



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

### **Proposed Data Centre**

1 Sirius Road, Lane Cove West  
(Lot 1 DP 1151370)

Prepared by Willowtree Planning Pty Ltd on behalf  
of Greenbox Architecture

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## **PART A PRELIMINARY**

### **1.1 INTRODUCTION**

This Clause 4.6 Variation request has been prepared in support of the State Significant Development Application (SSDA) for a proposed Data Centre at 1 Sirius Road, Lane Cove West (Lot 1 DP 1151370).

This Clause 4.6 Variation has been submitted to assess the non-compliance of the Proposed Development with *Clause 4.3 Height of Building* under *Lane Cove Local Environmental Plan 2009* (LCLEP2009). This Clause 4.6 Variation has been prepared in accordance with the requirements of Clause 4.6 of LCLEP2009, which has the following aims and 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.*

The proposed variation relates to *Clause 4.3 Height of Buildings* under LCLEP2009. In summary, the following variations are proposed:

<b>LCLEP2009 Clause</b>	<b>LCLEP2009 Development Standard</b>	<b>Proposed Development Non Compliance</b>	<b>Percentage of Variation</b>
Clause 4.3 Height of Buildings	Maximum 18 m building height	The proposal seeks development consent for a 24 m maximum building height	33.33%

In accordance with Clause 4.6(3) of LCLEP2009 Council is 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.

## **PART B THE STANDARDS BEING OBJECTED TO**

### **2.1 CLAUSE 4.3 (HEIGHT OF BUILDINGS) UNDER LANE COVE LOCAL ENVIRONMENTAL PLAN 2009**

The development standard requested to be varied is *Clause 4.3 Height of Buildings* under LCLEP2009, which provides as follows:

#### **Clause 4.3 Height of Buildings**

- (1) *The objectives of this clause are as follows:*
  - (a) *to ensure development allows for reasonable solar access to existing buildings and public areas,*
  - (b) *to ensure that privacy and visual impacts of development on neighbouring properties, particularly where zones meet, are reasonable,*
  - (c) *to seek alternative design solutions in order to maximise the potential sunlight for the public domain,*
  - (d) *to relate development to topography.*
- (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 (refer to **Figure 1**).*

The LCLEP2009 "Height of Buildings Map" referred to in subclause (2) above, identifies the Site as being subject to an 18 m maximum building height. Pursuant to Clause 4.6, the Proposed Development, for the purposes of a Data Centre, seeks exception to the applicable 18 m building height standard prescribed by Clause 4.3 under LCLEP2009.

The Site is zoned IN2 Light Industrial under the provisions of LCLEP2009 where industrial related uses, including Warehouse and Distribution Centres (Data Centre being the proposed use), are permitted with development consent.

The subject SSDA, therefore, relies upon what is reasonably concluded to be the underlying objectives of the standard imposed in the IN2 Light Industrial zone.

### **2.2 THE OBJECTIVES/UNDERLYING PURPOSE OF THE CLAUSE**

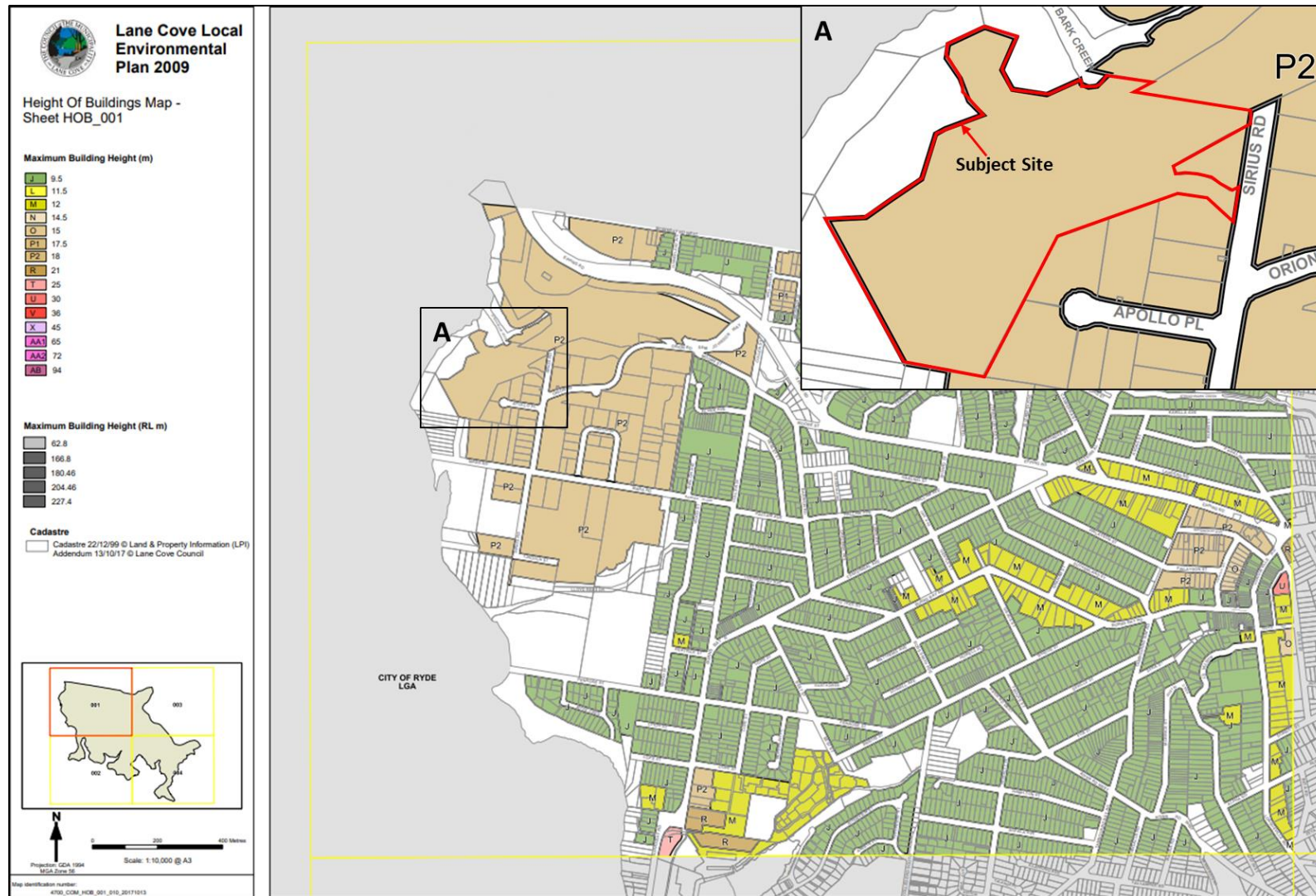
A key determination of the appropriateness of a variation to a development standard is the proposal's compliance with the underlying objectives and purpose of the development standard. Therefore, while there is a specified numerical control for maximum building height, the objectives and underlying purpose behind the development standard are basic issues for consideration in the development assessment process.

**Part C** of this Clause 4.6 Variation addresses the proposed variation to the Clause 4.3 development standard under LCLEP2009.

### **2.3 PROPOSED VARIATION TO STANDARDS**

The Proposed Development seeks development consent for a proposed Data Centre at 1 Sirius Road, Lane Cove West. The Proposed Development would result in a building exhibiting a maximum building height of approximately 24 m. The proposed 24 m building height represents a breach of approximately 6 m under Clause 4.3 of LCLEP2009.

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**Figure 1 Maximum Building Height of Subject Site and Surrounding Area (Source: NSW Legislation, 2018)**

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

Pursuant to Clause 4.6 of LCLEP2009, exception is sought from the 18 m height of buildings standard applicable to the Site pursuant to Clause 4.3 of LCLEP2009. Clause 4.6(4)(a)(ii) requires that such a request must establish that the proposed contravention is consistent with the objectives of the standard of the zone.

### **3.1 OBJECTIVES OF THE STANDARD**

The objectives of the standard as stated in LCLEP2009 are:

*(a) to ensure development allows for reasonable solar access to existing buildings and public areas,*

The Proposed Development for purposes of a Data Centre, would remain generally consistent with regard to the building height achieved in the IN2 Light Industrial zone, concerning surrounding developments (eastern and southern aspects).

Furthermore, the built-form of the Site would be further complemented by the relationship of adjoining built-form; the streetscape; and, amenity of the surrounding area, particularly existing industrial developments in close proximity to the Subject Site. In this regard, the architectural design of the built-form has responded accordingly to ensuring optimum solar access is achieved for the Proposed Development and that the solar access of adjoining developments is not compromised in any such way.

Additionally, the built-form of the Proposed Development responds to the operational requirements of the end-user and any future users of the Subject Site. Accordingly, the height of the Proposed Development is considered highly appropriate for the Site and its context.

*(b) to ensure that privacy and visual impacts of development on neighbouring properties, particularly where zones meet, are reasonable,*

The built-form, particularly the height of the Proposed Development would respond to and be further complemented by the height of adjoining industrial developments along the eastern and southern interfaces; positioned within an area zoned for such permissible purposes. Therefore, as a result of the Proposed Development, there would be no such impacts anticipated, with regard to visual impact, disruptions of views and amenity and privacy impacts.

Accordingly, colour and material direction would be utilised where possible to blend the architectural built-form of the Proposed Development, providing a gradual transition from the existing industrial character and nature of the surrounding area.

*(c) to seek alternative design solutions in order to maximise the potential sunlight for the public domain,*

The built-form of the Proposed Development, particularly the public domain, would be architecturally treated and orientated to maximise suitable sunlight opportunity where possible. As a result of the Proposed Development, 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 (refer to **Appendix 6**), particularly the public domain. Notwithstanding, it is important to note, that the Subject Site is zoned IN2 Light Industrial, for which it is surrounded by existing industrial developments.

*(d) to relate development to topography.*

The overall scale of the Proposed Development seeks to provide a transition from the existing industrial developments along the eastern and southern 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 on a gradual slope, for which the Proposed Development's architectural design responds to accordingly.

Furthermore, the Proposed Development attributes to the IN2 Light Industrial zone objectives, for which it is compatible with the existing built-form of surrounding developments, providing a gradual transition across the Subject Site accordingly.

### **3.2 OBJECTIVES OF THE ZONE**

The Subject Site is zoned IN2 Light Industrial under LCLEP2009, which the Proposed Development (Data Centre) is considered permissible with development consent.

The Proposed Development is considered consistent with the IN2 Light Industrial zone objectives, in that:

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

The Proposed Development provides an industrial premise (incorporating ancillary office space), for the purposes of a Data Centre on the Subject Site, which is considered highly compatible with regard to the range of light industrial, warehouse and related land uses in close proximity to the Subject Site. The Proposed Development would positively contribute to the desired industrial character of the Subject Site and the surrounding area.

- *To encourage employment opportunities and to support the viability of centres.*

The Proposed Development for the purposes of a Data Centre would provide employment-generating opportunities to the immediate community and wider locality within the Lane Cove Local Government Area (LGA) during both the construction and operational phases of development. This further contributing to the viable economic return on the local and regional economy the Proposed Development offers.

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

The Proposed Development is positioned on land that is designated for industrial 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 Development is further complemented by existing industrial developments along the eastern and southern boundaries. Additionally, the northern and western boundaries are densely vegetated. Therefore, there are no such impacts anticipated on the existing surrounding land uses.

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

The Proposed Development is for the purposes of a proposed Data Centre, which would provide enhanced IT infrastructure to the area, servicing the day to day needs of commercial and residential tenancies in the immediate area, as well as the wider locality.

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

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The Proposed Development is located on land that is designated for industrial purposes, and thus would ensure support is met for the desired outlay of the Site, and wider locality. As mentioned above, the Proposed Development would provide employment-generating opportunities in both the construction and operational phases, further advocating the continued support of industrial land in the IN2 Light Industrial zone.

- *To ensure that landscaping is a significant element in development viewed from the public domain and neighbouring properties.*

The Proposed Development would utilise an underperforming and undeveloped site, zoned for such permissible industrial development. The Proposed Development responds accordingly to the requirement to provide a minimum of 20% landscaped area with regard to the Site Area for the Subject Site, for which it provides a 26% landscaped area.

- *To recognise the close proximity of this zone to adjoining residential areas and seek to mitigate potential conflict between industrial and residential uses.*

The Proposed Development is not located in close proximity to any residential areas (~760 m southwest from the closest residential receiver on Cumberland Avenue, Lane Cove North). The Proposed Development would therefore support the viability of an existing industrial area. As described above, the provision of a proposed Data Centre proposed on the Subject Site would positively contribute to the desired industrial character of the Site.

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

Compliance with the standard would be unreasonable and unnecessary given that the Proposed Development generally maintains the height permitted under Clause 4.3 of LCLEP2009 with regard to the Subject Site. The non-compliance primarily arises due to the exceedance in height proposed that exceeds the standard imposed under LCLEP2009.

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

- The Proposed Development, for the purposes of a Data Centre, would generally maintain the maximum permitted building height under LCLEP2009 with regard to the Subject Site (exceedance by 6 m). Accordingly, the density and scale of the built-form proposed, would remain generally consistent with the existing industrial buildings surrounding the Site. Additionally, the Proposed Development would effectively integrate the streetscape and character of the area into the proposed scheme.
- By providing a transition between the existing industrial buildings in close proximity to the Subject Site, the built-form relationship of the Site contrasted to the surrounding built-form, would remain consistent with existing situation currently experienced with the IN2 Light Industrial zone.
- The built-form character of the surrounding industrial developments is generally consistent with the built-form proposed under this SSSDA, for which it is considered to respond to the local context.
- The Proposed Development would respond to the existing industrial developments on the southern and eastern interfaces, for which the protection of amenity would be ensured accordingly. Furthermore, there are no sensitive receptors in close proximity to the Subject Site; however, consideration for solar access, privacy, overshadowing and view / outlook would be considered (where possible).

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- The Proposed Development's building height is considered a key attribute in creating an internal building environment that would ensure the delivery of space and amenity that is required to support the operations of the future tenant involved and thereby enabling the productive use of the Site.

Overall, the above justifications demonstrate that compliance with the standard would be unreasonable and unnecessary. The proposed variation is therefore well-founded and acceptable.

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

The variation to the development standard for building height (Clause 4.3) under LCLEP2009 is considered well-founded on the basis that:

- The Proposed Development is entirely consistent with the underlying objective(s) or purpose of the building height standard, as demonstrated in **Section 3.1**.
- The Proposed Development fully achieves the objectives of LCLEP2009 for the IN2 Light Industrial zone, as described in **Section 3.2**.
- Compliance with the standard would be unreasonable and unnecessary for the reasons outlined in **Section 3.3**.
- The Proposed Development generally maintains the height experienced on surrounding industrial developments in close proximity to the Subject Site, for which the Proposed Development would provide a gradual transition.
- Materials and finishes 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. The proposed ancillary office would integrate various volumetric shapes and materials, conducive to transparency of function and response to sustainable building practices.
- The overall scale of the Proposed Development seeks to provide a transition from the surrounding industrial developments in close proximity of the Subject Site, being compatible in terms of built-form and scale. Additionally, the Proposed Development would provide an employment-generating land use that is considered adaptable and responds accordingly to shifting economic conditions.
- The Proposed Development, particularly the proposed height would integrate with the local context, specifically the IN2 Light Industrial zone that surrounds the Subject Site. The relationship of the Proposed Development, for the purposes of a Data Centre with surrounding developments, with respect to height, would remain consistent via the gradual transition offered between sites.
- The Proposed Development would maintain neighbouring amenity as-well-as the amenity of the public domain. It is important to note, that the Subject Site is relatively enclosed and shielded by existing industrial developments to the south and east, which directly face the public domain. Additionally, densely populated vegetation to the north and west offer additional landscape screening.
- The Proposed Development 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

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within close proximity to major commercial centres (Sydney CBD) and nearby transport infrastructure, such as bus networks and the wider regional road network.

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 LCLEP2009 Clause 4.6.

## **PART D CONCLUSION**

It is requested that Council supports the proposed variation to *Clause 4.3 Height of Buildings* under LCLEP2009 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 development.
- There is no public benefit in maintaining strict compliance with the standard.

Given the justification provided above, this Clause 4.6 Variation under LCLEP2009 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).