

1.0 Request to Vary a Development Standard

Clause 4.6 of the *State Environmental Planning Policy (Sydney Region Growth Centres) 2006* (SEPP) allows a consent authority to grant consent for development even though the development contravenes a development standard imposed by the SEPP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

1.1 Development Standard to be Varied

The development standard sought to be varied as part of this application is Clause 4.3 of the SEPP relating to the *height of buildings*. Clause 4.3 states that the maximum height of a building on any land is not to exceed the maximum height shown on the Height of Buildings Map, which for the Site is a maximum height of 16m (refer to **Figure 1**).

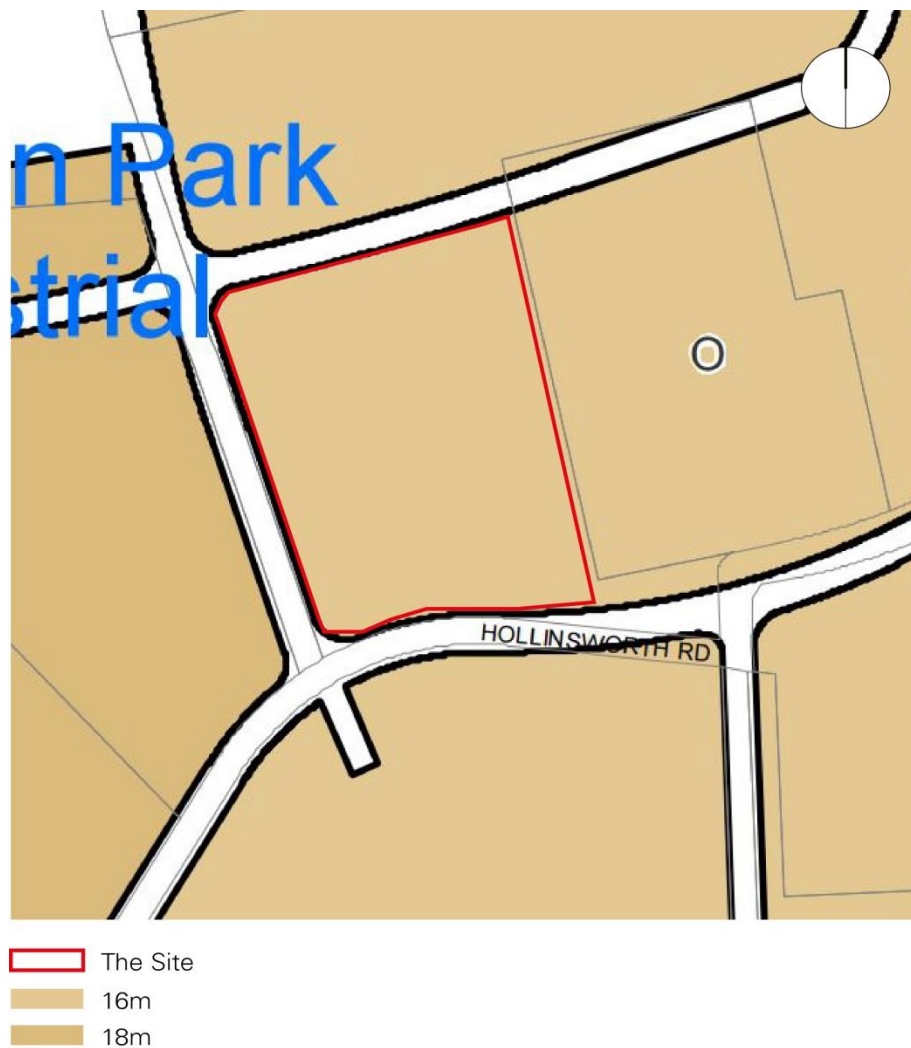


Figure 1 – Maximum height of building control
Source: SEPP (Sydney Region Growth Centres) 2006

1.2 Justification for Contravention of the Development Standard

1.2.1 Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

When considering whether a development standard is appropriate and/or necessary, it is important to take into account the Site context, the design of the proposed development and the nature of the proposed variation. Each of these matters is discussed below:

Site Context

The Site is located within Sydney Business Park development within the Marsden Park Industrial Precinct which is currently undergoing rapid change. Much of the precinct is cleared and ready for development with a range of industrial and business uses being developed. Large scale warehouse buildings are the dominant built form in line with the purpose of the Sydney Business Park as a purpose built precinct to accommodate large scale business. The business park is also intersected by electricity transmission towers and power lines which are 35 metres high and pass directly over the proposal site.

Figure 2 shows a photographic montage of the view from the corner of Richmond Road and Hollinsworth Road, the typical view for the public entering the Business Park to access bulky good retailers. **Figure 3** shows the nature of development in the local area and identifies the bulky goods precinct which will be the primary destination for the general public who will shop at Masters, Ikea or Bunnings. Outside of this area the Sydney Business Park will predominantly feature industrial uses.

As the montage shows the proposed height of the development does not cause a significant impact in terms of bulk and scale when compared to the intersection of Richmond Road and Hollinsworth Road. Once inside the business park, and beyond the bulky goods precinct, the height of the proposed development would not be of concern for the following reasons:

- The site is an industrial use within an industrial zone.
- The site is a significant distance to non-industrial use land.
- The site is in close proximity to future heavy (or general industry land immediately to the west.
- The general public will not enter the wider business park unless travelling to an industrial development.
- The proposed development is close to transmission towers which are of similar height.

The closest residential land uses include a house approximately 250m south of the site, and a caravan park approximately 480m southwest of the site. These properties have now been zoned for industrial land uses. No residential zoned development is located in proximity of the Site, with the nearest being 800m to the south of the Site. As such, this industrial area is not considered to be sensitive to change. The proposed variation to the height control, therefore, will not unduly impact the amenity of surrounding developments or the aesthetics of the locality.



Figure 2 – Photo montage view from corner of Richmond Road and Hollinsworth Road
Source: Beca



-  The Site
-  View Point
-  Bulky Goods Precinct
-  Light Industrial Precinct
-  Heavy Industry Precinct

Figure 3 – Aerial context map
Source: JBA and Nearmap

Design of the Proposed Development

The proposed development has been subject to detailed design process which has considered many layout options. The final design represents the best outcome which has balanced operational need and visual impact. The proposal has a high quality building facade which has placed the highest portion of the building set back as far as possible from Hollinsworth Road at the centre of the development. The design is further articulated to minimise bulk and scale by providing a stepped built frontage at Hollinsworth Road with a colour scheme that further reduces scale. A photo montage of the proposal as viewed from Hollinsworth Road is shown in **Figure 4**.

Nature of the Variation

The main warehouse building is generally within the 16 metres height limit. The point where the development exceeds the height limit is the roof structure above the top of the building eave. The proposed development will feature state of the art automated storage and delivery machinery. The high bay roof structure will accommodate storage area and is necessary for the development to achieve an appropriate scale. The high bay is located in the southern part of the site, with the top of the high bay at 34.8m.

The extent of this non-compliance is illustrated in **Figure 5**.



Figure 4 – Photo montage of the proposal from the south east corner of the site
 Source: Beca

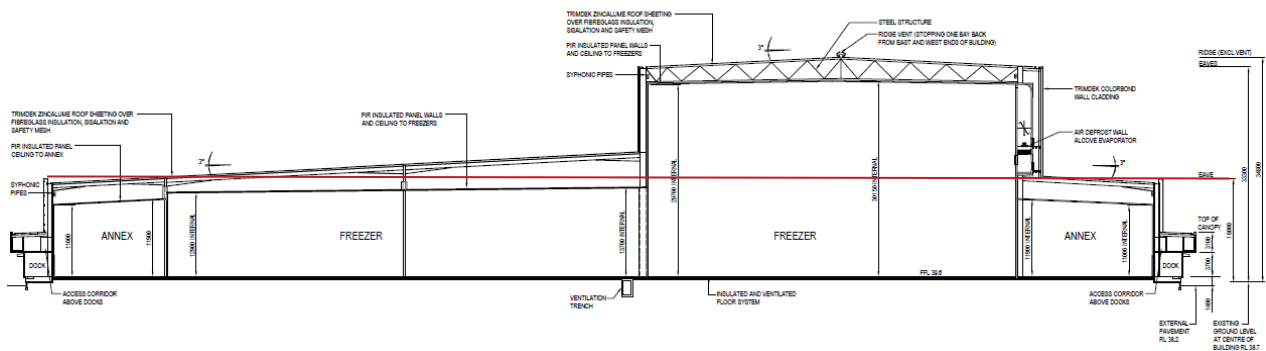


Figure 5 – West elevation of the proposal (SEPP Height limit shown in red)
 Source: Beca and JBA

Non-Compliance

Clause 4.6(3) of the SEPP states that:

1. *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.*

In the decision of *Wehbe v Pittwater Council* [2007] NSW LEC 827, which provides case law relating to SEPP 1 Objections, Chief Justice Preston expressed the view that there are five different ways in which a variation to a development standard might be shown as unreasonable or unnecessary. Of particular relevance in this instance is 'way 1' that a development standard might be shown as unreasonable or unnecessary if 'the objectives of the standard are achieved notwithstanding non-compliance with the standard'.

The objectives of the Clause 4.3 building height development standard of SEPP are:

- a) *to establish the maximum height of buildings on land within the Marsden Park Industrial Precinct,*
- b) *to provide for a range of building heights in appropriate locations that provide a high quality urban form,*
- c) *to provide appropriate height controls for commercial, industrial and residential development,*
- d) *to establish parameters for and promote a high quality built form,*
- e) *to protect the amenity of adjoining development and land in terms of solar access to buildings and open space.*

Table 1 demonstrates that despite the non-compliance with the numerical height standard, the proposed development will still achieve the overarching objectives of Clause 4.3 of the SEPP.

Table 1 – Assessment against relevant SEPP objectives

Objective	Proposal
a) to establish the maximum height of buildings on land within the Marsden Park Industrial Precinct,	This request is to vary the maximum height.
b) to provide for a range of building heights in appropriate locations that provide a high quality urban form,	As discussed above, the site is located within an area specially designed to cater for industrial and large scale business. Areas of the Sydney Business Park frequented by the public are located an appropriate distance to ensure the height will not cause significant impact. The proposed development has been carefully designed to provide a high quality built form which has located the highest portion of the building to reduce the visual bulk and scale of the building. The height of the building is therefore not of concern as the surrounding land uses are compatible, being industrial and future heavy (or general) industrial, reflecting the appropriate location of the proposed development.

Objective	Proposal
c) to provide appropriate height controls for commercial, industrial and residential development,	The main warehouse building is generally within the 16 metres height limit. The development exceeds the height limit due to the roof structure above the top of the building eave. The high bay roof structure will accommodate storage area and is necessary for the development to achieve an appropriate scale. It is considered that the height exceedance is appropriate for the industrial development within an industrial estate.
d) to establish parameters for and promote a high quality built form,	The proposed development has been subject to detailed design process which has sought to reduce the visual impact of the development in response to the height limit exceedance. The design of the building features a high quality facade which is articulated to minimise bulk and scale by providing a stepped built frontage at Hollinsworth Road with a colour scheme that further reduces scale
e) to protect the amenity of adjoining development and land in terms of solar access to buildings and open space.	The building is located in a purpose built industrial park which is designed to cater for large scale development. The proposal is surrounded by light industrial and future heavy (or general) industrial land which are less sensitive to amenity impacts from reduced solar access. Regardless, the development has appropriate setbacks to ensure appropriate solar access to adjacent buildings and open space.

1.2.2 There are sufficient environmental planning grounds to justify contravening the development standard

The proposed development will feature state of the art automated storage and retrieval system, which needs to be accommodated in a high-bay building to minimise the building footprint and optimise stacker crane utilisation and cycle times. Reducing the building footprint to approximately 40% of the equivalent low-bay alternative reduces the capital cost of the building and land components, which are necessary offsets to the high capital cost premium of automation. The inclusion of the high-bay section increases the total storage that can be accommodated on this high value site, which is an important factor for the economic viability of the site. The inclusion of the high-bay section therefore increases the total storage that can be accommodated on this high value site, which is necessary for the development to achieve an efficient scale, and to ensure the orderly and economic use of the site.

There are considered to be sufficient environmental planning grounds to justify contravention of the building height development standard, these being:

- It promotes the orderly and economic use of land by providing cleared industrial land a new industrial purpose within the Marsden Park Industrial area.
- The development is suitable for the size and dimension of the site and its industrial setting.
- The proposed variation is not substantially out of character with the area given the precinct is purpose built for large scale development.
- The proposed development is consistent with the objectives of the SEPP height control as described above.
- The proposed variation will not adversely impact the amenity of neighbouring properties or heritage items in the locality.

1.3 Secretary's Concurrence

Under clause 4.6(5) of the Growth Centres SEPP the Secretary's concurrence is required. The following section provides a response to those matters sets out in clause 4.6(5) which must be considered by the Secretary:

Whether contravention of the development standard raises any matter of significance for State or regional environmental planning.

The variation to the building height development standard of the SEPP will not raise any matter which could be deemed to have State or Regional significance. The variance of this development standard will not contravene any overarching State or Regional objectives or standards, or have any effect outside the site's immediate area.

The public benefit of maintaining the development standard.

Maintaining the development standard would not result in any public benefit in this situation. If the proposed development were to comply with the maximum building height control, the proposed cold storage facility could not be accommodated on the Site, as the high bay is an essential operational requirement. In order to develop the currently vacant Site for a new light industrial use, which is consistent with desired land uses of the Marsden Park area, this minor height non-compliance is necessary.

Any other matters required to be taken into consideration by the Secretary before granting concurrence.

There are no other matters to be taken into consideration by the Secretary before granting concurrence.

1.4 Summary

This section demonstrates that the consent authority can be satisfied that:

- The non-compliance with the building height development standard does not represent an unreasonable variation and a significant proportion of the proposal will remain below the prescribed 16m height limit;
- Compliance with the development standard is unreasonable or unnecessary as the proposed cold storage warehouse could not be functionally and efficiently accommodated on the Site if this standard is enforced;
- The design solution represents an appropriate design outcome that does not adversely impact the amenity of neighbouring properties or the aesthetics of the streetscape; and
- There are sufficient environmental planning grounds to justify contravening the development standard as the building represents a high quality outcome, provides an appropriate response to its site-specific context and represents the economic and efficient use of land.

In light of the above, the proposed non-compliance regarding building height is considered acceptable and does not inhibit the ability of the consent authority to favourably consider the subject DA. It is therefore requested that the Minister for Planning, as the consent authority, grant development consent for the proposal even though it contravenes the maximum height of buildings development standard in the Growth Centres SEPP.