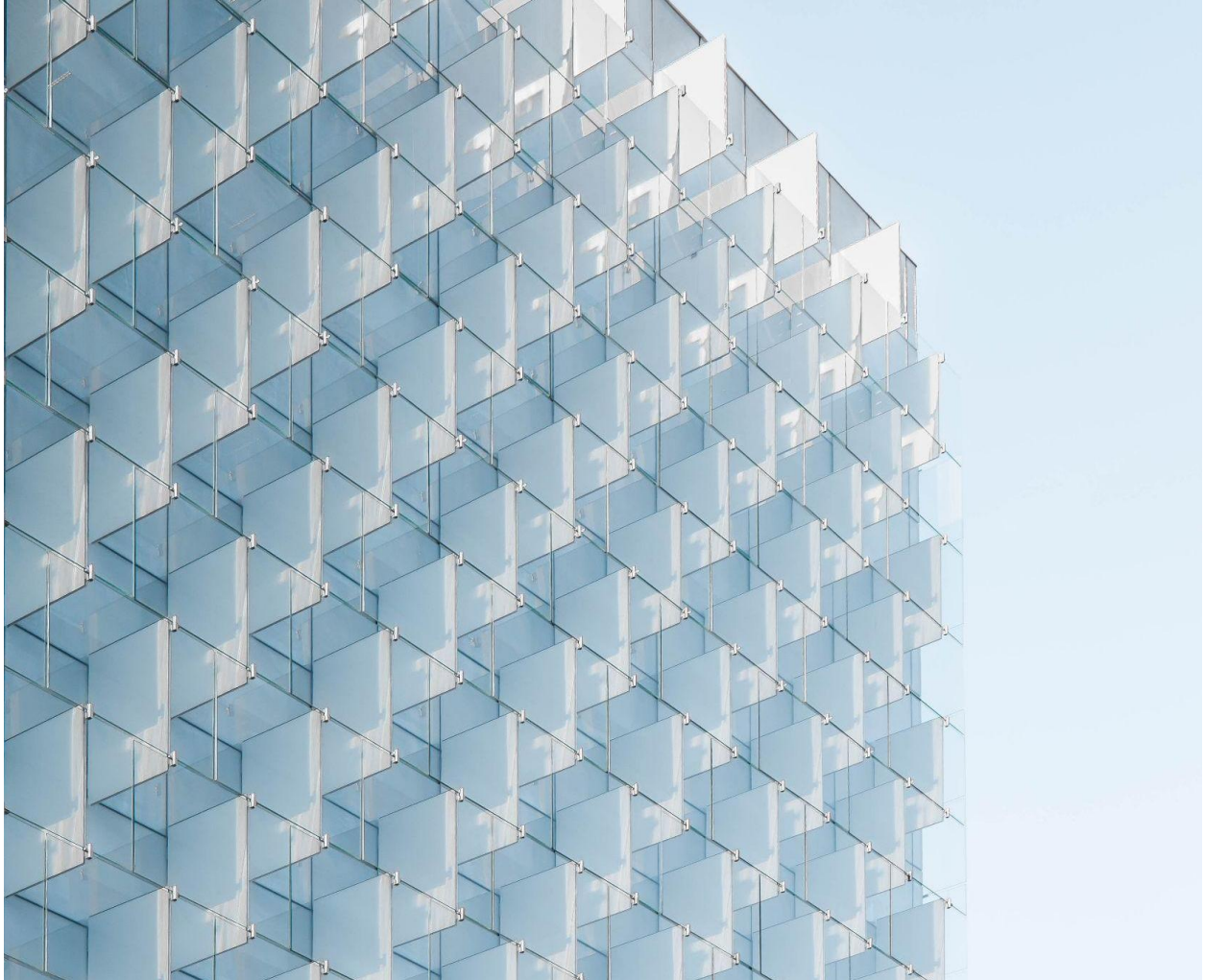


WILLOWTREE PLANNING



24 June 2025

Ref: WTJ24-549
Contact: Jude Urbanik



CLAUSE 4.6 VARIATION REQUEST HEIGHT OF BUILDING JULIUS AVENUE DATA CENTRE

6-8 Julius Avenue, North Ryde
Lot 89 DP 1082131

—
Prepared by Willowtree Planning Pty Ltd
on behalf of ISPT Pty Ltd

June 2025

Clause 4.6 Variation – Height of Buildings

Julius Avenue Data Centre
6-8 Julius Avenue, North Ryde

SSD-80018208



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

DOCUMENT CONTROL TABLE			
Document Reference:	WTJ24-549		
Contact	Jude Urbanik		
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Version No. 1 – 22/05/2025 Draft for client review	Jude Urbanik Senior Planner	Asher Richardson Senior Associate	Andrew Cowan Director
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PART A PRELIMINARY

1.1 INTRODUCTION

This Clause 4.6 Variation Request (Variation Request) has been prepared in support of the State Significant Development Application (SSDA) for the construction and operation of a data centre and associated infrastructure and amenities, identified as the Julius Avenue Data Centre (the Proposal), at 6-8 Julius Avenue, North Ryde (the Site). The Proposal comprises the following scope of works:

- Site preparation works, including tree removal;
- Earthworks and additional site retaining;
- Infrastructure comprising civil works and utilities servicing;
- Construction a data centre, with the following:
 - Basement car parking for 54 cars, including two (2) accessible;
 - Two (2) data halls across six (6) storeys with an IT load of 115.2 MW and a maximum power consumption of 169 MW, with upper-level mechanical equipment and rooftop plant;
 - Six (6) storey office/front of house building;
 - Six (6) storey enclosed generator gantry to rear of data centre.
- New Ausgrid precinct-wide 132 kilovolt (KV) Sub-transmission Switching Station (STSS);
- One (1) new public street along the southern part of the Site;
- A new pedestrian through-site link from Julius Avenue to Richardson Place; and
- Complementary landscaping and offset planting.

The Site is legally described as Lot 89 in Deposited Plan 1082131 and located within the Ryde Local Government Area (LGA) and is zoned E3 Productivity Support, pursuant to the *Ryde Local Environmental Plan 2014* (RLEP 2014). The Proposal is categorised as a data centre, which is permitted with consent in the E3 Productivity Support zone pursuant to the RLEP 2014.

The Proposal is consistent with the objectives and provisions of the RLEP 2014, with the exception of Clause 4.3 – Height of buildings and Clause 7.7 – additional requirements for incentive building height and floor space ratio development standards on land other than Key Sites.

Specifically, the Site is subject to a 30m maximum height of buildings development standard prescribed by Clause 4.3 of the RLEP 2014. The Site is located within the Macquarie Park Accelerated Transport Oriented Development (TOD) Precinct and is subject to the incentive building height provisions of Clause 7.7 of the RLEP 2014. This allows development on the Site to have a 45m maximum height of buildings.

The Proposal seeks a maximum building height of 50.93m, which exceeds the 45m incentive maximum height of buildings development standard by 5.93m or 13.2%. The Proposal entails the following key components identified in



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TABLE 1: DEVELOPMENT COMPONENTS

below.



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TABLE 1: DEVELOPMENT COMPONENTS

Project element	Proposed
Incentive maximum building height development standard	45m
Proposed maximum building height to Julius Avenue	38.93m
Proposed maximum building height to top of building roof	42m
Proposed maximum building height to top of rooftop plant	50.93m

This Variation Request has been prepared in accordance with the aims and objectives contained within Clause 4.3, Clause 4.6, and Clause 7.7 of the RLEP 2014. It considers various planning controls, strategic planning objectives and existing characteristics of the Site and concludes that the proposed variation is the best means of achieving the objectives of encouraging the orderly and economic use and development of the Site under the *Environmental Planning and Assessment Act 1979* (EP&A Act).

Refer to **Figure 1** and **Figure 2** below for details of sections of the Site and a height plane analysis, identifying where the height variation is proposed.

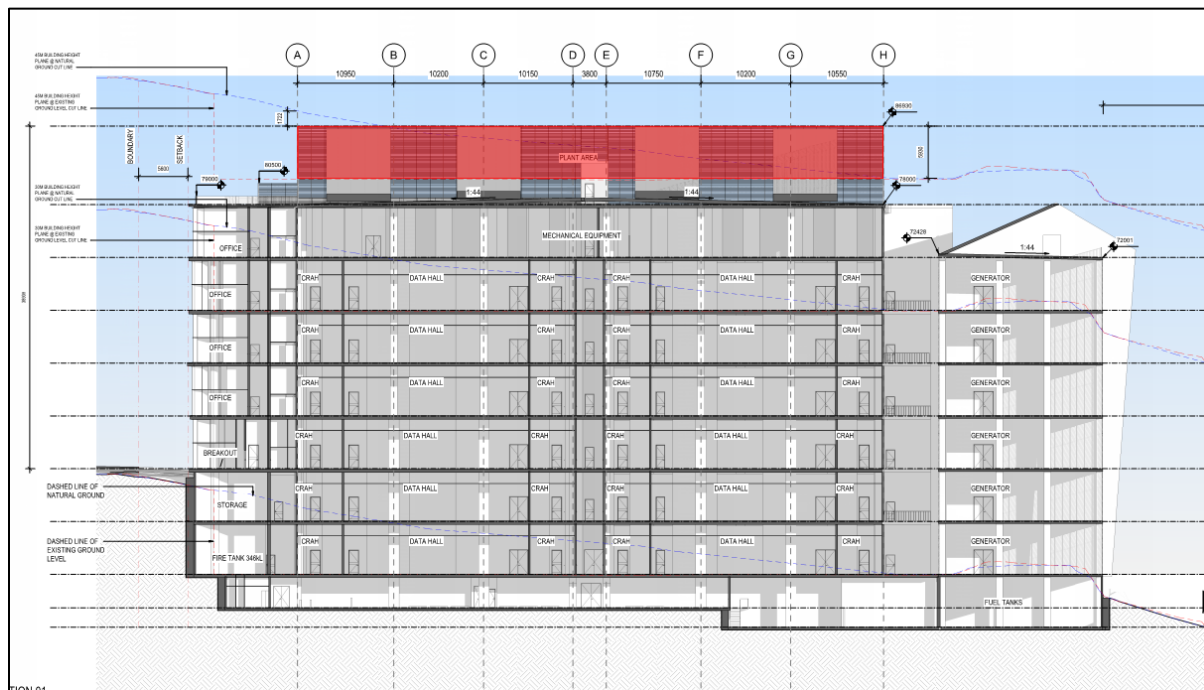


Figure 1. Extent of variation shown on Section (Source: Greenbox Architecture, 2025)



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A Height Plane Analysis is provided at **Figure 2** below which illustrates the extent of the building height variation.

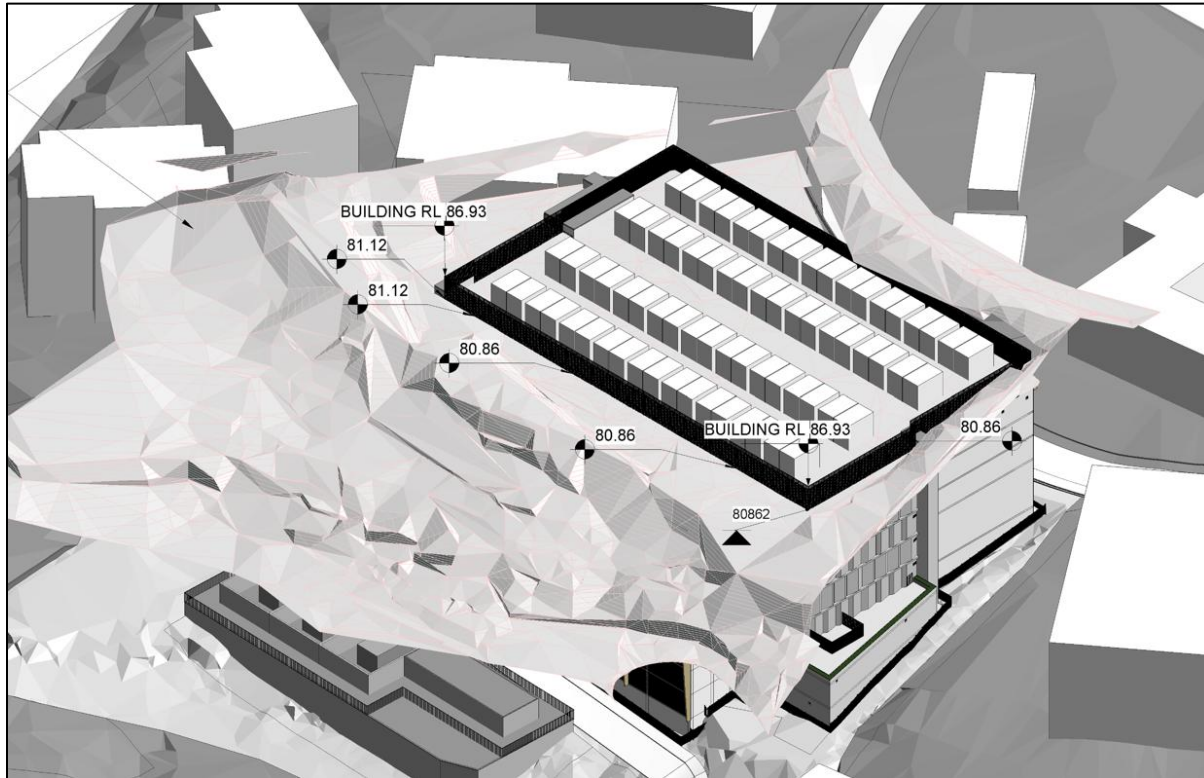


Figure 2. Height Plane Analysis (Source: Greenbox Architecture, 2025)

1.2 DEVELOPMENT STANDARD VARIATION

This Variation Request has been submitted to assess the proposed non-compliance with Clause 4.3 and Clause 7.7 of the RLEP 2014 and has been prepared in accordance with the requirements of Clause 4.6 of RLEP 2014.

Under the provisions of Clause 4.3 of the RLEP 2014, the Site is subject to a maximum height of buildings development standard of 30m. Clause 4.3 of the RLEP 2014 is detailed below:

4.3 Height of buildings

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

- (a) *to ensure the height of buildings is compatible with that of adjoining development and the overall streetscape*
- (b) *to minimise impacts of overshadowing, visual impact, and loss of privacy on adjoining properties and open space areas.*



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- (2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

Under the provisions of Clause 7.7 of the RLEP 2014, the Site is subject to an incentive maximum height of buildings development standard of 45m. Clause 7.7 of the RLEP 2014 is detailed below:

- (1) *The objective of this clause is to encourage additional commercial development in the Macquarie Park Transport Oriented Development Precinct coordinated with an adequate access network and recreation areas.*
- (2) *This clause applies to land to which this part applies that is not identified as an Area on the Key Sites Map under Division 2.*
- (3) *A building on land to which this clause applies may have a height of up to the building height shown for the land on the Macquarie Park Incentive Height of Buildings Map.*
- (4) *The floor space ratio of buildings on a site on land to which this clause applies may be up to the floor space ratio shown for the land on the Macquarie Park Incentive Floor Space Ratio Map.*
- (5) *Subclauses (3) and (4) do not apply unless the consent authority is satisfied the development includes adequate provision for one or both of the following—*
- (a) *recreation areas that are configured and located in a way that is appropriate for the recreational purposes of the Precinct,*
 - (b) *an access network that is configured and located in a way that will allow a suitable level of connectivity within the Precinct.*



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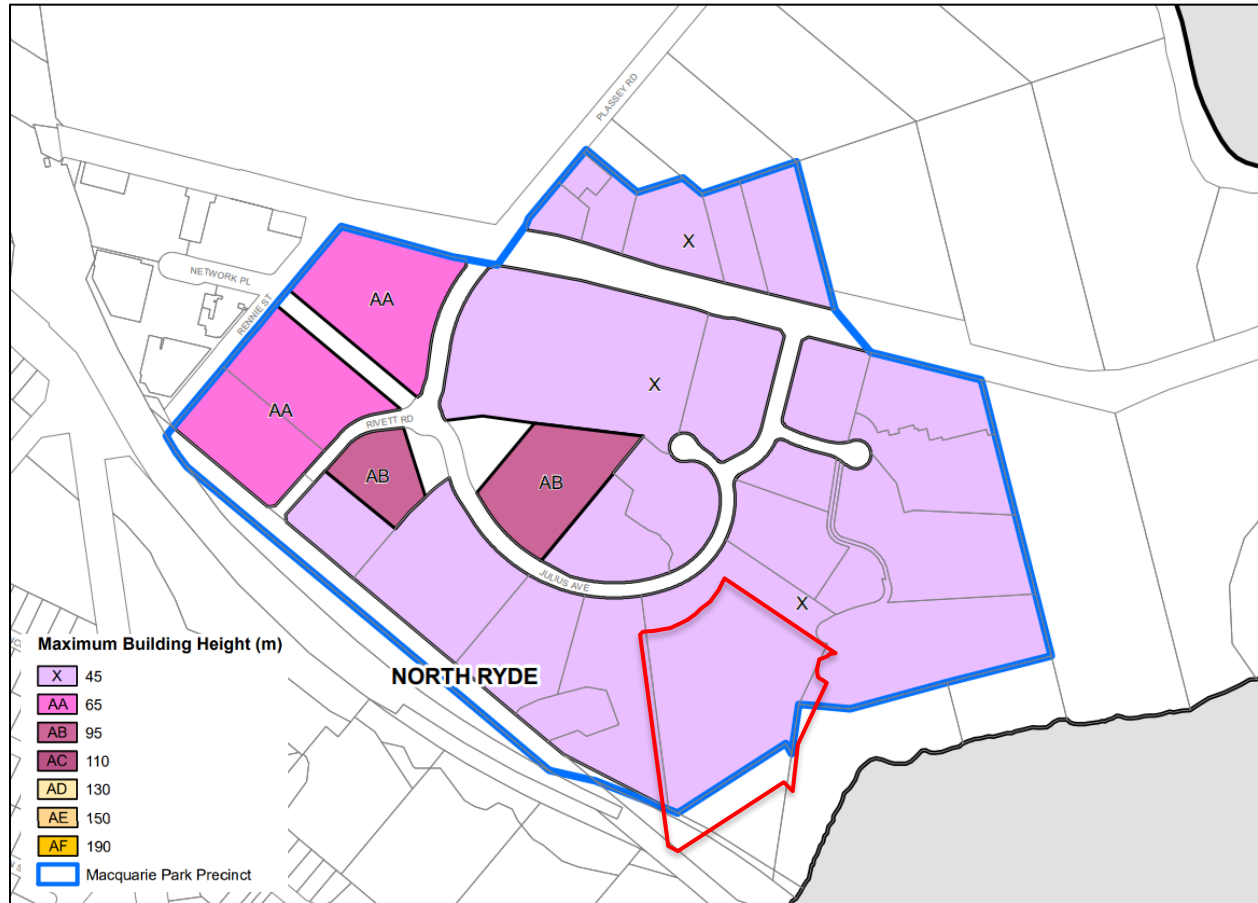


Figure 3. RLEP 2014 Incentive Height of Buildings Map (Source: NSW Legislation, 2025)

The proposed building height of 50.93m would exceed the maximum height of buildings by 5.93m or 13.2%. A sizable portion of the height exceedance is attributable to the 8.93m height of necessary rooftop plant and ventilation towers required with associated acoustic screening. The plant and ventilation towers are required to be located on the roof for operational purposes and are the only exceedance of the maximum height of buildings development standard.

The Proposal's massing has been carefully designed to meet operational requirements while addressing key Site constraints, including setbacks, pedestrian pathways, and the preservation of existing vegetation. The building is generally situated within the required envelope controls, including height restrictions, and takes advantage of the Site's unique topography. The floor-to-floor heights required for a data centre development are precise and based on a required volumetric outcome to establish the future internal layouts whilst remaining compliant with BCA Standards and fire engineering requirements.

The Site is located within 100m of 5-11 Julius Avenue and 1 Rivett Road, North Ryde, each allowing a 95m maximum height of buildings with the proposed variation considered minimal when compared to the incentive maximum height of buildings granted to these sites.

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A compliant scheme would be operationally unsound for the future end user and not meet the market demands of data centres. Positioned primarily in the northern portion of the Site, the building utilises an existing cut to reduce its overall height and visual bulk, minimising its impact on surrounding areas, particularly when viewed from Julius Avenue. This strategic placement ensures that the building maintains a low profile while maximising the use of available space. The location of plant and equipment on the rooftop level, and surrounded by acoustic screening, is the best environmental planning outcome for the Site in that it results in the best acoustic mitigation for the plant. The relocation of the rooftop plant to the ground floor level would significantly increase the footprint of the building and reduce any opportunity for landscaping across the Site.

The proposed built form is a result of a detailed analysis of the context of the Site and its surrounds with a desire to deliver a positive architectural outcome. The Proposal is a significant improvement from the existing development and considered more aligned with the desired character of the E3 Productivity Support zone. The circumstances of the Site and the Proposal warrant an appropriate degree of flexibility in the application of the development standard to achieve the best outcome for the Site. In its current form, the Proposal represents the most efficient use of the Site which responds to the existing environmental constraints, compared to a development which is entirely compliant with the development standard.





PART B THRESHOLDS THAT MUST BE MET

2.1 INTERPRETING CLAUSE 4.6

Clause 4.6 of the RLEP 2014 facilitates exceptions to strict compliance with development standards in certain circumstances. Clause 4.6(3) states (our emphasis added):

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

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

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

Clause 4.6(3) provides that the consent authority must be satisfied:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (CI 4.6(3)(a)); and
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard (CI 4.6(3)(b)). To this end the environmental planning grounds advanced in the written request must justify the contravention, not simply promote the benefits of carrying out the development as a whole:

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

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



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Accordingly, a consent authority must be satisfied:

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

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





PART C STANDARDS BEING OBJECTED TO

3.1 OVERVIEW

The Site is zoned E3 Productivity Support and is subject to the underling objectives of the varied standard as well as the E3 zone under RLEP 2014.

3.2 CLAUSE 4.3 BUILDING HEIGHT CONTROL UNDER RLEP 2014

Clause 4.3 of RLEP 2014 identifies the following objectives:

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

- (a) to ensure that street frontages of development are in proportion with and in keeping with the character of nearby development,*
- (b) to minimise overshadowing and to ensure that development is generally compatible with or improves the appearance of the area,*
- (c) to encourage a consolidation pattern and sustainable integrated land use and transport development around key public transport infrastructure,*
- (d) to minimise the impact of development on the amenity of surrounding properties,*
- (e) to emphasise road frontages along road corridors.*

Pursuant to Clause 4.6, the Proposal seeks exception to the maximum permissible height of buildings control of 30m.

3.3 CLAUSE 7.7 INCENTIVE BUILDING HEIGHT CONTROL UNDER RLEP 2014

The objective of Clause 7.7 is to encourage additional commercial development in the Macquarie Park TOD Precinct coordinated with an adequate access network and recreation areas.

The Proposal seeks exception to the maximum incentive permissible height of buildings control of 45m in Clause 7.7 of the RLEP 2014.

For clarity, building height is defined under the Dictionary accompanying RLEP 2014 as:

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.*





PART D PROPOSED VARIATION TO DEVELOPMENT STANDARDS

Pursuant to Clause 4.6 of RLEP 2014 exception is sought from the height of buildings development standard applicable to the Site pursuant to Clause 4.3 and Clause 7.7 of RLEP 2014.

4.1 OBJECTIVES OF THE STANDARD

A key determinant of the appropriateness of a Clause 4.6 Variation to a development standard is the Proposal's consistency with the underlying objectives and purpose of that development standard. Clause 35B of the EP&A Regulation 2021 requires that a request to vary a development standard must demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances, and there are sufficient environmental planning grounds to justify the contravention of the development standard. The Proposal seeks exception to the maximum building height pursuant to Clause 4.3 and Clause 7.7 of RLEP 2014.

4.1.1 Objectives of Clause 4.3

Clause 4.3 of RLEP 2014 sets out specific objectives. Those objectives are responded to in **TABLE 2** below:

TABLE 2: CONSISTENCY WITH THE CLAUSE 4.3 OBJECTIVES	
Objective	Response
(a) <i>To ensure that street frontages of development are in proportion with and in keeping with the character of nearby development</i>	The Site is located in an existing E3 Productivity support zone and consistent with the minimum setback and FSR controls associated with the Site. The built form results in a bulk and scale that is coherent with permissible industrial/commercial development in the locality and is located within 100m of the MUI Mixed Use zone which allows an incentive 95m maximum height of buildings. The height variation is considered to have a minimal impact on the streetscape elevation and bulk and scale of the Site and complies with the clause 7.7 incentive height along the street frontage, with a visible height of 39m. This is compatible with other nearby industrial and commercial development given the permitted scale of development in the locality. The Proposal is consistent with Objective (a) of Clause 4.3.
(b) <i>To minimise overshadowing and to ensure that development is generally compatible with or improves the appearance of the area,</i>	The built form will not compromise the solar access of these existing buildings or cause any additional overshadowing to adjoining properties. Overshadowing is minimised as the breach of height is limited to rear portion of the development and not near adjoining development. Solar diagrams have been prepared by Greenbox Architecture and are available at Appendix 2 of the Environmental Impact Statement (EIS) which



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TABLE 2: CONSISTENCY WITH THE CLAUSE 4.3 OBJECTIVES	
Objective	Response
	demonstrate adequate solar access is available to all adjoining properties. The height deviation is considered minimal and remains generally compatible with development in the Macquarie Park Accelerated TOD Precinct. The Proposal is consistent with Objective (b) of Clause 4.3.
<i>(c) To encourage a consolidation pattern and sustainable integrated land use and transport development around key public transport infrastructure,</i>	The Site is well located within 600m to the North Ryde Metro Station. The development does not change the consolidation pattern and has a built form largely consistent with planning envelope controls. The Proposal is well integrated with other land uses providing an outcome that supports other well located to transport opportunities. This is supplemented by new access networks and pedestrian pathways including in bushland. Furthermore, a Green Travel Plan (GTP) has been provided at Appendix 10 of the EIS which outlines the way in which travel demand will be managed in future Site operations. The Proposal provides a consolidated and sustainable approach and integrates key public transport infrastructure in the locality. The Proposal is consistent with Objective (c) of Clause 4.3.
<i>(d) to minimise the impact of development on the amenity of surrounding properties,</i>	The deviation to the development standard is considered minimal and remains in character with the 45m incentive maximum height of buildings prescribed to all adjoining E3 Productivity Support land. The Site is located within 100m of 5-11 Julius Avenue and 1 Rivett Road, North Ryde, zoned MU1 Mixed Use which allows for an incentive 95m maximum height of buildings. As such, the proposed height variation is considered minor and consistent with the intended Macquarie Park Accelerated TOD Precinct. The Site does not adjoin any residential properties, and the height variation will not impact the amenity of future residential development in the nearby MU1 Mixed Use zone. A Noise and Vibration Impact Assessment, Visual Impact Assessment, Air Quality Impact Assessment and solar diagrams have been prepared for the Proposal and conclude that the Proposal will not have acoustic, visual, air quality or overshadowing amenity issues, respectively. The Proposal is consistent with Objective (d) of Clause 4.3.



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TABLE 2: CONSISTENCY WITH THE CLAUSE 4.3 OBJECTIVES

Objective	Response
(e) <i>To emphasise road frontages along road corridors.</i>	The Site adjoins the M2 Motorway which currently has significant vegetation and provides no direct access. The existing natural environment aesthetic adjoining the M2 Motorway is to be retained, with the Proposal limited to northern region of the lot, directly adjoining Julius Avenue. Given the constraints of the Site, appropriate setbacks have been provided to Julius Avenue to emphasise quality road frontage. The Proposal is consistent with Objective (e) of Clause 4.3.

4.1.2 Objectives of Clause 7.7

Clause 7.7(1) of the RLEP 2014 states that:

- (1) *The objective of this clause is to encourage additional commercial development in the Macquarie Park Transport Oriented Development Precinct coordinated with an adequate access network and recreation areas.*

Clause 7.7(5) requires recreation areas to be configured and located in a way that is appropriate for the recreational purposes of the Precinct, and an access network that is configured and located in a way that will allow a suitable level of connectivity within the Precinct.

To satisfy the requirements of Clause 7.7 and meet its objective, access networks and recreation areas are provided as part of the Proposal. This will include upgrades and extension to the public pathways from Julius Avenue to the National Park Bushland toward the rear of the Site. A new extensive bush walkway is proposed at the rear of the Site, incorporating recreational elements that emphasise the surrounding natural environment. Two (2) recreational areas are proposed onsite; one (1) along the front setback at Julius Avenue, and the other toward the east of the Site which includes a lookout. The provision of this infrastructure for the public benefit will be via a voluntary planning agreement (VPA) and payment of the Council's 'incentive floor space rate'.

As such, the Proposal is consistent with the objective of Clause 7.7 of the RLEP 2014.



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4.2 OBJECTIVES OF THE ZONE

The Site is zoned E3 Productivity Support pursuant to RLEP 2014. Therefore, consideration has been given to the E3 zone objectives in **TABLE 3** below:

TABLE 3: CONSISTENCY WITH THE E3 ZONE OBJECTIVES	
Objective	Response
To provide a range of facilities and services, light industries, warehouses, and offices.	The Proposal is for a data centre which is defined as a high technology industry, which is a sub definition of light industry. The Proposal is adjacent a range of office, commercial and light industrial uses and increases the range of development in the locality. As such, the Proposal is consistent with this objective.
To provide for land uses that are compatible with, but do not compete with, land uses in surrounding local and commercial centres.	Data centres are permissible with consent in the E3 Productivity Support zone and therefore considered compatible with the surrounding development. The Proposal supports data intensive uses and does not compete with adjoining development.
To maintain the economic viability of local and commercial centres by limiting certain retail and commercial activity.	The Proposal will encourage employment and does not interfere with the viability of the Macquarie Park Accelerated TOD Precinct by limiting retail or commercial activity.
To provide for land uses that meet the needs of the community, businesses, and industries but that are not suited to locations in other employment zones.	The need for data centres are continuously growing due to rapid technological advancements in the e-commerce sector. As such, the Proposal is considered to meet the needs of businesses and industries associated with the E3 Productivity Support zone.
To provide opportunities for new and emerging light industries.	Data centres are defined as high technology industry, which is a sub definition of light industry. As such, the Proposal is consistent with this objective.
To enable other land uses that provide facilities and services to meet the day-to-day needs of workers, to sell goods of a large size, weight or quantity or to sell goods manufactured on-site.	This objective is not relevant to the Proposal. Notwithstanding, the Proposal is not inconsistent with this objective.
To promote sustainable development, including public transport and working environments.	The Proposal promotes sustainable development through the retention of existing vegetation, upgrades to existing pathways, provision of recreational walkways to bushland, and being located within 600m of the North Ryde Metro Station.



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To encourage industries involved in research and development	Data centres are defined as high technology industry, which are driven by technological advancements in the e-commerce sector. As such, the Proposal is not inconsistent with this objective.
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4.3 ESTABLISHING IF THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY

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

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

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

The five methods outlined in *Wehbe* include:

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

It is sufficient to demonstrate only one of these methods to satisfy clause 4.6(3)(a) of the RLEP 2014 (*Wehbe*, *Initial Action* at [22], *Rebel* at [28]) and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31].

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

- The First Method has been satisfied, and the objectives of the height of buildings standard are achieved notwithstanding the non-compliance with the numerical standard (see also Section 4.1 above); and



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- (b) The Third Method has been satisfied, and the underlying object or purpose would be defeated or thwarted if compliance were required and therefore compliance is unreasonable.

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 Proposal.

A compliant scheme in this respect would require the removal of the roof top plant and equipment and reduce the height of the proposed data halls, resulting in a less efficient use of the Site, as well as being operationally unsound for future end users, and not meeting market demands. A compliant scheme would require additional development footprint at ground level which would result in reduced landscaping and sustainability opportunities. Additionally, a compliant scheme would limit the effectiveness of the data centre in meeting the needs of the business intended to operate at the Site, thwarting the related objectives of the E3 Productivity Support zone. Critically, the Proposal meets the objectives of Clause 4.3 and Clause 7.7 of the RLEP 2014.

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

By providing a building at the height proposed, a site layout is achieved that:

- Enables plant and equipment to be located away from public view that can be screened;
- Maintains and facilitates landscaping throughout the Site that integrates and reduces the visual presence of the ground plane;
- Allows car parking and access/egress provision which improves the road safety outcomes; and
- Provides opportunity for architectural treatment at the upper levels that will contribute to set a desirable precedent for future development in the locality.
- Results in a built form that is substantially the same as the adjoining and future development permissible within the E3 Productivity Support zone and minimal in comparison to the nearby MU1 Mixed Use zone.

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

- The Proposal is consistent with the existing and desired future character of the Site, the locality, and the surrounding area. The Proposal provides for a scale of development that when viewed from the streetscape and surrounding properties is not dominant in terms of bulk, scale, extent of hardstand or interface with the streetscape. Further, the Proposal retains significant landscaping that promotes the natural environment and includes well designed recreational infrastructure.
- The Proposal is consistent with the desired future character of the Site, the locality and the surrounding area. The Proposal provides for a scale of development that is consistent with the desired future character of the area, which has been shaped by the development standards



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prescribed by the RLEP 2014 and representative of the implementation of Macquarie Park Accelerated TOD Precinct. The Proposal is minimal in scale when compared to 95m MU1 Mixed Use zone within 100m of the Site and the height deviation is considered minor and remains consistent with the scale of development in the locality (see *Woollahra Municipal Council v SJD DB2 Pty Ltd* [2020 NSWLEC 115]).

- The density (as measured by FSR) is compliant with the 1:1 development standard prescribed for the Site by Clause 4.4 of RLEP 2014. The additional height of Proposal is therefore not due to a desire to increase FSR. A theoretical scheme that could be reduced in overall height, would require a greater footprint and would not be viable due to the existing vegetation within the Site. The Proposal represents the best outcome for the Site and the streetscape, providing a compliant provision of landscaping that reduces any visual impacts to the adjoining properties and acts a suitable transition between the C1 National Parks and Nature Reserves zone and the Macquarie Park Accelerated TOD Precinct and the bulk and scale is consistent with the future intended development in the locality.
- The Proposal is generally compliant with the minimum building setback requirements prescribed by the Macquarie Park Design Guide, providing a minimum 5m setback due to the constrained nature of the Site, including the construction of the local road through the Site and the preservation of a landscaped setback to Lane Cove National Park. The setbacks vary given the shape of the Site and provide sufficient relief from the side boundaries in accordance with the objectives. The Proposal provides a contributory frontage in accordance with the Macquarie Park Design Guide, ensuring a commercial active frontage is provided along all frontages facing public streets and public open spaces.
- Despite the variation, the Proposal is consistent with the provisions of the Macquarie Park Design Guide in the following manner:
 - The Shadow Diagrams provided at Appendix 2 to the EIS illustrate compliance with the overshadowing controls contained in RDCP 2014 and the Macquarie Park Design Guide. There will be some additional shadow cast over the commercial buildings at 10 Julius Avenue at 9:00am, however, this is reduced as the day progresses, resulting in no impact from 12:00pm to 3:00pm. The Proposal is compliant with the solar protection requirements of Macquarie Park Design Guide., ensuring that the nominated public open space will have the required amount of solar protection.
 - The Proposal includes a window design that reduces the likelihood of bird collision risk, with only half of the north elevation of the building proposed to have windows. Each window is glazed and non-reflective glass to ensure the chance of any bird collision is minimised.
 - The Proposal responds to the existing industrial and commercial developments in the locality and the height exceedance does not result in any additional or unacceptable impact on other land uses by way of visual impact, disruption of views, loss of privacy, loss of solar access, traffic impact or loss of on-street parking capacity of the like. Therefore, the Proposal does not result in any unreasonable impacts on adjoining development.



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- The Proposal focusses the GFA on a constrained footprint to reduce the extent of vegetation clearing required on the Site and retains a significant portion of the landscaped setback in accordance with the provisions of the Macquarie Park Design Guide.
- The Proposal is also compliant with the landscape setback, tree canopy and deep soil targets of The Design Guide, providing 25.16% of the Site area as tree canopy cover and 32.12% of the Site area as deep soil landscaping. This strengthens tree canopy in the locality and creates green linkages, aiming to ameliorate effects of urban heat island.
- The Proposal allows for the delivery of public infrastructure as prescribed by the Macquarie Park Design Guide.
- The Proposal responds to the existing industrial and commercial developments in the locality and the height exceedance does not result in any additional or unacceptable impact on other land uses by way of visual impact, disruption of views, loss of privacy, loss of solar access, traffic impact or loss of on-street parking capacity of the like. Therefore, the Proposal does not result in any unreasonable impacts on adjoining development.
- The heights proposed are considered to be of the representative of market needs and demands for modernised data centres and industrial land uses to meet the operational needs and requirements of the end users involved.
- The built form is considered a key attribute in creating an internal and external environment to support end users on the Site, which 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.
- It is noted that the Proposal and the exceedance does not result in any additional or unacceptable impact on other land uses by way of visual impact, disruption of views, loss of privacy, loss of solar access, traffic impact or loss of on-street parking capacity of the like as demonstrated in the supporting evidence provided with the EIS.
- Reducing the height to strictly meet the RLEP 2014 development standard is considered unreasonable, as this would result in a less efficient use of the Site, reduce employment opportunities and be operationally unsound for future end users, and market and tenant demands.
- If the height exceedance were not permitted, the use of the Site would be constrained given the bushland affectation. Further, if the height exceedance was not permitted, then the operational efficiency of the data centre would be stymied and the potential of the data centre unable to be realised without any benefit to neighbouring properties or the public domain. In this regard the purpose of the standard would be thwarted.

Accordingly, the abovementioned justifications are considered valid, and in this instance the proposed variation is considered to be acceptable. The objectives of the development standard and the zone would be upheld as a result of the Proposal.





The Proposal represents the most efficient use of the Site whilst ensuring a high-level of amenity is achieved. In light of the above, the application of the height of building development standard is therefore unreasonable and unnecessary in response to the Proposal.

4.4 SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD

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

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

- The Proposal is considerate of the adjoining Lane Cove National Park through appropriate design, materials, and the rear landscaped setback ensuring the building façade and layout minimises impacts to the surrounding area. Through breaching the height limit, the proposal is able to retain vegetated setbacks to the National Park which would need to be reduced should a compliant scheme be proposed. This facilitates ecologically sustainable development through environmental considerations and as a means of protecting the natural environment.
- The additional building height beyond the 45m development standard does not cause any impact on existing development in the vicinity of the Site by way of visual impact, disruption of view, loss of privacy and loss of solar access.
- The Proposal has been architecturally designed to provide a materiality and form that sets a desirable precedent for future development and ensures that the visual impact of the building integrates with the surrounding environment.
- The Proposal is reflective of the market demand of contemporary data centres and promotes the orderly, economic and efficient use of the Site.

For the reasons outlined above, it is considered that the proposed variation to the building height development standard under Clause 4.3 and incentive height of buildings under Clause 7.7 is appropriate and can be clearly justified having regard to the matters listed within Clause 4.6(3)(b) under the RLEP 2014.





4.5 OBJECTIVES OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

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

TABLE 4: EP&A ACT OBJECTIVES	
Objective	Response
<i>(a) to promote the social and economic welfare of the community and a better environment by the proper management, development, and conservation of the State's natural and other resources,</i>	The Proposal is considered to promote the social and economic welfare of the community as it would contribute towards meeting the demand for increased employment opportunities within The Ryde LGA, as identified in A Metropolis of Three Cities, and the North District Plan. Specifically, the Proposal would be of social benefit to the community situated within nearby community groups, as it would provide employment-generating opportunities for the immediate locality.
<i>(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental, and social considerations in decision-making about environmental planning and assessment,</i>	The Proposal would not create the risk of serious or irreversible damage to the environment and not create any threats of serious or irreversible environmental damage. Refer to the SEE for further details of how the Proposal meets this objective.
<i>(c) to promote the orderly and economic use and development of land,</i>	The Proposal would make use of a site that is currently considered to be under utilised, and the last of land in the local E3 Productivity Support zone to be developed. The Proposal will result in the orderly and economically beneficial development of the land, without resulting in any unacceptable economic, environmental, or social impacts.
<i>(d) to promote the delivery and maintenance of affordable housing,</i>	The Proposal is not inconsistent with this objective.
<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>	A Biodiversity Development Assessment Report (BDAR) has been submitted for the Proposal and is provided at Appendix 15 of the EIS. The BDAR confirms that the Proposal will not prevent the conservation of any threatened and other species of native animals and plants, ecological communities, and their habitats.
<i>(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),</i>	The Site is not mapped as a heritage site, nor is it known as an area of Aboriginal cultural heritage, sites, or places. An Aboriginal Cultural Heritage Assessment Report has been undertaken and is available at Appendix 26 of the EIS, to ensure the Proposal promotes sustainable management of the built and cultural heritage in the locality.



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TABLE 4: EP&A ACT OBJECTIVES	
Objective	Response
(g) to promote good design and amenity of the built environment,	Section 4.1 satisfactorily addresses how the Proposal responds to the character of the locality in terms of urban design.
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,	Construction and maintenance of the building can be undertaken without health and safety risks for future tenants.
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,	The Proposal represents SSD, for which it will be assessed and determined by DPHI.
(j) to provide increased opportunity for community participation in environmental planning and assessment.	Community Engagement has been undertaken as part of the Proposal with details available at Appendix D of the EIS. The Proposal will be exhibited in accordance with DPHI's requirements and provide ample opportunity for the community to participate in environmental planning and assessment.

4.6 MATTERS OF STATE AND REGIONAL SIGNIFICANCE

The proposed non-compliance with Clause 4.3 of RLEP 2014 will not give rise to any matters of significance for State or regional environmental planning. They will also not conflict with any State Environmental Planning Policy or Ministerial Directives under section 9.1 of the EP&A Act.





PART E CONCLUSION

For the reasons outlined above, it is considered that the variation to Clause 4.3 and Clause 7.7 of RLEP 2014 is well-founded in this instance and is appropriate in the circumstances. Furthermore, the Variation Request is considered to be well-founded for the following reasons as outlined in Clause 4.6 of RLEP 2014:

- The development is consistent with the objectives of the particular standard (refer to **Section 4.1**);
- The development is consistent with the objectives for development within the zone and long-term strategic intentions to maintain and preserve employment land (refer to **Section 4.2**);
- Compliance with the development standard is unreasonable and unnecessary in the circumstances (refer to **Section 4.3**); and
- There are sufficient environmental planning grounds to justify contravening the development standard (refer to **Section 4.4**).

Overall, it is considered that the proposed variation to the maximum building height control is entirely appropriate and can be clearly justified having regard to the matters listed within Clause 4.6 of RLEP 2014.

Given the justification provided above, the Variation Request is well founded and should be favourably considered by DPHI.

