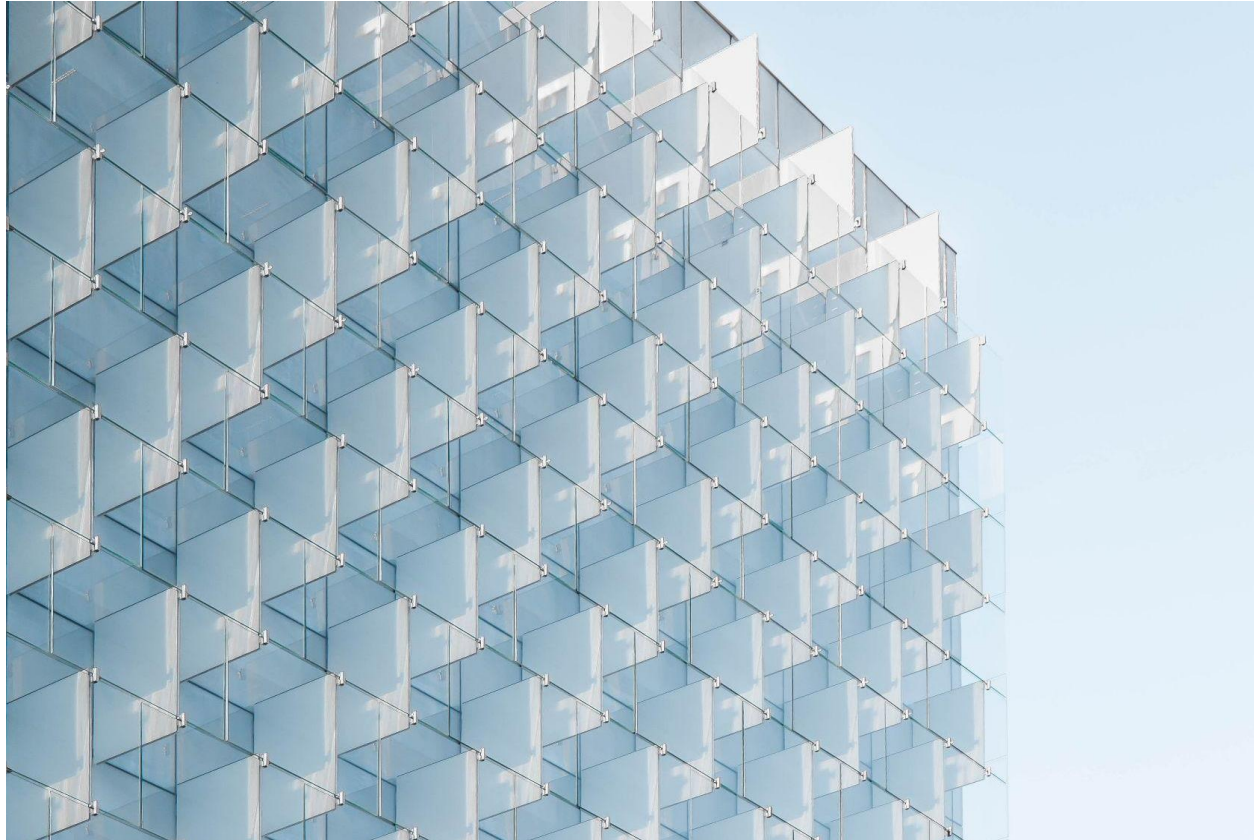


# WILLOWTREE PLANNING



18 December 2024

Ref: WTJ24-397  
Contact: Britani Dunn



## CLAUSE 4.6 VARIATION REQUEST HEIGHT OF BUILDINGS

### PROPOSED REMOVAL OF THREE (3) TREES AND INSTALLATION OF LIFT

114 Old Pittwater Road, Brookvale NSW 2100  
Lot 1 DP868761

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




DOCUMENT CONTROL TABLE			
Document Reference:	Appendix 9 – Clause 4.6 Variation Request – Height of Buildings		
Contact	Britani Dunn		
Version and Date	Prepared by	Checked by	Approved by
Version No. 1 – 16/12/2024	Britani Dunn Town Planner 	Andrew Cowan Director 	Andrew Cowan Director 



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## Clause 4.6 Variation – Height of Buildings

Proposed Tree Removal and Installation of Lift

114 Old Pittwater Road, Brookvale (Lot 1 DP868761)

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### PART A PRELIMINARY

#### 1.1 INTRODUCTION

This Clause 4.6 variation request (Variation Request) has been prepared in support of a Development Application (DA) for the removal of three (3) and the installation of a lift at 114 Old Pittwater Road, Brookvale (subject site).

The subject site is zoned E4 – General Industrial, pursuant to the *Warringah Local Environmental Plan 2011* (WLEP2011) and is located within the Northern Beaches Local Government Area (LGA). The proposed development is permissible with consent within the E4 – General Industrial zone is considered contextually appropriate. The proposal is generally consistent with the objectives and provisions of WLEP2011, with the exception of Clause 4.3 – Height of Buildings, for which this Variation Request is sought.

This Variation Request has been prepared in accordance with the aims and objectives contained within Clause 4.6 and the relevant development standards prescribed under WLEP2011. It considers various planning controls, strategic planning objectives and existing characteristics of the subject site and concludes that the proposed non-compliance is the best means of achieving the objects of encouraging orderly and economic use and development under the *Environmental Planning and Assessment Act 1979* (EP&A Act).

#### 1.2 RATIONALE OF VARIATION FROM DEVELOPMENT STANDARDS

This Variation Request has been submitted to assess the proposed non-compliance with Clause 4.3 – Height of Buildings of WLEP2011 and has been prepared in accordance with the requirements of Clause 4.6 of WLEP2011 which includes the following objectives:

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

Under the provisions of Clause 4.3 of the WLEP2011, the subject site is subject to a maximum building height of **11m**. The proposed building of height of **19.89m** would exceed the maximum development standard. The proposed development in its proposed built form and scale will support the improved functionality and accessibility of the existing warehouse building and is purpose built to satisfy the ongoing function of the industrial and commercial uses within the subject site and contribute to the employment sector within the Northern Beaches LGA. The proposed goods and passengers lift is commensurate in form and scale with the desired future character of the surrounding industrial zoned land and wider Brookvale locality, earmarked as an important employment and innovation centre by Council. The proposed non-compliance is not likely to have an adverse impact on the area, as it noted that the approved warehouse building at the subject site has an existing building height of **18.28m**, resulting in a minor increase of approximately **1.61m** due to the proposed goods and passengers lift. To be specific, the proposed non-compliance seeks to accommodate the lift overrun and the new bridge walkway which connects the lift to the existing rooftop carpark. These areas of non-compliance are confined to small, essential structure which protrude beyond



the parapet line and are not readily perceptible in terms of overall built form and massing from the public domain.

This Variation Request has been prepared in accordance with the aims and objectives contained within Clause 4.6 and the relevant development standards prescribed by WLEP2011.

**1.3 DEVELOPMENT STANDARD VARIATION**

Under the provisions of Clause 4.3 of WLEP2011, the subject site is subject to a maximum building height of **11m**. It is to be noted that a maximum building height of the existing building is approximately 18.28m. The proposal will result in a building height of **19.89m**. **Table 1** below provides a summary of the variation.

TABLE 1: CLAUSE 4.3 OF WLEP2011 VARIATION SUMMARY			
WLEP2011	WLEP2011 Development Standard	Variation proposed	Proposed Development Non-Compliance
Clause 4.3 – Height of Buildings	11m	Maximum building height of 19.89m	The proposal seeks consent for a maximum development standard of 19.89m which is a 57% variation from the development standard.

Notwithstanding the above, curtailing the building height of the proposal to the current prescribed development standard would prevent the proposal from meeting the operational and accessibility needs and requirements of the warehouse development, thus preventing the subject site from achieving its development potential and desired future character outcome provided for the subject site.

In its current form, the proposal therefore represents the most efficient use of the subject site which responds to the existing environmental constraints, compared to a development which is entirely compliant with the 11m height of buildings control.



## Clause 4.6 Variation – Height of Buildings

Proposed Tree Removal and Installation of Lift  
114 Old Pittwater Road, Brookvale (Lot 1 DP868761)

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### PART B THRESHOLDS THAT MUST BE MET

#### 2.1 INTERPRETING CLAUSE 4.6

Clause 4.6 of WLEP2011 facilitates exceptions to strict compliance with development standards in certain circumstances. Clause 4.6(3) states (our emphasis added):

*Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—*

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

*Note— The Environmental Planning and Assessment Regulation 2021 requires a development application for development that proposes to contravene a development standard to be **accompanied by a document setting out the grounds** on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b)*

Accordingly, a successful Clause 4.6 variation must satisfy the below:

##### First Limb – cl 4.6(3)

Clause 4.6(3) provides that the consent authority must be satisfied that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the following

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

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

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



#### Clause 4.6 Variation – Height of Buildings

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*satisfied that an argument addressing the matters required to be addressed under subcl (3) has been advanced."*

Accordingly, a consent authority must be satisfied:

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

These matters are addressed in **Sections 4.3** and **4.4** of this Variation Request.

This written request has been prepared under Clause 4.6 to request a variation to the "height of buildings" development standard at Clause 4.3 of WLEP2011.



## Clause 4.6 Variation – Height of Buildings

Proposed Tree Removal and Installation of Lift  
114 Old Pittwater Road, Brookvale (Lot 1 DP868761)

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### PART C STANDARDS BEING OBJECTED TO

#### 3.1 OVERVIEW

The subject site is zoned E4 – General Industrial and is subject to the underling objectives of the varied standard as well as the E4 zone under WLEP2011.

#### 3.2 CLAUSE 4.3 BUILDING HEIGHT CONTROL UNDER WLEP2012

Clause 4.3 of WLEP2011 identifies the following objectives::

*(1) The objectives of this clause are as follows—*

- (a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
- (c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
- (d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities*

Pursuant to Clause 4.6, the proposal seeks exception to the maximum building height of 11m.

#### 3.3 PROPOSED VARIATION TO DEVELOPMENT STANDARDS

The DA seeks approval for the removal of three (3) trees and the installation of a lift at 114 Old Pittwater Road, Brookvale. The subject site is subject to a maximum building height of 11m. The development proposes a maximum building height of **19.89m**. The proposal would **exceed the building applicable to the Site by 8.89m, which represents a 57% variation**. The area of non-compliance is generally limited to the lift overrun and the new bridge walkway, with no gross floor area (GFA) located above the maximum height limit as part of the proposed development, please see **Figure 1** below.

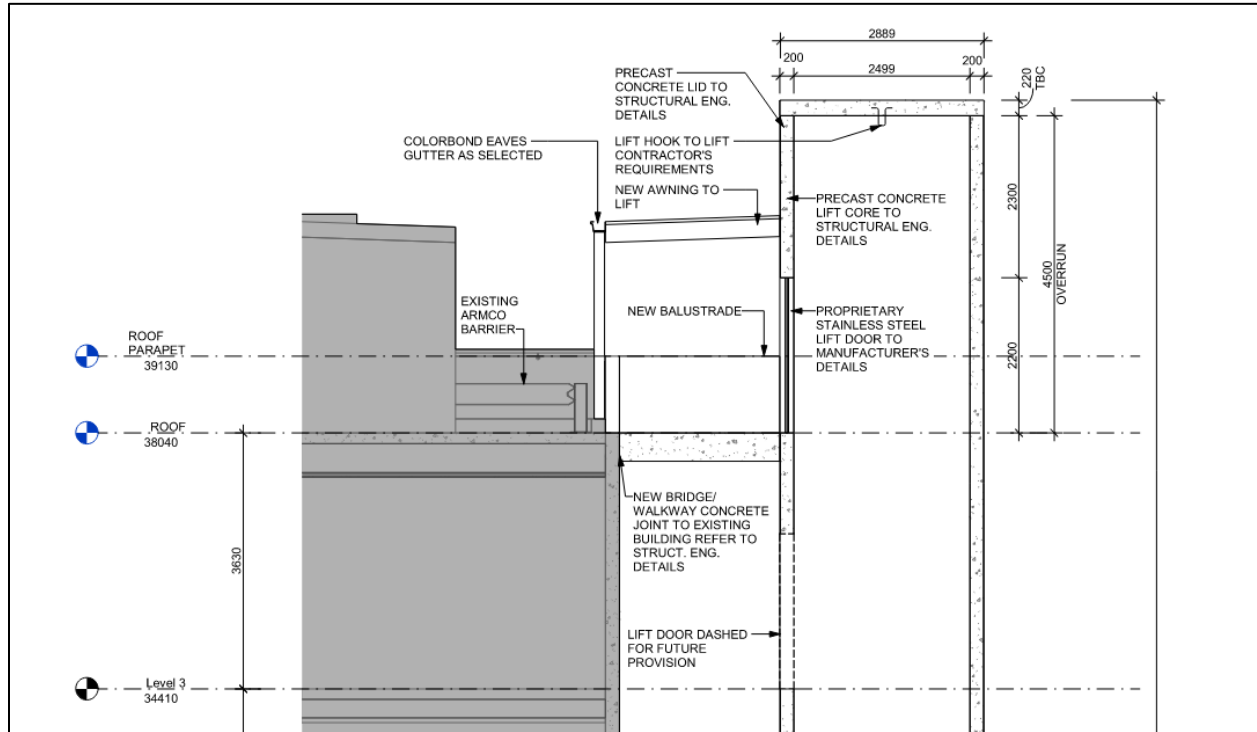




#### Clause 4.6 Variation – Height of Buildings

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**Figure 1. Image of Proposed Height Breach due to Lift (Source: Reid Campbell, 2024)**

The development in its proposed built form and scale will provide improved functionality and accessibility of an established industrial and commercial space within Brookvale that is purpose built to satisfy the function of the use and is generally commensurate in form and scale with the surrounding developments. The additional height will not result in the loss of any significant views or cause any adverse overshadowing impacts whilst also maintaining reasonable levels of privacy and amenity for the neighbouring buildings, noting that no residential development is in the immediate vicinity, the closest dwelling houses situated approximately 150m to the west, buffered by densely vegetated RE1 - Public Recreation zoned land.

The lift overrun connecting bridge walkway are required to ensure adequate servicing to the development and compliance with the Building Code of Australia.

Curtailling the building height of the proposal to the current prescribed development standard would prevent the proposal from meeting the operational needs and servicing requirements of the warehouse development, thus preventing the subject site from achieving its development potential and desired future character outcome provided for the subject site.

In its current form, the proposal therefore represents the most orderly efficient use of the subject site which responds to the existing environmental constraints and the form and scale of the existing desired future development on the surrounding properties, compared to a development which is entirely compliant with the 11m standard. The subject site is zoned E4 – General Industrial under the provisions of WLEP2011, whereby use of the subject site as a warehouse is permissible with consent.



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

Proposed Tree Removal and Installation of Lift  
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This Variation Request has been prepared in accordance with the objectives of Clause 4.3 and the E4 – General Industrial zone objectives of WLEP2011.



## Clause 4.6 Variation – Height of Buildings

Proposed Tree Removal and Installation of Lift

114 Old Pittwater Road, Brookvale (Lot 1 DP868761)

### PART D PROPOSED VARIATION TO STANDARDS IN CLAUSE 4.3 OF WLEP2012

Pursuant to Clause 4.6 of WLEP2011 exception is sought from the height of buildings standard applicable to the subject site pursuant to Clause 4.3 of WLEP2011.

#### 4.1 OBJECTIVES OF THE STANDARD

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

Clause 4.6(4)(a)(ii) requires that a request to vary a development standard must establish that the proposed contravention will be in the public interest because it is consistent with the objectives of the development standard and the zone. Pursuant to Clause 4.6 of WLEP2011, the proposal seeks exception to the maximum building height pursuant to Clause 4.3 of WLEP2011.

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

TABLE 2: CONSISTENCY WITH THE CLAUSE 4.3 OBJECTIVES	
Objective	Response
(a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,	The proposed lift results in a difference of 1.61m to the existing height of the established warehouse building at the subject site, representing an increase of approximately 8.8%. This is considered virtually unnoticeable to the general public and surrounding development, thus keeping in line with the expected height and scale of the subject site. The breach in height is the result of providing for a lift overrun and bridge walkway, ensuring access to both Level 1 and the rooftop carpark. Further, the proposed goods and passengers lift is considered small in scale and will not result in undue impacts to privacy or solar access to adjoining development. It is noted that the closest residential development is adequately separated from the subject site and is buffered by dense vegetation to the west. The modest increase in height will not disrupt significant views from surrounding properties or public vantage points, nor will it detract from the scenic quality of Warringah's coastal and bush environments. The proposed lift and associated works are in keeping with the industrial character of the subject site and its surrounds, ensuring the development integrates harmoniously with the existing environment.
(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,	



## Clause 4.6 Variation – Height of Buildings

Proposed Tree Removal and Installation of Lift  
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**TABLE 2: CONSISTENCY WITH THE CLAUSE 4.3 OBJECTIVES**

Objective	Response
<i>(d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.</i>	The proposed development, including the installation of the lift that results in a breach of height restrictions, is not visible from any public places including parks, roads or community facilities. This is partly due to the fact the development is located upon a battle-axe lot and not visible from Old Pittwater Road, and due to the portion of the densely vegetated RE1 zoned land immediately to the west being not publicly accessible.

## 4.2 OBJECTIVES OF THE ZONE

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

**TABLE 3: CONSISTENCY WITH THE E4 ZONE OBJECTIVES**

Objective	Response
<i>To provide a range of industrial, warehouse, logistics and related land uses.</i>	The proposed development seeks to support the increased functionality and accessibility of an existing warehouse, comprising of suitable industrial and commercial uses on the subject site. This proposed development endeavours to serve the needs of the immediate community and wider locality.
<i>To ensure the efficient and viable use of land for industrial uses.</i>	The proposed goods and passengers lift enhances the functionality and accessibility of the subject site by providing access to both Level 1 and the rooftop carpark, supporting the efficient operation of the warehouse and integrated tenancies.
<i>To minimise any adverse effect of industry on other land uses</i>	The proposed development will not adversely impact other land uses, as it aligns with the existing use of the subject site and is situated within an established industrial and commercial area.
<i>To encourage employment opportunities.</i>	The proposed development supports improved functionality and accessibility of the subject site, thereby encouraging employment opportunities.
<i>To enable limited non-industrial land uses that provide facilities and services to meet the needs of businesses and workers.</i>	The proposed development does not involve a non-industrial land use.
<i>To provide areas for land uses that need to be separated from other zones</i>	Noted.



## Clause 4.6 Variation – Height of Buildings

Proposed Tree Removal and Installation of Lift

114 Old Pittwater Road, Brookvale (Lot 1 DP868761)

To provide healthy, attractive, functional and safe light industrial areas	
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### 4.3 ESTABLISHING IF THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY

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

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

While *Wehbe* related to objections made pursuant to *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1), in *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118 (*Initial Action*) the Court held that the common ways of demonstrating that compliance with a development standard is unreasonable or unnecessary as outlined in *Wehbe* are equally applicable to clause 4.6.

The five methods outlined in *Wehbe* include:

- *The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Method).*
- *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Method).*
- *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Method).*
- *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Method).*
- *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Method).*

It is sufficient to demonstrate only one of these methods to satisfy clause 4.6(3)(a) of LCLEP 2009 (*Wehbe*, *Initial Action* at [22], *Rebel* at [28]) and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31].

However, in this case, it is demonstrated below that:

- (a) the First Method has been satisfied, and the objectives of the height of buildings standard are achieved notwithstanding the non-compliance with the numerical standard (see also Section 4.1 above); and
- (b) the Fourth Method has been satisfied, and the development standard has been virtually abandoned or destroyed by the Council's own actions (in this case the NSW Department of



## Clause 4.6 Variation – Height of Buildings

Proposed Tree Removal and Installation of Lift

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Planning, Housing and Infrastructure (NSW DPHI) in granting consents departing from the standard).

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

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

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

We have set out above a detailed assessment against the objectives of the development standard and accordingly, adopted the First and Fourth Method in *Wehbe* to establish that compliance is unreasonable or unnecessary because the objectives of the height controls are satisfied notwithstanding the variation.

The proposal does not conflict with the intent of the development standard and zone as demonstrated above, notwithstanding the proposed numeric variation. The proposed building height variation will retain compatibility with the desired future character and continue to support industrial zoned land in the locality, consistent with the objectives of the E4 – General Industrial zone. Additionally, the proposed development will supporting the improved and ongoing use of the subject site as a warehouse, contributing to the existing employment opportunities and enhancing economic viability of the Brookvale locality.

The abovementioned justifications are considered valid, and in this instance the proposed Clause 4.6 Variation is considered to be acceptable. The proposed development represents a more efficient use of the subject site. The objectives of the relevant clause and E4 zone would be upheld as a result of the proposed development. In light of the above, the application of the height of building development standard is therefore unreasonable and unnecessary in response to the proposed development.

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

In *Initial Action*, Preston CJ observed that in order for there to be “sufficient” environmental planning grounds to justify a written request under Clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard, not on the development as a whole.

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

- Provides equitable and efficient access within the building to all floors through provision of an elevator and lift core – the overrun of which breaches the height control in confined and strategically located areas within the building to provide for the most efficient access and also minimise the public's ability to perceive the service overrun;



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- The minor variation to the height control facilitates significantly improved amenity for the industrial/commercial premises and results in a high-quality outcome;
- The proposed lift is confined within the subject site and has been designed to integrate with the current building form, ensuring its functionality remains self-contained; and
- The use and operation of the goods and passengers lift is consistent with the established industrial activities on the site, avoiding any undue impacts to neighbouring development.

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

## 4.5 OBJECTIVES OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

All planning determinations made under the EP&A Act are required to be made with regard to the objects of the Act in accordance with section 1.3 of the EP&A Act. **Table 4** below assesses the proposed development against the objects of the EP&A Act.

TABLE 4: EP&A ACT OBJECTIVES	
Objective	Response
<i>(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,</i>	The proposal will positively contribute to the existing employment generating land uses within the Brookvale locality. The proposal can be progressed without any significant environmental impacts.
<i>(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,</i>	The proposal has been designed to include appropriate ecologically sustainable measures and has adequately considered environmental impacts on the surrounding locality.
<i>(c) to promote the orderly and economic use and development of land,</i>	The proposal makes use of an existing warehouse and seeks to improve its overall function, access and convenience for the end user, thereby promoting continued economic use of the land.
<i>(d) to promote the delivery and maintenance of affordable housing,</i>	The proposal will not impact the delivery and maintenance of affordable housing.
<i>(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,</i>	The existing subject site is not identified as biodiversity certified land. Additionally, the subject site has been designed to not adversely impact the surrounding environment, including native animals and plants, ecological communities and their habitats.
<i>(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),</i>	The subject site is not identified as, nor does it contain, any built or cultural heritage. The subject site is also not in the vicinity of any heritage items.



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

Objective	Response
<i>(g) to promote good design and amenity of the built environment,</i>	The proposal will provide an appropriate transition in height to the surrounding development on neighbouring sites. As mentioned above, the proposed lift results in an increase in building height of 8.8% compared to the exiting built form at the subject site. An appropriate mix of finishes and materials have been employed to ensure a high-quality urban form is achieved when viewed from the surrounding sites with minimal impacts on the amenity of the built environment. It is noted that the proposed lift is not visible from Old Pittwater Road.
<i>(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,</i>	The proposal can be constructed and maintained without health and safety risks to current and future tenants.
<i>(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,</i>	Given the extent of variation, the application will be required to be determined by the local government.
<i>(j) to provide increased opportunity for community participation in environmental planning and assessment.</i>	The DA would be subject to the relevant public notification requirements.





## Clause 4.6 Variation – Height of Buildings

Proposed Tree Removal and Installation of Lift

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### 4.6 MATTERS OF STATE AND REGIONAL SIGNIFICANCE

The proposed non-compliance with Clause 4.3 of WLEP2011 will not give rise to any matters of significance for State or regional environmental planning. They will also not conflict with any State Environmental Planning Policy or Ministerial Directives under section 9.1 of the EP&A Act.

Planning Circular PS 08-014, issued by the former NSW Department of Planning, requires that all development applications including a variation to a standard of more than 10% be considered by full Council rather than under delegation. It is noted that this variation exceeds 10% and would be required to be determined by the Local Planning Panel.

### 4.7 SUMMARY

For the reasons outlined above, it is considered that the variation to Clause 4.3 of WLEP2011 is well-founded in this instance and is appropriate in the circumstances. Furthermore, the Variation Request is considered to be well-founded for the following reasons as outlined in Clause 4.6 of WLEP2011, *Four2Five Pty Ltd v Ashfield Council* and *Wehbe v Pittwater Council*:

- The development is consistent with the objectives of the particular standard (refer to **Section 4.1**);
- The development is consistent with the objectives for development within the zone and long term strategic intentions to maintain and preserve employment land (refer to **Section 4.2**);
- Compliance with the development standard is unreasonable and unnecessary in the circumstances (refer to **Section 4.3**);
- There are sufficient environmental planning grounds to justify contravening the development standard (refer to **Section 4.4**); and
- The development does not give rise to any matter of significance for the State or regional environmental planning and is consistent with the visions and objectives of the relevant strategic plans (refer to **Section 4.5**);

Overall, it is considered that the proposed variation to the maximum building height control is entirely appropriate and can be clearly justified having regard to the matters listed within Clause 4.6 of WLEP2012.



#### Clause 4.6 Variation – Height of Buildings

Proposed Tree Removal and Installation of Lift

114 Old Pittwater Road, Brookvale (Lot 1 DP868761)

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#### PART E CONCLUSION

For the reasons outlined above, it is requested that Council support the Variation Request, which seeks approval for non-compliance with Clause 4.3 of WLEP2011 for the following reasons:

- The development is consistent with the objectives of the particular standard (refer to **Section 4.1**);
- The development is consistent with the objectives for development within the zone and long term strategic intentions to maintain and preserve employment land (refer to **Section 4.2**);
- Compliance with the development standard is unreasonable and unnecessary in the circumstances (refer to **Section 4.3** as part of the First Limb satisfied);
- There are sufficient environmental planning grounds to justify contravening the development standard (refer to **Section 4.4** as part of the First Limb satisfied);
- The Proposal is consistent with the objectives of the EP&A Act (refer to **Section 4.5**); and
- The development does not give rise to any matter of significance for the State or regional environmental planning and is consistent with the visions and objectives of the relevant strategic plans (refer to **Section 4.6**);

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

