

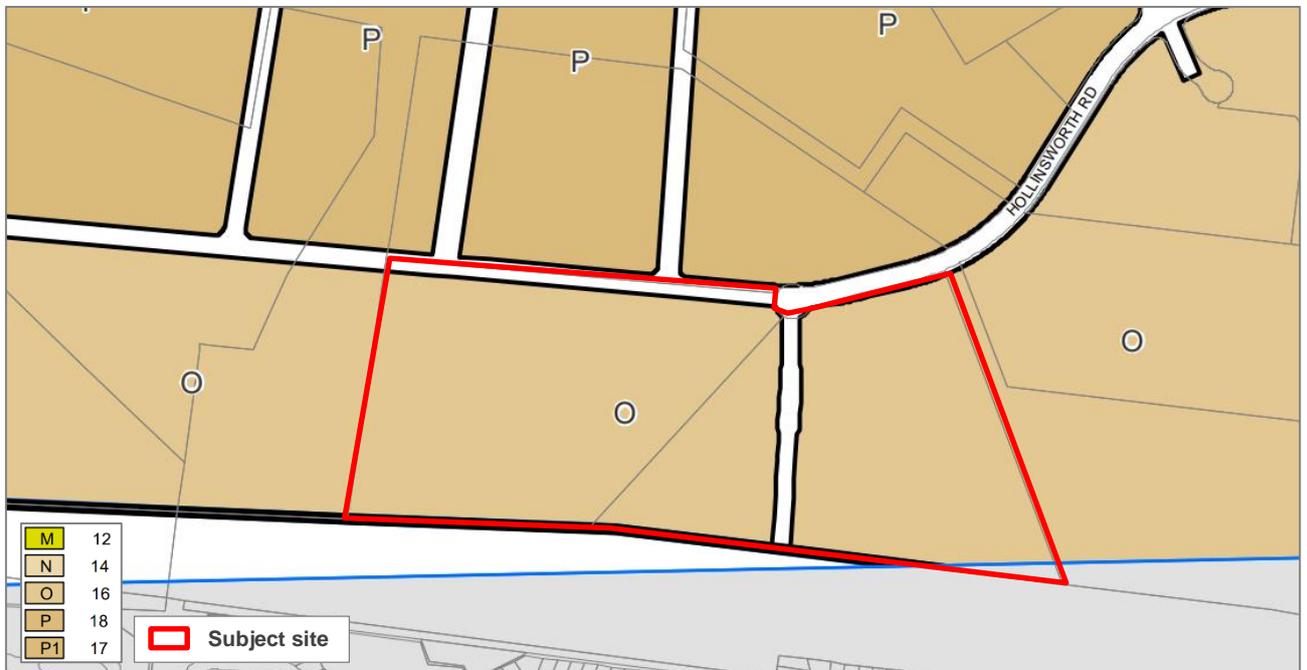
CLAUSE 4.6 VARIATION – HEIGHT OF BUILDINGS

HOLLINSWORTH ROAD, MARSDEN PARK

1. INTRODUCTION

This request seeks to vary the maximum height of building development standard prescribed for the subject site (Lot 24 DP262886) under clause 4.3 of Appendix 5 Marsden Park Industrial Precinct Plan (Appendix 5 of the SEPP) of *State Environmental Planning Policy (Sydney Region Growth Centres) 2006* (the SEPP).

Figure 1 – Height of Buildings Map



2. PROPOSED VARIATION

The proposed development seeks to vary the SEPP height in the following locations:

- Building 1A and 1B: 3.2m variation (20%)
- Building 2A and 2B: 1m variation (6.25%)
- Building 3 (Northern High-Bay): 2.5m (15.625%)
- Building 3 (Southern High-Bay): 0.3 (1.875%)
- Building 6: 3.5m (21.875%)

The height breaches on Building 3 are the result of the proposed high-bay built forms. The proposed locations for the high-bay elements sought to minimise the impacts such as overshadowing and visual impact. The proposed high-bay elements are unique to the Austcor proposal and are the result of operational and functional requirements to store large volumes of goods and respond to contemporary



market conditions for increased automation of warehouse and distribution centres. The revised version of *Towards our Greater Sydney 2056* acknowledges this trend to high-bay warehouses as “*automation is driving the adaptation of buildings to accommodate high-bay automation, which requires building heights greater than existing buildings and current planning limits. Increased building heights are needed for the evolution of buildings*”.

The height breaches on Buildings 1, 2 and 6 are the result of the site’s topography. As shown on the Survey Plan (Appendix C) the site ungrades and accordingly requires cut and fill in various locations to create flat and functional pads for buildings, access and hardstand. Buildings 1, 2 and 6 are all 13.7m high when measured from the finished pad level to the roof ridge. However, ‘building height’ under the Growth Centres SEPP is measured from existing ground level to the highest point of the building. As such, in parts of the site where a large quantum of fill is required, the 13.7m high building breaks the 16m height limit.

Each breach is described and shown in elevational form at Section 5.8.2 of the EIS.

3. NSW LAND AND ENVIRONMENT COURT CASE LAW (TESTS)

The case law relevant to the preparation of this clause 4.6 variation are as follows:

- *Wehbe v Pittwater Council* [2007] NSWLEC 827
- *Four2Five Pty Ltd v. Ashfield Council* [2015] NSWCA 248

The findings of these cases have been considered in the preparation of this clause 4.6 Variation.

4. ASSESSMENT OF CLAUSE 4.6 VARIATION

4.1. Consistency with Objectives of Height Control

Clause 4.3 of the Appendix 5 of the SEPP outlines objectives for the height of buildings development standard. These objectives are outlined in Table 1. This table demonstrates that the variation is consistent with the objectives of this development standard.

Table 1 – Assessment of Consistency with Development Standard Objectives

Objective	Comment
<i>(a) to establish the maximum height of buildings on land within the Marsden Park Industrial Precinct</i>	<p>The maximum heights in the SEPP are appropriate for buildings within the Marsden Park Industrial Precinct.</p> <p>The high-bay elements which breach the height control are unique to the Austcor proposal and respond to market conditions to provide provision to store and process large volumes of goods.</p> <p>The height breaches on Buildings 1, 2 and 6 are the result of the site’s topography and the need to fill in certain parts of the site. Buildings 1, 2 and 6 are all 13.7m high when measured from the finished pad level to the roof ridge.</p>
<i>(b) to provide for a range of building heights in appropriate locations that</i>	<p>The proposed buildings have been designed, positioned and orientated to ensure that they are integrated with the overall development. It is positioned in locations to minimise the perceivable impact of height and scale. The Visual Impact</p>

Objective	Comment
<i>provide a high quality urban form</i>	Assessment prepared by Geoscapes (Appendix L) does not consider the high-bay elements to be a major visual impact for the surrounding receivers.
<i>(c) to provide appropriate height controls for commercial, industrial and residential development</i>	<p>The maximum heights in the SEPP are appropriate for the majority of warehousing and industrial developments in the Marsden Park Industrial Precinct.</p> <p>However, the elements which breach the height control are unique to the Austcor proposal and are the result of operational and functional requirements to store large volumes of goods, and provide racking and automation to access the goods.</p> <p>The height breaches on Buildings 1, 2 and 6 are the result of the site's topography and the need to fill in certain parts of the site. These building are only 13.7m high from finished pad level.</p>
<i>(d) to establish parameters for and promote a high quality built form</i>	The proposed buildings do not erode the ability to provide high quality built form on site. The high-bay elements avoid the need to increase the site coverage by providing storage space vertically. Buildings 1, 2 and 6 are only 13.7m high. Refer to the Design Statement at Appendix D for a full description of the materials and design quality of the proposed built form.
<i>(e) to protect the amenity of adjoining development and land in terms of solar access to buildings and open space</i>	<p>The orientation of Building 3 and the location of the northern high-bay is such that it will only create shadow onto the internal access road before midday and onto the lower roof of Building 3 after midday. No surrounding building or open space will be affected by the northern high-bay.</p> <p>The orientation of Building 3 and the location of the southern high-bay is such that it will only create shadow onto the rear loading dock, future bus reserve and motorway reserve to the south of site.</p> <p>The shadow impacts resultant from Buildings 1, 2 and 6 are considered to be negligible given the orientation of the buildings means that the majority of shadows will be cast onto loading docks and car parks and/or the future Bells Line road reserve.</p>

4.2. Consistency with Objectives of the IN2 Light Industrial zone

The Appendix 5 of the SEPP includes objectives for the IN2 Light Industrial zone. These objectives have been addressed in Section 5.8.1 of the EIS.

4.3. Unreasonable or Unnecessary

The following points are raised to establish the why compliance with the development standard is unreasonable or unnecessary:

- If compliance with the height control was imposed, Building 3 would not proceed as the high-bay element is critical to the overall operation and success of the project. The proposed height

variation is important to the viability of the project and is highly consistent with the revised version of *Towards our Greater Sydney 2056* which acknowledges the trend to the provision of high-bay warehouses. Refer to Section 5.12 of the EIS for commentary about the proposals consistency with the matters raised in *Towards our Greater Sydney 2056*.

- Given minimal external impacts will result from the variations and the proposal is consistent with the objectives of the height standard compliance with the control is unnecessary.
- If compliance with the height control was imposed, Buildings 1, 2 and 6 would need to be reduced in height to a roof level which would not support the majority of warehouse tenant needs. Buildings 1A, 6 and 7 only breach in locations where a large quantum of fill is required and are all 13.7m high when measured from the finished pad level to the roof ridge.
- The proposal includes additional building height above that permitted in carefully considered appropriate locations across the site. The proposed variation is a deliberate strategy to bring about a superior urban design outcome at street level by:
 - Minimising multiple level changes,
 - Reducing the site coverage of building footprints, and
 - Providing for greater opportunities for landscaping.

Taking into account the above, the particular circumstances of this application warrant a variation of the development standard to facilitate a superior outcome than that which would result from a compliant scheme. Imposing absolute compliance is considered unreasonable or unnecessary given the circumstances of the proposed variation.

4.4. Sufficient Environmental Planning Grounds

There are sufficient environmental planning grounds to justify the contravening development, which include:

- Building 3 high-bay elements have been designed, positioned and orientated to ensure that it is integrated with the overall development.
- Buildings 1, 2 and 6 are the result of the site's topography, required fill volumes, and the need to provide flat and functional pads for buildings, access and hardstand. These buildings will only read as 13.7m high once complete.
- The variations do not result in unreasonable adverse amenity impacts on adjacent land, including view and visual impacts (as per Section 6.2 and Appendix L of the EIS) and overshadowing given no sensitive receivers or areas of public open space are located in close proximity to the site (the road reserve is not considered to be an area of public open space given its reservation for a motorway).
- The variation does not diminish the development potential of adjacent land.
- The proposal is under the maximum permitted floor space ratio control that applies to the site, meaning it is highly consistent with what one could reasonably expect as a building form, site layout design and land use intensity of the site.
- The scale of development is considered appropriate given the significance of the site as supporting the continued growth of the Marsden Park Industrial Precinct.

4.5. Any Matter of Significance

The non-compliance does not raise any matter of significance for state or regional environmental planning.

4.6. Public Benefit

A design concept to achieve compliance with the maximum building height would result a mediocre development outcome for the proposed development, as strict compliance with the building heights would:

- Result in commercial viability issues and potentially resulting in Austcor and the tenants of Buildings 1, 2 and 6 seeking other development sites thus eroding the employment generating vision for the Marsden Park Industrial Precinct.
- Result in larger footprint warehouses which will have impacts to the overall built form strategy, site coverage and reduced landscaping opportunities.
- Result in complex level changes potentially resulting in stormwater and accessibility issues.

The proposed development is not contrary to the public interest and accordingly there can be no quantifiable or perceived public benefit in maintaining the standard.

5. CONCLUSION

As described in the preceding sections, taking into account the significance of the site, its context, and the vision for the locality, strict compliance with the numerical standard in this instance is both unreasonable and unnecessary for the following reasons:

- As demonstrated in the proposal, the built form has been developed in response to site constraints, surrounding context and the design development for the built form and massing across the site.
- The additional height will not result in any detrimental amenity impacts to surrounding development when compared to a complying design. Nor will the extent of the non-compliance result in any adverse visual impact on the locality.
- The proposal represents a superior urban design outcome for the site as it consolidates built form vertically rather than horizontally.
- The non-compliance will not hinder the development's ability to satisfy the objectives of the IN2 Light Industrial zone.
- The non-compliance will not hinder the development's ability to satisfy the vision for Marsden Park Industrial Precinct and the Central City District Plan.
- The proposal is highly consistent with the revised version of *Towards our Greater Sydney 2056* which acknowledges the industry trend to high-bay warehouses.

Based on the reasons outlined, it is concluded the request is well founded and the particular circumstances of the case warrant flexibility in the application of the maximum height of building development standard.

