



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 the proposed construction and operational use of a Data Centre. The Proposed Development would be located at 1 Sirius Road, Lane Cove West (Lot 1 DP 1151370), on a site of approximately 39,453 m².

The Proposed Development results in a non-compliance with Clause 4.3 Height of Buildings under the *Lane Cove Local Environmental Plan 2009* (LCLEP2009) across a portion of the Site.

This Clause 4.6 Variation request has therefore 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.*

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.

1.2 PROPOSED NON-COMPLIANCES

1.2.1 Clause 4.3 Height of Buildings

Under the provisions of Clause 4.3 of LCLEP2009, the Site is subject to a maximum building height of approximately 18 m. It is noted, that the Proposed Development would comprise a Data Centre (including three (3) main operable Data Halls, with associated offices), which would attain a maximum height of 30.3 m (in certain portions of the Site), measured from the vertical distance of the ground level (existing) to the highest point of the building, in accordance with the definition bestowed in LCLEP2009 and the Standard Instrument. The Proposed Development would result in an exceedance of the LCLEP2009 18 m height control by approximately 12.3 m (or by 68%) – measured to the ridge of the roof top plant.

1.3 STRATEGIC PLANNING JUSTIFICATION

If the Proposal was to include a compliant scheme in accordance with the Development Standard of LCLEP2009, the built-form potential of the Site would be significantly under-realised. Hypothetically, if a height compliant scheme for the Proposal was submitted, it would:

- Not contribute towards meeting the demand for employment-generating opportunities within the Lane Cove Local Government Area (LGA), as identified within *A Metropolis of Three Cities*

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and the *North District Plan*, by potentially resulting in a reduction in available building footprint and consequently future industrial land uses on the Site;

- Threaten the commercial viability of the Proposed Development by reducing the overall achievable maximum height across the Site, by which would impact on end-user operational requirements;
- Create fewer full-time equivalent jobs during the construction and operational phases of development due to a decrease in footprint and potential disinterest in the Site due to preferred end-user ceiling heights not being able to be achieved; and
- Fail to meet the Objects of the *Environmental Planning and Assessment Act 1979* (EP&A Act) by making orderly and economic use of the Site for its full planning potential.

Notwithstanding, this Clause 4.6 Variation request has been prepared in accordance with the aims and objectives contained within Clause 4.6 and the relevant Development Standards under LCLEP2009. It considers various planning controls, strategic planning objectives and existing characteristics of the Site, and concludes that the proposed non-compliance is the best means of achieving the objective, which encourages orderly and economic use and development of land under Section 1.3 of the EP&A Act.

PART B THRESHOLDS THAT MUST BE MET

2.1 CLAUSE 4.6 OF LCLEP2009

In accordance with Clause 4.6 of LCLEP2009, Council is required to consider the following Subclauses:

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

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

(4) Development consent must not be granted for development that contravenes a development standard unless:

- (a) that the consent authority is satisfied that:*
 - i. the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - ii. the Proposed Development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Secretary has been obtained.*

(5) In deciding whether to grant concurrence, the Secretary must consider:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.*

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

PART C THE STANDARDS BEING OBJECTED TO

3.1 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. **Table 1** below outlines the proposed variation sought to Clause 4.3 of LCLEP2009.

| Table 1: Proposed Development Standard Variation in Relation to LCLEP2009 | | | |
|--|---------------------------------------|--|--------------------------------|
| LCLEP2009 Clause | LCLEP2009 Development Standard | Proposed Development Non-Compliance | Percentage of Variation |
| Clause 4.3(2) Height of Buildings | Maximum 18 m building height | The Proposal seeks development consent for a 30.3 m maximum building height. | 68% |

3.2 HYPOTHETICAL COMPLIANT DESIGN

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

- Not contribute towards meeting the demand for employment-generating opportunities within the Lane Cove Local Government Area (LGA), as identified within *A Metropolis of Three Cities* and the *North District Plan*, by potentially resulting in a reduction in available building footprint and consequently future industrial land uses on the Site;
- Threaten the commercial viability of the Proposed Development by reducing the overall achievable maximum height across the Site, by which would impact on end-user operational requirements;
- Create fewer full-time equivalent jobs during the construction and operational phases of development due to a decrease in footprint and potential disinterest in the Site due to preferred end-user ceiling heights not being able to be achieved; and
- Fail to meet the Objects of EP&A Act by making orderly and economic use of the Site for its full planning potential.

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

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PART D PROPOSED VARIATION TO CLAUSE 4.3 HEIGHT OF BUILDINGS

4.1 OBJECTIVES OF THE STANDARD

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

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

4.1.1 LCLEP2009 – Clause 4.3 Height of Buildings

Clause 4.3 of LCLEP2009 sets out specific objectives. Those objectives under LCLEP2009 are responded to as follows:

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

The intent of the Proposed Development is to contribute to the existing industrial character experienced within the IN2 Light Industrial zone within the immediate vicinity of the Subject Site in a complementary manner, consistent with the LCLEP2009 and the *Land Cove Development Control Plan 2009* (LCDCP2009).

The design approach for the Site has evolved in a considerate relationship to adjoining properties on the Sirius Road and Apollo Place street frontages, to ensure their current and future amenity would not be compromised. It is important to note, that the predominant building setbacks would be maintained accordingly, with regard to the setback controls (building and landscaping) articulated within the LCDCP2009 for industrial development. The additional height would only read as approximately 12.3 m above the permitted height control for the Site, with particular focus, that the height breach and non-compliance is only evident with certain portions of the development profile and footprint and not across the whole of the Site, as previously exhibited at the time of the original submission.

With its overall site configuration, a well-resolved built-form and potential public realm benefits, the Proposed Development can create a high quality built-form, which is complementary to the street character on the Sirius Road street frontage and the adjoining properties along Apollo Place, as well as being a quality contribution to the urban built-form of the surrounding area, comprising a versatile mix of similar, transitional industrial development surrounding the Site. Through generous landscaping and peripheral amenities to help activate the Site and surrounds, the Proposed Development can achieve a suitable fit within the existing public realm of the Lane Cove West Business Park, with positive economic, social and environmental benefits for the wider community, whilst not impacting on the adjoining bushland towards the Site's north and west (including northwest).

In order to facilitate high quality resolution of the building envelope, and to enable the best outcome for transitional relationship with the adjoining properties, the Proposed Development comprises a legible and efficient floor plan, as well as incorporating façade articulation to maximise the Site's visual appearance in the form of a conducive State-of-the-Art Data Centre. Additionally, revised material and colour selections complement an aesthetic, that is not considered to be visually adverse or obtrusive, rather integrates and transitions with adjoining properties and the adjoining bushland.

Underpinned by the subtly expressive architectural language, the building articulation of the industrial development transitions well both horizontally and vertically in its streetscape and built-form relationships with adjoining industrial developments. Complete cognisance of the topography of the Site has been considered throughout the revised design, for which the Natural Ground Level (NGL) of the

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Site varies from point to point due to the excessive slope encountered across the Site. Notwithstanding, the proposed height of 30.3 m is the worst-case scenario height at which the proposed roof plant is located in conjunction with the NGL. For context other heights encountered from the roof plant to the NGL at other portions of the Site are only as high as 21.8 m, which attains a height breach of only 3.8 m, with regard to the Clause 4.3 Height of Buildings Development Standard. Balanced by appropriate floor levels; an aesthetically pleasing architectural treatment; and reinforced landscaping, the proposed height contravention is considered to be significantly and satisfactorily justified.

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 local and regional context. Notwithstanding, the height is representative of market needs and demands for Data Centres close to the Sydney CBD, with available land able to cater and entertain such a development being sparsely identified within Sydney's inner city areas and distinguishable Metropolitan area.

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

The most significant visual impacts, with respect to the Proposed Development would be noted from ground level, along the walking track, that is noted to meander alongside the Lane Cove River and Stringybark Creek. Geoscapes (2019) have undertaken a further field survey and revised their Visual Impact Assessment, which accounts for the potentially impacted views from the ground level alongside the Lane Cove River and Stringybark Creek.

It is noted, that existing and proposed vegetation would provide sufficient and satisfactory landscape screening for any passersby, as well as further reinforce the ecological character of the Site and adjoining bushland area.

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 southern and eastern interfaces; positioned within an area zoned for such permissible industrial-related purposes. Therefore, as a result of the Proposed Development, there would be no undue impacts with regard to visual amenity, privacy or view loss. Revisions to the height exceedances previously encountered further complement this aspect by mitigating and reducing the height in certain areas of the building, particularly along the northern aspect, by reducing the northern generator platform, which has significantly reduced the height in some areas.

Accordingly, careful selection of building finishes and colours, combined with proposed landscape planting across the Site (particularly along the northern and western (including north-western) boundaries of the Subject Site), are considered to be appropriately treated from an architectural perspective, as well as being aesthetically pleasing to mitigate any visual impacts. This will assist in screening the built-form of the Proposed Development within the locality, from any concerned visual perspectives. As a result, this will assist in reducing the potential visual impacts to passersby along the Lane Cove Bushwalk walking track and adjoining industrial sites, that are in close proximity to the Proposed Development and are of the highest sensitivity.

Furthermore, the landscaping treatment proposed, as a result of mitigating potentially impacted views, would attain a height of 4 m after three (3) years, based on a 200 mm pot size. Furthermore, after 15 years, trees are expected to reach maturity, which would be considered to be consistent with the adjoining bushland surrounding the Subject Site.

It is noted, that significant tall areas of existing vegetation to be retained across the Site are located along the northern and western boundaries, which are the most visually impacted interface with regard to the sensitive bushland receivers (zoned E2 Environmental Conservation) to the north and west. By increasing the landscaping along this portion of the Site (as well as throughout the Subject Site), this

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will provide an effective screening measure for the Proposed Development, towards a number of potential visual receivers to the north and west, including the noted E2 Environmental Conservation zone. It is noted, that views looking south and west towards the Site from Sirius Road and Apollo Place are significantly screened and further transitional by existing industrial developments, which further complement the Proposed Development.

The Architectural and Landscape Plans for the Proposed Development are included in **Appendix 5 & 6**, which demonstrate, that there will be no such significant visual impacts on adjoining sites and sensitive receivers within close proximity.

(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. Revised landscaping includes provisions for additional landscaping throughout the proposed car parking areas, which would have beneficial social impacts for workers and visitors accessing the Site and assist in regulating the Site's microclimate throughout the warmer months during Summer. Notwithstanding, it is important to note, that the Subject Site is zoned IN2 Light Industrial, for which it is surrounded by existing industrial developments, that exhibit similar public domain qualities.

(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.

Detailed geotechnical investigations and combined civil engineering analysis confirms the topography of the Site can be made suitable for the Proposed Development. The levels and balance of cut and fill across the Site have been designed and proposed to respond to the Subject Site and adjoining site's, so as to not exhibit any adverse visual impacts on nearby sensitive receivers.

In relation to topography, it is noted, that portions of the Site are identified by flood affectations. The current gradient and pre-developed scenario of the Subject Site, with respect to flooding, results in significant influxes of stormwater runoff (including potential runoff contaminants given the Site's contaminated history) into identified tributaries such as the Lane Cove River and Stringybark Creek. The post-developed scenario addresses flooding in the 1%, 2%, 5% ARI storm events and responds to current site conditions; thereby, improving the Site's topography by deviating stormwater effectively into the proposed drainage system surrounding the Data Centre building, as part of the overall stormwater treatment measures, to be incorporated into the design, prior to discharge along the infiltration trenches.

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.

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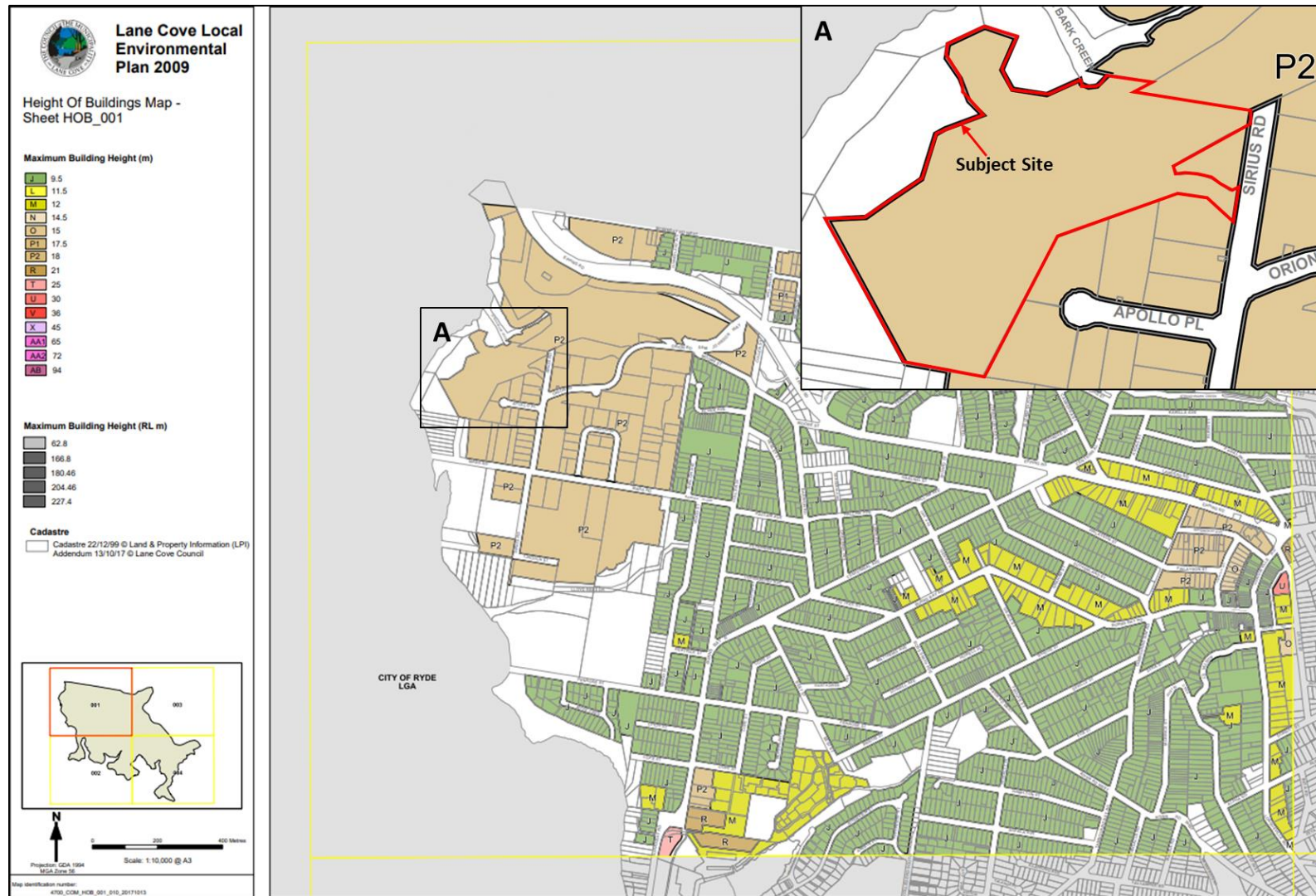


Figure 1 Maximum Building Height of Subject Site and Surrounding Area (Source: NSW Legislation, 2019)

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4.2 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.

By providing an industrial-related land use to the Subject Site, the Proposed Development will create positive economic and social impacts, through increased employment-generating opportunities, which align with the zone objectives listed below.

- *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 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.

It is important to note, that if the building heights proposed are not able to be achieved, an alternate site would have to be chosen; thereby, forgoing new employment opportunities on the Site.

- *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.*

The Proposed Development is positioned on land that is designated for industrial purposes, and thus would ensure 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 southern and eastern boundaries. Mitigation measures would be implemented to minimise any adverse impacts from occurring on nearby sensitive receivers, including the E2 Environmental Conservation zone adjoining the Site. Mitigation measures include:

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Noise:

The Acoustic Assessment undertaken confirms, that the Proposed Development is capable of meeting the relevant NSW EPA noise emission guidelines. However, the following mitigation measures are recommended to ensure ongoing compliance with the relevant NSW EPA guidelines:

- The appointed contractor will implement a Construction Noise and Vibration Management Plan (CNVMP). This plan will include the following (but not limited to):
 - Roles and responsibilities;
 - Noise sensitive receiver locations;
 - Areas of potential impact;
 - Mitigation strategy;
 - Monitoring methodology; and
 - Community engagement strategy.
- Practices (mitigation measures) to reduce construction noise impacts include:
 - Adherence to the standard approved working hours;
 - Manage noise from construction work, that might be undertaken outside of the recommended standard hours;
 - The location of stationary plant (concrete pumps, air compressors, generators) as far away as possible from sensitive receivers;
 - Using site work sheds and other temporary structures or screens to limit noise exposure where possible;
 - The appropriate choice of low-noise construction equipment and / or methods;
 - Modifications to construction equipment or the construction methodology or programme; and
 - Carry out consultation with the community and surrounding building owner's / occupants during construction.
- The following noise mitigation measures are recommended to be adopted at all times on the Site:
 - Regularly train workers and contractors (such as toolbox talks) to use equipment in ways to minimise noise;
 - Site managers to periodically check the Site and nearby residences for noise problems, so that solutions can be quickly applied;
 - Avoid the use of radios or stereos outdoors;
 - Avoid the overuse of public address systems;
 - Avoid shouting and minimise talking loudly and slamming vehicle doors; and
 - Turn off all plant and equipment when not in use.

Visual:

As mentioned above in **Section 4.1.1**, with its overall site configuration, a well resolved built-form and potential public realm benefits, the Proposed Development can create a high quality built-form, which is complementary to the street character on the Sirius Road and Apollo Place street frontages, as well as being a quality contribution to the urban built-form of the surrounding area, comprising a versatile mix of transitional industrial (south and east) development surrounding the Site. Through generous landscaping and peripheral amenities to help activate the Site, the Proposed Development can achieve a suitable fit within the existing public realm, with positive economic, social and environmental benefits for the wider community.

In order to facilitate high quality resolution of the building envelope, and to enable the best outcome for transitional relationships with the adjoining sites, the Proposed Development comprises a legible and efficient floor plan with façade articulation, as well as material and colour selection to complement an aesthetic, that is not considered to be visually adverse or obtrusive.

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As mentioned above, the Site would be complemented via an aesthetically pleasing architectural landscape design with regard to the Proposed Development, which would contribute to enhancing the vegetated character of the Site and the reinforce the character and importance of the bushland adjoining the Site.

- *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 36.68% landscaped area in accordance with Council's relevant DCP controls.

- *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.

4.3 ESTABLISHING IF THE DEVELOPMENT STANDARD IS UNREASONABLE OR NECESSARY

4.3.1 Height of Buildings

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

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 relates to the exceedance in height proposed, that exceeds the standard imposed under LCLEP2009. Furthermore, as shown in **Section 4.1** above, the Proposed Development is considered consistent with the objectives of Clause 4.3 pursuant to 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 12.3 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 within the IN2 Light Industrial zone.
- The built-form character of the surrounding industrial developments is generally consistent with the built-form proposed under this SSD Application, for which it is considered to respond to the local and regional context.

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- The height is representative of market needs and demands for modernised industrial-related developments, which assists in improving operational efficiencies and reducing the amount of building footprint required for developments.
- 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).
- 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.

Notwithstanding, reducing the height of the design to strictly meet the LCLEP2009 Development Standard is considered unreasonable, as this would result in a less efficient use of the Site and require additional GFA, as well as being operationally unsound for future end-users. Further, a reduced height may result in a building design that does not respond as well to the Site's prevailing topography, which the proposed heights have been so strategically based on as the strategically incorporated engineered design, which includes suitable levels for the Site, through balanced cut and fill.

The abovementioned justifications are considered valid and, in this instance, the proposed Clause 4.6 Variation is considered to be acceptable. The objectives of the relevant clauses and the IN2 Light Industrial zone would be upheld as a result of the Proposed Development.

4.4 SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD

The variation to the Development Standard for building height (Clause 4.3) under 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 4.1**.
- The Proposed Development fully achieves the objectives of LCLEP2009 for the IN2 Light Industrial zone, as described in **Section 4.2**.
- Compliance with the standard would be unreasonable and unnecessary for the reasons outlined in **Section 4.3**.
- The Proposed 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 Proposed Development incorporates suitable setback controls and separation distances (where required) in accordance with the LCDCP2009.

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- 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, which softens the industrial treatment of the Subject Site. Further, the additional height would not result in any significant adverse impacts on the amenity of the neighbouring industrial buildings in terms of overshadowing, privacy, outlook and amenity.
- The exceedance of the Height Standard (by 12.3 m) would have no undue minimal impact on the streetscape, on visual privacy and solar access of neighbouring development due to a strategically implemented architectural treatment, which integrates an aesthetically pleasing architectural landscape design, which offers suitable vibrant screening throughout the Site, via a dichotomous selection of native and exotic tree, plant, shrubs and grass species to be strategically planted across the Site.
- 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 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.

4.5 PUBLIC INTEREST

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

Sections 4.1 and **4.2** have already demonstrated how the Proposed Development is consistent with the objectives of Clause 4.3 and the IN2 Light Industrial zone under LCLEP2009. Accordingly, the Proposed Development is in the public interest, as it is consistent with the overarching height objectives. It would also contribute towards meeting the demand for employment opportunities within the Lane Cove LGA, as identified within *A Metropolis of Three Cities* and the *North District Plan*. Specifically, the Proposed Development would be of social benefit to the Lane Cove community and wider Lane Cove LGA as it would revitalise an underutilised industrial zoned site, for which it would provide employment-generating opportunities during the construction and operational phases of development.

There are no significant public disadvantages which would result from the Proposed Development.

The Proposed Development is therefore considered to be justified on public interest grounds.

4.6 MATTERS OF STATE OR REGIONAL SIGNIFICANCE

The proposed non-compliances with Clause 4.3 of LCLEP2009 would not raise any matters of significance for State or Regional environmental planning. It would also not conflict with any State Environmental Planning Policies or Ministerial Directives under Section 9.1 of the EP&A Act.

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

- LCLEP2009, Clause 4.3 Height of Buildings by 12.3 m / 68%.

This non-compliance is more than the 10% prescribed in the stipulated planning circular.

Furthermore, by including the non-compliance with Clause 4.3 of LCLEP2009, the Proposed Development would be more susceptible to being able to meet the objectives of the following State Government planning policies:

- *A Metropolis of Three Cities:*
 - By providing a greater height at the Site, the Proposed Development can respond to the Greater Sydney Commission's vision and NSW Government's aim of increasing the availability of employment opportunities in a range of industry sectors.
- *North District Plan:*
 - By providing a greater height at the Site, the Proposed Development can better respond to the Greater Sydney Commission's vision for continued job growth and economic prosperity across the North District.

4.7 PUBLIC BENEFIT IN MAINTAINING THE STANDARD

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

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

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

4.8 OBJECTS OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

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

CLAUSE 4.6 VARIATION – HEIGHT OF BUILDINGS (CLAUSE 4.3)

Proposed Data Centre – 1 Sirius Road, Lane Cove West (Lot 1 DP 1151370)

| Table 2: Objects of the Act – EP&A Act | |
|---|--|
| Object | Proposed Development Compliance |
| The objects of this Act are as follows: | |
| <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 Proposed Development is considered to be in the public interest as it would contribute towards meeting the demand for increased employment opportunities within the Lane Cove LGA, as identified in <i>A Metropolis of Three Cities</i> , and the <i>North District Plan</i> . Specifically, the Proposed Development would be of social benefit to the community situated within Lane Cove, 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> | <p>The Proposed Development has been assessed against the principles of Ecologically Sustainable Development as set out in the <i>Protection of the Environment Operations (General) Regulation 2009</i> as follows.</p> <p>The Proposed Development would not create the risk of serious or irreversible damage to the environment.</p> <p>Ultimately, the Proposed Development would not create any threats of serious or irreversible environmental damage which would require further scientific study to fully ascertain.</p> <p>The Proposed Development would not impact on the conservation of biological diversity or the ecological integrity of the locality.</p> <p>The Proposed Development would not require an Environmental Protection Licence or other mechanism to compensate for any pollution generating activities at the Site.</p> |
| <i>(c) to promote the orderly and economic use and development of land,</i> | The Proposed Development would make use of a site that is currently considered to be underdeveloped and underutilised, for which it would result in orderly and economically beneficial development, without resulting in any unacceptable economic, environmental or social impacts. |
| <i>(d) to promote the delivery and maintenance of affordable housing,</i> | Not relevant to the Proposed Development. |
| <i>(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,</i> | <p>It is important to note, that several measures will be implemented to reduce impacts, where possible, such as appropriate pre-clearance protocols and a CEMP. These include:</p> <ul style="list-style-type: none"> ▪ Pre-Clearance Protocols: <ul style="list-style-type: none"> ○ On-site supervision of habitat tree felling and relocation of fauna; and, ○ Soft felling operations. ▪ Vegetation Management Plan (VMP) ▪ CEMP |

CLAUSE 4.6 VARIATION – HEIGHT OF BUILDINGS (CLAUSE 4.3)

Proposed Data Centre – 1 Sirius Road, Lane Cove West (Lot 1 DP 1151370)

| | |
|---|--|
| | <p>Excluding the requirement for a CEMP, no additional adaptive management measures are proposed.</p> <p>Impacts associated with vegetation zones PCT 1776 in an 'intact' and 'disturbed' condition for the Proposed Development will require offset under the BAM. The total cost of ecosystem credits, should the Biodiversity Conservation Trust (BCT) be used to offset the impacts, are currently (27 August 2019) estimated to be \$23,127.78 (excluding GST).</p> |
| <p><i>(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),</i></p> | <p>The Site does not contain, and nor is it in the vicinity of, any heritage items listed under both the NSW State Heritage Register or LCLEP2009. The Heritage items identified approximately 250 m to the north of the Site would not be compromised by the Proposed Development.</p> <p>The Site has been previously disturbed and is therefore subject to significant levels of disturbance. The potential for the Proposed Development to uncover any unrecorded items of Aboriginal Cultural Heritage significance is therefore considered to be low. In the unlikely event that potential Aboriginal Cultural Heritage items or human remains are uncovered at the Site, works in the vicinity of the find would cease, and the NSW OEH and NSW Police would be contacted as appropriate.</p> |
| <p><i>(g) to promote good design and amenity of the built environment,</i></p> | <p>Section 4.1 satisfactorily addresses how the Proposed Development responds to the character of the locality in terms of urban design.</p> |
| <p><i>(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,</i></p> | <p>The Proposed Development can be constructed and maintained without health and safety risks to future tenants.</p> |
| <p><i>(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,</i></p> | <p>The Proposed Development has a Capital Investment Value of approximately \$216,465,700.00 Million. As such, it is classified as State Significant Development, for which it would be determined by the NSW DPIE.</p> |
| <p><i>(j) to provide increased opportunity for community participation in environmental planning and assessment.</i></p> | <p>The SSD Application for the Proposed Development would be subject to the relevant public notification and exhibition requirements.</p> |

4.9 SUMMARY

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

- Compliance with the Development Standard is unreasonable and unnecessary in the circumstances;

CLAUSE 4.6 VARIATION – HEIGHT OF BUILDINGS (CLAUSE 4.3)

Proposed Data Centre – 1 Sirius Road, Lane Cove West (Lot 1 DP 1151370)

- There are sufficient environmental planning grounds to justify contravening the Development Standard;
- The Proposed Development is in the public interest;
- The Proposed Development is consistent with the objectives of the particular standard;
- The Proposed Development is consistent with the objectives for development within the IN2 Light Industrial zone;
- The objectives of the standard are achieved notwithstanding the non-compliance with the standard;
- The Proposed Development does not negatively impact on any matters of State or regional significance; and
- The public benefit in maintaining strict compliance with the development standard would be negligible.

It is furthermore submitted, that:

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

Overall, it is considered that the proposed Clause 4.6 Variation to Clause 4.3 Height of Buildings pursuant to LCLEP2009 is entirely appropriate and can be clearly justified having regard to the matters listed with Clause 4.6 of LCLEP2009.

PART E CONCLUSION

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

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

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

It is requested, that the NSW DPIE (and Council) supports the proposed variation to Clause 4.3 Height of Buildings under 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).