



## **Clause 4.6 Variation – Height of Buildings (Clause 4.3)**

### **Proposed Concept Proposal and Early Works for Intermodal Facility**

Moorebank Avenue, Moorebank  
(Lot 1 DP 1197707)

Prepared by Willowtree Planning Pty Ltd on behalf  
of Sydney Intermodal Terminal Alliance (SIMTA)

**June 2020**

## CLAUSE 4.6 VARIATION – HEIGHT OF BUILDINGS (CLAUSE 4.3)

Proposed Concept Proposal and Early Works for Intermodal Facility  
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### PART A PRELIMINARY

#### 1.1 INTRODUCTION

This Clause 4.6 Variation request has been prepared in support of the subject Section 4.55(2) Modification Application for proposed amendments to Development Consent **SSD 5066**. Approval to **SSD 5066** was granted by the Minister for Planning on 3 June 2016 for a Concept Proposal for the use of the Site as an Intermodal Facility; and Early Works (Stage 1) across the Subject Site, which comprised of the following development particulars:

- **Concept Proposal:** The Concept involves the use of the Site as an intermodal facility, including a rail link to the Southern Sydney Freight Line, warehouse and distribution facilities, and associated works.
- **Early Works (Stage 1):** Involves the demolition of buildings, including services termination and diversion; rehabilitation of the excavation / earthmoving training area; remediation of contaminated land; removal of underground storage tanks; heritage impact remediation works; and the establishment of construction facilities and access, including site security.

Specially, the proposed amendments sought include provisions to increase the maximum building height across relevant portions (Warehouse areas 5 & 6) of the Site from 21 m to 45 m, which results in a non-compliance with Clause 4.3 Height of Buildings under *Liverpool Local Environmental Plan 2008* (LLEP2008).

This Clause 4.6 Variation request has therefore been prepared in accordance with the requirements of Clause 4.6 of LLEP2008, which includes the following objectives:

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

In accordance with Clause 4.6(3) of LLEP2008, the NSW Department of Planning, Industry and Environment (DPIE) are required to consider the following:

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

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

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

#### 1.2 PROPOSED NON-COMPLIANCES

##### 1.2.1 Clause 4.3 Height of Buildings

Under the provisions of Clause 4.3 of LLEP2008, the Site is subject a maximum building height of approximately 21 m. It is noted, that the amendments sought under the subject Section 4.55(2) Modification Application involve the increase in building height across relevant portions (Warehouse areas 5 & 6) of the Site from 21 m up to and including 45 m, measured from the vertical distance of

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the ground level (existing) to the highest point (ridge height) of the building, in accordance with the definitions bestowed in LLEP2008 and the Standard Instrument. The proposed modifications would result in an exceedance of the 21 m building height control under LLEP2008 by approximately 24 m (or by 114.29%).

### **1.3 STRATEGIC PLANNING JUSTIFICATION**

If the proposed modifications were to support the future built form with regard to a compliant scheme in accordance with the Development Standard of LLEP2008, the built form potential of the Site would be significantly under-realised. Hypothetically, if a height compliant scheme for a future proposal was submitted, it would:

- Not contribute towards meeting the demand for employment-generating opportunities within the Liverpool Local Government Area (LGA), as identified within *A Metropolis of Three Cities* and the *Western City District Plan*, by potentially resulting in a reduction in available building footprint and consequently prohibiting future industrial-related land uses on the Site, that support the Moorebank Intermodal Terminal;
- Threaten the commercial viability of the Subject Site for future built form, by reducing the overall achievable maximum height across the Site, which would impact on end user operational requirements;
- Not be able to achieve a height, that is being driven due to securing economic employment lands for a secured end user;
- Create fewer full-time equivalent jobs during the construction and operational phases of development due to a decrease in footprint and potential disinterest in the Site due to preferred end user ceiling heights not being able to be achieved; and
- Fail to meet the Objects of the *Environmental Planning and Assessment Act 1979* (EP&A Act) by making orderly and economic use of the Site for its full planning potential.

Notwithstanding, this Clause 4.6 Variation request has been prepared in accordance with the aims and objectives contained within Clause 4.6 and the relevant Development Standards under LLEP2008. It considers various planning controls, strategic planning objectives and existing characteristics of the Site, and concludes that the proposed non-compliance is the best means of achieving the objective, which encourages orderly and economic use and development of land under Section 1.3 of the EP&A Act.

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### **PART B THRESHOLDS THAT MUST BE MET**

#### **2.1 CLAUSE 4.6 OF LLEP2008**

In accordance with Clause 4.6 of LLEP2008, the NSW DPIE is required to consider the following Subclauses:

- (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 Planning Secretary has been obtained.*
- (5) *In deciding whether to grant concurrence, the Planning 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 Planning Secretary before granting concurrence.*

The matters are responded to in **Part D** of this Clause 4.6 Variation.

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### PART C THE STANDARDS BEING OBJECTED TO

#### 3.1 CLAUSE 4.3 (HEIGHT OF BUILDINGS) UNDER LIVERPOOL LOCAL ENVIRONMENTAL PLAN 2008

The Development Standard requested to be varied is Clause 4.3 Height of Buildings under LLEP2008. **Table 1** below outlines the proposed variation sought to Clause 4.3 of LLEP2008.

Table 1: Proposed Development Standard Variation in Relation to LLEP2008			
LCLEP2009 Clause	LCLEP2009 Development Standard	Proposed Development Non-Compliance	Percentage of Variation
Clause 4.3(2) Height of Buildings	Maximum 21 m building height	The Proposal seeks development consent for a 45 m maximum building height.	114.29%

#### 3.2 HYPOTHETICAL COMPLIANT DESIGN

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

- Not contribute towards meeting the demand for employment-generating opportunities within the Liverpool Local Government Area (LGA), as identified within *A Metropolis of Three Cities* and the *Western City District Plan*, by potentially resulting in a reduction in available building footprint and consequently future industrial-related land uses on the Site, that support the Moorebank Intermodal Terminal;
- Threaten the commercial viability of the Subject Site for future built form, by reducing the overall achievable maximum height across the Site, by which would impact on end user operational requirements;
- Not be able to achieve a height, that is being driven due to securing economic employment lands for a secured end user;
- Create fewer full-time equivalent jobs during the construction and operational phases of development due to a decrease in footprint and potential disinterest in the Site due to preferred end user ceiling heights not being able to be achieved; and
- Fail to meet the Objects of the *Environmental Planning and Assessment Act 1979* (EP&A Act) by making orderly and economic use of the Site for its full planning potential.

Overall, an alternative, hypothetical design compliant with Clause 4.3 is not considered justified for the Site.

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### **PART D PROPOSED VARIATION TO CLAUSE 4.3 HEIGHT OF BUILDINGS**

#### **4.1 OBJECTIVES OF THE STANDARD**

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

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

##### **4.1.1 LLEP2008 – Clause 4.3 Height of Buildings**

Clause 4.3 of LLEP2008 sets out specific objectives. Those objectives under LLEP2008 are responded to as follows:

- (a) to establish the maximum height limit in which buildings can be designed and floor space can be achieved,*

The overall scale of the proposed modifications sought is to provide a transition for existing and future built form anticipated for Moorebank Precinct West (MPW), from existing industrial developments along the eastern (Moorebank Precinct East (MPE)) and northern interfaces, comprising developments of similar nature, which are considered compatible in terms of built form and scale. Additionally, the topography of the Subject Site is considered ideal for future development, for which SSD 5066 and SSD 5066 MOD 1 respond to accordingly, by establishing the building pads suitable for any future built form proposed.

Accordingly, the design philosophy for future built form strives to integrate all elements of function and space, to achieve an efficient and comfortable working environment, capable of adapting to the future requirements of the end users involved. The overall site layout addresses both the functionality of future warehousing and logistics operations and the high quality presentation to the wider Moorebank Logistics Park for future built form proposed. It is noted, that future high bay components (proposed under SSD 7709 MOD 1) would be located on the eastern (JR) and southeastern (JN) sides of the future built form proposed, maximising the setbacks able to be achieved from the Western Ring Road and further maximising the floor space able to be achieved across the remainder of the Site.

Detailed geotechnical investigations and combined civil engineering analysis undertaken for SSD 5066 and SSD 5066 MOD 1 confirms the topography of the Site can be made suitable for future development across the MPW site. It is noted, that the levels and balance of cut and fill across the Site have been designed and proposed to respond to the Subject Site and adjoining site's, so as to not exhibit any adverse visual impacts on nearby sensitive receivers, including residential typologies towards both the east and west of the Subject Site.

- (b) to permit building heights that encourage high quality urban form,*

The height and scale adjustments explored under this Modification Application are considered to be uniform and representative of the facilities within the wider Moorebank Intermodal Logistics Park (both MPE & MPW), as well as other industrial-related development to the north of the Subject Site. The heights proposed are considered consistent with market trends and operational requirements within the NSW Industrial (including freight and logistics) Sector, whilst being consistent and transitional with industrial development adjoining the Subject Site and within close proximity to the Subject Site, throughout Moorebank, as well as industrial-development further west located within the Prestons

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Industrial Employment Precinct which comprise heights of similar nature and stature.

Increased heights allow for flexibility for future end users and high volumes of storage; thereby, improving the operational efficiencies able to be achieved on-site. Additionally, the height and scale for future built form is further articulated within the comprehensive Visual Impact Assessment prepared Roberts Day (2020). The Visual Impact Assessment is located within **Appendix 3 & 4** of this Modification Application.

The proposed modifications involve the increase in the maximum height of buildings to be able to be achieved across the Site. The proposed increase in height is not anticipated to result in adverse visual impacts or view disruption, as confirmed by Roberts Day with the Visual Impact Assessment prepared (refer to **Appendix 3 & 4**). It is noted, that the proposed maximum building heights would respond to and be further complemented by the height positioned within an area zoned for such permissible industrial-related purposes. Therefore, as a result of the proposed modifications, there would be no undue impacts, with regard to visual amenity or view loss.

As a result of future built form, the Subject Site would be visually treated and suitably screened by both existing and proposed landscaping along the western boundary traversing the Georges River tributary, along with dispersed landscape planning proposed on the Subject Site, throughout the designated landscape setbacks and throughout the proposed car parking and hardstand areas, which further ameliorates the potential impacts with respect to the urban heat island effect.

Roberts Day (2020) note, that the closest residential receivers in close proximity to the Subject Site are situated to the west of the Site within Casula. Accordingly, the potential visibility of the proposal in accordance with adjoining residential properties factors in the following parameters:

- Orientation and proximity of residential receivers;
- Land elevation;
- Existing vegetation / trees; and
- Future surrounding industrial warehouses.

The proposed maximum building height for future built form across selected portions of the Site is considered consistent with the future end user requirements for modernised industrial warehousing, encapsulating a highly cost beneficial and operationally efficient outcome. The combination experienced with respect to both market and tenant demand has significantly increased due to the lack of industrial land release and exponential land value increases, for which requires end users to reach new attainable development standards, via means of verticality to secure an ideal planning outcome. Accordingly, the proposal is considered to be of an appropriate scale and character, having regard to the desired outcome for the locality, for which the Subject Site is centralised within the MPW site, whereby the future built form of the wider MPW site would provide for a softer and improved transitional development, whilst not posing any adverse visual impacts on nearby sensitive visual receivers.

The application of various tones and cladding in future built form would seek to alleviate the bulk and scale of the built form, making a positive contribution to the streetscape and local character. The design of individual building components within both Warehouse and Distribution Facilities (SSD 7709 MOD 1) would encapsulate high commercial and industrial standards by virtue of various configurations and colours being applied throughout the Site, which responds to the potential industrial character of the wider Moorebank Intermodal Precinct, as well as the intended industrial character throughout the wider Liverpool LGA.

The colours, materials and finishes have been selected to consider the surrounding environment and orientation. External walls would consist of various tones to alleviate the bulk and scale of the built form – contributing to the surrounding streetscape of the area, including surrounding industrial zoned land. High quality finishes will be applied to the office components to provide a striking break in the bulk of

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the warehouse buildings.

Furthermore, the varied colour tones utilised have been chosen to help site the proposed building's more comfortably into the surrounding context. To do so, a varied colour palette would be typically utilised in future built form on the four (4) building facades of each Warehouse and Distribution Facility (SSD 7709 MOD 1). Accordingly, this colour scheme assists in making the buildings more recessive into the skyline and is considered consistent with regard to adjoining development throughout the wider Moorebank Intermodal Terminal and industrial development towards the north of the Site.

The overall design concept of the proposed Warehouse and Distribution Facilities (SSD 7709 MOD 1), focuses on a vision to provide quality functional building design solutions, that respond to the Site and wider surroundings. Accordingly, the design is more flexible in its environment and its form and matches with the end user's operational needs and standards. It also sets a new industrial standard of amenity for workers and visitors, as well as potentially impacted residential receivers, which is considered well in advance of the current nature of industrial development practices and standards.

*(c) to ensure buildings and public areas continue to receive satisfactory exposure to the sky and sunlight,*

The future built form on the Subject Site, particularly the public domain, would be architecturally treated and orientated to maximise suitable sunlight opportunity where possible. As a result of the proposed modifications sought and any future built form proposed across the Site, landscaping would be provided where considered necessary, including a combination of exotic and native flora species, creating an activated and welcoming aesthetic to the Subject Site, particularly the public domain. Note, that this would be imperative for any future built form which includes provisions for high bay warehousing, that would attain heights up to and including the maximum building height proposed under this Clause 4.6 Variation for a maximum of 45 m.

Landscaping provisions for future built form, should include additional landscaping throughout car parking areas, which would have beneficial social impacts for workers and visitors accessing the Site; and assist in regulating the Site's microclimate throughout the warmer months during Summer, which would ensure the potential impacts of the Urban Heat Island Effect have been considered. Notwithstanding, it is important to note, that the Subject Site is zoned IN1 General Industrial, for which it is surrounding by existing (and future) industrial developments, that exhibit similar public domain qualities.

*(d) to nominate heights that will provide an appropriate transition in built form and land use intensity.*

The intent of the proposed modifications is to contribute to the existing industrial character experienced within the IN1 General Industrial zone within the immediate vicinity of the Subject Site in a complementary manner, consistent with the LLEP2008 and the *Liverpool Development Control Plan 2008* (LDPC2008).

The urban design approach for the Site has evolved in a considerate relationship to adjoining low density residential typologies adjoining George River to the west, as well as low density residential typologies adjoining Moorebank Precinct East toward the east of the Subject Site (Moorebank Precinct West). This is to ensure that these receiver's current and future amenity would not be compromised by any future built form across the Site.

With its overall site configuration, a well resolved built form potential and future potential public realm benefits, the proposed modifications to the Subject Site would create a high quality built form potential able to be established, which is complementary to the street character on the Moorebank Avenue street frontage, as well as being a quality contribution to the urban built form of the surrounding area,



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comprising a versatile mix of transitional industrial (north and east) development surrounding the Site. Future built form should include generous landscaping and peripheral amenities to help activate the street frontage, for which the height of buildings can achieve a suitable fit with the existing public realm and surrounding area, with positive economic, social and environmental benefits for the immediate locality and wider community.

Additionally, the increase in building heights is proposed in response to the operational requirements of the future tenants involved with respect to the future built form of the Subject Site. Accordingly, the maximum building height proposed is considered highly appropriate for the Site and its context. Notwithstanding, the height proposed is representative of market needs and demands for modernised industrial warehousing, logistics, and industrial facilities (including the potential for high bay warehousing) alike. It is noted, that the average industry standard, based on fire engineered and BCA compliant solutions, based on increased ridge heights, which accommodate market demands quality space with inbuilt provisioning for expansion to suit long term tenant occupation, is approximately 13.7 m; however, there has been a shift in the paradigm with regard to standardised industrial development due to a range of market drivers including land availability and exponential economic value of land.

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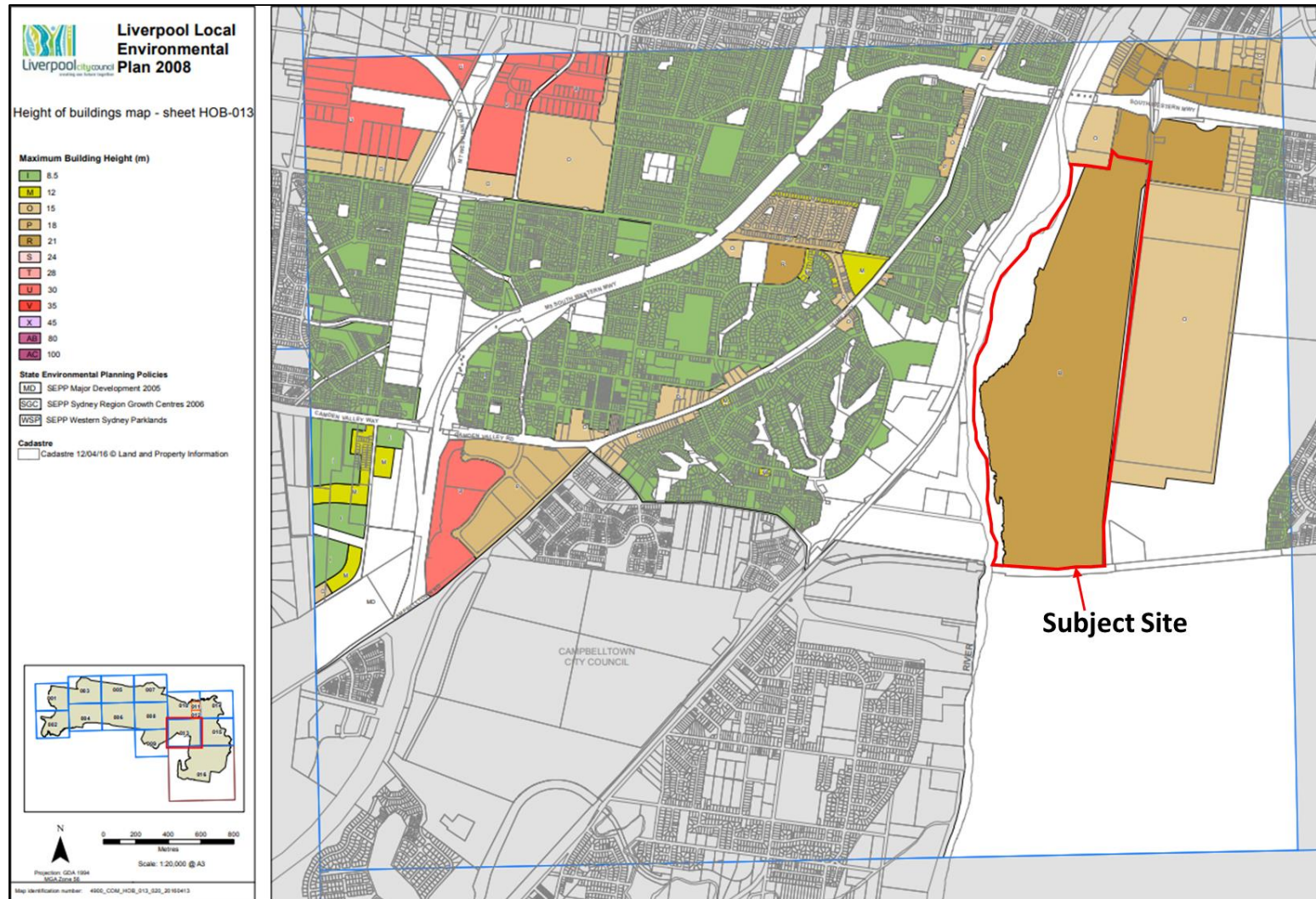


Figure 1 Maximum Building Height of Subject Site and Surrounding Area under *Liverpool Local Environmental Plan 2008* (Source: NSW Legislation, 2020)

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### 4.2 OBJECTIVES OF THE ZONE

The Subject Site is zoned IN1 General Industrial under LLEP2008, which the proposed modifications are considered consistent with, regarding the Development Consent provided with respect to SSD 5066. The proposed modifications are consistent with the IN1 General Industrial zone objectives, in that:

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

The proposed modification would support the Proposed Development approved under SSD 5066, with respect to the Concept Proposal and Early Works for an Intermodal Facility on the Site, comprising MPW in accordance with the wider Moorebank Logistics Park. MPW (combined with MPE) will provide significant employment-generating opportunities to the immediate community and wider locality within the Liverpool LGA during the construction and operational phases of existing and future development across the Site. This would further contribute to the viable economic return on the local and regional economies, both existing and future developments could offer.

It is important to note, that if the maximum building height proposed is not able to be achieved, an alternate site would have to be chosen; thereby, forgoing new employment opportunities on the Site. Additionally, the contravention in height is also a tenant-specific requirement, for which it is noted as an emerging trend in industrial-related developments that require increased building heights to ultimately improve the operational efficiencies of the end user involved.

The maximum building height established on sites across NSW and the wider Sydney Metropolitan Area are considered to be a major factor driving employment lands. Should these heights not be able to be achieved, not only will the specific LGA suffer, tenants will begin sourcing employment lands in other more affordable states, thereby compromising and sterilising development and built form potential, which would be considered State-of-the-Art and in line with market demand and operational needs and requirements.

Accordingly, the proposed modifications would facilitate and support future built form across the Site, which would be considered compatible with the Site's surrounding local context within the Moorebank Logistics Park. As mentioned above, an alternative, hypothetical design for future built form compliant with Clause 4.3 would:

- Not contribute towards meeting the demand for employment-generating opportunities within the Liverpool Local Government Area (LGA), as identified within *A Metropolis of Three Cities* and the *Western City District Plan*, by potentially resulting in a reduction in available building footprint and consequently future industrial-related land uses on the Site, that support the Moorebank Intermodal Terminal;
- Threaten the commercial viability of the Subject Site for future built form, by reducing the overall achievable maximum height across the Site, by which would impact on end user operational requirements;
- Not be able to achieve a height, that is being driven due to securing economic employment lands for a secured end user;
- Create fewer full-time equivalent jobs during the construction and operational phases of development due to a decrease in footprint and potential disinterest in the Site due to preferred end user ceiling heights not being able to be achieved; and
- Fail to meet the Objects of the *Environmental Planning and Assessment Act 1979* (EP&A Act) by making orderly and economic use of the Site for its full planning potential.

Ultimately, as the warehousing and logistics industry moves towards more innovative models of delivery, opportunities for advanced technologies and automations within the sector are growing. Providing slightly increased building heights at the Site would improve the future prospects of the Site in terms of

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being able to respond to these industry changes and therefore accommodates a wide range of industrial and warehousing land uses.

By providing a range of industrial-related land uses with respect to warehousing and distribution, and freight and logistics potential for future built form across the Site, the proposed modifications would positively contribute to the desired industrial character intended for the Subject Site and the surrounding area, whilst creating positive economic and social impacts, through increased provisions for future employment-generating opportunities, which aligns with the zone objective listed below.

- *To encourage employment opportunities.*

The proposed modifications would facilitate and support the future construction and operation (SSD 7709 MOD 1) of an employment-generating development, thereby allowing the Site to meet the strategic land use objectives of the IN1 General Industrial zone within the Moorebank Logistics Park. An alternative, hypothetical design compliant with Clause 4.3 would create fewer full-time equivalent jobs during the construction and operational phases of development due to a decrease in footprint and potential disinterest in the site due to preferred end-user ceiling heights not being able to be achieved.

It is also important to note, that if the building heights proposed are not able to be achieved, an alternate site would have to be chosen, thereby forgoing new employment opportunities on the Site. Additionally, from a commercial viability standpoint, the contravention in height is also a tenant-specific requirement, which is driving increased verticality in the industrial sector, which is noted to secure an increased commitment of the Site, prior to on-site commencement, ultimately driving employment lands throughout the wider Western Sydney Region.

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

SSD 5066 was approved and positioned on land that is designated for industrial and freight logistics purposes, and thus would ensure that support is met for the desired outlay of the Site, as well as the wider locality. Consideration has also been given to surrounding land uses, for which the proposed modifications are further complemented by, including existing industrial developments towards the northern and eastern boundaries. Future built form is expected to incorporate and implement any mitigation measures established under SSD 5066, as well as any project-specific measures required to be implemented to minimise any adverse impacts from occurring on nearby sensitive residential and environmental receivers.

The Subject Site is located within the Moorebank Intermodal Precinct, which comprises a versatile range of industrial land uses pursuant to its IN1 General Industrial and E3 Environmental Management zoning. Accordingly, the Site context may be described as part of an employment-generating industrial precinct (Moorebank Intermodal Precinct), which the proposed Warehouse and Distribution Facilities would positively contribute to. Given the existing industrial character of the Site's surrounds, no such land use conflict is expected to occur.

There are a range of land uses which surround the Subject Site, all of which have been given due consideration in the design of the Subject Site. Of particular relevance, the following land uses are noted within the vicinity of the Site:

- **North** – comprises existing industrial-related developments of similar nature and scale, for which provide for transitional, orderly and sequential development throughout land designated for industrial-related purposes and employment generation.
- **South** – comprises of SP2 Infrastructure zoned land, formulating part of the wider Heathcote National Park, which includes the Holsworthy Barracks. Further south and southwest includes R2 Low Density Residential zoned land with the suburb of Glenfield. Additionally, immediately south of the Subject Site includes IN1 General Industrial zoned land identified as MPW Stage 3,

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for which would be subject to future planning approval by SIMTA. Once approval has been provided for this portion of MPW, the built form will attribute to softening the bulk and scale of the proposed modifications, by providing a transitional array of development, comprising both orderly and sequential development across the Site.

- **East** – towards the east, there is a wider extension of MPW, which facilitates forming the remainder of the Moorebank Intermodal Terminal identified as MPE. Further east comprises R2 Low Density Residential and R3 Medium Density Residential zoned land; however, views with respect to the proposal would be appropriately screened by existing industrial-related developments throughout MPE.
- **West** – Residential development comprising a combination of both R2 Low Density Residential and R3 Medium Density Residential zoned land is located to the west of the Subject Site, which is sufficiently separated from the Subject Site, due to the Georges River tributary meandering the Site, as well as the elevated topographical nature of the residential receivers. Whilst Roberts Day note, that some views are afforded towards the Site (Viewpoint 4 within **Appendix 3 & 4**), the overall visual impacts are considered negligible given the wider horizon views encountered by these receivers.

Roberts Day (2020) conclude that the significance of impact on the landscape is low / negligible in accordance with the matrix information utilised within Visual Assessment Report (refer to **Appendix 3 & 4**). This is primarily due to the existing and future planned industrial character of the surrounding areas; the future character of the intermodal precinct (including associated warehousing and distribution facilities); and introduction of associated landscaping provisions, including native trees / landscape buffers compatible with existing vegetative and floristic characteristics and compositions surrounding the Subject Site.

Overall, the visual impacts assessed from multiple viewpoints surrounding the Site result in impacts considered to be in the none / negligible to moderate ranges. Accordingly, from the visual assessment and analysis undertaken by Roberts Day, the built form proposed would be visible from the following locations:

- Carroll Park (Viewpoint 4).
- Residential properties throughout Casula adjoining the rail network, whereby properties are:
  - Located adjoining Carroll Park; and
  - Facing Casula Station.
- Residential towers in the Liverpool Town Centre.

Notwithstanding, the wider Casula neighbourhood has a relatively compact configuration, which exhibit limited open views towards the Site. Accordingly, the proposal will be screened by Leacock Regional Park in the southern areas, Similarly, residential properties dispersed throughout Wattle Grove will not be impacted by the proposal.

In terms of the Site's perception from the public domain, the main vantage point of the Site is over 500-900 m to the west of the Subject Site near Carroll Park in Casula. With respect to immediate public domain surroundings the proposed Warehouse and Distribution Facilities would be visible from Moorebank Avenue and the Western Ring Road, which traverse the Subject Site. It is therefore noted, that the design of the proposed Warehouse and Distribution Facilities responds suitable to the surrounding context, with due consideration taken with respect to existing and future planned industrial development, as well as surrounding residential receivers. Proposed materials, design innovation, architectural articulation and deep soil landscaping, remodels the visual amenity of the Site.

Additionally, existing views of residential dwellings around Carroll Park will be visually impacted by future developments accruing heights of the maximum 21 m able to be attained in accordance with the LLEP2008 Development Standard. The analysis undertaken by Roberts Day indicates that the proposed High Bay components will constitute only a minor additional built form component, with respect to the

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future industrial character and built form of the wider Moorebank Intermodal Precinct. Coupled with associated proposed landscape planting and façade design, this will effectively reduce and soften the height impacts on the surrounding receivers.

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

The proposed modifications would continue to ensure that existing and future built form can support and provide employment-generation opportunities in both the construction and operational phases, further advocating the continued support of industrial land and consistency with respect to the IN1 General Industrial zone objectives. Accordingly, the proposed modifications would ensure the continued use of the Site for employment purposes, accommodating a range of potential businesses.

- *To particularly encourage research and development industries by prohibiting land uses that are typically unsightly or unpleasant.*

The bulk and scale of future warehouse buildings will be broken up by the variety in the materials and colour palette, protrusions and visual interest of the office components and landscaped setbacks applied (particularly on the Western Ring Road). The appearance of the future warehouse buildings will be consistent with the industrial character of the area and will not be unsightly or unpleasant.

The proposed modifications, with respect to future built form can be progressed without significant visual or overshadowing impacts to surrounding sensitive land uses. The future built form proposed (SSD 7709 MOD 1) would be designed so as to have a suitable façade interfacing and appropriate colours as noted above, so as to achieve a suitable level of urban design.

Overall, it is considered that the proposed modifications would not detract from the amenity of surrounding land users in an unsightly or unpleasant manner. Coupled with a conducive and aesthetically pleasing architectural and landscaped design; and implementation of recommended mitigation measures (SSD 7709 MOD 1), the proposed modifications would allow for future built form to achieve a modernised, contemporary industrial built form development within an industrial zone that would set a desirable precedent for future industrial developments within the wider locality.

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

Whilst the IN1 General Industrial zone allows for a range of non-industrial land uses, the proposed modifications have been designed for the purposes of being consistent with existing industrial-related development, comprising warehousing, freight logistics and industrial development. The proposed modifications would continue to provide employment-generating opportunities to the immediate community, as well as the wider locality. It is noted, that the Subject Site has the ability to include development for the purposes of a café, i.e. food and drink premises, which would be able to be utilised by workers and visitors on-site, as well as being accessible to members of the public with the immediate vicinity.

### **4.3 ESTABLISHING IF THE DEVELOPMENT STANDARD IS UNREASONABLE OR NECESSARY**

#### **4.3.1 Height of Buildings**

When considering whether a Development Standard is appropriate and / or necessary, one must take into account the nature of the proposed variation; the Site context; and the design of the Proposed Development.

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Compliance with the Development Standard would be unreasonable and unnecessary given that the proposed modifications sought would allow for future development to maintain consistency with increased market demand and tenant-specific operational requirements, with regard to maximum heights able to be achieved for industrial warehousing and industrial facilities, which include (but are not limited to) high bay warehousing. It is noted, that existing industrial developments approved are generally consistent with the height permitted under Clause 4.3 of LLEP2008 with regard to the Subject Site.

Accordingly, the non-compliance relates to the exceedance in height proposed, that exceeds the standard imposed under LLEP2008. Furthermore, as demonstrated in **Section 4.1** above, the proposed modifications are considered consistent with the objectives of Clause 4.3 pursuant to the LLEP2008.

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

- It is noted, that the density and scale of the future built form would remain generally consistent with the existing industrial building surrounding the Site; however, the provisions to increase the building height, would allow the MPW site to remain competitive with increased market demand to provide available opportunity for unconstrained building height potential to cater for a range of operational requirements. Additionally, the proposed modifications would effectively account for and integrate the streetscape and character of the area into the concept proposal, for which would be incorporated into any future built form application.
- By providing a transition between the existing and industrial buildings in close proximity to the Subject Site, the built form relationship, would remain generally consistent with the existing situation currently experienced with the IN1 General Industrial zone.
- The heights proposed are considered to be representative of market needs and demands for modernised industrial warehouse, freight logistics and industrial facilities, for which increased heights are required to be able to meet the operational needs and requirements of the end users involved, which assists in improving operational efficiencies and reducing the amount of building footprint required for developments.
- The proposed modifications would respond to the existing industrial developments on the northern and eastern interfaces. There are no sensitive receptors in close proximity to the Subject Site; however, consideration of solar access, privacy, overshadowing and view loss has been given particular attention with respect to the R2 Low Density Residential zone along the western interface of the Subject Site, with regard to any future built form proposed, that would have the potential to impact any sensitive receivers.
- The proposed modifications are considered a key attribute in creating an internal building environment for any future end user on the Site, that would ensure the delivery of space and amenity that is required to support the operations of the end users involved; thereby, enabling the productive use of the Site.
- The built form character of the surrounding industrial development is generally consistent with the potential built form that would be able to be undertaken pursuant to Development Consent for the proposed modifications being sought, for which it is considered to respond to the local and regional context.

Notwithstanding, reducing the height to strictly meet the LLEP2008 Development Standard is considered unreasonable, as this would result in a less efficient use of the Site and require additional GFA, as well as being operationally unsound for future end users. Further, a reduced height may result in a building design that does not respond as well to the Site's prevailing topography, which the proposed heights to allow future built form have been so strategically based on, as well as the strategically incorporated

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engineered design, which includes suitable levels for the Site, through balanced cut and fill, which was approved under SSD 5066 and SSD 5066 MOD 1.

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

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

The variation to the Development Standard for building height (Clause 4.3) under LLEP208 is considered well-founded on the basis that:

- The proposed modifications are entirely consistent with the underlying objective(s) or purpose of the building height standard, as demonstrated in **Section 4.1**.
- The proposed modifications fully achieve the objectives of LLEP208 for the IN1 General Industrial zone, as described in **Section 4.2**.
- Compliance with the standard would be unreasonable and unnecessary for the reasons outlined in **Section 4.3**.
- The proposed modifications would integrate with both the local and regional context, specifically the IN1 General Industrial zone that surrounds the Subject Site. The relationship of the development as modified, with respect to height, would remain consistent due to the transition offered between the surrounding sites.
- Materials and finishes for future built form proposed would activate and provide a visual outcome that seamlessly integrates with the surrounding industrial character. Additionally, colour and material direction would be utilised (where possible) to blend with the varied architectural forms. Proposed ancillary offices would be recommended to integrate various volumetric shapes and materials, conducive to transparency of function and response to sustainable building practices.
- The proposed modifications would give rise to an employment-generating land use for future built form that is considered adaptable and responds accordingly to shifting economic conditions.
- The proposed modifications, particularly the proposed height would integrate with the local context, specifically the IN1 General Industrial zone that surrounds the Subject Site. The relationship of the proposed modifications, with respect to height, would remain consistent via the gradual transition offered between sites.
- Densely populated vegetation to the west offers additional landscape screening, which softens the industrial treatment of the Subject Site. Further, the additional height would not result in any significant adverse impacts on the amenity of the neighbouring industrial buildings in terms of overshadowing, privacy, outlook and amenity with regard to any future built form proposed.
- The exceedance of the Height Standard (by 24 m) would have minimal impact on the streetscape, on visual privacy and solar access of neighbouring development due to a strategically implemented architectural treatment, which integrates an aesthetically pleasing architectural landscape design, which offers suitable vibrant screening throughout the Site, via



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a careful selection of native and exotic tree, plant, shrubs and grass species to be strategically planted across the Site.

- The proposed modifications would support the productive economic use of the Site that is ideally located within an area zoned for such permissible industrial-related use, as well as being located within close proximity to major commercial centres and nearby transport infrastructure, such as rail and bus networks and the wider regional road network, providing enhanced connectivity to the wider Sydney Metropolitan Area.

For the reasons outlined above, it is considered that the proposed variation to the building height control under Clause 4.3 is entirely appropriate and can be clearly justified having regard to the matters listed within Clause 4.6 of LLEP2008.

### **4.5 PUBLIC INTEREST**

It is noted, that Subclause 4.6(4)(a)(ii) requires the Proposal (SSD 5066) to be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

**Sections 4.1 and 4.2** have already demonstrated how the proposed modifications are consistent with the objectives of Clause 4.3 and the IN1 General Industrial zone under LLEP2008. Accordingly, the proposed modifications are in the public interest, as it is consistent with the overarching height objectives. It would also contribute towards meeting the demand for employment opportunities within the Liverpool LGA, as identified within *A Metropolis of Three Cities* and the *Western City District Plan*. Specifically, the proposed modifications would be of social benefit to the immediate community groups and wider Liverpool LGA as it would revitalise an underutilised industrial zoned site, for which it would provide employment-generating opportunities during the construction and operational phases of development.

There are no significant public disadvantages which would result from the proposed modifications.

The proposed modifications are therefore considered to be justified on public interest grounds.

### **4.6 MATTERS OF STATE OR REGIONAL SIGNIFICANCE**

The proposed non-compliances with Clause 4.3 of LLEP2008 would not raise any matters of significance for State or Regional environmental planning. It would also not conflict with any State Environmental Planning Policies or Ministerial Directives under Section 9.1 of the EP&A Act.

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

- LLEP2008, Clause 4.3 Height of Buildings by 24 m / 114.29%.

This non-compliance is more than the 10% prescribed in the stipulated Planning Circular – PS 08-014.

Furthermore, by including the non-compliance with Clause 4.3 of LLEP2008, the proposed modifications would be more susceptible to being able to meet the objectives of the following State Government planning policies:

- *A Metropolis of Three Cities:*

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- By providing a greater height at the Site, the proposed modifications can respond to the Greater Sydney Commission’s vision and NSW Government’s aim of increasing the availability of employment opportunities in a range of industry sectors.
- *Western City District Plan:*
  - By providing a greater height at the Site, the proposed modifications can better respond to the Greater Sydney Commission’s vision for continued job growth and economic prosperity across the Western City District.

## 4.7 PUBLIC BENEFIT IN MAINTAINING THE STANDARD

Given that strict compliance with Clause 4.3 of LCLEP2009 would result in:

- Not contribute towards meeting the demand for employment-generating opportunities within the Liverpool Local Government Area (LGA), as identified within *A Metropolis of Three Cities* and the *Western City District Plan*, by potentially resulting in a reduction in available building footprint and consequently future industrial-related land uses on the Site, that support the Moorebank Intermodal Terminal;
- Threaten the commercial viability of the Subject Site for future built form, by reducing the overall achievable maximum height across the Site, by which would impact on end user operational requirements;
- Not be able to achieve a height, that is being driven due to securing economic employment lands for a secured end user;
- Create fewer full-time equivalent jobs during the construction and operational phases of development due to a decrease in footprint and potential disinterest in the Site due to preferred end user ceiling heights not being able to be achieved; and
- Fail to meet the Objects of the *Environmental Planning and Assessment Act 1979* (EP&A Act) by making orderly and economic use of the Site for its full planning potential.

As such, there is no genuine public benefit in maintaining this strict height of building control at the Subject Site.

## 4.8 OBJECTS OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

All planning determinations made under the EP&A Act are required to be made with regard to the Objectives of the Act in accordance with Section 1.3 of the EP&A Act. **Table 2** below assesses the proposed modifications against the Objects of the Act.

Table 2: Objects of the Act – EP&A Act	
Object	Proposed Development Compliance
The objects of this Act are as follows:	
(a) <i>to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State’s natural and other resources,</i>	The proposed modifications are considered to be in the public interest as it would contribute towards meeting the demand for increased employment opportunities within the Liverpool LGA, as identified in <i>A Metropolis of Three Cities</i> , and the <i>Western City District Plan</i> . Specifically, the proposed modifications would be of social benefit to the community situated within nearby community groups, as it would provide employment-generating opportunities for the immediate locality.
(b) <i>to facilitate ecologically sustainable development by integrating relevant economic, environmental and social</i>	The proposed modifications (including built form potential) have been assessed against the principles of Ecologically Sustainable Development as set out in

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<p><i>considerations in decision-making about environmental planning and assessment,</i></p>	<p>the <i>Protection of the Environment Operations (General) Regulation 2009</i> as follows.</p> <p>The proposed modifications would not create the risk of serious or irreversible damage to the environment.</p> <p>Ultimately, the proposed modifications would not create any threats of serious or irreversible environmental damage which would require further scientific study to fully ascertain.</p> <p>The proposed modifications would not impact on the conservation of biological diversity or the ecological integrity of the locality.</p> <p>The proposed modifications would not require an Environment Protection Licence or other mechanism to compensate for any pollution generating activities at the Site.</p>
<p><i>(c) to promote the orderly and economic use and development of land,</i></p>	<p>The proposed modifications would make use of a site that is currently considered to be underdeveloped and underutilised, for which it would result in orderly and economically beneficial development, without resulting in any unacceptable economic, environmental or social impacts.</p>
<p><i>(d) to promote the delivery and maintenance of affordable housing,</i></p>	<p>Not relevant to the proposed modifications.</p>
<p><i>(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,</i></p>	<p>It is important to note, that several measures will be implemented to reduce impacts, where possible, such as appropriate pre-clearance protocols and a CEMP for any future built form. These include:</p> <ul style="list-style-type: none"> <li>▪ Pre-Clearance Protocols: <ul style="list-style-type: none"> <li>○ On-site supervision of habitat tree felling and relocation of fauna; and,</li> <li>○ Soft felling operations.</li> </ul> </li> <li>▪ Vegetation Management Plan (VMP)</li> <li>▪ CEMP</li> </ul> <p>Excluding the requirement for a CEMP, no additional adaptive management measures are proposed.</p> <p>It is noted, that all potential ecological impacts have been previously considered pursuant to SSD 5066 and SSD 5066 MOD 1.</p>
<p><i>(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),</i></p>	<p>The Site has been previously disturbed and is therefore subject to significant levels of disturbance. The potential for the Proposed Development to uncover any unrecorded items of Aboriginal Cultural Heritage significance is therefore considered to be low. In the unlikely event that potential Aboriginal Cultural Heritage items or human remains are uncovered at the Site, works in the vicinity of the find</p>

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	would cease, and the NSW OEH and NSW Police would be contacted as appropriate.
<i>(g) to promote good design and amenity of the built environment,</i>	<b>Section 4.1</b> satisfactorily addresses how the proposed modifications responds to the character of the locality in terms of urban design.
<i>(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,</i>	The proposed modifications can be undertaken and maintained without health and safety risks to future tenants.
<i>(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,</i>	The proposed modifications represent a Modification Application to SSD 5066, for which it will be assessed and determined by the NSW DPIE.
<i>(j) to provide increased opportunity for community participation in environmental planning and assessment.</i>	The Modification Application for the proposed modifications would be subject to the relevant notification requirements.

### 4.9 SUMMARY

For the reasons outlined above, it is considered that the objections to Clause 4.3 of the LLEP2008 are well-founded in this instance and the granting of Clause 4.6 Variations to these Development Standards are appropriate in the circumstances. Furthermore, the objection is considered to be well-founded for the following reasons, as outlined within Clause 4.6 of LCLEP2009:

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

It is furthermore submitted, that:

- Strict compliance with the Development Standard would hinder the achievement of the Objects of the Act in accordance with Section 1.3 of the EP&A Act (refer to **Table 2** above);
- The proposed modifications would contribute toward employment contribution within the Liverpool LGA and wider Sydney Metropolitan Area, as identified within *A Metropolis of Three Cities* and the *Western City District Plan*; and
- No unreasonable impacts are associated with the proposed modifications.

Overall, it is considered that the proposed Clause 4.6 Variation to Clause 4.3 Height of Buildings pursuant to LLEP2008 is entirely appropriate and can be clearly justified having regard to the matters listed with Clause 4.6 of LLEP2008.

## CLAUSE 4.6 VARIATION – HEIGHT OF BUILDINGS (CLAUSE 4.3)

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### PART E CONCLUSION

It is requested, that the NSW DPIE (and Council) exercise their discretion and find, that this Clause 4.6 Variation adequately addresses the matters required to be demonstrated by Subclauses 4.6(3) of the LCLEP2009 (refer to **Section 2.1**).

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

- Not contribute towards meeting the demand for employment-generating opportunities within the Liverpool Local Government Area (LGA), as identified within *A Metropolis of Three Cities* and the *Western City District Plan*, by potentially resulting in a reduction in available building footprint and consequently future industrial-related land uses on the Site, that support the Moorebank Intermodal Terminal;
- Threaten the commercial viability of the Subject Site for future built form, by reducing the overall achievable maximum height across the Site, by which would impact on end user operational requirements;
- Not be able to achieve a height, that is being driven due to securing economic employment lands for a secured end user;
- Create fewer full-time equivalent jobs during the construction and operational phases of development due to a decrease in footprint and potential disinterest in the Site due to preferred end user ceiling heights not being able to be achieved; and
- Fail to meet the Objects of the *Environmental Planning and Assessment Act 1979* (EP&A Act) by making orderly and economic use of the Site for its full planning potential.

It is requested, that the NSW DPIE (and Council) supports the proposed variation to Clause 4.3 Height of Buildings under LLEP2008 for the following reasons:

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

Given the justification provided above, this Clause 4.6 Variation under LLEP2008 is well founded and should be favorably considered by the determining authority. As each of the relevant considerations are satisfied for the reasons outlined elsewhere in this Report, concurrence can be assumed under Clause 4.6(5).