

Clause 4.6 Written Request Shoalhaven LEP 2014

PROPOSED ADDITIONAL GRAIN STORAGE AND HANDLING
FACILITIES; PROPOSED ALTERATIONS AND ADDITIONS TO
WASTE WATER TREATMENT PLANT; AND OTHER WORKS

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FACILITIES; PROPOSED ALTERATIONS AND ADDITIONS TO
WASTE WATER TREATMENT PLANT; AND OTHER WORKS

Prepared for
Shoalhaven Starches Pty Ltd

Site address
Bolong Road Bomaderry

27/03/2026

Project Reference: 130428

Shoalhaven



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Nowra Office: 75 Plunkett Street, Nowra NSW 2541 • PO Box 73, Nowra 2541

Kiama Office: 1/28 Bong Bong Street, Kiama NSW 2533

Wollongong Office: Suite 1, Level 2, 83-85 Market Street, Wollongong NSW 2500

Tel 02 4421 6544 • **email** consultants@allenprice.com.au



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<i>Initial.</i>	<i>Rev</i>	<i>Date</i>	<i>Details</i>
ST		26/3/2026	Client Issue

1.0 INTRODUCTION

Shoalhaven Starches is a member of the Manildra Group of companies. The Manildra Group is a wholly Australian owned business and the largest processor of wheat in Australia. It manufactures a wide range of wheat-based products for food and industrial markets both locally and internationally.

The Shoalhaven Starches factory located on Bolong Road, Bomaderry produces a range of products for the food, beverage, confectionary, paper and motor transport industries including starch, gluten, glucose and ethanol.

Project Approval MP06_0228 was granted by the Minister for Planning on the 28th January 2009 for the Shoalhaven Starches Expansion Project. This approval also encapsulated previous approvals for the site into one overall approval for the site (at that time).

The Shoalhaven Starches Expansion Project sought to increase ethanol production at the Bomaderry plant in a staged manner from 126 million litres per year to 300 million litres per year. To accomplish the increase in ethanol production, this project required a series of plant upgrades and increase in throughput of raw materials, principally flour and grain.

Following the Minister's determination Shoalhaven Starches have been implementing and commissioning works in accordance with this Project Approval.

Shoalhaven Starches now seek approval to modify their Project Approval for the Shoalhaven Starches Expansion Project to:

- Erect additional grain silos at the former Dairy Farmers factory to the east of the Shoalhaven Starches factory site and to construct associated grain handling facilities associated with this grain storage. These works will also necessitate an extension of an existing rock wall revetment along the banks of the Shoalhaven River.
- Undertake alterations and additions to the existing Wastewater Treatment Plant (WTP) located on the Shoalhaven Starches Environmental Farm located on the northern side of Bolong Road.
- Construction of nineteen (19) finished product silos in addition to those approved to be constructed on the northern Packing Plant to the main factory site on the southern side of Bolong Road.
- Construct a new rail maintenance building to be constructed at the eastern terminus of the recently approved Mod 25 rail line extension to the east of the former Pulp and Paper Mill factory site. It is also proposed to install provision for rail fuel storage adjacent to the existing rail line within the former Paper Mill site.
- Construct an Ethanol Maintenance building within the south-eastern part of the main factory site.

- Construct a Nitric Acid storage adjacent to existing cooling towers to the west of Abernethys Creek.
- fineness to meet market requirements.

The land associated with this Modification Application is zoned E4 General Industrial, RU1 Primary Production and RU2 Rural Landscape under the provisions of Shoalhaven Local Environmental Plan 2014 (SLEP 2014). There is no specific maximum height provisions specified for the subject site under this LEP. Clause 4.3(2A) of the SLEP 2014 however stipulates that if no height limit is specified for a site, then a maximum building height of 11 metres applies.

Works associated with this Modification Proposal therefore comprise heights above ground level which exceed the building height limit of 11 m imposed by Clause 4.3(2A) of the SLEP 2014, including:

- Grain storage silos – 32 m
- Grain storage and associated conveyors and bucket elevators – 44 m
- Office workshop – 17 m
- Train and truck unloader – 13.54 m
- Grain unloader and substation – 16.85 m
- Screening building – 26 m
- Product Silos – 44.5 m
- Biogas Scrubber tanks – 16.5 m
- Equalisation tank – 12 m
- Wastewater Tanks – 17 m
- Biogas blower room – 12 m

Clause 4.6 of SLEP 2014 makes provision for exceptions to development standards and enables a consent authority to consent to development even though it may be inconsistent with a development standard. The provisions of Clause 4.6 require that a written request accompany a proposal that seeks to justify the contravention of a development standard.

Clause 4.3(2A) of the SLEP 2014 is contained in Part 4 of the SLEP 2014. This part of the LEP is titled “*Principal Development Standards*”. This clause is therefore a development standard and open to a written request made pursuant to Clause 4.6.

A written request pursuant to Clause 4.6 is however not required for the contravention of a development standard arising as a result of a modification application having regard to the outcome of *SDHA Pty Ltd v Waverley Council [2015] NSWLEC 65* at [34] – [35]. This Modification Application is however supported by a Clause 4.6 Written Request that

serves to justify the contravention of a development standard and assess the impacts of the proposed variation to the maximum height of building control under Shoalhaven LEP 2014.

This written request provides justification that the 11m building height development standard detailed in the provisions of Clause 4.3(2A) may be contravened by the grant of development consent because strict compliance with the provisions of this clause under the specific circumstances associated with this case would be unreasonable and unnecessary; that there are environmental planning grounds to justify the contravention of this development standard; and that the proposal is in the public interest.

2.0 DESCRIPTION OF SITE AND SURROUNDS

The Shoalhaven Starches factory site is located on the southern side of Bolong Road on the northern bank of the Shoalhaven River with some operations located on the northern side of Bolong Road. The Shoalhaven Starches factory site (excluding the former Dairy Farmers and former Australian Paper Mill (APM) sites) has an area of approximately 12.5 hectares. components of this Modification Proposal comprising a maintenance workshop and the feed to the existing rain storage within the existing factory site will be located within the factory site.

Manildra also acquired the former Dairy Farmers factory located a 220 Bolong Road (Lot 143 DP 1069758); as well as the former Australian Paper Mill located at 340 Bolong Road (Lot A DP 384559 & Lot 102 DP 1283484). This Modification Proposal primarily involves works to be carried out on the former Dairy Farmers Factory site. The proposed grain silos and grain handling facilities and other associated works will be located on this site.

Shoalhaven Starches also operate a rail spur line that is situated along the northern bank of the Shoalhaven River. For the purposes of this Modification Proposal, this rail spur line is situated within Lot 1 DP 385145. This Modification Proposal will also involve works associated with a conveyor and services gantry that will be located to the south of the existing rail line, and which will connect the proposed grain silos and handling facilities to the Shoalhaven Starches factory site.

All the lands associated with this Modification Application are included in the Project Approval MP 06_0228 (as amended) (Mod 16).

Figure 1 is a site locality plan depicting the location of the lands associated with this Modification Application.

Figure 2 is an aerial image of the location of rain silos and handling facilities within the former Dairy farmers factory site.

The lands associated with this Modification Proposal are all zoned IN1 (General Industrial) zone under the provisions of Shoalhaven Local Environmental Plan 2014 (SLEP 2014).

The town of Bomaderry is located just over 1.5 km (approx.) to the west of the former Dairy farmers factory site, and the Nowra urban area is situated 3.0 km to the south-west of the site. The “Riverview Road” area of the Nowra Township is situated approximately 2.0 km to the south-east of the former APM site across the Shoalhaven River.

The village of Terara is situated approximately 1.2 kilometres to the south of the former Dairy Farmers site, across the Shoalhaven River. Burruga (Pig) Island is situated between the factory site and the village of Terara and is currently used for dairy cattle grazing.

There are a number of industrial lands uses which have developed on the strip of land between Bolong Road and the Shoalhaven River. Industrial activities have included a metal fabrication factory, the Shoalhaven Starches site and the former Dairy Farmers factory and APM (now owned by the Manildra Group of Companies). The industrial area is serviced by

a privately owned spur railway line that runs from just north of the Nowra-Bomaderry station to the Starches Site.

The state railway terminates at Bomaderry with a separate, privately owned spur line to the factory site and which extends up to the western boundary of the former APM site. The proposed conveyor and services gantry will be partly located within the land associated with this rail spur line.

Shoalhaven Starches also carry out irrigation of treated waste waters activities on the Company's Environmental Farm located over 1000 hectares on the northern side of Bolong Road. This area is cleared grazing land and also contains a wastewater treatment plant, wet weather storage ponds and spray irrigation lines. The wet weather storage ponds on the farm form part of the irrigation management system for the factory. The Environmental Farm stretches over a broad area of the northern floodplain of the Shoalhaven River stretching from Bolong Road in the south towards Jaspers Brush in the north. Apart from the Environmental Farm this broad area is mainly used for grazing (dairy cattle).

Both the Shoalhaven Starches factory and former Dairy Farmers sites have direct road frontage to Bolong Road to the north. The Shoalhaven River flows along the southern boundary of both sites.

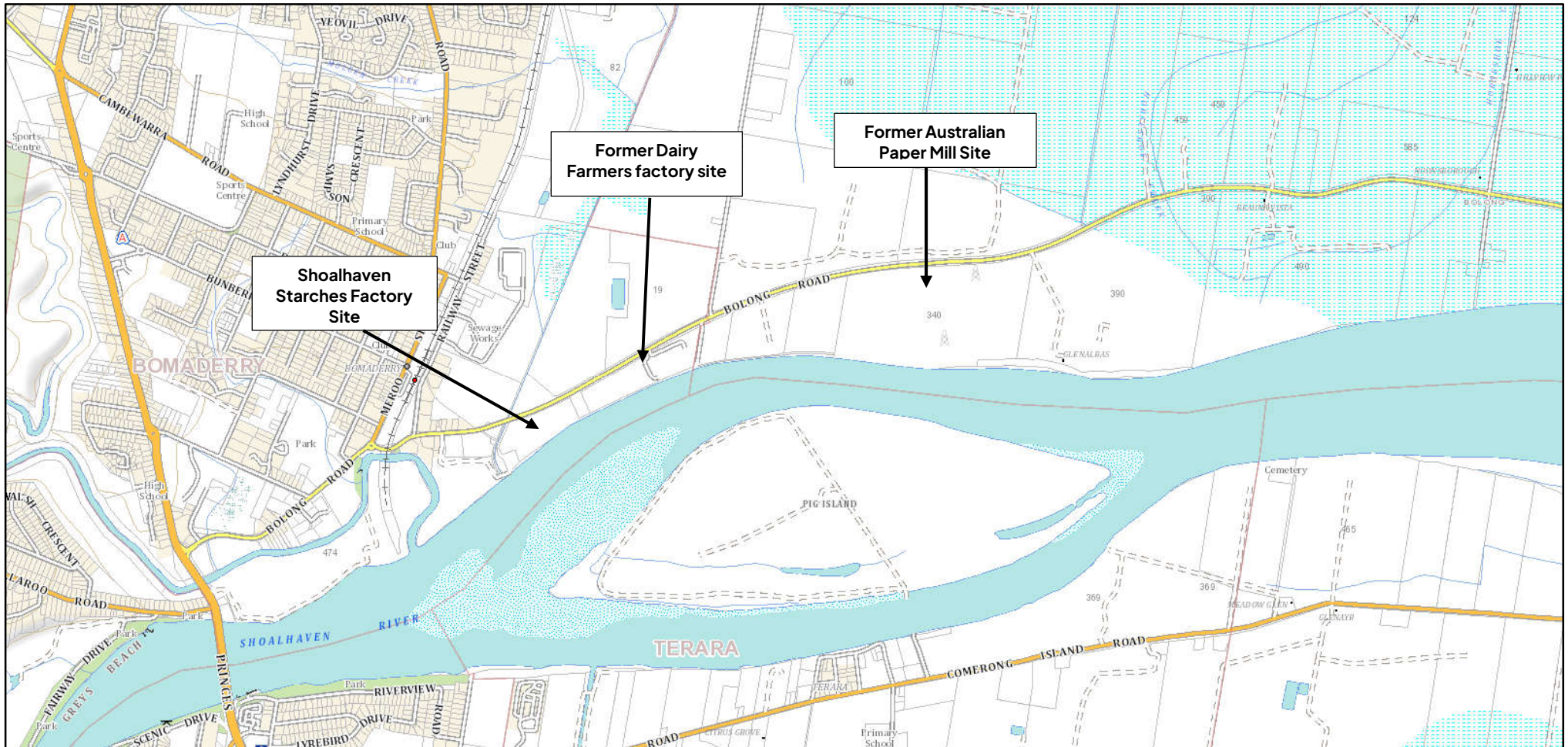


Figure 1 : Site locality plan

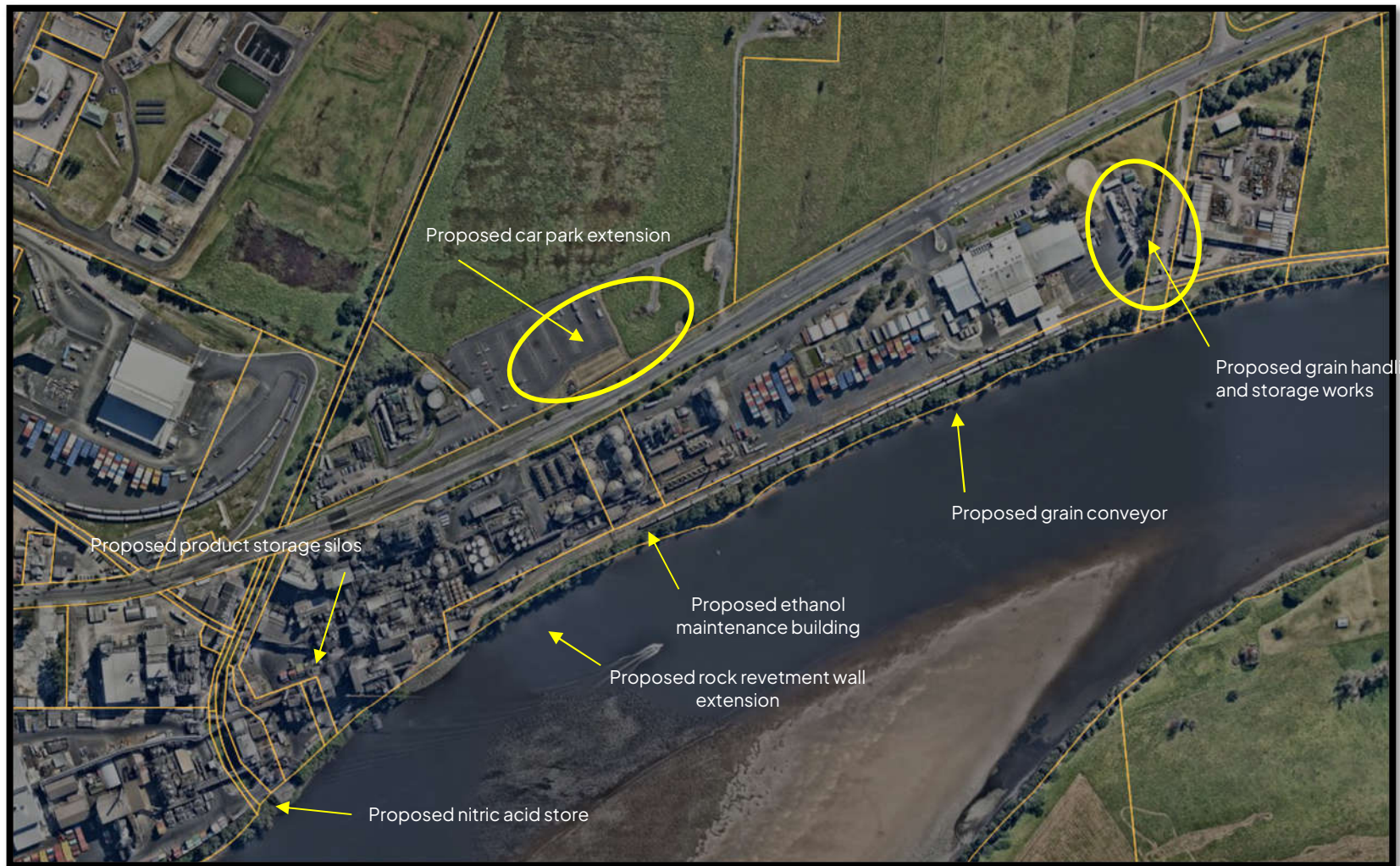


Figure 2 : Aerial image of location of proposed works within the Shoalhaven Starches factory site and former Dairy Farmers Factory Site



Figure 3 : Aerial image of location of proposed works associated with Wastewater Treatment Plant

3.0 THE PROPOSAL

Shoalhaven Starches seek approval to modify their Project Approval for the Shoalhaven Starches Expansion Project to:

- Erect additional grain silos at the former Dairy Farmers factory to the east of the Shoalhaven Starches factory site and to construct associated grain handling facilities associated with this grain storage. These works will also necessitate an extension of an existing rock wall revetment along the banks of the Shoalhaven River.
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- Construct an Ethanol Maintenance building within the south-eastern part of the main factory site.
- Construct a Nitric Acid storage adjacent to existing cooling towers to the west of Abernethys Creek.

Works associated with this Modification Proposal comprise heights above ground level which exceed the building height limit of 11 m imposed by Clause 4.3(2A) of the SLEP 2014, including:

- Grain storage silos – 32 m
- Grain storage and associated conveyors and bucket elevators – 44 m
- Office workshop – 17 m
- Train and truck unloader – 13.54 m
- Grain unloader and substation – 44 m
- Screening building – 30 m
- Product Silos – 44.5 m
- Biogas Scrubber tanks – 16.5 m
- Equalisation tank – 12 m
- Wastewater Tanks – 17 m
- Biogas blower room – 12 m

A drawing set of the works associated with this Modification Proposal are included as **Annexure 1** to the SEE.

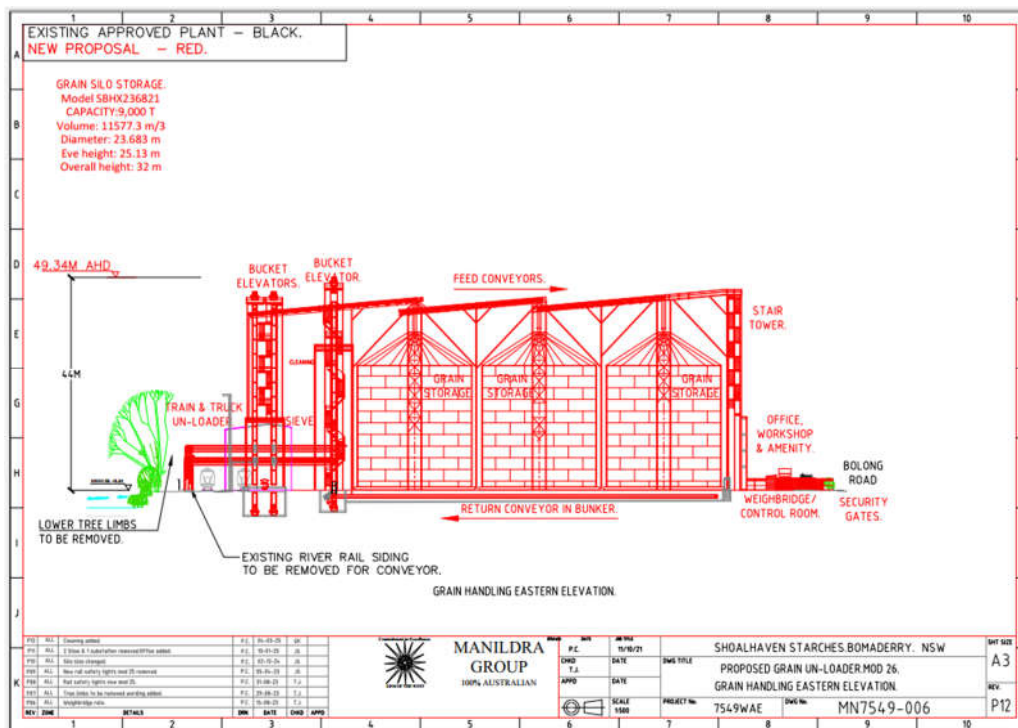


Figure 4: Elevation details of proposed grain silos and bucket elevators

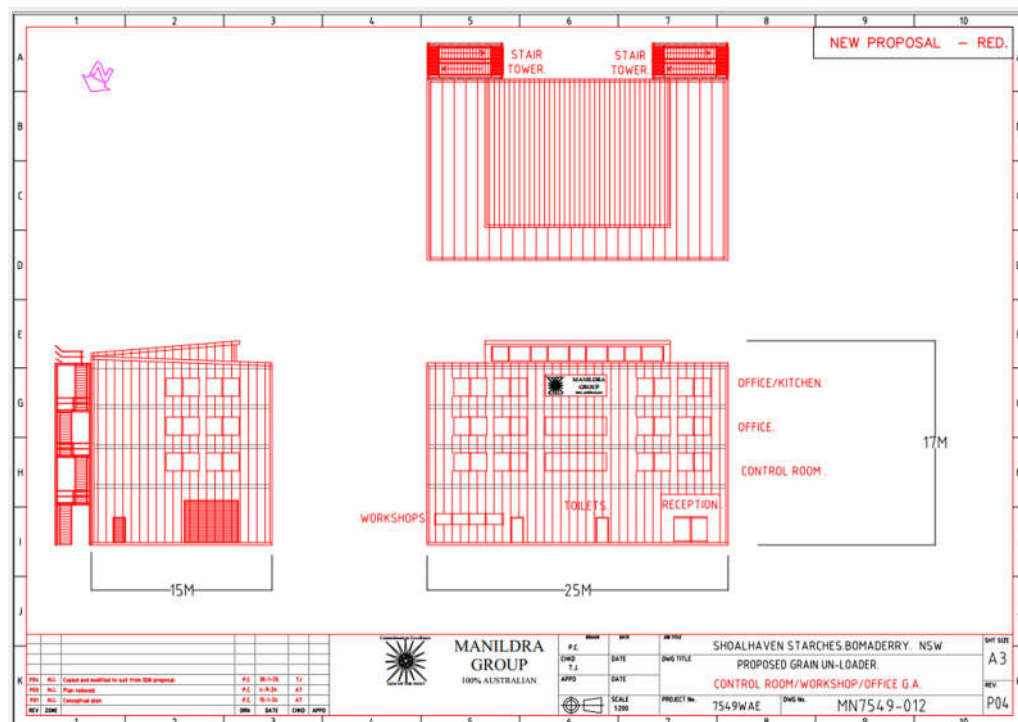


Figure 5: Elevation details control room, workshop and office

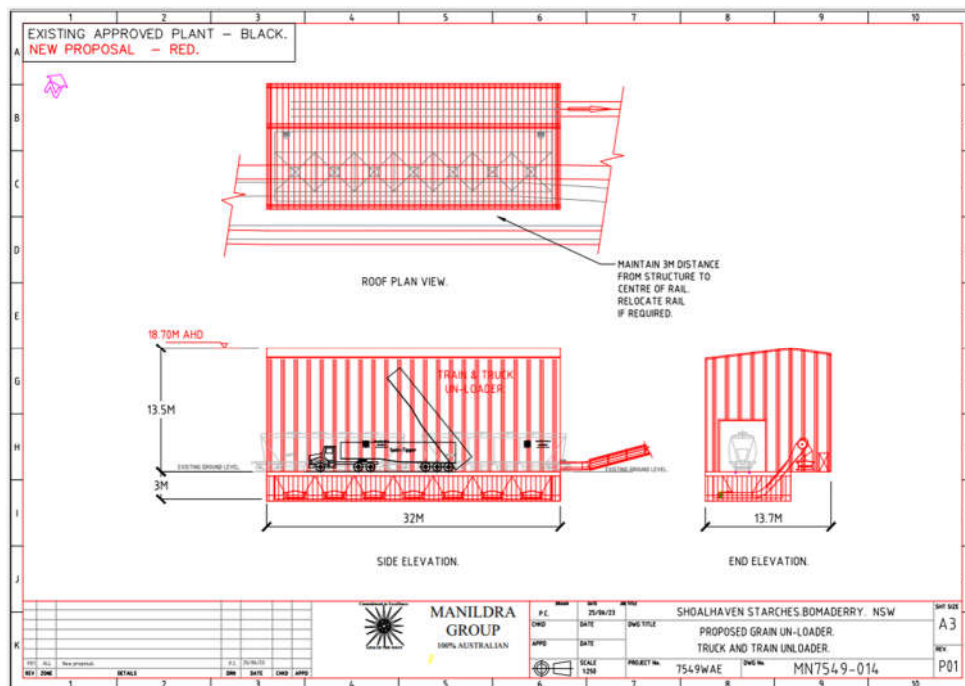


Figure 6 : Elevation details proposed Truck & Train Unloader.

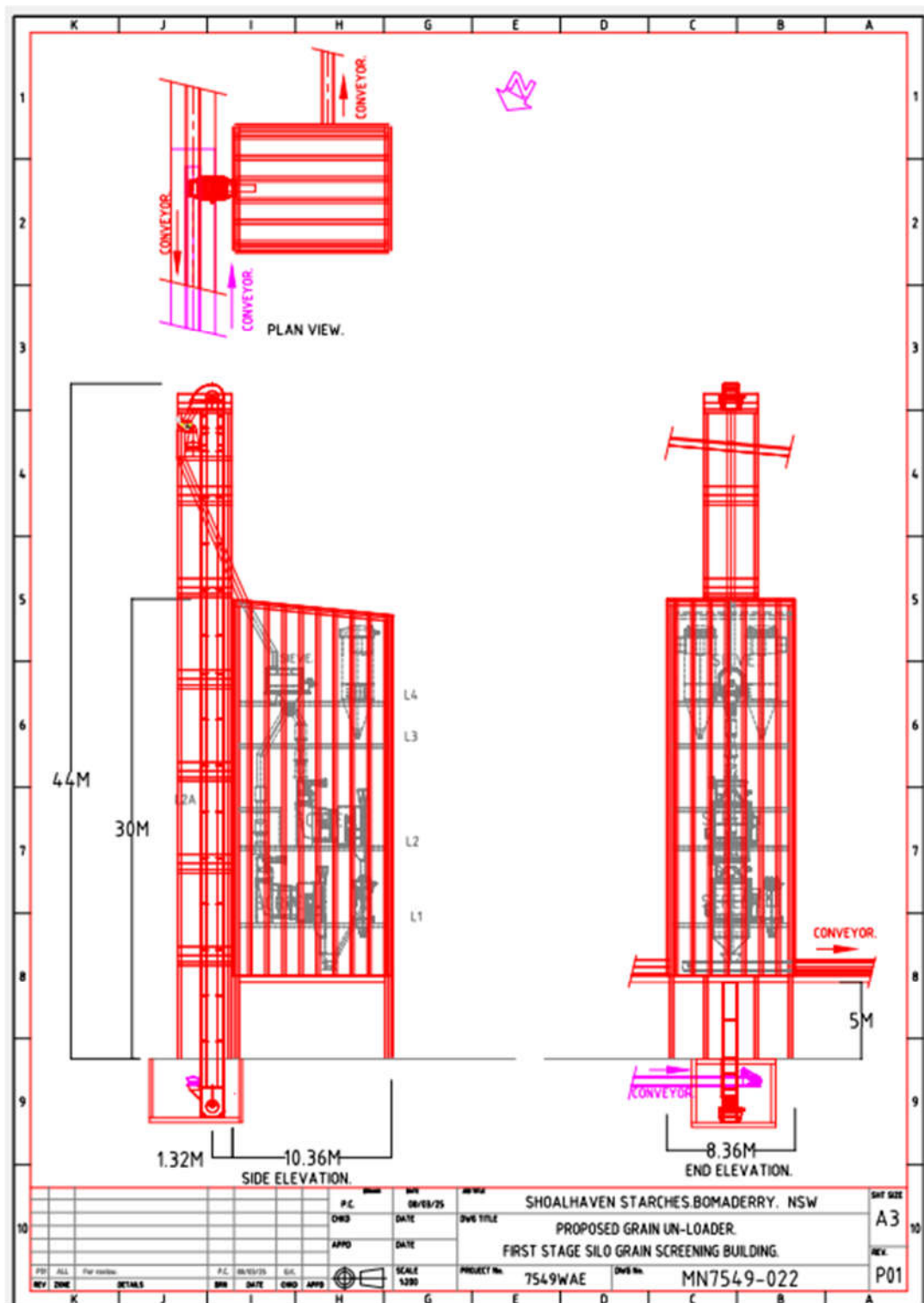


Figure 7 : Elevations of proposed screening building and grain unloader

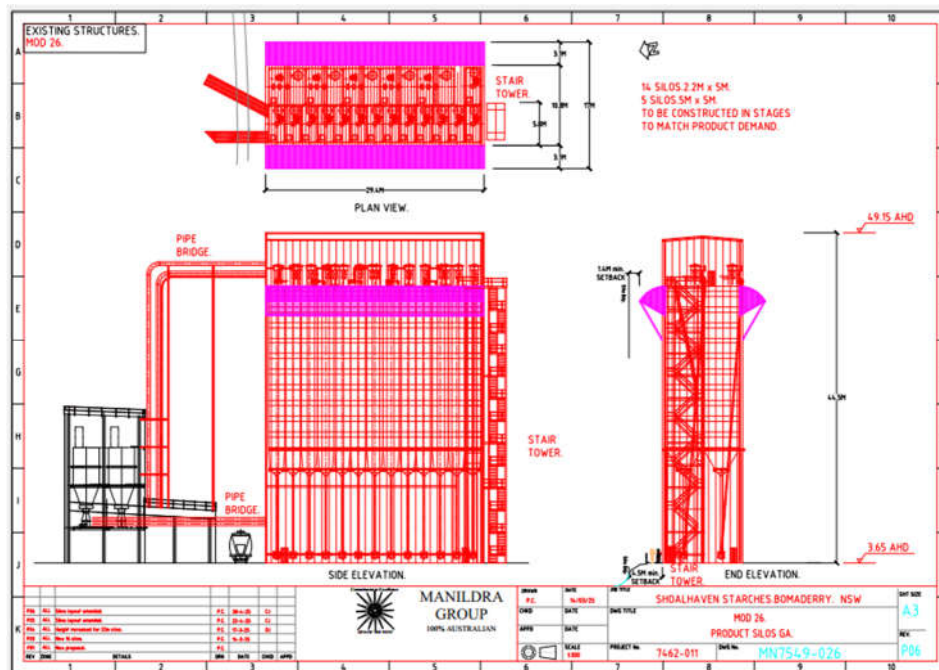


Figure8 : Elevations of Product Silos

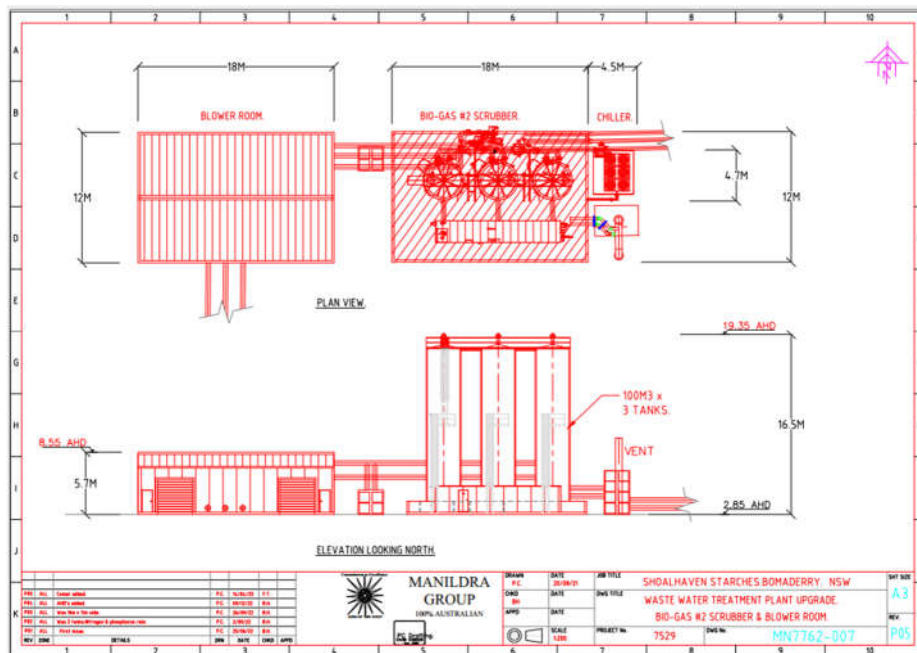


Figure 9 : Plan and elevation details Biogas Scrubber

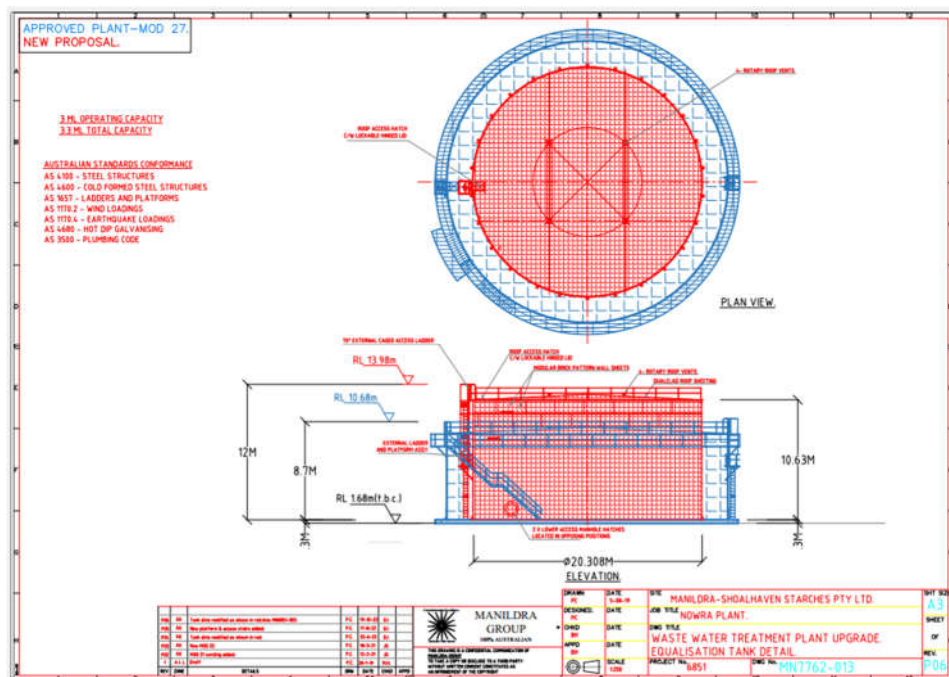


Figure 10 : Plan and elevation details proposed Equalisation Tanks

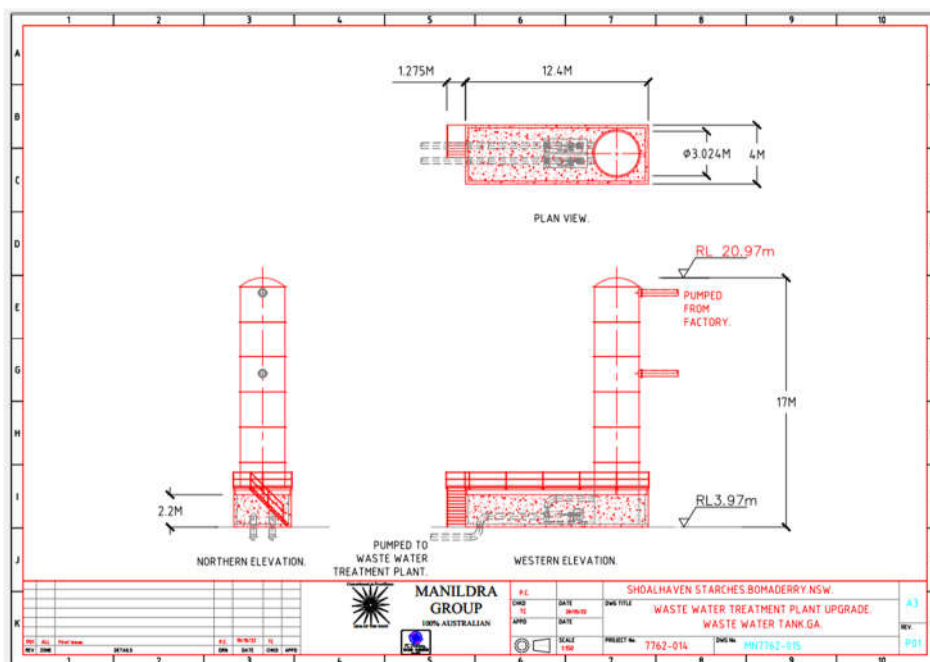


Figure 11 : Plan and elevation details proposed Wastewater Tank

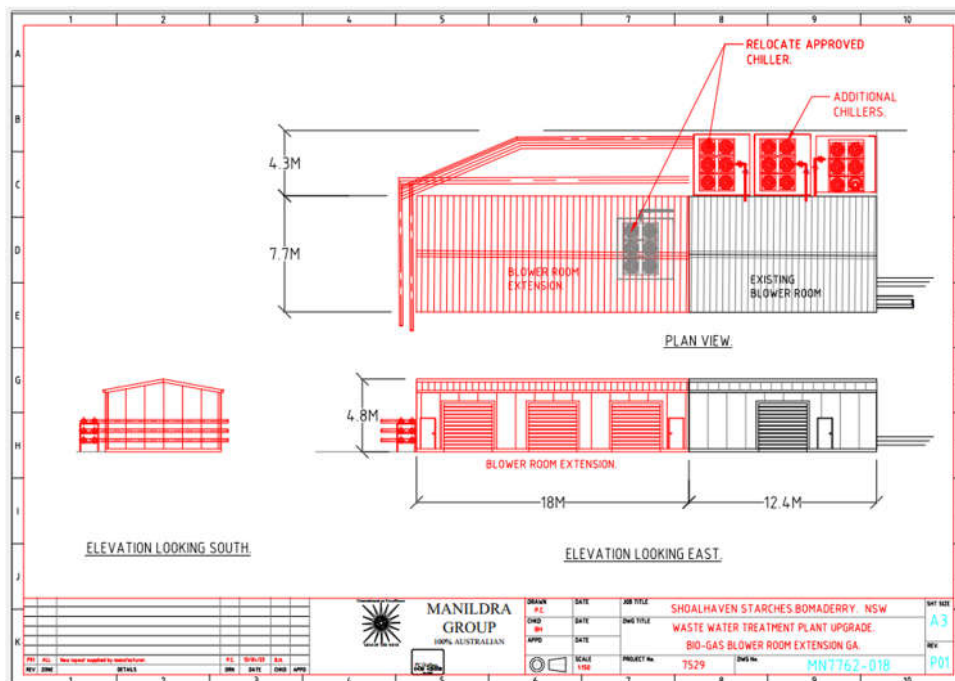


Figure 12 : Plan and elevation details proposed Biogas Blower Room Extension

4.0 CLAUSE 4.6 OF SHOALHAVEN LOCAL ENVIRONMENT PLAN 2014

Clause 4.6 of SLEP 2014 stipulates:

4.6 Exceptions to development standards

- (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*

- (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*
 - (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if—*
 - (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
- Note.*
- When this Plan was made it did not include all of these zones.*
- (7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
 - (8) *This clause does not allow development consent to be granted for development that would contravene any of the following—*
 - (a) *a development standard for complying development,*
 - (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
 - (ba) *clause 4.1E, to the extent that it applies to land in a rural or environment protection zone,*
 - (bb) *clause 4.2B,*
 - (c) *clause 5.4,*
 - (ca) *clause 6.1 or 6.2,*
 - (cb) *clause 7.25,*
 - (cc) *clause 4.1H.*

4.1 CLAUSE 4.6 AND ITS USE

Clause 4.6 of the SLEP 2014 provides for an appropriate degree of flexibility in applying certain development standards and aims to achieve better outcomes to and from development by allowing flexibility where strict compliance can be shown to be unreasonable or unnecessary in the circumstances of the case that there are sufficient environmental planning grounds to justify contravening the development standard; and that the development proposed is in the public interest.

Before applying the discretionary power of Clause 4.6 the consent authority must be satisfied that the standard for which the departure is sought is a "development standard" and not a matter which would prohibit the proposal.

Part 4 of the SLEP 2014 contains the *Primary Development Standards* of the LEP.

A development standard is defined within Section 1.4 of the Environmental Planning and Assessment Act 1979 (EP&A Act).

"Development standard" means provisions of an environmental planning instrument 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 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 the development on patterns of wind, sunlight, daylight or shadows;*
- (m) *the provision of services, facilities and amenities demanded by the development;*
- (n) *the emission of pollution and means for its prevention or control or mitigation; and*
- (o) *such other matters as may be prescribed.*

Having regard to the definition of “development standard”, including paragraph (c) it is considered that Clause 4.3(2A) of the SLEP 2014 contains a development standard.

Clause 4.3(2A) prescribes a maximum building height of 11 m upon which a consent authority is able to approve the erection of a building on the subject site. Such would comprise a development standard having regard to paragraph (c) above as it applies to the “height” of a building.

Furthermore, Clause 4.3(2A) is contained in Part 4 of the Shoalhaven LEP 2014, containing the “Primary Development Standards” of the LEP. This reinforces the contention that the provisions of Clauses 4.3 are development standards.

As development standards, consideration of these clauses is therefore open to written requests made pursuant to Clause 4.6.

A consent authority must also be satisfied of three matters before it may agree with the written request made pursuant to clause 4.6.

Firstly, the request is to be in writing [Clause 4.6(3)]; demonstrate that the compliance with that development standard is unreasonable or unnecessary in the circumstances of the case [Clause 4.6(3)(a)] and that there are sufficient environmental planning grounds to justify contravening the development standard [Clause 4.6(3)(b)].

Secondly, the consent authority must also be satisfied 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 [Clause 4.6(4)(a)(ii)].

Finally, the consent authority can only grant development consent for a development that contravenes a development standard if the concurrence of the Secretary (formerly Director General) of Planning, Industry and Environment (“the Department”) has been obtained [Clause 4.6(4)(b)].

The Secretary in deciding whether to grant concurrence must consider pursuant to Clause 4.6(5):

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

In this instance, as will be described in Section 4.3 below, the concurrence of the Secretary of the Department is not required in relation to this Clause 4.6 written request.

Clause 4.6(6) states:

4.6(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

As this matter does not involve the subdivision of land zoned Zone RU2 Rural Landscape, and E2 Environmental Conservation, Clause 4.6(6) is not applicable to this proposal.

This submission has been prepared having regard to the above relevant matters.

4.2 INITIAL ACTION PTY LTD V WOOLLAHRA MUNICIPAL COUNCIL [2018] NSWLEC 118

Preston CJ in Initial Action Pty Ltd v Woollahara Municipal Council [2018] NSWLEC 118 (“Initial Action”) provides an informative instruction with the approach to making a written request under Clause 4.6 for the grant of development consent in contravention of a development standard.

As outlined in Section 4.1 above Clause 4.6(4)(a)(i) requires the written request to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by Clause 4.6(3). The written request must demonstrate the following matters:

- firstly, 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)).

As to the first matter, Clause 4.6(3)(a), Preston CJ in “Initial Action” summarises common ways an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary by referencing his findings in *Wehbe v Pittwater Council* [2007] NSWLEC827 (“Wehbe”). Although the decision in *Wehbe* was in the context of an objection under State Environmental Planning Policy No. 1 – Development Standards to compliance with a development standard, according to Preston CJ the discussion is equally applicable to a written request under Clause 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary.

In Wehbe, Preston provided a “five part test” for consent authorities to consider when assessing a proposal that seeks to vary a development standard as follows:

1. the objectives of the standard are achieved notwithstanding non-compliance with the standard.
 2. the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.
 3. the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.
 4. 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.
 5. the compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land.
- That is, the particular parcel of land should not have been included in the zone.

Preston CJ notes that the above five tests are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. Preston CJ states “An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.”

The second leg of Clause 4.6(3)(b) requires that there are sufficient environmental planning grounds to justify contravening the development standard. Preston CJ in Initial Action notes that ‘environmental grounds’ are not defined but would “refer to ground that relate to the subject matter, scope and purpose of the EP & A Act, including the objects in S.1.3 of the Act.” Environmental grounds would, by inference, include the Aims of the SLEP 2014 outlined in Clause 1.2(2).

According to Preston CJ (at par 24 in Initial Action) the environmental planning grounds relied on in the written request under Clause 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of Clause 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply

promote the benefits of carrying out the development as a whole. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under Clause 4.6(4)(a)(i) that the written request has adequately addressed this matter.

The second option of satisfaction, in Clause 4.6(4)(a)(ii), is that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. The second option of satisfaction under Clause 4.6(4)(a)(ii) differs from the first option of satisfaction under Clause 4.6(4)(a)(i) in that the consent authority must be directly satisfied about the matter in Clause 4.6(4)(a)(ii), not indirectly satisfied that the applicant's written request has adequately addressed the matter in Clause 4.6(4)(a)(ii).

Preston CJ points out that the matter in Clause 4.6(4)(a)(ii), with which the consent authority must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest *because* it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority cannot be satisfied that the development will be in the public interest for the purposes of Clause 4.6(4)(a)(ii).

4.3 DEPARTMENT OF PLANNING HOUSING & INFRASTRUCTURE

The Department of Planning & Environment (DPE) have prepared a "Guide to Varying Development Standards" (November 2023) ("the Guide"). Part A of the Guide clarifies requirements for preparing, assessing and determining documents to vary development standards. It aims to:

- explain the tests in clause 4.6 of the Standard Instrument LEP;
- clarify how to prepare and assess a variation request, including applying the tests;
- identify the circumstances in which clause 4.6 does and does not apply.

Section 3 of the Guide addresses how to prepare a Variation Statement that would satisfy the requirements of Clause 4.6.

Clause 35B of the EP&A Regulation explicitly requires a development application to be accompanied by a document (the written statement) that sets out the grounds on which an applicant seeks to demonstrate that:

- compliance with the development standard is unreasonable or unnecessary in the circumstances.

- there are sufficient environmental planning grounds to justify the contravention of the development standard.

The written statement is a standalone document lodged with the DA. In summary the Guide specifies that the written statement should:

- identify the development site.
- describe the proposed development.
- note the relevant environmental planning instrument and zoning of the site.
- identify the development standard that the applicant is seeking to vary.
- identify aspects of the proposed development that contravene the development standard (including where there is more than one aspect of a development that contravenes the development standard), including:
 - where these aspects occur or are located within the site
 - the extent of variation associated with each.
- include an assessment of the proposed variation against the relevant tests in clause 4.6(3)(a) and (b).

This Written Statement made pursuant to Clause 4.6 has been prepared having regard to the contents of the Guide.

5.0 WRITTEN REQUEST – CLAUSE 4.3 (2A)

This written request seeks to justify the contravention of the 11-metre maximum building height development standard imposed by Clause 4.3(2A) of the SLEP 2014 as it applies to the development proposed by this development application.

5.1 NON-COMPLIANCE WITH CLAUSE 4.3 OF SLEP 2014

Clause 4.3 states:

4.3 Height of buildings

- 1) *The objectives of this clause are as follows—*
 - a) *to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of a locality,*
 - b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,*
 - c) *to ensure that the height of buildings on or in the vicinity of a heritage item or within a heritage conservation area respect heritage significance.*
- 2) *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.*

(2A) If the Height of Buildings Map does not show a maximum height for any land, the height of a building on the land is not to exceed 11 metres.

Clause 4.3(2A) has been highlighted in bold above and has the effect that development consent must not be granted for the erection of a building on land that is not mapped on the Height of Buildings Map that supports the SLEP 2014, unless the building has a maximum height of 11 m or less.

The subject land is not mapped on the Height of Buildings Map. As such under Clause 4.3(2A) any building on the subject land must have a maximum height of 11 m.

The modification proposal will result in structures that will have heights in excess of 11 metres in height.

- Grain storage silos – 32 m
- Grain storage and associated conveyors and bucket elevators – 44 m
- Office workshop – 17 m
- Train and truck unloader – 13.54 m
- Grain unloader and substation – 44 m
- Screening building – 30 m
- Product Silos – 44.5 m
- Biogas Scrubber tanks – 16.5 m
- Equalisation tank – 12 m

- Wastewater Tanks – 17 m
- Biogas blower room – 12 m

The heights of the buildings and plant outlined above are in excess of the maximum 11 m building height limit as outlined in Clause 4.3(2A) of the SLEP 2014. The modification proposal therefore seeks to depart from this development standard.

Clause 4.6 of SLEP 2014 makes provision for exceptions to development standards and enables a consent authority to consent to development that may be inconsistent with a development standard. The provisions of Clause 4.6 require that a written request accompany a proposal that justifies the contravention of a development standard.

This written request has therefore been prepared pursuant to Clause 4.6 and provides justification that the development standard outlined in Clause 4.3(2A) of the SLEP 2014 may be contravened by the grant of development consent because strict compliance with these provisions under the specific circumstances of this case would be unreasonable and unnecessary; and because there are sufficient environmental planning grounds to justify contravening the development standard. Furthermore, this written request demonstrates the proposal is in the public interest.

5.2 OBJECTIVES OF STANDARD

As detailed in Section 5.1 above the objectives of Clause 4.3 are:

- 1) *The objectives of this clause are as follows—*
 - a) *to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of a locality,*
 - b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,*
 - c) *to ensure that the height of buildings on or in the vicinity of a heritage item or within a heritage conservation area respect heritage significance.*

5.2.1 OBJECTIVES OF E4 ZONE GENERAL INDUSTRIAL

The subject land is zoned E4 General Industrial under the provisions of the SLEP 2014.

The objectives of the E4 General Industrial are:

- *To provide a range of industrial, warehouse, logistics and related land uses.*
- *To ensure the efficient and viable use of land for industrial uses.*
- *To minimise any adverse effect of industry on other land uses.*
- *To encourage employment opportunities.*
- *To enable limited non-industrial land uses that provide facilities and services to meet the needs of businesses and workers.*
- *To allow a diversity of activities that do not significantly conflict with the operation of existing or proposed development.*

5.2.2 OBJECTIVES OF RU1 ZONE PRIMARY PRODUCTION

The subject land is zoned RU1 under the provisions of the SLEP 2014.

The objectives of the RU1 zone are:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To encourage diversity in primary industry enterprises and systems appropriate for the area.*
- *To minimise the fragmentation and alienation of resource lands.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To conserve and maintain productive prime crop and pasture land.*
- *To conserve and maintain the economic potential of the land within this zone for extractive industries.*

5.2.3 OBJECTIVES OF RU2 ZONE RURAL LANDSCAPE

The subject land is zoned RU2 under the provisions of the SLEP 2014.

The objectives of the RU2 zone are:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To maintain the rural landscape character of the land.*
- *To provide for a range of compatible land uses, including extensive agriculture.*

5.2.4 OBJECTIVES OF SP2 SPECIAL INFRASTRUCTURE

The subject land is zoned SP2 under the provisions of the SLEP 2014.

The objectives of the SP2 zone are:

- *To provide for infrastructure and related uses.*
- *To prevent development that is not compatible with or that may detract from the provision of infrastructure.*

5.2.5 OBJECTIVES OF W2 ZONE RECREATION WATERWAYS

The subject land is zoned W2 zone under the provisions of the SLEP 2014.

The objectives of the W2 zone are:

- *To protect the ecological, scenic and recreation values of recreational waterways.*
- *To allow for water-based recreation and related uses.*
- *To provide for sustainable fishing industries and recreational fishing.*

5.4 JUSTIFICATION OF DEPARTURE TO CLAUSE 4.3(2A)

This written request seeks to justify the departure to the provisions of Clause 4.3(2A) of the SLEP 2014. Clause 4.3(2A) effectively imposes a maximum building height limit of 11 m on the subject site. The proposed modifications to Project Approval MP06_0228 under this Modification Application involves structures that will exceed this maximum building height as detailed in Section 5.1 from between 1 m to 44 metres.

This written request demonstrates that strict compliance with Clause 4.3(2A) of SLEP 2014 under the specific circumstances of this case would be: unreasonable and unnecessary; that there are sufficient environmental planning grounds to justify contravention of this restriction; and that the proposal is in the public interest.

5.4.1 COMPLIANCE WITH STANDARD UNREASONABLE OR UNNECESSARY

Having regard to Clause 4.6(3)(a) it is my view that there is sufficient justification for contravention of the 11 m maximum building height limit development standard outlined under Clause 4.3(2A) of the SLEP 2014 as it would be unnecessary under the specific circumstances of this case as the proposal is consistent with the stated objectives of Clause 4.3 (as detailed in Section 5.1), as:

- The proposed works will not be dissimilar to existing structures within the existing Shoalhaven Starches industrial complex. The building forms, heights, shapes and characteristics are also similar to those that presently exist on the site and will conform to the visual character of the site, i.e. it is industrial development within an industrial setting.
- Part of the works are proposed on land that is zoned E4 General Industrial, and the proposed development meets the current and desired future character of the locality in which it is sited.
- Those works that are situated on land that is zoned RU1 / RU2 are located within the vicinity of the existing Wastewater Treatment Plant (WTP) and represent a height and scale of development that will be consistent with the prevailing height and scale of development within this part of the overall Shoalhaven Starches operations.
- The bulk and scale of the structures associated with this modification application will not be dissimilar to that which was associated with the original Project Approval for this location and will comprise a similar structure to other industrial type development associated with the existing factory site. Furthermore, the proposed works will be sited within proximity of similar structures of a similar nature. The proposed works will be sited in the midst of the existing factory or WTP complexes and will be viewed within this context. As such this development will not diminish the views of existing development. The visual impact of the modification proposal is discussed in Section 8.9 of the SEE.
- The development will not lead to excessive overshadowing of foreshore areas given the existing shadows cast by existing development and the nature of the foreshore in this locality.

- The proposed development site is not subject to a heritage listing under the provisions of SLEP 2014 nor is it sited within the vicinity of a heritage item or within a heritage conservation area.
- Whilst the proposal does involve installation of structures that will be visible, the bulk and scale of this structure will not be dissimilar to that of other industrial type development associated with the existing factory and WTP sites. The main vantage points from where the development could potentially be visible would be from Bolong Road. The proposed works will generally not extend past the existing skyline created by the existing factory and WTP.

It is our view that the proposed modification will not be inconsistent with the prevailing character of this locality; or the envisaged character of the area given the planning provisions applying to the land. Under the above circumstances and having regard to the first ‘test’ set by the “Wehbe” case and which Preston CJ references in *Initial Action*, the objectives detailed in Clause 4.3 which underpin the development standard outlined in Clause 4.3(2A) will be achieved notwithstanding non-compliance with this development standard, and hence strict compliance with this development standard is unnecessary. Given these circumstances, it is considered that strict compliance with Clause 4.3(2A) is unnecessary under the circumstances of this case.

Furthermore, it is our view that the 11 m maximum building height limit has been abandoned for the Shoalhaven Starches factory site. As a result of historic development on the Shoalhaven Starches factory and WTP sites, which date back to the early 1970s, and more recent development approvals, the majority of buildings and structures situated on the land exceed a height limit of 11 m. Many of the structures on this industrial site exceed a height limit of 30 metres. In effect and having regard to the fourth test set by the *Wehbe* case, the maximum building height limit has in effect been abandoned on this industrial site. Under these circumstances strict compliance with this development standard under the circumstances of this case would be unreasonable.

5.4.2 ENVIRONMENTAL PLANNING GROUNDS THAT JUSTIFY CONTRAVENTION OF STANDARD

Having regard to Clause 4.6(3)(b), it is my view that there are sufficient environmental planning grounds to justify contravening the 11 m maximum height development standard of Clause 4.3(2A) of the SLEP 2014 under the specific circumstances of this case.

5.4.2.1 Consistency with Planning Strategies and Plans

As outlined in Section 4.2 the term ‘environmental planning grounds’ is not defined by the SLEP 2014. As Preston CJ in *Initial Action* notes such grounds would include consideration of the Objects of the EP&A Act outlined in Section 1.3 of the Act.

As detailed in Section 1.3, the Objects of the Act include:

- (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,*
- (b) *to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) *to promote the orderly and economic use and development of land,*
- (d) *to promote the delivery and maintenance of affordable housing,*
- (e) *to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) *to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) *to promote good design and amenity of the built environment,*
- (h) *to promote the property construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) *to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) *to provide increased opportunity for community participation in environmental planning and assessment.*

The above Objects are in my view manifested in the aims and objectives that underpin State, regional and local planning strategies, plans and policies.

In my view the 11-metre maximum height development standard imposed by Clause 4.3(2A) seeks in part to achieve objects detailed in the Illawarra-Shoalhaven Regional Plan and the SLEP 2014.

Illawarra-Shoalhaven Regional Plan (ISRP) 2015

The ISRP provides the strategic policy, planning and decision-making framework to guide the region to sustainable growth over the next 20 years.

In summary the plan sets out five main goals, however in my mind the following goal has relevance to this submission.

A Prosperous Illawarra Shoalhaven

The ISRP notes in 2013, the Illawarra-Shoalhaven region generated \$16.2 billion in Gross Regional Product (GRP), making it the third-largest economic contributor to regional growth in NSW. Manufacturing was the largest contributor to regional output, contributing \$1.9 billion and employing nearly 10 per cent of local jobs. While the region continues to transition to a knowledge-based economy, its manufacturing activities remain a critical industry sector.

The Plan aims to:

- *grow the national competitiveness of Metro Wollongong to provide jobs and housing;*
- *grow the capacity of the port of Port Kembla as an international trade gateway;*
- *drive diversity and innovation in the economy through growth in priority growth sectors;*
- *grow strategic assets in key locations to help drive economic growth across the region;*
- *support new and expanded industrial activity by providing well-located and well-serviced supplies of industrial land; and*
- *strengthen the economic self-determination of Aboriginal communities.*

It builds on the NSW Government's five goals for regional economic development:

- *promote key regional sectors and regional competitiveness;*
- *drive regional employment and regional business growth;*
- *invest in economic infrastructure and connectivity;*
- *maximise government efficiency and enhance regional governance; and*
- *improve information sharing and build the evidence-base.*

Shoalhaven Starches is a member of the Manildra Group of companies. The Manildra Group is a wholly Australian owned business and the largest processor of wheat in Australia. It manufactures a wide range of wheat-based products for food and industrial markets both locally and internationally. The Shoalhaven Starches factory produces a range of products for the food, beverage, confectionary, paper and motor transport industries including starch, gluten, glucose and ethanol and is a significant local employer in the Shoalhaven region.

The Shoalhaven Starches Expansion Project, approved by the Minister for Planning on the 28th January 2009, sought to increase ethanol production at the Bomaderry plant in a staged manner from 126 million litres per year to 300 million litres per year. To accomplish the increase in ethanol production, this project required a series of plant upgrades and increase in throughput of raw materials, principally flour and grain. Following the Minister's determination Shoalhaven Starches have been implementing and commissioning works in accordance with this approval. This modification involves plant essential to the efficient running of the Manildra operations at this site. This modification therefore is consistent with this goal of the ISRP as it supports the efficient running and expansion of a critical local industry.

The Objectives of the Shoalhaven Local Environmental Plan 2014 and the E4 zone

The objectives of the SLEP 2014 and the zone that applies to the subject site also provide context within which to consider the environmental planning grounds that underpin the development standard in question.

The works associated with this height variation of Modification Application are located on land zoned E4, RU1, and RU2.

The objectives of the E4 zone are:

- *To provide a range of industrial, warehouse, logistics and related land uses.*
- *To ensure the efficient and viable use of land for industrial uses.*
- *To minimise any adverse effect of industry on other land uses.*
- *To encourage employment opportunities.*
- *To enable limited non-industrial land uses that provide facilities and services to meet the needs of businesses and workers.*
- *To allow a diversity of activities that do not significantly conflict with the operation of existing or proposed development.*

It is our view that the proposal is consistent with the objectives of the E4 zone as:

- the proposal involves a modification to an existing industrial facility.
- The proposal will facilitate the continued sustainable operation of the site enabling continued employment opportunities at this major employer within the Shoalhaven.
- The proposal has been designed and incorporates measures to minimise impacts to surrounding land uses.

The objectives of the RU1 and RU2 zoned are respectively:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To encourage diversity in primary industry enterprises and systems appropriate for the area.*
- *To minimise the fragmentation and alienation of resource lands.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To conserve and maintain productive prime crop and pasture land.*
- *To conserve and maintain the economic potential of the land within this zone for extractive industries.*

It is our view that the proposal is consistent with these objectives as:

- the proposal involves modifications to an existing approved rural industrial operation.

- The Modification Proposal will not result in the alienation or fragmentation of agricultural land.
- The proposal has been designed and incorporates measures to minimise conflicts with surrounding land uses.

A small portion of the works associated within the WTP are also situated within the RU2 zone. The objectives of the RU2 zone are:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To maintain the rural landscape character of the land.*
- *To provide for a range of compatible land uses, including extensive agriculture.*

It is our view that the proposal is consistent with these objectives as:

- The proposed works associated with the Modification Proposal within the RU2 zone relate to upgrade works to the existing WTP associated with the Shoalhaven Starches operations. These works relate to an existing rural industry operation
- The proposed modification within the RU2 zone relates to upgrade works to the existing WTP and specifically works to the existing wet weather storage ponds. These works will not involve substantial changes to the outward appearance of these existing works.

The proposed modification within the RU2 zone relates to upgrade works to the existing WTP which will be compatible with the existing use of the subject.

The Objects of Clause 4.3(2A)

The objects of Clause 4.3(2A) also inform the basis for understanding the environmental planning grounds that underpin this clause. For the reasons spelt out in Section 5.4.1 above, the proposal will still achieve the objectives that underpin Clause 4.3(2A) notwithstanding non-compliance with the 11 m maximum building height limit imposed under this clause.

6.0 CONCLUSION

Project Approval MP06_0228 was granted by the Minister for Planning on the 28th January 2009 for the Shoalhaven Starches Expansion Project. This approval also encapsulated previous approvals for the site into one overall approval for the site (at that time).

The Shoalhaven Starches Expansion Project sought to increase ethanol production at the Bomaderry plant in a staged manner from 126 million litres per year to 300 million litres per year.

To accomplish the increase in ethanol production, this project required a series of plant upgrades and increase in throughput of raw materials, principally flour and grain.

Following the Minister's determination Shoalhaven Starches have been implementing and commissioning works in accordance with this Project Approval.

Shoalhaven Starches now seek approval to modify their Project Approval for the Shoalhaven Starches Expansion Project to:

- Erect additional grain silos at the former Dairy Farmers factory to the east of the Shoalhaven Starches factory site and to construct associated grain handling facilities associated with this grain storage. These works will also necessitate an extension of an existing rock wall revetment along the banks of the Shoalhaven River.
- Undertake alterations and additions to the existing Wastewater Treatment Plant (WTP) located on the Shoalhaven Starches Environmental Farm located on the northern side of Bolong Road.
- Construction of nineteen (19) finished product silos in addition to those approved to be constructed on the northern Packing Plant to the main factory site on the southern side of Bolong Road.
- Construct a new rail maintenance building to be constructed at the eastern terminus of the recently approved Mod 25 rail line extension to the east of the former Pulp and Paper Mill factory site. It is also proposed to install provision for rail fuel storage adjacent to the existing rail line within the former Paper Mill site.
- Construct an Ethanol Maintenance building within the south-eastern part of the main factory site.
- Construct a Nitric Acid storage adjacent to existing cooling towers to the west of Abernethys Creek.
- Fineness to meet market requirements.

The land associated with this Modification Application is zoned E4 General Industrial, RU1 Primary Production and RU2 Rural Landscape under the provisions of Shoalhaven Local Environmental Plan 2014 (SLEP 2014). There is no specific maximum height provisions specified for the subject site under this LEP. Clause 4.3(2A) of the SLEP 2014 however stipulates that if no height limit is specified for a site, then a maximum building height of 11 metres applies.

Works associated with this Modification Proposal therefore comprise heights above ground level which exceed the building height limit of 11 m imposed by Clause 4.3(2A) of the SLEP 2014, including:

- Grain storage silos – 32 m
- Grain storage and associated conveyors and bucket elevators – 44 m
- Office workshop – 17 m
- Train and truck unloader – 13.54 m
- Grain unloader and substation – 16.85 m
- Screening building – 26 m
- Product Silos – 44.5 m
- Biogas Scrubber tanks – 16.5 m
- Equalisation tank – 12 m
- Wastewater Tanks – 17 m
- Biogas blower room – 12 m

The building and plant outlined above are at heights which exceed the building height limit of 11 m imposed by Clause 4.3(2A) of the SLEP 2014.

Clause 4.6 of SLEP 2014 makes provision for exceptions to development standards and enables a consent authority to consent to development even though it may be inconsistent with a development standard. The provisions of Clause 4.6 require that a written request accompany a proposal that seeks to justify the contravention of a development standard.

This Modification Application will not involve changes to the size, scale or intensity of the existing Shoalhaven Starches operations. The modification proposal will result in structures that will exceed the 11 m building height limit under Clause 4.3(2A) as follows.

Clause 4.3(2A) of the SLEP 2014 is contained in Part 4 of the SLEP 2014. This part of the LEP is titled “*Principal Development Standards*”. This clause is therefore a development standard and open to a written request made pursuant to Clause 4.6.

This written request made pursuant to Clause 4.6 of the SLEP 2014 demonstrates that strict compliance with the maximum 11 m building height limit development standard detailed in Clause 4.3(2A) under the specific circumstances of this case; would be unreasonable and unnecessary; that there are environmental planning grounds to justify the contravention of this development standard; and that the proposal is in the public interest. The written request therefore requests that the consent authority exercise its authority empowered in Clause 4.6 of the SLEP 2014 and approved this proposal notwithstanding the proposal does not strictly comply with the 11 m building height limit imposed by Clause 4.3(2A).

Stephen Richardson
TOWN PLANNER RPIA

Sebastian Tauni
TOWN PLANNER RPIA