



Statement of Environmental Effects

34 Orlando Road, Cromer

Demolition of existing buildings and construction of a new industrial / warehouse building with ancillary office, car parking and caretaker's dwelling

Prepared by Geoff Goodyer for submission to Northern Beaches Council

June 2019

Project No. 18-098

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1. Executive summary

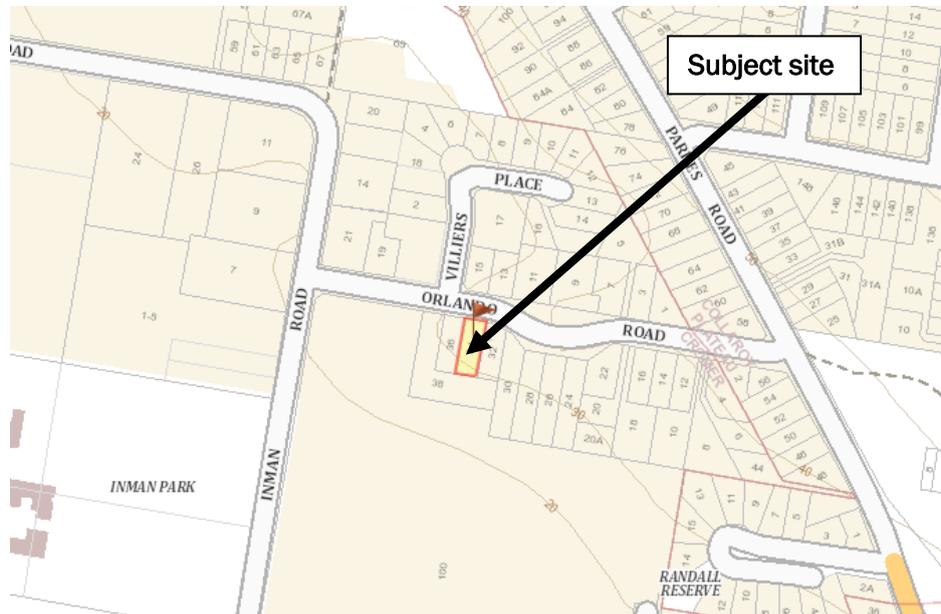
- 1.1. The proposal is to demolish all existing buildings and to construct a new industrial / warehouse building on the site.
- 1.2. The building is set back from the street front by 6.5 metres and is built to the side and rear boundaries. It comprises a lower level car parking area for 12 vehicles, a ground level industrial / warehouse space with a mezzanine office, and an upper level caretaker's dwelling.
- 1.3. The proposal complies with the development standards and other controls in *Warringah Local Environmental Plan 2011* with the exception of a minor variation to the building height control. A written request to vary the control is attached to this Statement of Environmental Effects.
- 1.4. Particular consideration has been given to the parking and traffic impacts arising from the proposal and a report has been prepared by TEF Consultants which concludes that the proposed development is supportable on traffic and parking grounds.
- 1.5. A pre-lodgement meeting was held with Council officers on 29 August 2017 and the feedback that was received has informed the design of the proposal.
- 1.6. This Statement of Environmental Effects carries out an assessment of the proposal against the relevant planning controls, including:
 - *Warringah Local Environmental Plan 2011*
 - *Warringah Development Control Plan 2011*
- 1.7. The site is zoned IN1 General Industrial. The proposal is permissible with consent within the zone and satisfies all relevant objectives.
- 1.8. The proposal is considered to be suitable for approval.

2. Introduction

- 2.1. This Statement of Environmental Effects has been prepared by Geoff Goodyer of Symons Goodyer Pty Limited, Balgowlah. My details are included in Appendix A of this Statement of Modifications and Environmental Effects.
- 2.2. I am a town planner with over 30 years' experience in local government and private practice. I am a Registered Planner accredited by the Planning Institute of Australia.
- 2.3. This report assesses the impacts of a proposal to demolish the existing buildings and construct a new industrial / warehouse building with ancillary office, car parking and caretaker's dwelling at 34 Orlando Road, Cromer, under section 4.15 of the *Environmental Planning and Assessment Act 1979*.
- 2.4. In the course of preparing this Statement of Environmental Effects I have:
- inspected and taken photographs of the site and surrounding locality;
 - reviewed the minutes of the pre-lodgement meeting held with Council officers on 29 August 2017; and
 - reviewed relevant environmental planning instruments and Council policies, in particular *Warringah Local Environmental Plan 2011* and *Warringah Development Control Plan 2011*.

3. Site and surrounding area

3.1. The subject site is Lot 1, DP 407210, No. 34 Orlando Road, Cromer. It is located on the southern side of Orlando Road between Inman Road and Parkes Road. The site's location is shown on the following maps:



Map 1 - Location (source: sixmaps)



Map 2 - Aerial photograph (source: sixmaps)

3.2. The site is rectangular in shape. It has a frontage of approximately 15.24 metres to Orlando Road to the north, eastern and western side boundaries of 40.54 metres and a southern rear boundary of 15.24 metres.

3.3. The site area is 617.8m².

- 3.4. The site benefits from a drainage easement across land to the rear of the site.
- 3.5. The site slopes from its front boundary down to its rear boundary. The total fall is approximately 4.6 metres, representing an average grade of 1 in 8.8 (6.5° or 11.3%).
- 3.6. The site is occupied by a demountable building. The rear of the site is vacant.
- 3.7. The surrounding area has been developed for industrial and warehouse purposes. A child care centre has been established 30 metres to the west of the site.
- 3.8. The following photographs show the site and surrounding area:



Photo 1:
The subject site, viewed from Orlando Road.



Photo 2:
The rear of the existing building on the subject site.



Photo 3:
The vacant rear yard on the subject site.



Photo 4:
The neighbouring property to the east, 32 Orlando Road.



Photo 5:
The neighbouring property to the west, 36 Orlando Road.



Photo 6:
Existing development on the opposite side of Orlando Road.

4. Proposal in detail

- 4.1. The proposal is to demolish all existing structures and construct a two-storey industrial / warehouse building with car parking and a caretaker's dwelling at 34 Orlando Road, Cromer.
- 4.2. Car parking for 12 vehicles is provided at lower ground floor level with access via a driveway from Orlando Road.
- 4.3. The industrial / warehouse area of the building is at ground level with access from Orlando Road. It has a floor area of 428.5m².
- 4.4. A mezzanine office with 40.4m² of floor area is proposed above the industrial / warehouse area.
- 4.5. An upper level contains a 2-bedroom caretaker's unit.
- 4.6. The building is to be built to the side and rear boundaries and be set back 6.5 metres from the front boundary.
- 4.7. A turntable is provided to enable trucks to enter and leave in a forward direction.
- 4.8. It is noted that the BCA and Access Report that is submitted with this development application makes comment and reference to fire egress and protection issues. The project architect advises that these issues were taken note of and the architectural plans submitted for this application have been amended to reflect the BCA and Access Report.
- 4.9. The proposal is shown on the following drawings:

No.	Title	Dated	Drawn by
01/A	Landscape plan	20.10.2018	C3d Design
02/A	Lower ground level	14.12.2018	C3d Design
03/A	Ground level	01.04.2019	C3d Design
04/A	Level 1	20.10.2018	C3d Design
05/A	Section A, B and C	20.10.2018	C3d Design
06/A	North and south elevations	20.10.2018	C3d Design
07/A	East and west elevations	20.10.2018	C3d Design
08/A	East elevation section	20.10.2018	C3d Design
09	West elevation section	20.10.2018	C3d Design
10	Stormwater management plan	12.12.2018	C3d Design
11	Shadow diagrams	14.12.2018	C3d Design
12	Demolition plan, excavation and fill plan, waste management plans	01.04.2019	C3d Design
13	Perspective	14.12.2018	C3d Design
16930	Detail survey	08.05.2017	CMS Surveyors

- 4.10. The proposal is supported by the following documentation:

Title	Date	Prepared by
BCA and Access Report	29.04.2019	PCA Services
Preliminary Geotechnical Report	01.04.2019	JK Geotechnics
Statement of Environmental Effects	June 2019	Symons Goodyer
Traffic and Parking Impacts Report	03.09.2018	TEF Consulting
Waste Management Plan	12.04.2019	Geoff Goodyer

5. Warringah Local Environmental Plan 2011

5.1. Aims of plan

5.1.1. The proposal is considered to be consistent with the relevant aims of WLEP 2011 in clause 1.2, in particular:

2(e)(i) The proposed development has no impact on the amenity of residential properties and public places.

2(e)(ii) The proposal will enhance the diversity of employment and services available in the area.

2(h)(ii) The proposal has positive economic effects.

5.2. Zone objectives and permissibility

5.2.1. The site is zoned IN1 General Industrial. The proposal is permissible with development consent as a *warehouse or distribution centre* with the office and caretaker's flat being ancillary development.

5.2.2. The proposal is considered to be consistent with the relevant objectives of the zone, as follows:

- The proposal encourages employment opportunities.
- The future industrial use of the land will not affect the amenity of other land uses.
- The industrial / warehouse building supports the use of industrial land for industrial purposes.
- The industrial character of the area is maintained.

5.2.3. The proposal does not undermine the other objectives of the zone.

5.3. Principal development standards

5.3.1. Clause 4.3 of WLEP 2011 prescribes a maximum building height of 11m. The proposed building generally complies with the 11m building height control.

5.3.2. However, the site has a "dip" in its south-western corner and, as a result, a minor portion of the building at this location exceeds the 11m building height control by up to 1.1m or 10%. Consideration was given to lowering the floor-to-ceiling height within the building but a clear height of 5.8m is required to install and run the overhead gantry crane that is an integral part of the use of the building.

- 5.3.3. A request to vary the building height control is attached is attached as Appendix B and is considered to be well-founded.
- 5.3.4. Planning Circular PS 18-003, dated 21 February 2018, provides that the Secretary's concurrence may not be assumed by a delegate of council "*if the development contravenes a numerical standard by **greater than 10%***" [emphasis added]. Because the proposed variation is not greater than 10% the proposed variation may be determined by Council staff under delegation and referral to the Local Planning Panel is not required.

5.4. Miscellaneous provisions

- 5.4.1. The site is not a heritage item and is not within a conservation area. There are three heritage items of local significance located to the south of the site, being Trees adjacent to Campbell Avenue (Item I35), the Roche Building at 100 South Creek Road (Item I52) and the Givaudan-Roure Office at 96 South Creek Road (Item I53). These items are all located a significant distance from the subject site and are separated by an intervening property. The proposal will have no impact on the heritage significance of these items or their settings. The proposal satisfies clause 5.10 of WLEP 2011.

5.5. Additional local provisions

- 5.5.1. The site is not identified within any Class on the Acid Sulfate Soils Map. No further assessment of the proposed works is required in terms of acid sulfate soils under clause 6.1 of WLEP 2011.
- 5.5.2. Earthworks are proposed to provide for the building platform and the basement car parking area. Clause 6.2 of WLEP 2011 requires the following matters to be considered:
- (a) *the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality,*
- Comment: Stormwater will be controlled in accordance with the Stormwater Management Plan prepared by C3d Design
- (b) *the effect of the proposed development on the likely future use or redevelopment of the land,*
- Comment: The proposal supports the future industrial / warehousing use of the land.
- (c) *the quality of the fill or the soil to be excavated, or both,*
- Comment: The excavated material is anticipated to be clean fill.
- (d) *the effect of the proposed development on the existing and likely amenity of adjoining properties,*

Comment: The proposal does not result in unreasonable impacts on the amenity of adjoining properties.

- (e) *the source of any fill material and the destination of any excavated material,*

Comment: Material removed from the site will be disposed of to a licensed facility. This may be controlled by an appropriate condition of consent.

- (f) *the likelihood of disturbing relics,*

Comment: Given the historical uses of the site it is unlikely that it contains any relics.

- (g) *the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.*

Comment: Stormwater will be controlled in accordance with the Stormwater Management Plan prepared by C3d Design.

5.5.3. The proposal complies with clause 6.2 of WLEP 2011.

5.5.4. The site is within Area D on the Landslip Risk Map. A preliminary geotechnical investigation has been carried out by JK Geotechnics which provides specific recommendations to be addressed during the construction phase of the project and relevantly concludes:

Our risk assessment indicates that the risk to property varies between “Very Low” and “Low”, which would be considered ‘acceptable’ in accordance with the criteria given in Reference 1. For the risk to life, we estimate that the risk for the person most at risk is about 4×10^{-8} . This would be considered ‘acceptable’ in accordance with the criteria given in Reference 1.

5.5.5. The proposal complies with clause 6.4 of WLEP 2011.

6. Warringah Development Control Plan

6.1. Compliance Table

6.1.1. The following table summarises the relevant numerical controls in the WDCP:

Development Standard	Required	Proposed	Complies?
B6 Merit assessment of side boundary setbacks	Merit assessment	Nil	Yes
B7 Front boundary setback	4.5 metres	6.0 metres	Yes
B10 Merit assessment of rear boundary setback	Merit assessment	Nil	Yes
C3 Parking facilities	1 space per 40m ²	No change	Yes
C3(A) Bicycle parking and end of trip facilities	1 space per 200m ² (3) plus 1 space per 600m ² for visitors (1)	Space for 4 bicycles in Lower Ground Floor level	Yes

6.2. Planning rules

6.2.1. The following table details the performance of the proposal against the relevant planning rules in the WDCP:

General Principles	Applies	Comments	Complies
B1 Wall heights	NO	No Comment	N/A
B2 Number of storeys	NO	No Comment	N/A
B3 Side boundary envelope	NO	No Comment	N/A
B4 Site coverage	NO	No Comment	N/A
B5 Side boundary setbacks	NO	No Comment	N/A
B6 Merit assessment of side boundary setbacks	YES	The proposal provides nil setbacks to the side boundary which is consistent with the majority of industrial development in the vicinity of the site. The nil setbacks have no impact on neighbouring amenity or the streetscape.	YES
B7 Front boundary setbacks	YES	The proposed 6.0m front setback exceeds the required 4.5m front setback.	YES
B8 Merit assessment of front boundary setbacks	NO	No Comment	N/A
B9 Rear boundary setbacks	NO	No Comment	N/A
B10 Merit assessment of rear boundary setbacks	YES	The proposal provides a nil setback to the rear boundary which is consistent with the majority of industrial development in the vicinity of the site. The nil setback has no impact on neighbouring amenity or the streetscape.	YES
B11 Foreshore building setback	NO	No Comment	N/A
B12 National Parks setback	NO	No Comment	N/A
B13 Coastal cliffs setback	NO	No Comment	N/A
B14 Main roads setback	NO	No Comment	N/A
C1 Subdivision	NO	No Comment	N/A

General Principles	Applies	Comments	Complies
C2 Traffic, access and safety	YES	The proposal is accompanied by a traffic and parking report by TEF Consulting which demonstrates compliance with the requirements of clause C2 of WDCP 2011.	YES
C3 Parking facilities	YES	The proposal provides 12 car spaces in a basement parking area. The proposal is accompanied by a traffic and parking report by TEF Consulting which demonstrates compliance with the requirements of clause C3 of WDCP 2011.	YES
C3(A) Bicycle parking and end of trip facilities	YES	Four bicycle parking spaces are provided in the basement and satisfy the requirements of clause C3(A) of WDCP 2011. End-of-trip facilities are available in the caretaker's unit.	YES
C4 Stormwater	YES	Stormwater will be managed in accordance with the Stormwater Management Plan prepared by C3d Design.	YES
C5 Erosion and sedimentation	YES	Erosion and sedimentation will be controlled in accordance with the plan prepared by the project architect (Drawing 012) and through the imposition of standard conditions of consent.	YES
C6 Building over or adjacent to constructed Council drainage easements	NO	No Comment	N/A
C7 Excavation and landfill	YES	Excavation and fill is required to provide a level building platform for the proposed development. Fill removed from the site is anticipated to be clean and will be disposed of to a licensed facility in accordance with the Waste Management Plan.	N/A
C8 Demolition and construction	YES	Demolition will be carried out in accordance with AS 2601-2001 and this can be conditioned in Council's normal manner. A Waste Management Plan has been prepared and is included in the development application.	YES
C9 Waste management	YES	Waste will continue to be disposed of by contractor to an approved waste disposal facility in accordance with the Waste Management Plan.	YES
D1 Landscaped open space and bushland setting	NO	No Comment	N/A
D2 Private open space	YES	A terrace is provided on the roof of the building to provide private open space for the caretaker's dwelling.	N/A
D3 Noise	YES	Noise generated by the use of the site for industrial and warehouse purposes will comply with the requirements of the POEO Act and the <i>NSW Industrial Noise Policy</i> . This matter can be addressed through the imposition of standard conditions of consent.	YES
D4 Electromagnetic radiation	NO	No Comment	N/A
D5 Orientation and energy efficiency	NO	No Comment	N/A
D6 Access to sunlight	YES	There are no dwellings adjoining the subject site. The rooftop terrace will receive more than 2 hours sunlight in mid-winter and the living rooms of the caretaker's unit are oriented to the north and so will receive throughout the day in mid-winter.	YES
D7 Views	YES	All public and private views are maintained.	YES
D8 Privacy	YES	The site does not adjoin any residential properties. There is no impact on existing levels of privacy.	YES

General Principles	Applies	Comments	Complies
D9 Building bulk	YES	The building is provided with articulation in the form of fenestration and a variety of external materials to ensure that a reasonable building bulk is maintained, noting that the proposal is an industrial development within an industrial area.	YES
D10 Building colours and materials	YES	Details of external materials are shown on drawings DA06 and DA07.	YES
D11 Roofs	YES	The proposed pitched roof is appropriate for industrial development.	YES
D12 Glare and reflection	YES	The proposal will not result in any glare or reflection. The degree of glare from reflected roof light can be controlled by the imposition of a standard condition of consent.	YES
D13 Front fences and front walls	YES	No front fence is proposed.	YES
D14 Site facilities	NO	No Comment	N/A
D15 Side and rear fences	NO	No Comment	N/A
D16 Swimming pools and spa pools	NO	No Comment	N/A
D17 Tennis courts	NO	No Comment	N/A
D18 Accessibility	YES	Compliance with AS1428 will be confirmed as part of the construction certificate process. An accessible car parking space is provided in the basement of the building and barrier free access is available from the street frontage of the property.	N/A
D19 Site consolidation in the R3 and IN1 zone	YES	The proposal will not prevent neighbouring allotments from being developed in accordance with the requirements of the WDCP 2011.	YES
D20 Safety and security	YES	Building entrances are clearly identifiable.	YES
D21 Provision and location of utility services	YES	The site is connected to all relevant utility services.	YES
D22 Conservation of energy and water	NO	No Comment	N/A
D23 Signs	NO	No Comment	N/A
E1 Private property tree management	NO	No Comment	N/A
E2 Prescribed vegetation	NO	No Comment	N/A
E3 Threatened species, populations, ecological communities	NO	No Comment	N/A
E4 Wildlife corridors	NO	No Comment	N/A
E5 Native vegetation	NO	No Comment	N/A
E6 Retaining unique environmental features	NO	No Comment	N/A
E7 Development adjoining public open space	NO	No Comment	N/A
E8 Waterways and riparian lands	NO	No Comment	N/A
E9 Coastline hazard	NO	No Comment	N/A

General Principles	Applies	Comments	Complies
E10 Landslip risk	YES	The site is within Landslip Risk Area D. A Preliminary Geotechnical Assessment has been prepared by JK Geotechnics and concludes: <i>Our risk assessment indicates that the risk to property varies between “Very Low” and “Low”, which would be considered ‘acceptable’ in accordance with the criteria given in Reference 1. For the risk to life, we estimate that the risk for the person most at risk is about 4×10^{-8}. This would be considered ‘acceptable’ in accordance with the criteria given in Reference 1.</i>	YES
E11 Flood prone land	NO	No Comment	N/A
F1 Local and neighbourhood retail centres	NO	No Comment	N/A
F2 Brookvale brickworks	NO	No Comment	N/A
F3 Special activities	NO	No Comment	N/A
F4 SP2 Infrastructure zone	NO	No Comment	N/A
G1 Dee Why mixed use area	NO	No Comment	N/A
G2 Medium density residential land in B4 Mixed Use zone	NO	No Comment	N/A
G3 Belrose corridor	NO	No Comment	N/A
G4 Warringah Mall	NO	No Comment	N/A
G5 Brookvale Village	NO	No Comment	N/A
G6 Dee Why RSL Club	NO	No Comment	N/A
G7 Evergreen Estate	NO	No Comment	N/A

7. Other matters under Section 79C of the Environmental Planning & Assessment Act 1979

7.1. The likely impacts of the development

7.1.1. These have been addressed above.

7.2. The suitability of the site

7.2.1. The site is zoned for industrial development. There are no natural hazards that constrain the development of the site. The site is not identified as being prone to bush fire risk or flooding and is considered to be suitable for this development

7.3. Submissions

7.3.1. None relevant at this time.

7.4. The public interest

7.4.1. The public interest is served by developing the land in an efficient and economic way that maintains the character of the area and the amenity of the neighbourhood.

7.4.2. The proposal will provide economic benefits and generate employment for the local community.

7.4.3. The Council's LEP and DCP encourage such development in this locality.

8. Summary

- 8.1. The merits of this application have been identified in this assessment under Section 4.15 of the *Environmental Planning and Assessment Act 1979*, *Warringah Local Environmental Plan 2011* and *Warringah Development Control Plan 2011*.
- 8.2. The proposal will provide economic benefits and provide employment opportunities for the local community.
- 8.3. The site is located within an industrial area and the design of the building is consistent with the character of the area. The site does not adjoin dwellings and will not have a significant impact on residential amenity in the area.
- 8.4. Overall the aims and objectives of Council's development controls are achieved and the proposal is considered to be suitable for approval on town planning grounds.

Appendix A Details of the Author

ACADEMIC QUALIFICATIONS

Bachelor of Town Planning (Honours), University of New South Wales (1988).
Master of Professional Accounting (Distinction), University of Southern Queensland (1999).

PROFESSIONAL EXPERIENCE

1997 to present SYMONS GOODYER PTY LTD

Principal town planning consultant responsible for providing expert town planning advice to a diverse range of clients.

Expert witness in the Land and Environment Court.

Statutory and strategic projects within numerous Council areas, including Ashfield, Bankstown, Canterbury, Hornsby, Ku-ring-gai, Lane Cove, Leichhardt, Liverpool, Manly, Mosman, North Sydney, Pittwater, Randwick, Rockdale, Sutherland, Warringah, Waverley, and Woollahra.

1988 to 1997 WARRINGAH COUNCIL

Manager, Planning and Urban Design Branch (1994-7). Responsible for drafting of operative provisions of the Warringah Local Environmental Plan 2000.

Senior Strategic Planner (1993-1994)

Development Assessment Officer (1988-1993)

1986 to 1988 MARRICKVILLE MUNICIPAL COUNCIL

Town Planner

1986 EDWARDS MADIGAN TORZILLO BRIGGS INTERNATIONAL PTY LTD

Town Planner

1984 RYDE MUNICIPAL COUNCIL

Student Town Planner

PUBLICATIONS

Goodyer, G (1988)

Retail and office activities in industrial areas in the Sydney region. University of New South Wales.

Goodyer, G (1989)

Hi-tech industry. Planning Law and Practice, UNSW, 1989.

Goodyer, G (1995)

Modern Planning Instruments. Health and Building Surveyors' Association (NSW) Conference, 1995.

Appendix B Building height – clause 4.6 variation request

Premises: 34 Orlando Road, Cromer

Proposal: Demolition of existing buildings and construction of a new industrial / warehouse building with ancillary office, car parking and caretaker's dwelling.

Controls: Building height

Clause 4.3(2) of *Warringah Local Environmental Plan 2011* ("WLEP 2011") permits a maximum building height of 11.0 metres. The proposed building generally complies with this control. However, the south-western corner of the building has a maximum building height of 12.1 metres, representing a maximum non-compliance of 1.1 metres (10.0%).

Introduction:

Clause 4.6 of WLEP 2011 provides, so far as is relevant:

- (1) *The objectives of this clause are as follows:*
 - (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.*
- (2) *Development 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.*
- (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*

With regards to the objectives of clause 4.6 stated at clause 4.6(1), Preston CJ provides the following guidance in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [90]:

In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”.

Clause 4.6 is facultative. Clause 4.6(2) permits a consent authority to grant development consent for development even though that development would contravene a development standard imposed by an environmental planning instrument.

Is the building height control a development standard?

A development standard is defined in s 1.4 of the *Environmental Planning and Assessment Act 1979* (“EPA Act”) to mean:

“provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- (a) *the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
- (b) *the proportion or percentage of the area of a site which a building or work may occupy,*
- (c) *the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*
- (d) *the cubic content or floor space of a building,*
- (e) *the intensity or density of the use of any land, building or work,*
- (f) *the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,*

- (g) *the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,*
- (h) *the volume, nature and type of traffic generated by the development,*
- (i) *road patterns,*
- (j) *drainage,*
- (k) *the carrying out of earthworks,*
- (l) *the effects of development on patterns of wind, sunlight, daylight or shadows,*
- (m) *the provision of services, facilities and amenities demanded by development,*
- (n) *the emission of pollution and means for its prevention or control or mitigation, and*
- (o) *such other matters as may be prescribed."*

Clause 4.3 of WLEP 2011 fixes the maximum height of buildings on land in what was previously the local government area of Warringah and is now part of the local government area of Northern Beaches. Clause 4.3(2) provides that:

"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."

The Height of Buildings map fixes a maximum height of 11.0 metres for the land on which the building is proposed. The proposed building has a maximum height of 12.1 metres, measured from existing ground level (RL 27.55) to the ridge of the proposed roof (RL 39.65) and exceeds the maximum height of 11.0 metres for the land. Clause 4.3 of WLEP 2011 is a development standard for the purposes of the EPA Act and clause 4.6 of WLEP 2011.

Matters for consideration in deciding whether to vary the development standard.

The permissive power in clause 4.6(2) to grant development consent for a development that contravenes the development standard is, however, subject to conditions. Clause 4.6(4) establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard.

The first precondition, in clause 4.6(4)(a), is that the consent authority must form two positive opinions of satisfaction under clause 4.6(4)(a)(i) and (ii).

The first opinion of satisfaction, in clause 4.6(4)(a)(i), is that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by clause 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b)). The written request needs to demonstrate both of these matters.

As to the first matter required by clause 4.6(3)(a), the common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary is summarised in *Wehbe v Pittwater Council* at [42]-[51]. Although that was said in the context of an objection under *State Environmental Planning Policy No 1 – Development Standards* to compliance with a development standard, the discussion is equally applicable to a written request under clause 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary.

The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: *Wehbe v Pittwater Council* at [42] and [43]. This is the way that has been chosen for this clause 4.6 variation request, and the other ways that are described *Wehbe v Pittwater Council* are not relied upon.

The objectives of the building height control as specified in clause 4.3(1) of WLEP 2011 are:

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

Comment: The proposed building is generally compliant with the 11.0m height control applying to the land, with the non-compliant element not being visible from the public domain as it is located at the rear of the site.

The height and scale of surrounding and nearby development is characterised by industrial / warehouse buildings comprising ground level work/storage areas with upper level ancillary offices. Other nearby development comprises industrial / warehouse units located over a number of levels. Examples of surrounding and nearby development are shown in the following photos (source: google maps):



Photo 7: 36 Orlando Road



Photo 8: 38 Orlando Road



Photo 9: 17 Orlando Road



Photo 10: 13 Orlando Road



Photo 11: 19 Orlando Road



Photo 12: 21 Orlando Road

The proposal will have a similar height and scale as the developments shown in the photographs above. Its scale is reduced when viewed from the street because it is on the low side of the street and so has a lesser scale when compared to 21 Orlando Road (above). The scale of the proposal is not discordant or jarring when viewed in comparison with other industrial and warehouse development near the site and is considered to be compatible with that development.

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

Comment: As the site is surrounded by industrially zoned land and is not adjacent to any residential development it will not have a significant impact in terms of privacy or solar access. The development of this site does not disrupt any public or private views.

The visual impact of the building is reduced through the use of a variety of building material and colours and the incorporation of architectural features such as the front balcony and sunshade.

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

Comment: The site is not located in proximity to the coastal and bush environments and the proposed development will not have a perceptible impact on the scenic quality of those environments.

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

Comment: The site is located on the lower side of Orlando Road, reducing the visual impact of the building. The non-compliant element of the building is located at the rear of the site and is not visible from the road or any public place. The proposal has a visual impact consistent with that which is to be expected from industrial or warehouse development on land zoned IN1 General Industrial.

The following are considered to be sufficient environmental planning grounds to justify the contravening the development standard:

1. The contravention of the building height control is limited to a small area of the building at the rear of the site. It is as a result of a “dip” in the land near the rear boundary. Consideration has been given to a number of ways in which the proposal could be made fully compliant but these options would have negative environmental outcomes.

One method is to carry out additional excavation of the site and lower the floor level of the basement by 1.1 metres to enable the roof to be similarly lowered. However, the additional excavation would require additional fill to be removed from the site and disposed of, with a negative impact on the land receiving the fill and the environmental cost of transporting the fill to a disposal facility. The Sydney area also has limited areas available for receiving fill and these areas are diminishing over time so there would be long term environmental costs involved in unnecessary excavation of sites.

Another option considered was to lower the floor-to-ceiling height of the industrial / warehouse area. However, the operational requirements of the proponent of the development requires the installation of a gantry crane and the operation of this crane, whether by the proponent or by future users of the building, requires a minimum floor-to-ceiling height of 5800mm, which is what is proposed.

2. The contravention of the building height standard, achieved in a way that minimises external impacts by providing a roof form that is generally compliant with the standard, has no impact on the streetscape or the character of the area because it is not visible from the street.
3. Contravening the building height control in the manner sought, restricting the non-compliance to a small area at the rear of the site, ensures that there is no impact on the residential amenity of any properties as the site is surrounded by industrially zoned land.

It is considered that the above discussion adequately addresses the matters required to be demonstrated by clause 4.6(3) of WLEP 2011, and that Council can have the level of satisfaction required by clause 4.6(4)(a)(i) of WLEP 2011.

Clause 4.6(4)(a)(ii) requires that Council also achieve the necessary level of satisfaction with other matters. Those matters are *“that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out”*.

The proposal is consistent with the objectives of the standard for the reasons detailed above.

The proposal is consistent with the objectives of the IN1 General Industrial zone for the following reasons:

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

Comment: The proposed building will accommodate a variety of industrial and warehouse uses. The non-compliance with the building height control is necessary to accommodate industrial uses that need the proposed gantry crane.

- *To encourage employment opportunities.*

Comment: The proposed building will provide employment opportunities.

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

Comment: The building is enclosed, minimising the release of noise and fumes to the environment. The site is connected to reticulated sewerage services, minimising water borne pollutants in local streams and waterways.

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

Comment: The development supports industrial uses and does not prevent other industrial land from supporting industrial uses.

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

Comment: Not relevant to this development.

- *To enable a range of compatible community and leisure uses.*

Comment: Not relevant to this development.

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

Comment: the proposed building has a clearly industrial character. Opportunities for landscaping are limited by planting beds are provided within the front setback area.

Clause 4.6(4)(b) of WLEP 2011 requires that Council be satisfied that the concurrence of the Secretary has been obtained. In this regard, Planning Circular PS 18-003, dated 21 February 2018, provides that Council may assume the Secretary's concurrence. However, such concurrence may not be assumed by a delegate of council if the development contravenes a numerical standard by greater than 10%. The proposal exceed the development standard by 10.0%. Because this is not greater than 10% the concurrence of the Secretary may be assumed by a delegate of Council.

Clause 4.6(5) of WLEP 2011 requires that, in deciding whether to grant concurrence, the Secretary (or, in this case, a delegate of Council assuming that concurrence) must consider:

- (a) *Whether contravention of the development standard raises any matter of significance for State or regional environmental planning.*

Comment: The variation to the development standard that is sought does not raise any matter of significance for State or regional environmental planning. It is a matter of significance for local planning only.

- (b) *The public benefit of maintaining the development standard.*

Comment: It is recognized that there is a general, overarching public benefit in maintaining development standards. However, in this case, the flexibility of varying the development standard in the manner proposed is justified on environmental planning

grounds as detailed above and is in the public interest because it satisfies the objectives of the control and of the zone in which the land is situated, as detailed above. To that extent, there is a public benefit in varying the development standard.

- (c) *Any other matters required to be taken into consideration by the Secretary before granting concurrence.*

Comment: There are no other matters that are required to be taken into consideration.

Is the exception request well founded?

For the reasons given above the exception request is considered to be well founded.



Geoff Goodyer
3 June 2019