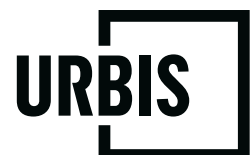




CLAUSE 4.6 VARIATION REQUEST

520 Gardeners Road,
Alexandria

Prepared for
CHARTER HALL
23 March 2022



URBIS STAFF RESPONSIBLE FOR THIS REPORT WERE:

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1. INTRODUCTION

This Clause 4.6 Variation Request (**the Request**) has been prepared on behalf of Charter Hall Holdings Pty Ltd (**the applicant**) and accompanies a State Significant Development Application (**SSDA**) for redevelopment of the site to provide a multi-level warehouse and distribution centre located at 520 Gardeners Road, Alexandria.

The Request seeks an exception from the maximum Height of Buildings development standard prescribed for the site under clause 4.3 of the *Sydney Local Environmental Plan 2012 (SLEP)*. The variation request is made pursuant to clause 4.6 of the SLEP.

This report should be read in conjunction with the Environmental Impact Statement prepared by Urbis Pty Ltd and dated 22 March 2022.

The following sections of the report include:

- **Section 2:** description of the site and its local and regional context, including key features relevant to the proposed variation.
- **Section 3:** brief overview of the proposed development as outlined in further detail within the SEE and accompanying drawings.
- **Section 4:** identification of the development standard which is proposed to be varied, including the extent of the contravention.
- **Section 5:** outline of the relevant assessment framework for the variation in accordance with clause 4.6 of the LEP.
- **Section 6:** detailed assessment and justification of the proposed variation in accordance with the relevant guidelines and relevant planning principles and judgements issued by the Land and Environment Court.
- **Section 7:** summary and conclusion.

2. SITE CONTEXT

2.1. SITE DESCRIPTION

The site is located at 520 Gardeners Road, Alexandria within the City of Sydney Local Government Area (LGA). The site is legally described as Lot 302 in Deposited Plan 1231238 and is currently owned by The Trust Company (Australia) Limited (as custodian for Bieson Pty Ltd as Trustee of CLP Alexandria Trust) c/o Charter Hall.

The site is generally rectangular in shape and is located on the corner of Bourke Road and Gardeners Road as pictured in **Figure 1**.

Figure 1 Site Aerial



Source: Urbis

The key features of the site are summarised in the following table.

Table 1 Site Description

Feature	Description
Street Address	520 Gardeners Road, Alexandria
Legal Description	Lot 302 in Deposited Plan 1231238
Site Area	1.89 hectares
Site Dimensions	112 metres x 179 metres (approximate)
Easements and Covenants	<ul style="list-style-type: none">5 metre wide easement for electricity running generally parallel along the western boundary

Feature	Description
	<ul style="list-style-type: none"> ▪ 2 metre wide easement to drain water in the western part of the property ▪ Lease to Ausgrid (with sub-leases to various parties listed on the land title) for substation in the south-eastern corner ▪ Subterranean stratum easement acquired for State Rail Authority in the north-western corner.
Site Topography	The site is generally flat, sloping from north to south.
Vegetation	The site is predominantly cleared except for a small number of trees in the north-western and south-eastern corners of the site.
Heritage	The site is not located in proximity to any identified heritage items or within a conservation area.

2.2. EXISTING DEVELOPMENT

The site currently accommodates a former hardware and building supplies store with large areas of hardstand, providing ancillary car parking along the northern, eastern and southern boundaries. There are currently two existing site access points, located on Bourke Road and Gardeners Road.

2.3. LOCALITY CONTEXT

The site is on the southern boundary of the Southern Enterprise Area which comprises the enterprise zoned land, business parks and industrial and urban services land within the City of Sydney LGA. The surrounding locality is pictured at Error! Reference source not found. and described below:

- **North:** the Southern Enterprise Area is located to the north, comprising a variety of employment-generating land uses. The property immediately north of the site accommodates a two-storey data centre, with more traditional warehouse-style buildings further north along Bourke Road. An east-west access driveway provides for vehicle entry/exit to the data centre buildings to the north and east via a signalised intersection on Bourke Road.
- **East:** the land to the east (and north of Gardeners Road) is also located within the Southern Enterprise Area. The immediately adjoining property includes a three-storey data centre, with large scale, bulky goods retailing further to the east. Council has recently granted development consent for a second stage comprising a four-storey data centre fronting Gardeners Road (D/2021/45).
- **South:** the land to the south of Gardeners Road includes a two-storey commercial and warehouse style building on the corner of Bourke Road and mixed-use development including retail and commercial uses on the ground floor with residential storeys above. The land is located within the Bayside LGA and has been rezoned to provide for mixed-use development close to Mascot railway station.
- **West:** a vehicle hire premises is located on the corner of Bourke Road and Gardeners Road. A mixed use three-storey building comprising commercial offices, medical consulting and showrooms is located at 85 Bourke Road, with older-style warehouse/industrial buildings to the north.

Figure 2 Site Context



Picture 1 View south-west to residential context from north-east corner of Garners Road and O’Riordan Street



Picture 2 View north to southern elevation of the data centre at 506 Gardeners Road



Picture 3 View of 629 Gardeners Road to the south-east of the subject site

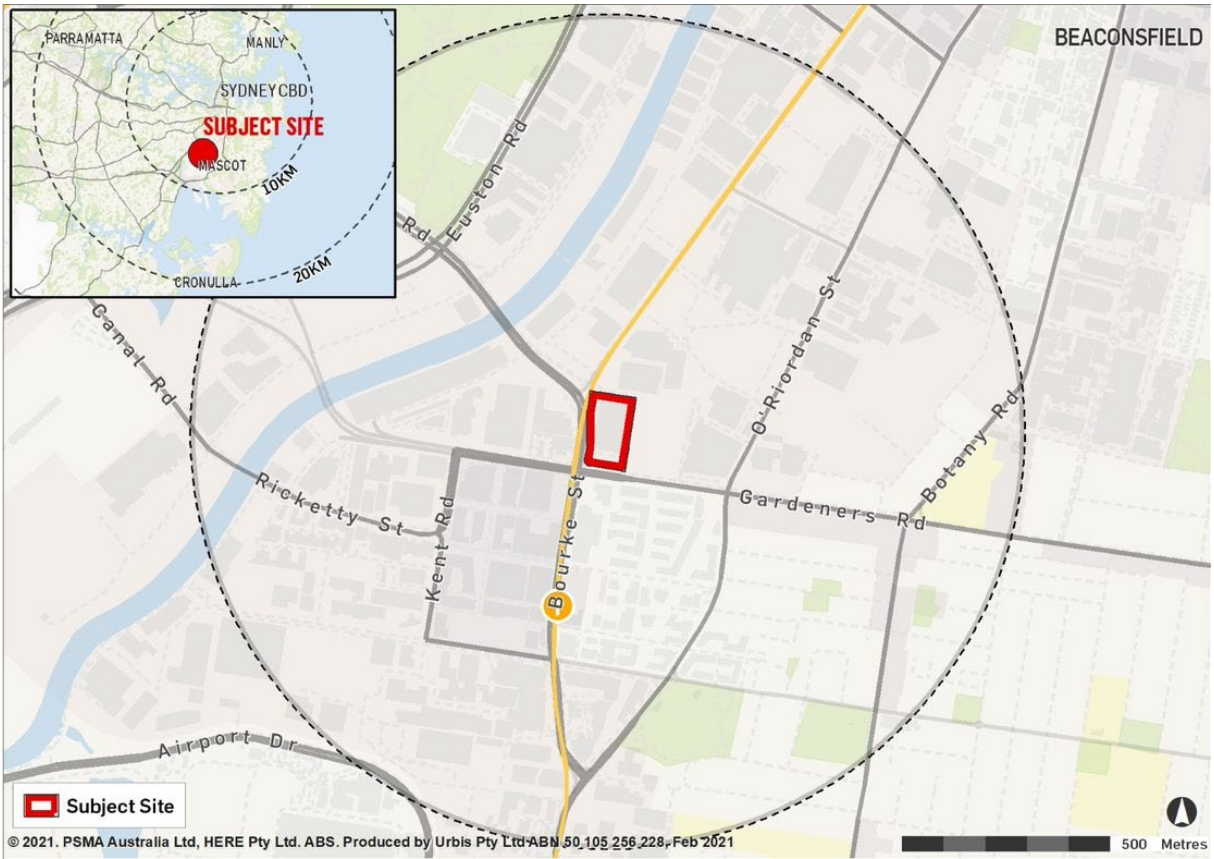


Picture 4 View of 629 Gardeners Road to the south-east of the subject site

Source: Urbis

The site is close to Sydney Airport and Port Botany and benefits from access to the regional road network as illustrated in **Figure 3**. The site is well-served by public transport, including Mascot Railway Station (approximately 350 metres walking distance) and several bus stops along Gardeners Road and Bourke Road which provide access to the inner-city, eastern suburbs and inner west. The site also benefits from active transport connections via the separated off-road cycleway on Bourke Road and an off-road shared path along Gardeners Road.

Figure 3 Regional Context



3. PROPOSED DEVELOPMENT

This Clause 4.6 Variation Request has been prepared to accompany SSD-32489140 on behalf of Charter Hall. The proposed development is seeking to deliver a state-of-the-art multi-level warehouse and distribution facility, strategically located within the Southern Enterprise Area.

A detailed description of the proposed development is provided in the Environmental Impact Statement (EIS) prepared by Urbis and dated 22 March 2022. The proposal is also detailed in the appendices attached to the EIS, including the Architectural Plans (Appendix B) and Design Report (Appendix F).

A summary of the key features of the development is provided below. Proposed site elevations are shown in **Figure 4**.

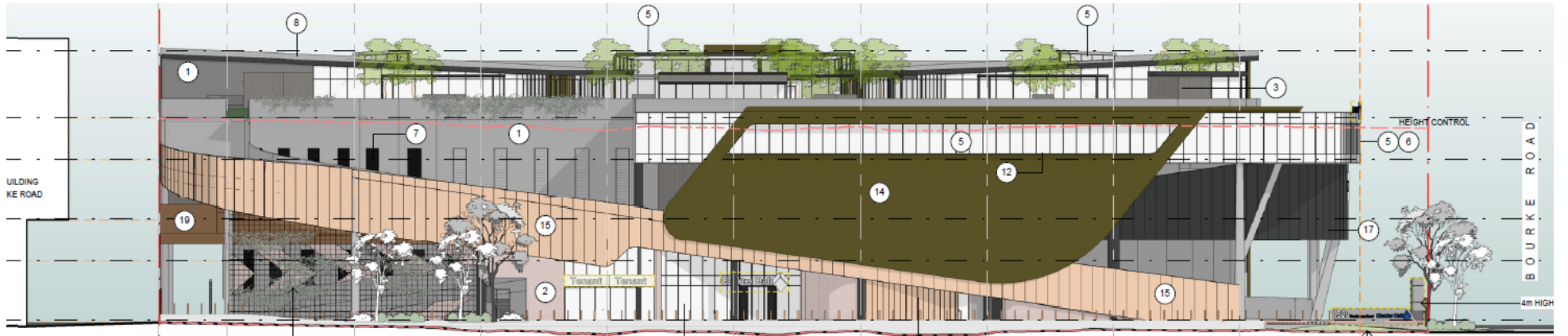
Table 2 Project Details

Descriptor	Project Details
Project Area	The site has a total area of 18,988m ² . The total site area is expected to be physically disturbed by the project.
Project Description	The project comprises site preparation works and construction, fit-out and operation of a multi-level warehouse and distribution centre development, including on-site amenities comprising cafes and a gym, and ancillary parking, landscaping and building identification signage. The proposed operating hours are 24 hours per day seven days per week.
GFA	Total GFA of 27,509m ² , broken down as follows: <ul style="list-style-type: none"> ▪ Warehouse and distribution: 21,952m² ▪ Ancillary office: 5,557m²
Maximum Height	24.65 metres (RL 31.4) and three storeys
Access and Car Parking Spaces	The existing vehicular access from Bourke Road will be replaced with two new access driveways from Bourke Road. The existing access driveway from Gardeners Road will be widened to accommodate heavy vehicle access. On-site parking will be provided for: <ul style="list-style-type: none"> ▪ 144 car spaces ▪ 3 car share spaces ▪ 12 motorcycle spaces
Cycle Parking	64 bicycle spaces
Loading	Heavy vehicle access and loading and unloading areas are provided within the Ground Level and Level 1 breezeways.
Landscaped area	Approximately 4,511m ² of hard and soft landscaping at ground level and an additional 1,634 m ² of soft landscaping at second floor level.

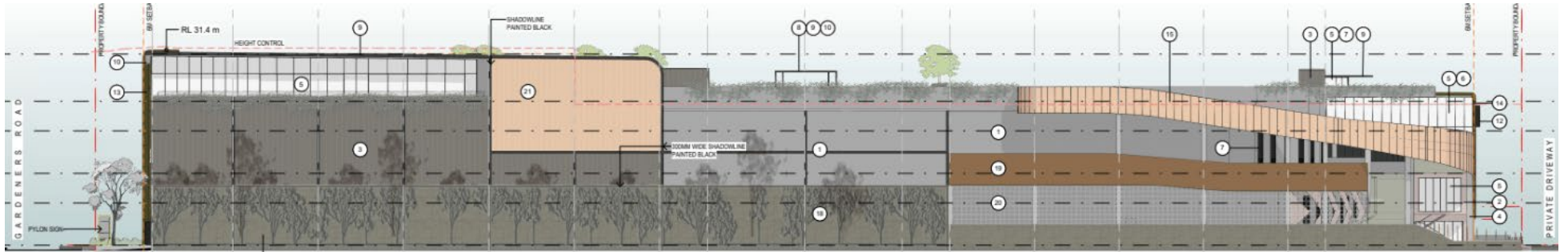
Figure 4 Proposed Elevations



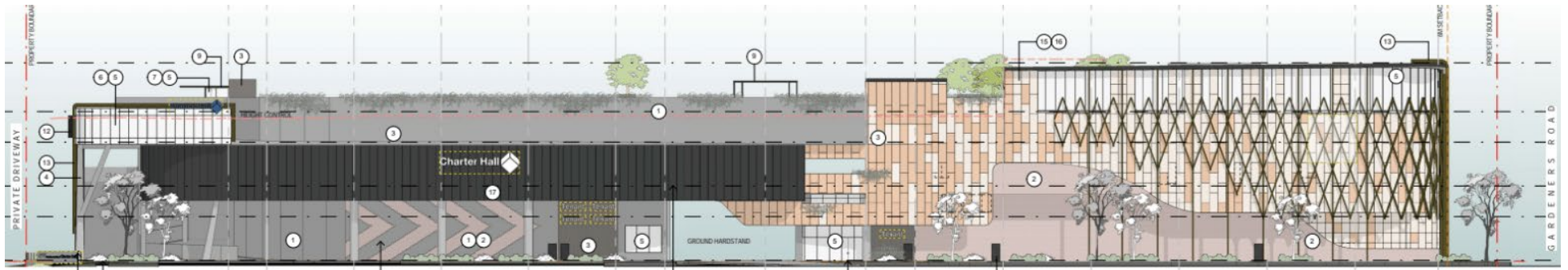
South elevation



North elevation



East elevation



West elevation

Source: *Nettleton Tribe*

4. VARIATION OF HEIGHT OF BUILDINGS STANDARD

This section of the report identifies the development standard which is proposed to be varied, including the extent of the contravention. A detailed justification for the proposed variation is provided in **Section 6** of the report.

4.1. DEVELOPMENT STANDARD

Clause 4.3(2) in *Sydney Local Environmental Plan 2012* states the height of a building is not to exceed the maximum height shown on the Height of Buildings Map. An extract of the relevant Height of Buildings Map is provided below.

The southern part of the site fronting Gardeners Road (shaded pink and identified as 'T1') has a maximum height of 25 metres. The northern part of the site (shaded brown and identified as 'P') has a maximum 18 metre height limit.

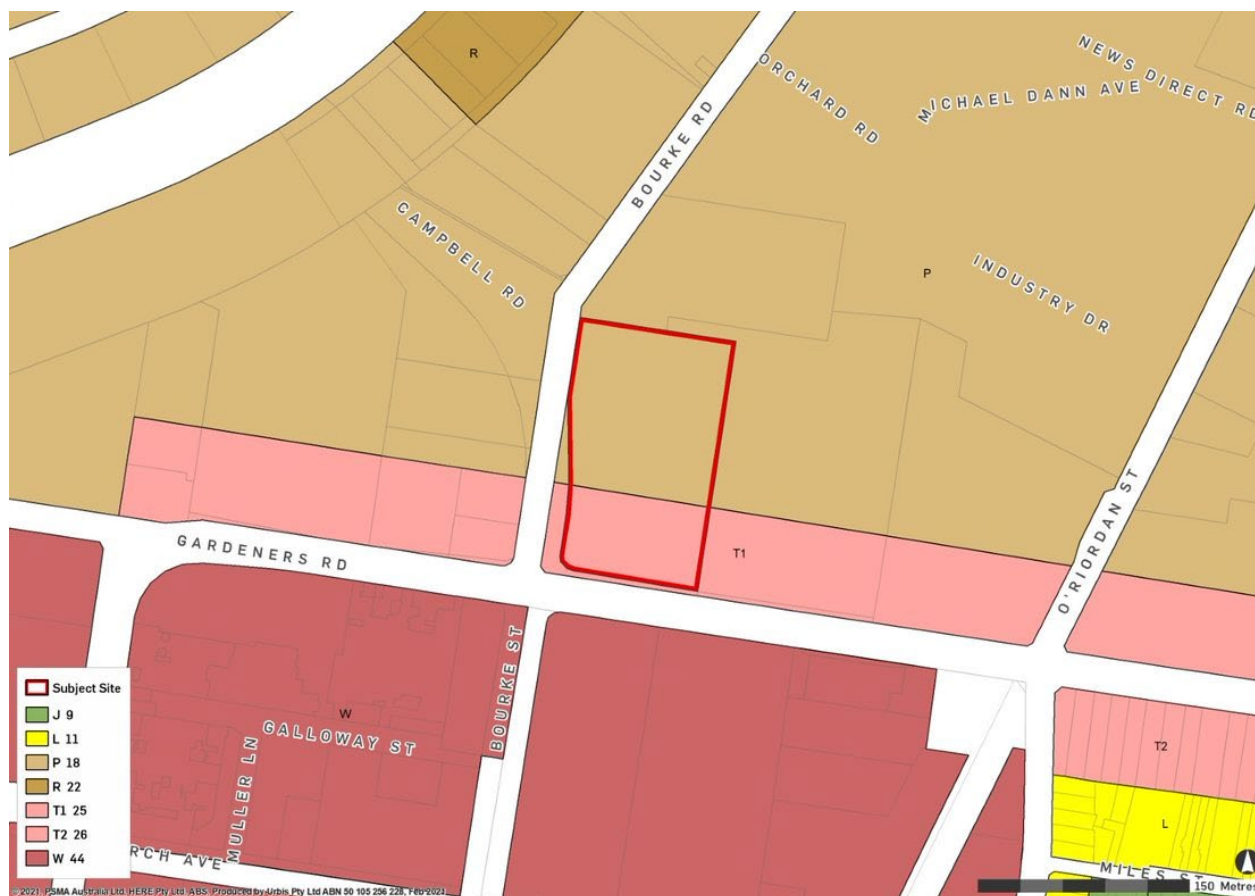
Building height is measured in accordance with the definition in the Dictionary of SLEP 2012 and as per the below extract:

building height (or height of building) means—

- (a) *in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- (b) *in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,*

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

Figure 5 SLEP 2012 Height of Buildings Map



Source: SLEP 2012 / Urbis

4.2. PROPOSED VARIATION TO CLAUSE 4.3

The proposed development comprises a part-two and part-three storey warehouse and distribution centre.

The southern part of the building has a maximum height of 24.65 metres which complies with the 25 metre height control under the SLEP 2012. The plan held as **Figure 6** shows the proposed heights (shaded blue) are less than the maximum 25 metre height.

However, the northern part of the building includes variations to the 18 metre height control as described in Table 3 and identified in red on the plan provided as **Figure 6**. The proposed building elements that are variations to the height control are shown in **Figure 7**.

Table 3 Proposed Variation

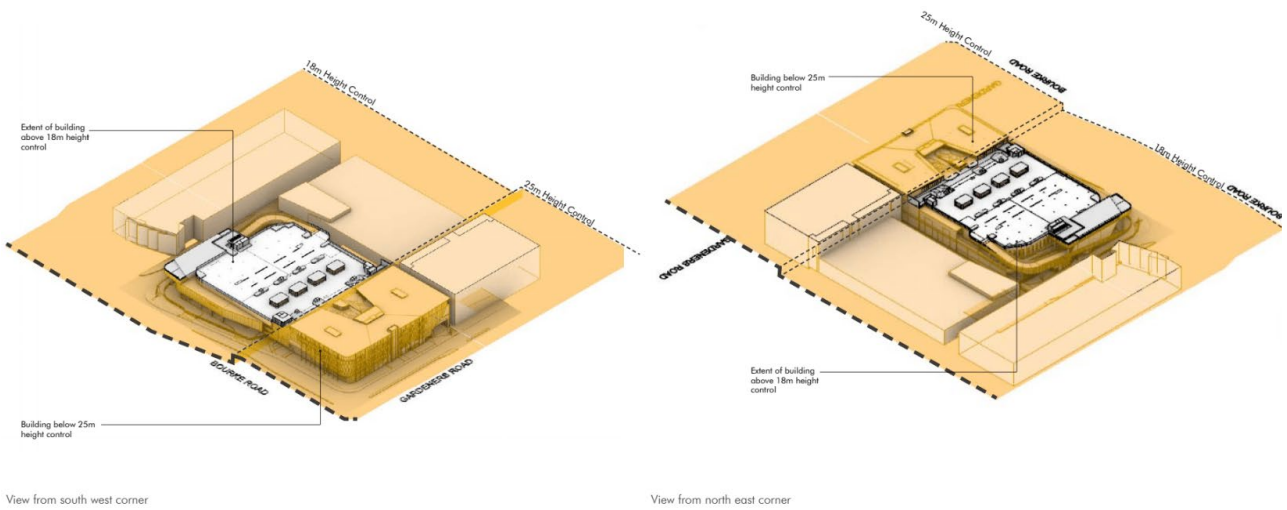
Building Element	Proposed Height	Height Variation	Area
Level 2 slab	18.41 - 18.51 metres	0.41 - 0.51 metres (2.8%)	7,137.5m ² (37.6%)
Lift and stair overruns	22.41 - 22.59 metres	4.41 - 4.59 metres (25.5%)	242.16m ² (1.3%)
Mechanical exhaust	20.6 - 20.67 metres	2.6 - 2.67 metres (14.8%)	36.1m ² (0.2%)
Ventilation void roof	21.9 - 22.27 metres	3.9 - 4.27 metres (23.7%)	342.21m ² (1.8%)
Level 1 mezzanine roof	18.41 - 18.51 metres	0.41 - 0.51 metres (2.8%)	912.5m ² (4.8%)
Level 2 parapet wall	20.2 - 20.4 metres	2.2 - 2.4 metres (13.3%)	43.5m ² (0.2%)
Level 2 landscape bed and kerbs	18.51 - 18.9 metres	0.51 - 0.9 metres (5%)	1,053.1m ² (5.5%)
Level 2 plant room screening	18.51 - 20.64 metres	0.51 - 2.64 metres (14.7%)	102.5m ² (0.5%)

The key reason underpinning the 0.5 metre height variation to the level 2 slab is related to the flood planning levels for the site, while maintaining appropriate floor-ceiling clearances within the warehouse levels. The other variations relate to point encroachments which affect limited parts of the site and predominantly screened from public view. A detailed assessment of the proposed variations in accordance with Clause 4.6 of SLEP 2012 is provided in **Section 6**.

Figure 6 Proposed Height Variations



Figure 7 Height Control Blanket Diagram



Source: Nettleton Tribe

5. RELEVANT ASSESSMENT FRAMEWORK

Clause 4.6 of the SLEP 2012 includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of clause 4.6 of the SLEP are:

- (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.*

Clause 4.6 provides flexibility in the application of planning provisions by allowing the consent authority to approve a development application that does not comply with certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve better outcomes for and from the development.

In determining whether to grant consent for development that contravenes a development standard, clause 4.6(3) requires that the consent authority to consider a written request from the applicant that seeks to justify the contravention of the development by demonstrating:

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

Clause 4.6(4)(a) requires the consent authority to be satisfied that the applicant's written request adequately addresses each of the matters listed in clause 4.6(3). The consent authority should also be satisfied that that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which it is proposed to be carried out.

Clause 4.6(4)(b) requires the concurrence of the Secretary to have been obtained. In deciding whether to grant concurrence, subclause (5) requires that the Secretary 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.*

The concurrence of the Secretary can be assumed to have been granted for the purpose of this variation request in accordance with the Department of Planning Circular PS 18–003 'Variations to development standards', dated 21 February 2018. This circular is a notice under section 64(1) of the *Environmental Planning and Assessment Regulation 2000* and provides for assumed concurrence. A consent granted by a consent authority that has assumed concurrence is as valid and effective as if concurrence had been given.

Consent authorities for State significant development may assume the Secretary's concurrence where development standards will be contravened. Any matters arising from contravening development standards will be dealt with in Departmental assessment reports.

This clause 4.6 request demonstrates that compliance with the Height of Buildings prescribed for the site in clause 4.3 of the SLEP is unreasonable and unnecessary, that there are sufficient environmental planning grounds to justify the requested variation and that the approval of the variation is in the public interest because it is consistent with the development standard and zone objectives.

In accordance with clause 4.6(3), the applicant requests that the Height of Buildings development standard be varied (subject to the applicant's position that such a request should not actually be necessary).

6. ASSESSMENT OF CLAUSE 4.6 VARIATION

The following sections of the report provide a comprehensive assessment of the request to vary the development standards relating to the Height of Buildings in accordance with clause 4.3 of the SLEP 2012.

Detailed consideration has been given to the following matters within this assessment:

- *Varying development standards: A Guide*, prepared by the Department of Planning and Infrastructure dated August 2011.
- Relevant planning principles and judgements issued by the Land and Environment Court.

The following sections of the report provides detailed responses to the key questions required to be addressed within the above documents and clause 4.6 of the LEP.

6.1. IS THE PLANNING CONTROL A DEVELOPMENT STANDARD THAT CAN BE VARIED? – CLAUSE 4.6(2)

The maximum building height prescribed by clause 4.3 of the SLEP is a development standard capable of being varied under clause 4.6(2) of SLEP. The proposed variation is not excluded from the operation of clause 4.6(2) as it does not comprise any of the matters listed within clause 4.6(6) or clause 4.6(8) of the SLEP.

6.2. IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE? – CLAUSE 4.6(3)(A)

Historically, the most common way to establish a development standard was unreasonable or unnecessary was by satisfying the first method set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method requires the objectives of the standard are achieved despite the non-compliance with the standard.

This was re-affirmed by the Chief Judge in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [16]-[17]. Similarly, in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 at [34] the Chief Judge held that “*establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary*”.

This Request addresses the first method outlined in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method alone is sufficient to satisfy the ‘unreasonable and unnecessary’ requirement.

The Request also addresses the third method, that the underlying objective or purpose of the development standard would be undermined, defeated or thwarted if compliance was required with the consequence that compliance is unreasonable (*Initial Action* at [19] and *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131 at [24]). Again, this method alone is sufficient to satisfy the ‘unreasonable and unnecessary’ requirement.

6.2.1. Objectives of the standard

The specific objectives of the Height of Buildings development standard as specified in clause 4.3 of the SLEP 2012 are detailed in Error! Reference source not found. below. An assessment of the consistency of the proposed development with each of the objectives is also provided.

Table 4 Assessment of Consistency with Clause 4.3 Objectives

Objectives	Assessment
(a) <i>to ensure the height of development is appropriate to the condition of the site and its context</i>	The proposed variation to the level 2 slab comprises 0.5 metres or 2.8% over the maximum 18 metre height control. It is considered the proposed variation is minor and will be consistent and compatible with the surrounding

Objectives	Assessment
	<p>development. It is unlikely the proposed variation would be perceptible to the untrained eye.</p> <p>The other variations to the 18 metre height limit relate to point encroachments, primarily associated with the vertical access arrangements and mechanical servicing of the building. These generally comprise small, discreet parts of the building which have limited visibility from the public domain. The proposed variations will not have a significant visual impact on the development or the appropriateness of the proposed built form within its context.</p>
<p><i>(b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas</i></p>	<p>The site is not identified or located within close proximity to any items or areas of heritage significance.</p>
<p><i>(c) to promote the sharing of views</i></p>	<p>The proposed variation to the height limit will have minimal effect on views from neighbouring residential properties.</p> <p>The southern part of the site benefits from a 25 metre height control which will be complied with. The proposed variations to the northern part of the building will be effectively screened by the higher built form to the south, avoiding adverse view impacts to the north for the residential properties on the south side of Gardeners Road or to the south from the data centre to the north.</p> <p>The proposed variations may have limited impacts on western views from the data centre on the adjoining property. However, the 0.5 metre variation to the level 2 slab is likely to have only a minor, if any effect, on the sharing of views. The proposed point encroachments will have limited impacts based on the affected area and the extent of landscaping to be provided across the level 2 car park.</p> <p>The Visual Impact Assessment prepared by Urbis and submitted with the EIS (Appendix J) confirms the proposed visual impacts are acceptable, noting the built form does not generate any significant view or visual impacts and no mitigation measures are recommended.</p>
<p><i>(d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas</i></p>	<p>Not applicable</p>

Objectives	Assessment
<p>(e) in respect of Green Square—</p> <p>(i) to ensure the amenity of the public domain by restricting taller buildings to only part of a site, and</p> <p>(ii) to ensure the built form contributes to the physical definition of the street network and public spaces.</p>	Not applicable

The objectives of the development standard are achieved, notwithstanding the non-compliance with the standard in the circumstances described in this variation report.

6.2.2. Underlying object or purpose would be undermined

Detailed consideration was given to the appropriateness of the proposed building heights during the preparation and refinement of the architectural drawings. The proposed floor-to-ceiling levels on the ground level and level 1 are critical to meet market expectations and accommodate current and future tenant needs. However, the finished floor levels for the proposed building are required to be a minimum of 0.5m above the gutter level to ensure the development is not affected by nuisance runoff and gutter flows in Gardeners Road and Bourke Road. This required the building to be raised, resulting in the overall height exceeding the maximum 18 metre height by 0.5 metres.

If the proposed development was to be redesigned to comply with the maximum 18 metre height control, this would require an entire level of warehousing to be removed. Alternatively, one or both warehouse levels would need to be reduced in height which would impact on the quality of tenants who would likely occupy the warehouse floorspace, impacting on the economic and employment benefits of the project.

The floor-to-floor heights of the ground and level one warehouses have been specifically designed in response to pallet racking heights for storage. Typically pallets are 1.395 metres in height. The warehouse space has been designed in accommodate a five-pallet high racking option, with a 2 metre allowance for a services and structure zone. This reflects the intended program of distribution and storage, maximising the efficiency and effectiveness of the building design in line with the *Better Placed* principle of 'Better working: functional, efficient and fit for purpose'. If the floor-to-floor height were to be reduced by 0.5m to achieve strict compliance with the Height of Buildings standard, this would result in the warehouse space only be able to accommodate four-pallet high racking, reducing the storage area by 20%.

A significant reduction in the warehouse or distribution floorspace would compromise the compliance of the proposal with the IN1 General Industrial land use objectives which seek to provide for warehouses and employment opportunities. Further, the built form does not generate any significant view or visual impacts and no mitigation measures are recommended. Accordingly, the required changes would be unnecessary to address the relevant objectives associated with the building height standard.

Strict compliance with the relevant standards would compromise the potential building envelope and the delivery of the permitted floorspace in accordance with the FSR control in accordance with clause 4.4 of SLEP 2012. This would impact on the compliance of the proposal with the relevant objects of the *Environmental Planning and Assessment Act 1979* including 'to promote the orderly and economic use and development of the land'.

6.3. ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD? – CLAUSE 4.6(3)(B)

The Land & Environment Court judgment in *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 2018, assists in considering the sufficient environmental planning grounds. Preston J observed:

“...in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6, the focus must be on the aspect or element of the development that

contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and

...there is no basis in Clause 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development”

There is an absence of environmental harm arising from the contravention and positive planning benefits arising from the proposed development as outlined in detail above. These include:

- The proposed built form is compatible and consistent with the existing and approved development along the northern side of Gardeners Road and Bourke Road. The proposed variations will not be visible from Gardeners Road and are unlikely to have any significant impacts on the Bourke Road streetscape.
- The proposed height encroachments do not result in any additional floorspace. The proposed variations predominantly relate to a minor increase in the height of the building to accommodate flood levels or minor building services components which do not contribute to GFA.
- The design of the proposed development has been carefully considered to ensure that a state-of-the-art warehouse and distribution centre can be delivered on site, meeting tenant market requirements now and into the future. This is to ensure that employment opportunities can be delivered on site upon completion of construction and in the long-term, maximising the life cycle of the development. This is in accordance with the objectives of the IN1 zone and the Southern Enterprise Area.

Based on the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed Height of Buildings non-compliance in this instance.

6.4. HAS THE WRITTEN REQUEST ADEQUATELY ADDRESSED THE MATTERS IN SUB-CLAUSE (3)? – CLAUSE 4.6(4)(A)(I)

Clause 4.6(4)(a)(i) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3).

Each of the sub-clause (3) matters are comprehensively addressed in this written request, including detailed consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. The written request also provides sufficient environmental planning grounds, including matters specific to the proposal and the site, to justify the proposed variation to the development standard.

6.5. IS THE PROPOSED DEVELOPMENT IN THE PUBLIC INTEREST? – CLAUSE 4.6(4)(B)(II)

Clause 4.6(4)(a)(ii) states development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied the proposal will be in the public interest because it is consistent with the objectives of the development standard and the objectives for the zone.

The consistency of the development with the objectives of the development standard is demonstrated in **Table 4** above. The proposal is also consistent with the land use objectives that apply to the site under the SLEP. The site is located within the IN1 General Industrial zone. The proposed development is consistent with the relevant land use zone objectives as outlined in **Table 5** below.

Table 5 Assessment of Compliance with Land Use Zone Objectives

Objective	Assessment
Zone IN1 General Industrial	
<i>To provide a wide range of industrial and warehouse land uses.</i>	The development will provide a modern and innovative warehouse and distribution use, that will support a

Objective	Assessment
	range of potential tenants on site, providing services to the local community and wider Sydney region.
<i>To encourage employment opportunities.</i>	The proposed development will provide for 274 construction jobs and up to 659 operational jobs. The proposal will make best use of the site through sustainable redevelopment to deliver increased, long-term employment opportunities on site.
<i>To minimise any adverse effect of industry on other land uses.</i>	The design and operation of the development has been carefully considered to ensure that any potential effects of the warehouse and distribution centre on neighbouring land uses are minimised. The proposed height variations will not result in visual or view impacts and are unlikely to result in any significant impacts to solar access or overshadowing.
<i>To support and protect industrial land for industrial uses.</i>	The proposal seeks to provide for warehouse or distribution centre activities which are consistent with the IN1 zone and the existing development within the established industrial precinct. The modern and innovative design will maximise the life cycle of the development and industrial use of the site.
<i>To ensure uses support the viability of nearby centres.</i>	The site is located close to the Sydney CBD, Green Square-Mascot, Sydney Airport and Port Botany and will support the vitality of these strategic centres and trade gateways.

6.6. HAS THE CONCURRENCE OF THE PLANNING SECRETARY BEEN OBTAINED? – CLAUSE 4.6(4)(B) AND CLAUSE 4.6(5)

The Secretary can be assumed to have concurred to the variation under Department of Planning Circular PS 18–003 ‘Variations to development standards’, dated 21 February 2018. Consent authorities for State significant development (SSD) may assume the Secretary’s concurrence where development standards will be contravened. Any matters arising from contravening development standards will be dealt with in Departmental assessment reports.

The matters for consideration under clause 4.6(5) are considered below.

- **Clause 4.6(5)(a) – does contravention of the development standard raise any matter of significance for State or regional environmental planning?**

The proposed non-compliance with the maximum building height control will not raise any matter of significance for State or regional environmental planning. It has been demonstrated that the proposed variation is appropriate based on the specific circumstances of the case and would be unlikely to result in an unacceptable precedent for the assessment of other development proposals.

- **Clause 4.6(5)(b) - is there a public benefit of maintaining the planning control standard?**

The proposed development achieves the objectives of the maximum building height control and the land use zone objectives despite the technical non-compliance.

The benefits of the project include the delivery of warehouse or distribution floorspace which meets market demand for well-designed and functional space close to international trade gateways and the Sydney CBD. There is no material impact or benefit associated with strict adherence to the development standard and there is no compelling reason or public benefit derived from maintenance of the standard.

- **Clause 4.6(5)(c) – are there any other matters required to be taken into consideration by the Secretary before granting concurrence?**

Concurrence can be assumed, however, there are no known additional matters that need to be considered within the assessment of the clause 4.6 variation request prior to granting concurrence, should it be required.

7. CONCLUSION

For the reasons set out in this written request, strict compliance with the Height of Buildings development standard contained within clause 4.3 of SLEP 2012 is unreasonable and unnecessary in the circumstances of the case. Further, there are sufficient environmental planning grounds to justify the proposed variation and it is in the public interest to do so.

It is reasonable and appropriate to vary the Height of Buildings control to the extent proposed for the reasons detailed within this submission and as summarised below:

- The objectives of the maximum building height control are achieved, including:
 - The proposed built form and the height of the development is consistent and compatible with the existing and surrounding development.
 - The proposed height variations are minor and will not have any impact on the sharing of views, noting the compliance of the proposal with the 25 metre height control to the south and the limited impact on east-west views.
- The proposed variation will deliver positive economic impacts, including the delivery of essential warehouse or distribution centre floorspace close to Sydney CBD, Sydney Airport and Port Botany.
- The proposal is in the public interest as it complies with the underlying objectives for the maximum height control and will deliver a development that complies with the relevant land-use objectives.

For the reasons outlined above, the clause 4.6 request is well-founded. The development standard is unnecessary and unreasonable in the circumstances, and there are sufficient environmental planning grounds that warrant contravention of the standard. In the circumstances of this case, flexibility in the application of the Height of Buildings development standard should be applied.

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