
<i>(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,</i>	The proposed development can be constructed and maintained without health and safety risks to future tenants.
<i>(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,</i>	The proposed development has a Capital Investment Value of approximately \$44,590,000. As such, it is classified as Regionally Significant Development, for which it would be determined by the Sydney Central City Planning Panel.
<i>(j) to provide increased opportunity for community participation in environmental planning and assessment.</i>	The DA for the proposed development would be subject to the relevant public notification requirements.

4.9 SUMMARY

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

- Compliance with the Development Standard is unreasonable and unnecessary in the circumstances;
- There are sufficient environmental planning grounds to justify contravening the Development Standard;
- The proposed development is in the public interest;
- The proposed development is consistent with the objectives of the particular standard;
- The proposed development is consistent with the objectives for development within the IN1 General Industrial zone;
- The objectives of the standard are achieved notwithstanding the non-compliance with the standard;
- The proposed development does not negatively impact on any matters of State or regional significance; and
- The public benefit in maintaining strict compliance with the development standard would be negligible.

Clause 4.6 Variation – Height of Buildings (Clause 4.3)

Proposed alterations and additions to an existing industrial facility, offices and ancillary café
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It is furthermore submitted, that:

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

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

Clause 4.6 Variation – Height of Buildings (Clause 4.3)

Proposed alterations and additions to an existing industrial facility, offices and ancillary café
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PART E CONCLUSION

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

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

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

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

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

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