

30 November 2022

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Via: DPE Planning Submissions Portal

SSD-13475973 - Mowbray Road Data Centre – Public Submission

This submission focuses aspects of the 'Clause 4.6 Variation Request to Clause 4.3 of LCLEP2009 by Willowtree Planning on behalf of Microsoft.

The key issue of Microsoft's proposal is not whether they can seek the variation, but whether the variation should be accepted on merit.

The writer's position is that the variation is not sufficiently justified by the proponent nor is there sufficient merit demonstrated to vastly exceed statutory planning controls.

The '**thresholds that must be met**' do not seem to be met at all & only weak justification or ambit claims made. The proposal does not meet the objectives to the extent claimed for the variation to be valid & therefore Microsoft's proposal should not be approved.

Additional concerns:

- The proposed height is not allowed under the LEP, which is a statutory/legal instrument. Microsoft have not proven a net public benefit (Vs impacts) & outcome that is superior to the statutory standard.
- The bulk & scale is completely out of context with the local area. There is no precedent for a data centre of this size in such close proximity to low rise residential area. The impact is unwarranted.
- The proposed job outcome for the overall site is poor in comparison to light industrial & other employment zoned lands in the Northern Districts & other Districts. Microsoft have not proven otherwise & additional jobs created above the height control is minimal. Using increased employment is a very weak justification to apply the variation clause.
- Microsoft knew the site constraints (e.g. lane cove tunnel = somewhat limited excavation) & planning constraints (I.e. LEP) when they bought the site. The fact that they can't fit their known requirement within the known allowable building envelope should be their problem & not a problem that is solved by allowing undue impacts on nearby residents & general public.

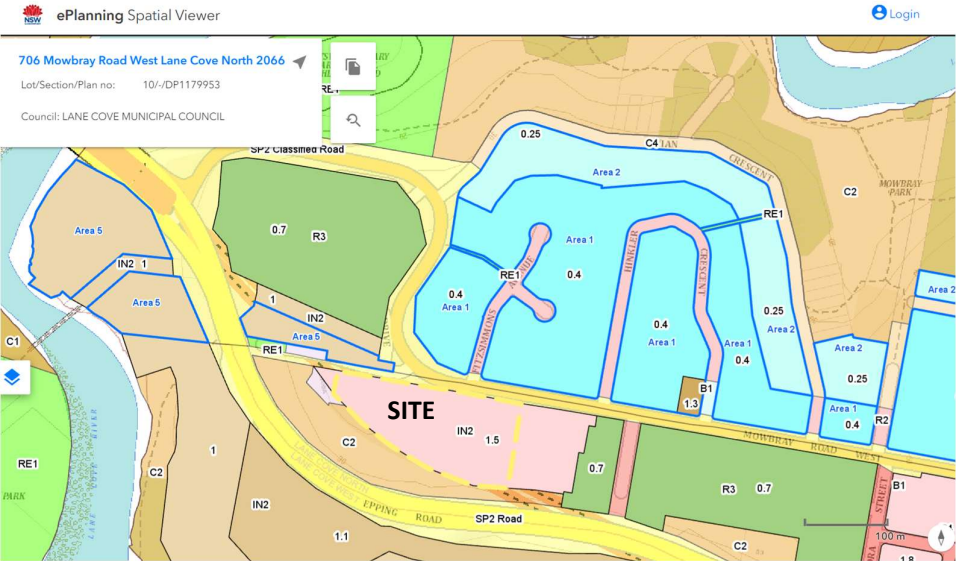
Specific responses to the variation request report are provided in Appendix A.

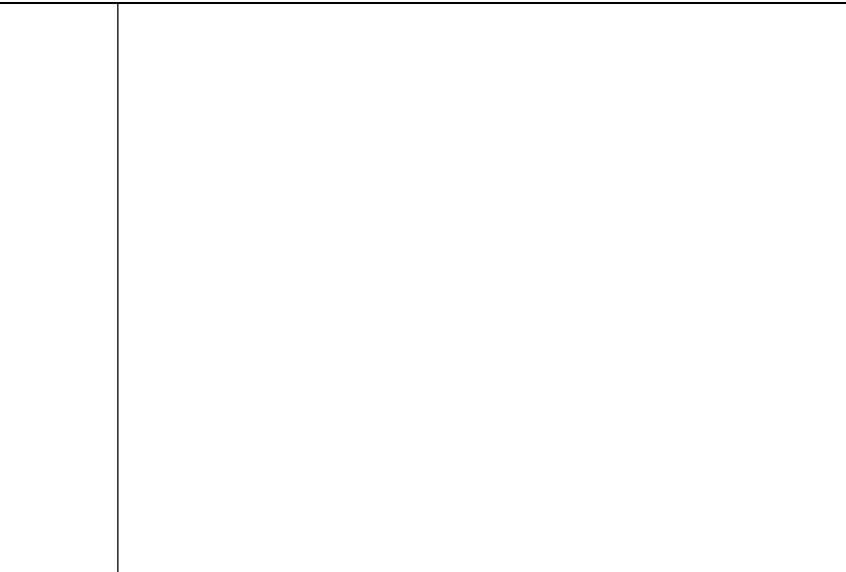
I strongly object to the proposal. I appreciate the opportunity to make a submission & voice concerns of proposed impacts on the public.

Kind Regards,

James Rendall

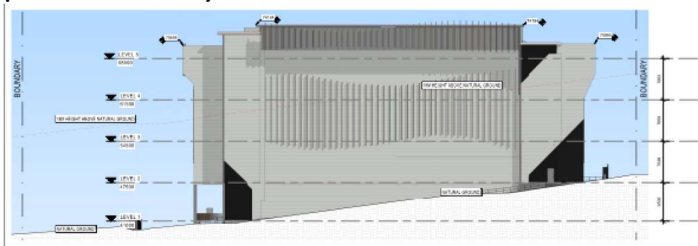
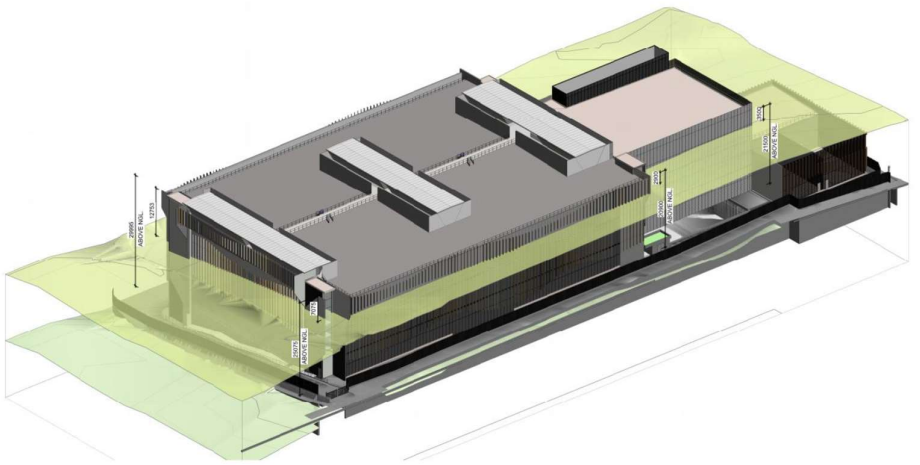
APPENDIX A

Section	Proponent Content	Writer's Review / Position
1.1 pg2	<p><i>The proposal seeks variation to the maximum building height prescribed in Clause 4.3 of the LCLEP2009 across relevant portions of the Site from 18 m to heights of varied nature between 20.9– 29.695 m.</i></p> <p><i>This Clause 4.6 Variation request has therefore been prepared in accordance with the requirements of Clause 4.6 of LCLEP2009, which includes the following objectives:</i> <i>(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,</i> <i>(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.</i></p>	<p>65% exceedance of LEP height requirement noted</p> <p>The objective of achieving 'better outcomes' is not met, as outlined in positions below.</p> <p>Better outcomes in Microsoft's interest do exist</p> <p><u>The proponent has not demonstrated better outcomes in the public interest.</u></p>
	<p><i>Importantly, the Site is also subject to Floor Space Ratio (FSR) of 1.5:1. The Proposal as submitted seeks an FSR of 0.64:1 which is compliant with the development standard.</i></p>	<p>It is noted that FSR of uses immediately opposite to the North is 0.4:1</p>  <p>Whilst being compliant with this control, <u>the proponent has not properly considered the context of the site</u></p>
1.2 pg5	<p><i>The Proposed Development would result in an exceedance of the 18 m building height control under LCLEP2009 by approximately 11.695 m</i></p>	<p>Exceedance in height is by approximately 3 storeys (with a standard ceiling height of between 2.7m and 3m) which would not normally be permitted in employment land zones. This 11.695m exceedance alone is significantly more than nearby height limits</p>



1.2 pg5 *The height plane diagrams demonstrate that the Data Centre is broken down into one (1) main building, with the heights (varying from 26.59 m – 29.695 m) being positioned at the rear of the Site to ensure that potential visual impacts are further mitigated by positioning the built form as far away from the streetscape as possible. The front of the Site (varying from 20.9 m – 25.08 m) is much closer to the streetscape; however, is coupled with increased landscaping to assist in screening the bulk and scale of the Proposal ...the highest points of the proposed built form are positioned at the rear of the Site. Along Mowbray Road West, the highest points will be between 20.9 m (16.11% variation) and 25.08 (39.33% variation).*

There is minimal attempt to ensure that the visual impacts are further mitigated from Mowbray Road. There is no tiering or stepping back & up from the height control at the Mowbray Road frontage.



East Elevation

Landscaping is decreased compared to the existing environment with mature trees fronting Mowbray Rd which will mostly be removed. Even the existing mature trees would not sufficiently screen the proposed bulk & scale of the proposal. Increased landscaping will require 10years+ of growth.

Part B	Thresholds that must be met	Thresholds seem not to be met. <u>If thresholds have not been met then this variation & whole proposal fall over.</u>
1st Limb a. that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a)); and b. that there are sufficient environmental planning grounds to justify contravening the development standard	Microsoft have not demonstrated why compliance is <u>unreasonable</u> . It is not their use that is the issue it is the proposed scale of their use which is unreasonable. Data Centres of this bulk & scale are typically in B3 zonings with greater height limits &/or in locations further away from low rise residential.
2 nd Limb	... in that the consent authority must be directly satisfied that the Proposed Development will be in the public interest because it is consistent with the objectives of the development standard and the zone, not indirectly satisfied that the applicant's written request has adequately addressed those matters.	The writer asserts that Microsoft have not demonstrated that the Proposed Development will be in the public interest whereby benefits are more than impacts.
3 rd Limb	..concurrence.	N/A
Other relevant legal matters	<i>This variation adopts Method 1 in Wehbe which requires an applicant to demonstrate that the objectives of the relevant development standard will be achieved, despite the non-compliance with the numerical standard. The factual circumstances surrounding the existing ground level across the Site and its presentation to the Street frontages demonstrate that compliance with a height control is unreasonable in the circumstances.</i>	The writer accepts that the site slopes & there is a degree of appropriate flexibility that could fairly be applied to the rear of the site However, it is noted that there is significant non-compliance at the front of the property where the road & natural ground level are at similar levels and where it would be considered reasonable that a proponent needs to comply with as a minimum. Considering this, the cases cited do not seem to be fairly used & 'Method 1 in Wehbe' not sufficiently justified.
Part C Pg14	<i>Development Standards – Cl.4.3 (Height of Buildings) under LCLEP2009 however, the front part of the Site comprises a maximum building height of 25.08m resulting in a variation 39.33%.</i>	Microsoft make no attempt to reach compliance across the site & especially where visual impacts due to bulk & scale are at the greatest at the front of the property at Mowbray Rd. Surely this goes against the LEP objectives. By contrast nearby low rise residential properties are bound by strict compliance.
Part D Pg21	<i>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</i> <u>Pubic Open Space:</u> <i>.....the additional height would not compromise the public domain features, or adjoining sites. Rather, through increased landscaping provision the public domain would be revitalised improving the overall aesthetic and wellbeing of this portion of Mowbray Road West, by including deep-soil landscaping to balance the vibrancy intended for the Site by virtue of trees, shrubs and plant species. This would act as a natural screening mechanism for any unwarranted views held towards the Site</i>	Microsoft make an extraordinary claim that public open space would not be impacted by a 25.08m high building at street frontage. Again Microsoft seem to have no appreciation for the context of the area, with surrounding uses being predominantly low rise residential, & no appreciation for the impacts of the bulk & scale of the non-compliant proposal. Maybe <u>if the public do not look up for 15 years</u> there won't be an impact.

	<p>from eye level. Accordingly, the public domain features of the Site will take advantage of sunlight throughout the daytime, which proposed landscaping will be able to reach full maturity over a 15-year period which is considered acceptable.</p> <p>In accordance with the objective, it is not considered that there are any such unwarranted impacts on the public domain as a result of the Proposal (including the height breach).. Therefore, a compliant height scheme compared to that of a non-compliant height scheme would have no such material impact on the public domain features of the Site and surrounding sites. It is considered that the proposed height would not undermine the intent of Clause 4.3(1)(c).</p>	<p>Only a compliant scheme, at least for the front part of the site facing Mowbray Rd, would have less material impact, but to say ‘no such material impact’ is a stretch.</p>
<p>Pg21</p>	<p><u>Pubic Open Space: (cont) (d) to relate development to topography.</u></p> <p>...overall scale of the Proposed Development seeks to provide a transition from the existing industrial developments along the eastern and western interfaces comprising developments of similar nature, in terms of built form typology and scale.</p> <p>.....to ensure that the proposed data halls can operate at their optimum operational efficiencies; therefore, the Site cannot be tiered to accommodate the future data centre.</p> <p>.....the slope of the Site from the northern boundary to the southern boundary, the geotechnical profile and proposed earthworks have been limited to the degree proposed due to the existing infrastructure constraint pertaining to the Lane Cove Tunnel.</p> <p>Therefore, the Proposal, including the additional height, is considered suitable for the site’s topography thereby satisfying Clause 4.3(1)(d).</p>	<p>Erroneous claim that the adjacent light industrial uses to the east & immediate west are a similar scale.</p> <p>Microsoft provide no proof to support this claim that the site cannot be tiered. Data Centres in Western Sydney are much lower in height, including a recently approved Microsoft data centre in Kemps Creek. Tiered can also mean stepped.</p> <p>Microsoft knew the constraint when they bought the property. The fact that they can’t dig down to create additional built area to suit their requirement was known and therefore should not be factored in any concession for allowing additional heights that impact on public interests.</p> <p><u>There is no reasonable support to this conclusion that the additional height is considered suitable</u>, especially at the Mowbray Rd frontage.</p>
<p>4.2 Pg23</p>	<p><i>Objectives of the Zone – Encourage employment)</i></p> <p>It is estimated that the Data Centre would employ 56 full time staff and generate up to 150 jobs during the construction stage.....</p>	<p>56 full time jobs is a very poor total job outcome for this site & barely encourages employment. Microsoft are also unclear where these jobs are based in Lane Cove or elsewhere.</p> <p>By comparison this site would normally expect to yield 200jobs (Site Area = 1.757Ha x 114 jobs/Ha = 200 Jobs if comparable to other North district employment lands, or 107 jobs if the</p>

	<p><i>...if the maximum building height proposed is not able to be achieved, an alternate site would have to be chosen; thereby, forgoing new employment opportunities on the Site.</i></p> <p><i>... The height is considered to consistent with the heights currently being explored by the NSW DPE pertaining to Data Centre heights able to be achieved under Complying Development (anticipated to be up to and including 45 m under future policy).</i></p> <p><i>The height is considered to consistent with the heights currently being explored by the NSW DPE pertaining to Data Centre heights able to be achieved under Complying Development (anticipated to be up to and including 45 m under future policy).</i></p>	<p>average across Sydney (per Employment Lands Development Monitor 2021 summary report, noting Employment lands are areas zoned for industrial or similar purposes in planning instruments (Macquarie Park is differently classed as Business Park Land)).</p> <p>56jobs equates to 32 jobs/Ha which is far lower than the average for the West District (44jobs/Ha) where many data centres operate on broadacre industrial estates.</p> <p>The previous film studio, dance studio & mix of (quiet) light industrial users had far more staff on site than 56 before Microsoft closed the doors.</p> <p>The extra jobs for the extra height is a tiny positive & incomparable to the negative impact to the public interest.</p> <p><u>Employment outcomes do not meet the desired objectives of the Zone & employment is not sufficiently encouraged to justify the variation of height.</u></p>
<p>4.2 Pg23-24</p>	<p><i>Objectives of the Zone - Minimise any adverse effect of industry on other land uses.</i></p> <p><i>the Site context may be described as part of an employment-generating industrial ‘precinct’ as such, which the proposed Data Centre would positively contribute to. Given the existing industrial character of the Site’s surrounds, no such land use conflict is expected to occur.</i></p> <p><i>North – North of the Subject Site comprises existing residential land uses (positioned within the Willoughby LGA), whereby the Site will be appropriately screened and mitigated to prevent any adverse impacts occurring on nearby receiver locations.</i></p>	<p>Illogical claim. The semi-isolated industrial use is only separated from low rise residential by a local road. Due to minimal separation of zones, conflict is naturally expected & if the visual impacts are exacerbated but exceeding height limits, then they are expected to occur.</p> <p>Screening will never be able to appropriately screen & mitigate impacts of a development of this scale & size opposite a low rise residential area without a completely altered design.</p> <p><u>The objectives of the zone are not met due to impacts on other land uses.</u></p>
<p>4.2 Pg24</p>	<p><u>Visual Amenity</u></p> <p><i>the potential visual impacts, views from residential dwellings located across Mowbray Road West will be mitigated with a large turf verge creating distance from the development and landscape setback in which tall native canopy trees, screening shrubs and groundcovers are planted. Following maturity, these planted buffers will provide a dense screen to help soften and screen the Proposal.</i></p> <p><i>the Proposed Development includes provision for substantial landscape planting to offset the visual impact in the form of an</i></p>	<p>If the public do not look up until the trees mature, there’ll be some downplaying of the visual impacts.</p> <p>The planting strategy ‘10 years’ seems to contradict the previous 15 years quoted.</p> <p><u>Visual amenity will be significantly negatively impacted by the proposal.</u></p>

	<i>8 m setback which includes dense tree and shrub planting. This planting strategy will be most effect after 10 years</i>																															
Pg33-34	<p><i>(Objective) To support and protect industrial land for industrial uses.</i></p> <p><i>The Proposal supports industrial land for industrial uses for the following key reasons</i></p> <ul style="list-style-type: none"> - <i>Reinforces the industrial character of the Site, thereby it does not encourage rezoning or the like.</i> - <i>The Proposed Development would utilise an underperforming site, zoned for such permissible industrial development</i> 	<p>A chronic undersupply of industrial space is available for occupiers to lease. The existing building, even though secondary vs newer stock in western Sydney market would attract rent paying users at historically high rents in a market with basically zero vacancy. By comparison Macquarie Park, where many nearby data centres exist, has a 10%+ vacancy for secondary office space.</p> <table border="1"> <thead> <tr> <th></th> <th>South Sydney</th> <th>Inner South West</th> <th>North Shore</th> <th>North Sydney</th> <th>Central West</th> <th>Metro West</th> <th>Outer South West</th> <th>Outer North West</th> <th>Sydney Total</th> </tr> </thead> <tbody> <tr> <td>2H21</td> <td>0.6%</td> <td>0.8%</td> <td>1.2%</td> <td>2.5%</td> <td>0.6%</td> <td>0.5%</td> <td>0.1%</td> <td>0.1%</td> <td>0.4%</td> </tr> <tr> <td>1H22</td> <td>0.4%</td> <td>0.6%</td> <td>0.0%</td> <td>1.0%</td> <td>0.3%</td> <td>0.0%</td> <td>0.2%</td> <td>0.3%</td> <td>0.3%</td> </tr> </tbody> </table> <p>Source: CBRE Research, Industrial Figures Q3'2022 Sydney Market Vacancy</p> <p>The site would continue to be used for industrial uses without Microsoft <u>An erroneous or weak claim that Microsoft are protecting the use that shouldn't be used to justify the variation.</u></p>		South Sydney	Inner South West	North Shore	North Sydney	Central West	Metro West	Outer South West	Outer North West	Sydney Total	2H21	0.6%	0.8%	1.2%	2.5%	0.6%	0.5%	0.1%	0.1%	0.4%	1H22	0.4%	0.6%	0.0%	1.0%	0.3%	0.0%	0.2%	0.3%	0.3%
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1H22	0.4%	0.6%	0.0%	1.0%	0.3%	0.0%	0.2%	0.3%	0.3%																							
	<i>the Proposed Development would allow for future built form to achieve a modernised, contemporary industrial built form development within an industrial zone that would set a desirable precedent for future industrial developments</i>	On the contrary, the proposal sets a dangerous precedent for allowing proposals with misaligned bulk & scale for local contexts with high capital outcomes but low on-site job outcomes																														
4.3	<p>ESTABLISHING IF THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY</p> <p><i>Of particular assistance in this matter, in establishing that compliance with a development standard is unreasonable or unnecessary, is the First Method</i></p>	As below																														
4.3.1 Pg35-36	<p>Height of Buildings</p> <p><i>Compliance with the Development Standard would be unreasonable and unnecessary as it would provide for a building that is unable to fulfil the objectives of the zone and provide optimal operational capacity within an area that is highly suitable for data centre operations. A compliant scheme in this respect would require greater site coverage at ground level, causing building setbacks to be reduced substantially and landscaped outcomes compromised.</i></p>	A compliant building would provide a smaller building that would also meet the objectives of the zone, perhaps not to Microsoft's but other's requirements.																														
Pg36	<p><i>The standard is unreasonable and unnecessary in the circumstances of the case on the following basis</i></p> <ul style="list-style-type: none"> ▪ <i>that the density and scale of the future built form proposed would remain generally consistent with the built form</i> 	The standard is reasonable for light industrial & urban services type uses, even including data centres. It is the scale of Microsoft's use that should be the concern as it impacts on the public interest in the context of the position of this site.																														

	<p><i>typologies in terms of footprint pertaining to existing industrial buildings surrounding the Site and the built form and scale of Data Centres emerging through the immediate locality and nearby throughout Macquarie Park</i></p> <ul style="list-style-type: none"> ▪ <i>heights proposed are considered to be representative of market needs and demands for modernised Data Centre facilities, for which increased heights are required to be able to meet the operational needs and requirements of the end users involved....floor-to-floor heights required for Data Centre's are extremely precise</i> ▪ <i>....with regard to the future built form proposed, that would have the potential to impact some views experienced from residents.</i> <p>Reducing the height 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. Furthermore, a reduced height may result in a building design that does not respond as well to the Site's prevailing topography; market and tenant demands; and current socio-economic demand following the impacts of COVID-19, which the proposed heights to allow future built form have been strategically based upon.</p> <p><i>....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 Clause 4.6 of LCLEP2009.</i></p>	<p>Data centres in Macquarie Park have different zoning & height limits. Most data centre operators recognise that when you purchase a site you should expect to build what is allowed under the known controls of the relevant environmental planning instrument.</p> <p>Again Microsoft knew their requirements when they bought the site & knew whether it could fit within the allowable building envelope or not. Anything else is taking commercial advantage & should not be gifted by a relevant planning authority. Microsoft could attempt to buy a bigger site.</p> <p>Correct the proposed built form would likely impact on people.</p> <p>The LEP height should be the starting point. The proposed design has a high site coverage already. It is more likely that a reduced height design would not be as economically viable, but that's the point for the proposed Microsoft data centre use there was a reasonable maximum development outcome that should have been acknowledge.</p> <p>Microsoft have provided no detail as to how many sqm of data halls they wouldn't have if they made the design compliant to the height control. I'm sure Microsoft's competitors would be interested in whether they get a freebie.</p> <p>It would be expected that Microsoft understood site constraints when at purchase.</p> <p>Microsoft's variation to the building height is entirely inappropriate & unjustified given the insufficient reasons & poorly supported reasons.</p>
<p>4.5</p> <p>Pg38</p>	<p>PUBLIC INTEREST</p> <p><i>There are no significant public disadvantages which would result from the Proposed Development.</i></p> <p><i>The Proposed Development is therefore considered to be justified on public interest grounds</i></p>	<p>If a data centre use of this scale is in the public interest it is because it serves the wider public & Microsoft's clients more so than serving the local context. If needing to be at this scale it is unclear why this site is more in the public interest than other sites located with sufficient power supply & not in such close proximity to low rise residential. For example nearby DCs have been constructed in Gore Hill/Artarmon (2), MacQ Pk (3-5) & Lane Cove West (1). It is unclear why Microsoft can't increase the size of their DC at Seven Hills, Huntingwood & Erskine Park.</p> <p>No technical report has been provided by Microsoft supporting their claim that they are out of other site options.</p>

		<p>One wider public disadvantage is for creating a potentially dangerous precedent for Council LEPs with light industrial areas in close proximity to residential & the obvious impact from bulk & scale grossly out of context within the local environment in Willoughby CC.</p>
<p>4.6 Pg39</p>	<p>MATTERS OF STATE OR REGIONAL SIGNIFICANCE</p> <p><i>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:</i></p> <p><i>North District Plan: o 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 Eastern Harbour City.</i></p>	<p>The statement that non-compliance is better is a stretch.</p> <p>It is not the intent of state government planning policies to erode local statutory environmental planning instruments.</p> <p>Microsoft have not clearly demonstrated that the 56 permanent jobs are fulltime & on site, and not services contractors or offsite workers. It is not clear how the 56 jobs is superior in number & quality of jobs for alternative light industrial, ancillary office users & light urban amenity. Current demand for industrial space is at an all-time historic low vacancy hence this land (& existing building) would be in high demand, see above.</p> <p>It is also not clear how 56 jobs at this location, with this scale, is more efficient & effective and thus meeting state policies & district plans better than other likely nearby precincts housing data centres of a similar bulk & scale.</p>
<p>4.7</p>	<p>PUBLIC BENEFIT IN MAINTAINING THE STANDARD</p> <p><i>Given that strict compliance with Clause 4.3 of LCLEP2009 would result in:</i></p> <ul style="list-style-type: none"> ▪ <i>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 prohibiting future industrial-related land uses on the Site, that support employment in the Lane Cove West Business Park (including the Subject Site forming an extension to this area);</i> ▪ <i>Not be able to achieve a height, that is being driven due to securing economic employment lands for a secured end user – that is of a size that is surrounded by existing built form requiring increased heights rather than land mass;</i> ▪ <i>Create fewer full-time equivalent jobs during the construction and operational (including maintenance) 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 reducing the potential amount of data halls, thus reduction in data storage potential; and</i> ▪ <i>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.</i> 	<p>The claim that without Microsoft there would be no benefits is an erroneous ascertain.</p> <p>The DC use could remain, proportionally smaller, not breach site controls and still provide significant benefits.</p> <p>It could be considered that the proposal seeks a DISorderly use of the land above its prescribed land use outcomes. Microsoft are seeking to ignore the existing order.</p> <p>As above, the employment outcomes are a reduction in job numbers for this site. The use reduces the potential public benefit & introduces negative public impacts.</p> <p>As established above there is strong demand for industrial space.</p> <p>Microsoft have removed a space from the market to pursue a development strategy that is not within allowable planning controls.</p> <p>Alternatives - Microsoft have not provided any evidence as to why the additional space above the allowable height needs to be on this location & not in areas more sympathetic with their use. They only make claims without technical or supporting reports. Gore Hill tech park/Artarmon industrial area, Lane Cove West industrial area & Macquarie Park (B3 zoning with higher height limits) are nearby alternatives (not just out west) with much lower impacts on nearby/adjacent land uses. A number of data centres have been built in these locations since Microsoft got a position on the Mowbray site.</p>

	<p><i>The proposed development is therefore considered to be justified on public interest grounds and there is no material public benefit in maintaining the standard</i></p>	<p>Arguments are not coherent or clearly articulate sufficient public interest grounds.</p>
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