

## **ANNEXURE 3**

**Submission under Clause 4.6  
of Shoalhaven LEP 2014**

**prepared by**

**Cowman Stoddart Pty Ltd**

**PROPOSED MODIFICATION TO  
BOILERS 2, 4 AND 6**

**LOT 1 DP 838753, LOT B DP 334511  
AND LOT B DP 376494  
Bolong Road  
Bomaderry**

Prepared for

**Shoalhaven Starches Pty Ltd**

May 2017



**Prepared by:**

*COWMAN STODDART PTY LTD*

SUBMISSION UNDER  
CLAUSE 4.6 OF SHOALHAVEN LEP 2014

PROPOSED MODIFICATION TO  
BOILERS NO. 2, 4 and 6

STRUCTURES AND ASSOCIATED WORKS  
IN EXCESS OF ELEVEN METRE  
MAXIMUM BUILDING HEIGHT LIMIT  
(Clause 4.3(2A) Shoalhaven LEP 2014)

Lot 1 DP 838753, Lot B DP 334511  
and Lot B DP 376494  
Bolong Road  
Bomaderry

Ref. 16/110

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<b>Figure 1</b>	Site Locality Plan (extract from Shoalhaven City Council)
<b>Figure 2</b>	Aerial Photograph of Shoalhaven Starches Factory Site

## **1.0 INTRODUCTION**

This submission has been made in support of a modification application that seeks approval to

- To convert Boiler No. 2 from its current fuel source of woodchips back to coal as it was originally designed so as to increase steam production from this boiler.
- To convert Boiler No. 4 from gas to coal-fired. The objective of this modification application is to provide an economically sustainable fuel source for this boiler given the increasing costs associated with using natural gas.
- To undertake modifications to Boiler No. 6 including the construction of a new baghouse and associated ducting so as to increase steam production from this boiler.

The site is zoned IN1 General Industrial under the provisions of Shoalhaven LEP (SLEP) 2014. There are no specific maximum building height provisions specified for the subject site on mapping supporting the LEP. Clause 4.3(2A) of the Shoalhaven LEP stipulates that if no height limit is specified then a maximum height of any buildings is to be eleven (11) metres.

The proposal seeks approval to:

- Construct a new Baghouse adjacent to Boiler 2 at ground level which will have a height above ground level of 15 m, and replace an existing stack with a new stack which will have a height above ground level of 40 m.
- Construct a baghouse on top of the existing Boiler 4 that will have a height above ground level of 35.0 m above ground level; and repairs to an existing stack that will have a height above ground level of 40 m.
- Construct a new Baghouse adjacent to Boiler 6 (and associated ducting) with a height above ground level of 18.2 m.

The proposed works will therefore exceed the 11 m building height limit set by Clause 4.3(2A) of SLEP 2014.

Clause 4.6 of Shoalhaven LEP 2014 deals with exceptions to development standards and provides that a consent authority may consent to a development even though it contravenes a development standard. The provisions of Clause 4.6 require that a written request accompany a proposal that justifies the contravention of a development standard.

This submission has therefore been prepared pursuant to Clause 4.6 and provides justification that the proposal is appropriate and that strict compliance with the provisions of Clauses 4.3(2A) are unreasonable and unnecessary under the specific circumstances associated with the application.

## **2.0 DESCRIPTION OF SITE AND SURROUNDS**

The Shoalhaven Starches Factory site is situated on various allotments of land on Bolong Road, Bomaderry within the City of Shoalhaven. The factory site is located on the south side of Bolong Road on the northern bank of the Shoalhaven River. The factory site (excluding the former Dairy Farmers site) has an area of approximately 12.5 hectares.

This development application concerns land comprising Lot 1 DP 838753 and Lot B DP 376494, Bolong Road, Bomaderry.

The town of Bomaderry is located 0.5 km (approx.) to the west of the factory site, and the Nowra urban area is situated 2.0 km to the south west of the site. The “Riverview Road” area of the Nowra Township is situated approximately 600 metres immediately opposite the factory site across the Shoalhaven River.

The village of Terara is situated approximately 1.5 kilometres to the south east of the site, across the Shoalhaven River. Burruga (Pig) Island is situated between the factory site and the village of Terara and is currently used for dairy cattle grazing.

There are a number of industrial land uses which have developed on the strip of land between Bolong Road and the Shoalhaven River. Industrial activities include a metal fabrication factory, the Shoalhaven Starches site and the Shoalhaven Paper Mill (Australian Papers). The industrial area is serviced by a privately owned spur railway line that runs from just north of the Nowra-Bomaderry station to the starches plant.

The state railway terminates at Bomaderry with a separate, privately owned spur line to the factory site. Shoalhaven City Council sewerage treatment works is situated between the railway line and the factory.

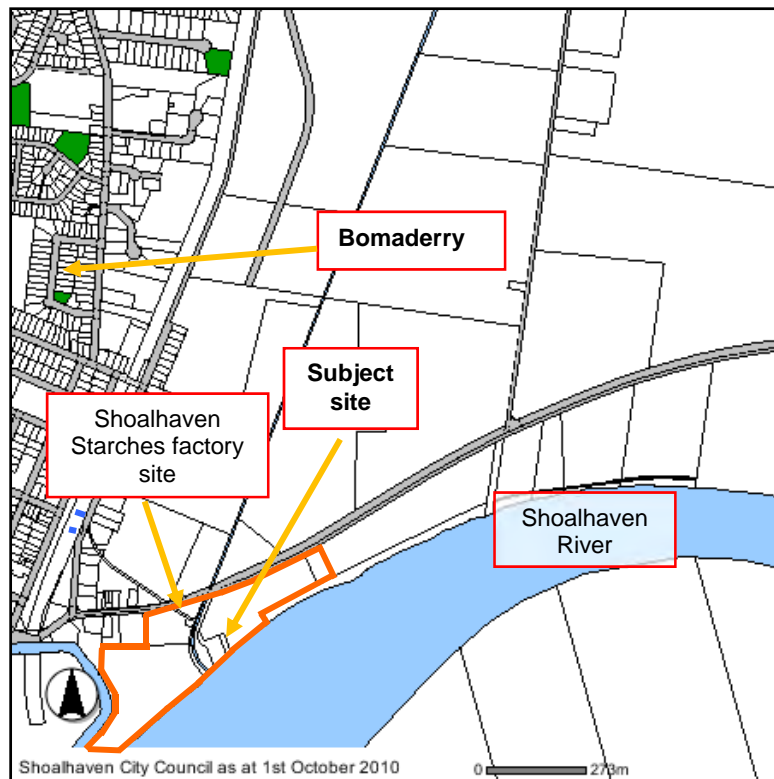
The Company also carries out irrigation activities on the Company’s Environmental Farm located over 1000 hectares on the northern side of Bolong Road. This area is cleared grazing land and also contains spray irrigation lines and wet weather storage ponds). These wet weather storage ponds on the farm form part of the irrigation management system for the factory.

The proposed works associated with this modification application to be situated entirely within the factory site located on the southern side of Bolong Road and to the east of Abernethy’s Creek.

The land is zoned IN1 General Industrial pursuant to Shoalhaven Local Environmental Plan (SLEP) 2014. Mapping that supports the SLEP 2014 does not identify the subject site as having a specified building height limit. The provisions of Clause 4.3(2A) of the SLEP state that if no

height limit is specified for a parcel of land then a maximum building height of eleven (11) metres applies.

**Figure 1** is a site locality plan, whilst **Figure 2** is an aerial photo of the locality.



**Figure 1: Site locality plan.**



**Figure 2: Aerial photograph of Shoalhaven Starches factory site.**

### **3.0 THE PROPOSAL**

The Modification Proposal to seek to carry out the following modifications to Boilers No. 2, 4 and 6 on the Shoalhaven Starches site as follows:

- To undertake modifications to Boiler No. 2. This boiler was originally a coal-fired boiler but was converted to enable the use of woodchips instead of coal and presently generates approximately 7 tonnes of steam per hour. It is now proposed to convert this boiler back to coal fired. This will require the construction of a new baghouse adjacent to the Boiler No. 2 building and the construction of a new emissions stack which will have a height above ground level of 40 metres. These modifications will increase production of steam from this boiler back to 14 tonnes per hour (consistent with what it originally produced before it was converted to burn woodchips).
- Convert Boiler No. 4 from gas to coal-fired. The proposed conversion will require the construction of a baghouse on top of the boiler building. The baghouse will have a height of 8.3 metres, increasing the overall height of the boiler house to 35.0 m above ground level. The proposal will also include repairs and extension to an existing stack, increasing the height of the stack by 9 metres to an overall height above ground level of 40 m.
- To undertake modifications to Boiler No. 6. This boiler is already a coal-fired boiler. It is proposed however to construct a new baghouse and associated ducting adjacent to this boiler. These works will have a maximum height above ground level of 18.2 metres. The purpose of this work will be to increase steam production from this boiler by 7 tonnes per hour.

Any increase in production of steam as a result of these modifications will be balanced by a corresponding reduction in steam generated by boilers on the site that use natural gas.

#### **3.1 JUSTIFICATION FOR PROPOSAL**

These modifications are being implemented due to recent substantial increases in natural gas prices that are currently being experienced nationwide. Shoalhaven Starches are therefore seeking to reduce their reliance on natural gas for their energy generation. It is anticipated that the modifications to all these boilers (Nos. 2, 4 and 6) will result in a saving of energy costs of \$9 million per annum.



## **4.0      CLAUSE 4.3 OF SHOALHAVEN LEP 2014**

Clause 4.3 of Shoalhaven LEP 2014 stipulates the following:

### **4.3 Height of buildings**

- (1) *The objectives of this clause are as follows:*
  - (a) *to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of a locality,*
  - (b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,*
  - (c) *to ensure that the height of buildings on or in the vicinity of a heritage item or within a heritage conservation area respect heritage significance.*
- (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.*
- (2A) *If the Height of Buildings Map does not show a maximum height for any land, the height of a building on the land is not to exceed 11 metres.*

Mapping supporting the SLEP 2014 does not identify a maximum building height that applies to this land. Under these circumstances, and having regard to Clause 4.3(2A) a maximum building height of 11 metres applies to the subject site.

The heights of the works associated with this modification application will be above the eleven metre maximum building height limit. The development therefore does not comply with the provisions of Clause 4.3(2A) of Shoalhaven LEP 2014.

## 5.0      **CLAUSE 4.6 OF SHOALHAVEN LEP 2014**

Clause 4.6 of Shoalhaven LEP 2014 stipulates:

### **4.6 Exceptions to development standards**

- (1) *The objectives of this clause are as follows:*
  - (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.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (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) *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 Director-General has been obtained.*
- (5) *In deciding whether to grant concurrence, the Director-General 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 Director-General before granting concurrence.*
- (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6*

*Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

**Note.** *When this Plan was made it did not include all of these zones.*

- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:*
  - (a) a development standard for complying development,*
  - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
  - (c) clause 5.4,*
  - (ca) clause 6.1 or 6.2*

## **5.1 CLAUSE 4.6 AND ITS USE**

Clause 4.6 of the SLEP 2014 sets out the general principle that a development standard may be varied where strict compliance can be shown to be unreasonable or unnecessary in the circumstances of the case; and that there are sufficient environmental planning grounds to justify contravening the development standard.

Before applying the discretionary power of Clause 4.6 the consent authority must be satisfied that the standard for which the departure is sought is a "development standard" and not a matter which would prohibit the proposal.

A development standard is defined within Section 4 of the EP&A Act.

*"Development standard" means provisions of an environmental planning instrument in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of -*

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or works, or the distance of any land, building or work from any specified point;*

- (b) the proportion or percentage of the area of a site which a building or work may occupy;*
- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work;*
- (d) the cubic content or floor space of a building;*
- (e) the intensity or density of the use of any land, building or work;*
- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment;*
- (g) the provision of facilities for the standing, movement, parking, servicing manoeuvring, loading or unloading of vehicles;*
- (h) the volume, nature and type of traffic generated by the development;*
- (i) road patterns;*
- (j) drainage;*
- (k) the carrying out of earthworks;*
- (l) the effects of the development on patterns of wind, sunlight, daylight or shadows;*
- (m) the provision of services, facilities and amenities demanded by the development;*
- (n) the emission of pollution and means for its prevention or control or mitigation; and*
- (o) such other matters as may be prescribed.*

Having regard to the definition of “*development standard*”, particularly paragraph (c), it is considered that Clause 4.3 contains a development standard limiting the height of a building. Furthermore, Clause 4.3 is contained in Part 4 of the Shoalhaven LEP, which contains the primary development standards outlined in the LEP. This reinforces the contention that the provisions of Clause 4.3 are a development standard. Such a development standard is therefore open to a written request made pursuant to Clause 4.6.

A consent authority must also be satisfied of three matters (pursuant to the provisions of Clause 4.6) before it may agree with the written request and grant development consent to a development application for development that could, but for a development standard, be carried out with development consent.

First, the request is to be in writing (Clause 4.6(3)), demonstrate that the compliance with that development standard is unreasonable or unnecessary in the circumstances of the case (Clause 4.6(3)(a)) and that there are sufficient environmental planning grounds to justify contravening the development standard (Clause 4.6(3)(b)).

Secondly, the consent authority must also be satisfied that 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 (Clause 4.6(4)(a)(ii)).

Finally, the consent authority can only grant development consent for a development that contravenes a development standard if the concurrence of the Secretary (formerly Director General) of Planning and Infrastructure has been obtained (Clause 4.6(4)(b)).

The Secretary in deciding whether to grant concurrence must consider pursuant to Clause 4.6(5):

- (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 Director-General before granting concurrence.*

As this matter does not concern the subdivision of land zoned *RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living* the provisions of Clause 4.6(6) are also not applicable to this proposal and are not further addressed in this written request.

This submission has been prepared having regard to the above relevant matters.

## **5.2 DEPARTMENT OF PLANNING AND INFRASTRUCTURE GUIDELINES**

The Department of Planning and Infrastructure has produced a document entitled “*Varying Development Standards – A Guide*” dated August 2011. This document updates the former Circular B1 which applied to *State Environmental Planning Policy No. 1 (SEPP No. 1) - Development Standards* to include the relevant matters applying under Clause 4.6 where the Standard Instrument LEP has been adopted.

The Guidelines build upon the matters outlined above and in Clause 4.6 itself, and also stipulates that the application should address the “five part test”. In this regard, the Land and Environment Court (*Wehbe v Pittwater Council [2007] NSWLEC827 (21 December 2007)*) has set out a “five part test” for consent authorities to consider when assessing a proposal that seeks to vary a development standard. The “five part test” is as follows:

1. *the objectives of the standard are achieved notwithstanding non-compliance with the standard;*

2. *the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
4. *the development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
5. *the compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.*

Relevant matters are addressed in Section 7.0 below.

## **6.0        ASSUMED CONCURRENCE**

The Guidelines prepared by the Department deal with the concurrence requirements of proposals reliant upon an exception to development standards. Where a Standard Instrument LEP applies, as is the case with this proposal and the provisions of Shoalhaven LEP 2014, the Guidelines reference Planning Circular PS 08-003 issued in May 2008 and which advises that the concurrence can be assumed with respect to all environmental planning instruments that adopt Clause 4.6, or a similarly worded clause, providing for exception to development standards.

The concurrence of the Secretary of the Department of Planning and Infrastructure can therefore be assumed with respect to this proposal.

## **7.0 THE REQUEST**

### **7.1 WRITTEN REQUEST JUSTIFYING CONTRAVENTION OF CLAUSE 4.3 SLEP 2014**

This written request seeks to justify the departure to the provisions of Clause 4.3(2A) of the SLEP 2011 which imposes a maximum building height of eleven (11) metres. The proposal seeks to construct a baghouse on top of the existing Boiler No. 4 housing which will have a height of 35 m above ground level (and increase in the height of this structure of 8.42 m); and the extension of a stack to a height of 40 m (and increase in height of 9 metres).

This written request demonstrates that compliance with Clause 4.3(2A) of SLEP 2014 is unreasonable and unnecessary given the specific circumstances of this case; and that there are sufficient environmental planning grounds to justify contravention of the maximum height limit.

#### **7.1.1 Objectives Underpinning Clause 4.3 are Achieved**

Preston CJ in *Wehbe v Pittwater Council* [2007] NSWLEC827 (21 December 2007) provides commentary with respect to establishing whether compliance with a development standard is unreasonable or unnecessary under the specific circumstances of a particular matter. Whilst this case related to the use of SEPP 1, given the similarities between the objects of SEPP No. 1 and Clause 4.6 the findings of Preston CJ does provide guidance with respect to the implementation of this clause.

According to Preston CJ one of the most commonly invoked ways to establish that compliance with the development standard is unreasonable or unnecessary is because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).

As outlined in Section 6.2 above, the objectives underpinning the development standard – in this instance the maximum building height of eleven metres is a relevant consideration in determining whether strict compliance with that standard under the specific circumstances of the case would be unreasonable or unnecessary.



The objectives of the height of buildings standard are expressly stated in Clause 4.3 as follows:

- (1) *The objectives of this clause are as follows:*
- (a) *to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of a locality,*
  - (b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,*
  - (c) *to ensure that the height of buildings on or in the vicinity of a heritage item or within a heritage conservation area respect heritage significance.*

The above objectives in my view provide a clear understanding of the purposes underpinning the building height standard outlined in Clause 4.3(2A) and which applies to the subject site.

This written submission will demonstrate that this proposal will not prevent the above objectives from being achieved notwithstanding non-compliance with the eleven metre height restriction development standard in the specific circumstances of this case.

Having regard to the objectives of Clause 4.3, it is my view that the proposal is not inconsistent with these for the following reasons:

The proposal seeks to construct

- A new baghouse adjacent to the Boiler No. 2 building which will have a footprint of 4.775 m by 11.51 m and a height above ground level of 15 m; and the construction of a new emissions stack which will have a height above ground level of 40 metres.
- A baghouse on top of the existing Boiler No. 4 housing with a footprint of 9.6 m by 8.1 m and which will have a height of 35 m above ground level (and increase in the height of this structure of 8.42 m); and the extension of a stack to a height of 40 m (and increase in height of 9 metres).
- A new baghouse and associated ducting adjacent to Boiler No. 6 with a footprint of 3.16 m by 8.5 m. These works will have a maximum height above ground level of 18.2 metres.
- Combined the proposed works will have an overall footprint of approximately 160 m<sup>2</sup>, which will comprise a fraction of the overall footprint of the boiler complex which has a footprint in the order of 900 m<sup>2</sup>.
- The proposed works will not be dissimilar to existing structures within the existing Boiler House complex or for that matter the overall Shoalhaven Starches complex.

The building forms, heights, shapes and characteristics are also similar to those that presently exist on the site, and will conform to the visual character of the site, ie. it is industrial development within an industrial setting. Detailed plans of the proposed development are attached as Annexure 2 to the EA.

- The subject site is zoned IN1 general industrial and the proposed development meets the current and desired future character of the locality in which it is sited.
- The proposed development will have a limited visual impact. The bulk and scale of the structures associated with this modification application will not be dissimilar to that of other industrial type development associated with the existing factory site. Furthermore the proposed works will be sited within proximity of similar structures of a similar nature. The works will be sited in the midst of the existing factory complex, and will be viewed within this context. As such this development will not diminish the views of existing development. The visual impact of the modification proposal is discussed in Section 8.5 of the EA.
- The development will not lead to excessive overshadowing of foreshore areas given the existing shadows cast by existing development and the nature of the foreshore in this locality.
- The proposed development site is not subject to a heritage listing under the provisions of SLEP 2014 nor is it sited within the in the vicinity of a heritage item or within a heritage conservation area.
- The proposed development has been designed to comply with all relevant statutory planning provisions applying to this form of development.

Given these circumstances, it is our view that the works associated with this modification proposal will not be inconsistent with the prevailing character of this locality; or the envisaged character of the area given the planning provisions applying to the land, and will therefore not be inconsistent with the objectives outlined in Clause 4.3(1) of SLEP 2014.

#### **7.1.2 Environmental Planning Grounds that Justify Contravening Development Standard**

The written request is also required to demonstrate that there are sufficient environmental planning grounds to justify contravening the eleven metre height restriction.

- The proposal is not inconsistent with state and regional planning provisions applying to this land.

- The proposal is consistent with the objectives and is permissible within the IN1 zone that applies to the land.
- Despite non-compliance with 11 metre height restriction, the proposal is consistent with the stated objectives of Clause 4.3 as they relate to the building height requirements as outlined above in Section 7.1.1 of this written request.
- The proposed development is representative of the prevailing character of the locality, ie industrial development within an industrial zone and is of a height consistent with buildings already existent on the development.
- The subject site is eminently suitable for the proposal development.

### **7.1.3 Public Interest**

The written request is also required to demonstrate that 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.

Section 7.1.1 of this submission demonstrates that the proposal will be able to satisfy the objectives of the development standard as enunciated within Clause 4.3 notwithstanding contravention of the eleven metre height restriction.

The subject site is zoned IN1 General Industrial under the provisions of the Shoalhaven Local Environmental Plan 2014.

The objectives of the IN1 zone are:

- *To provide a wide range of industrial and warehouse land uses.*
- *To encourage employment opportunities.*
- *To minimise any adverse effect of industry on other land uses.*
- *To support and protect industrial land for industrial uses.*
- *To allow a diversity of activities that do not significantly conflict with the operation of existing or proposed development.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.*

It is our view that the proposal is not inconsistent with the above objectives:

- The site is an existing factory complex and the development will ensure that land that is zoned for industrial purposes is fully utilised for that purpose.

- The proposed works will support and protect both the industrial use of the subject site and the employment opportunities provided by Shoalhaven Starches.
- Section 8.5 of the EA addresses the visual impact of the proposal and concludes that the proposal will not adversely impact the scenic amenity of this locality.

Given the proposal is consistent with the objectives that underpin Clause 4.3 and is consistent with the objectives of IN1 zone that apply to the land. It is our view that the proposal will be in the public interest having regard to clause 4.6(4)ii) of SLEP 2011.

#### **7.1.4 Clause 4.6(5) Matters for Consideration by Director-General**

As outlined the concurrence of the Director-General is to be assumed in this case.

- As identified in the original EA for the SSEP the overall proposal is consistent with state and regional planning provisions that apply to the site.
- As outlined in Section 7.1 of the submission it is our view that the proposal is in the public interest.

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Under these circumstances it is my view that this objection made pursuant to Clause 4.6 is well founded and strict compliance with Clause 4.3(2A) of Shoalhaven LEP 2014 would be unreasonable under the specific circumstances of this case as:

- The objectives that underpin the development standard outlined in Clause 4.3 of Shoalhaven LEP are achieved notwithstanding non-compliance with the development standard.
- This proposal is consistent with state and regional planning provisions applying to this land.
- The proposal is consistent with the objectives of the IN1 zone that applies to the land.
- Despite non-compliance with the eleven metre height restriction, the proposal is consistent with the stated objectives of Clause 4.3 as they relate to the height of building requirements as outlined above in this written request.
- The proposed development is representative of the prevailing character of the locality, ie. industrial development within an industrial zone.
- The modified proposal is of a form, bulk and height consistent with buildings already existent on the development.

- The underlying purpose of the proposed works associated with this modification application would be defeated if compliance was required as restricted height would limit the ability to construct a flour mill and its associated infrastructure and therefore compliance is unreasonable. Such would have an adverse impact on the ongoing operations on the site.
- The subject site is eminently suitable for the proposal development.

Although well considered, the eleven metre height restriction for the broader Shoalhaven encapsulated within Clause 4.3 should not be rigidly enforced as a development standard in all cases.

This submission demonstrates that the variation to the development standard sought by this proposal is consistent with the objectives of the state, regional and local planning provisions for this site. It is my opinion that strict compliance with this development standard under the specific circumstances of this case would be unreasonable and unnecessary.

For these reasons, this submission pursuant to Clause 4.6 requests that the Department exercise the discretionary power and support this proposal and the development application.



**Stephen Richardson**  
TOWN PLANNER CPP MPIA