



KEY URBAN PLANNING

DEVELOPMENT APPLICATION

# STATEMENT OF ENVIRONMENTAL EFFECTS

## Penrith City Council

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### **LOTS 11 & 12 DP 1087962 No. 24-27 Lambridge Place, PENRITH**

Alterations and additions to an existing 'warehouse or distribution centre' (cold store) including additional loading and refueling facilities on site.

12<sup>th</sup> OCTOBER, 2017

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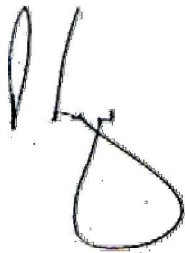
STATEMENT OF ENVIRONMENTAL EFFECTS

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Waiver

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# 1 /

## INTRODUCTION

### 1.1 Background

This Statement of Environmental Effects (“**SEE**”) assesses the impacts of the proposed development under the provisions of the relevant Planning Controls applicable to the subject site. This assessment has been undertaken in accordance with the provisions of Section 79C of the Environmental Planning & Assessment Act, 1979 (the “**Act**”).

In the preparation of this SEE we have:

- Undertaken an inspection of the site and surrounding locality;
- Undertaken a review of the Penrith Local Environmental Plan 2010 (the “**LEP**”);
- Assessed the proposal against the relevant chapters of Penrith Development Control Plan 2014 (the “**DCP**”);
- Consulted with relevant Officers of Council;
- Given consideration to the relevant provisions of the Act and Regulations; and
- Assessed the proposal against the relevant State Environmental Planning Policies

This SEE has been prepared in accordance with the provisions of Section 78A of the Act and Clause 50 of the Environmental Planning and Assessment Regulations 2000.

The development proposal complies with the relevant Planning Controls adopted by the City of Penrith. The development application warrants the granting of development consent by Council.

# 2/

## SITE ANALYSIS

### 2.1 Site Description

The property is known as Lots 11 and 12 in Deposited Plan 1087962, No. 24-27 Lambridge Place, Penrith (the “site”). The site comprises two separate allotments. The proposed additions as part of the proposal are predominantly confined to lot 11. Lots 11 & 12 will be consolidated into one lot as part of this development application.

Lot 12 has an area of 6,246 m<sup>2</sup> and contains an existing warehouse of approximately 1,882.8 m<sup>2</sup>. A survey plan has been prepared as part of the development application. The survey plan identifies that lot 12 is burdened by three (3) easements namely two drainage easements and an easement for electricity substation. Lot 12 is located on a ‘bend’ in Lambridge Place and has a western boundary fronting Lambridge Place of 75.61 m and a southern frontage to the roadway of 85.358 m.

Lot 11 adjoins lot 12 to the east and has a splayed frontage to the cul-de-sac head of Lambridge Place. The site is currently vacant. The lower (southern) portion of the site serves as a floodway for the locality. Lot 12 has a total area of approximately 6,299.5 m<sup>2</sup>. The natural ground level of lot 11 falls from the northern property boundary to the southern side boundary.

The subject land is located within a large industrial area. The site is located in an area identified in the DCP as Precinct 5 North Penrith and is located to the south of Andrews Road. The main access to the site is through Lambridge Place. *The total site area is approximately 12,545 m<sup>2</sup>.*

**Photograph 1 – Aerial view of site** (Courtesy Google Earth)



## 2.2 Existing Development

Existing site development comprises a large industrial building and associated offices used for administration. The main industrial building operates as a cold store. Access to the site is via a vehicle crossing near the south-western corner of the site. The driveway provides access to an existing hardstand area providing thirty (30) on-site car spaces plus truck manoeuvring to the exiting loading docks.

FoodBoss maintains the highest standards in temperature-controlled warehousing, transport and logistics. FoodBoss have operated the cold store from the site for approximately 7 years.

The existing cold storage warehousing operation is accredited as follows:

- QAP (Quarantine Approved Premises) - FoodBoss Coldstore is an approved place for Quarantine with the Department of Agriculture (DAFF Biosecurity). The company holds appropriate licencing with import and export certification.
- Import/Export Registration - FoodBoss is:
  - Export Registration Tier 2 and China Accredited, and
  - An Imported Foods (Class 2.2, 2.5, 2.5.2) Agricultural Products Facility.
- HACCP -  FOODBOSS is HACCP accredited. HACCP accreditation recognises the Company's rigorous and strict adherence of procedures that maintain temperature control and product quality.
- NHVAS Maintenance/Fatigue - FoodBoss is accredited under the National Heavy Vehicle Accreditation Scheme that regulates both fleet safety and human fatigue. FoodBoss is committed to managing fatigue within the workplace, and ensure that the Company's drivers comply with the NHVAS standards through regular audits and driver assessments.



Briefly, the history of the FoodBoss operations is summarised as follows:

**1950's** – It was the mid-1950's when Founder Laurie Gibson began collecting milk from Farm Gate for the Nepean Milk Depot. Initially this involved the collection of milk cans from local farms, but quickly progressed to truck and tanker pickups throughout the Penrith and Hawkesbury regions. Originally named Fordcraft Fresh Logistics, the organisation quickly grew in response to the developing needs of the milk industry.

**1970's** – In response to the evolution of the Nepean Milk Co-Op (previously Depot), the business expanded to offer clients the transportation of other refrigerated goods. This included packaged goods and long-distance distribution (line haul) throughout NSW to other depots. The business grew with the addition of both staff and vehicles.

**1980's** – Investment in a fleet of prime movers and trailers was made as Fordcraft Fresh Logistics commitment to quality and service saw the business workload consistently increase. Importantly, Laurie's sons – Robert, Graham and Ian – also came on board.



**1990's** – This decade saw Fordcraft Fresh Logistics expanding into newer markets across regional NSW. This opened the door for many new clients who were seeking quality, cost-effective and compliant logistics services.

**2000's** – Ian Gibson became Managing Director and was committed to maintaining the foundation of honesty, integrity and reliability on which the business was built. He introduced interstate haulage across Australia, and a number of Rigid's were added to the fleet to offer a Sydney metropolitan service daily.

**2010 – 2015** – The company acquired FoodBoss Cold Storage, which was built in 2007. This offered our clients a **complete integrated cold logistic service**. Fordcraft Fresh Logistics relocated to new premises in Lambridge Place, Penrith.

**Fordcraft Fresh Logistics** changed its name to FoodBoss Transport to complete the partnership, and has now been servicing the transport industry for over 60 years. The business continues to grow as numerous customers choose FoodBoss as their provider of choice for refrigerated storage and logistics.

The subject site is located in Precinct 5 North Penrith under the Penrith DCP and is located on the Southern side of Andrews Road. The main access to the site is through Lambridge Place.

The subject site has an area of 6,246 m<sup>2</sup> and the existing industrial warehouse has an area of approximately 1,882.8sqm. The subject site is affected by two easements that are situated towards the front and western boundary. They are a 2.5m wide drainage easement and 4.75m wide substation. The application does not propose any development works within the easements.

The surrounding area comprises a variety of industrial uses and is characterised by a number of factories that are used for warehousing and distribution. The site is overland flow affected. A large child-care facility is situated opposite the site and although permissible in the IN1 zone, has operational characteristics that appear to be in conflict with other established industrial uses in the locality.

The current operation employs twenty-three (23) full-time employees on the site. Frozen goods are transported to and from the cold store by truck. Current truck movements a day average 25 – 30 vehicles (approx. 1 per hour). The proposed expansion will be used predominantly for long-term storage and consequently, no increase in truck movements is envisaged. The current cold store comprises a number of loading docks to accommodated peak demand for loading facilities. Additional loading facilities will be provided as part of the expansion to the premises.

An additional two (2) warehouse staff and one (1) office staff will be employed on the site as a result of the expanded operation.

Car parking for thirty (30) vehicles is provided on the site with access to Lambridge Place. Established landscaping effectively screens the existing development from the adjoining street and surrounding locality.

The following photographs show the site and surrounding locality.

**Photograph 2 - View of existing premises administration fronting Lambridge Place.**



**Photograph 3 – View of loading area.**



*Photograph 4 – View of site looking east.*





*Photograph 5 – View of site looking north.*



*Photograph 6 – Internal racking within existing cold store.*





# 3 /

## DESCRIPTION OF THE DEVELOPMENT

### 3.1 The Proposed Development

The proposed development includes the following:

- Construction of a new cold store building (long term) as an extension to the existing cold store to be built predominantly on the adjoining vacant lot;
  - Existing Cold Store- 1,882.8sqm
  - Cold Store (Increase) – 2,238sqm
  - TOTAL – 4,120.8 sqm
- Construction of associated hardstand for truck and car access;
- Provision of an additional seven (7) on site car parking spaces;
- Additional loading facilities;
- Modification to existing access drive for improved truck access;
- Truck refueling area to be bunded with a fuel storage tank;
- Landscaping of front setback;
- Additional condensers for cooling.

The current operation employs twenty-three (23) full-time employees on the site. Frozen goods are transported to and from the cold store by truck. Current truck movements a day average 25 – 30 vehicles (approx. 1 per hour). The proposed expansion will be used predominantly for long-term storage and consequently, no increase in truck movements is envisaged. The current cold store comprises a number of loading docks to accommodate peak demand for loading facilities. Additional loading facilities will be provided as part of the expansion to the premises.

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## 4/

PENRITH LOCAL  
ENVIRONMENTAL PLAN 2010**4.1 Aims of the Plan (Clause 1.2)**

The Penrith LEP 2010 was made on 22 September 2010 and adopts the Standard Environmental Planning Instrument form pursuant to section 33A of the Act. The LEP prescribes certain broad aims of the plan which development within the Penrith Local Government Area should accord with where applicable. The relevant aims of the plan to the proposed development are as follows:

- “(a) to provide the mechanism and planning framework for the management, orderly and economic development, and conservation of land in Penrith,*
- (b) to promote development that is consistent with the Council’s vision for Penrith, namely, one of a sustainable and prosperous region with harmony of urban and rural qualities and with a strong commitment to healthy and safe communities and environmental protection and enhancement,*
- (c) to accommodate and support Penrith’s future population growth by providing a diversity of housing types, in areas well located with regard to services, facilities and transport, that meet the current and emerging needs of Penrith’s communities and safeguard residential amenity,*
- (d) to foster viable employment, transport, education, agricultural production and future investment opportunities and recreational activities that are suitable for the needs and skills of residents, the workforce and visitors, allowing Penrith to fulfil its role as a regional city in the Sydney Metropolitan Region,*
- (e) to reinforce Penrith’s urban growth limits by allowing rural living opportunities where they will promote the intrinsic rural values and functions of Penrith’s rural lands and the social well-being of its rural communities,*
- (f) to protect and enhance the environmental values and heritage of Penrith, including places of historical, aesthetic, architectural, natural, cultural, visual and Aboriginal significance,*
- (g) to minimise the risk to the community in areas subject to environmental hazards, particularly flooding and bushfire, by managing development in sensitive areas,*
- (h) to ensure that development incorporates the principles of sustainable development through the delivery of balanced social, economic and environmental outcomes, and that development is designed in a way that assists in reducing and adapting to the likely*

*impacts of climate change.*"

The proposed development is considered to be consistent with the relevant aims detailed above for the following reasons:

- The proposed development is seen to be generally consistent with the adopted planning controls applying to industrial development in Penrith City. The development is also considered to be consistent with the desired future planning for the Strategic Precincts – Precinct 5 North Penrith.
- The proposal is seen to be an orderly and sustainable response to the future use of the site for industrial purposes. The proposal is a reasonable economic response to improve the quality of the existing industrial premises on the site.
- The proposed development is consistent with the planning framework for and the goals and outcomes of the Penrith City Strategy;
- The proposal is for alterations and additions consistent with the existing industrial premises and embraces the principles of quality urban design;
- The proposal is consistent with the desired future character of the locality;
- The proposal will not detrimentally affect the public domain;
- The proposal will maintain the existing amenity of the local community;
- The proposal will not result in adverse impacts on adjoining or nearby properties; and
- The design of the proposal has given proper consideration to environmental hazards, particularly flooding.

## 4.2 Permissibility Of The Development (Clause 2.2)

The site is zoned IN1 General industrial under the provisions of Penrith LEP 2010. The 'Dictionary' provided within the LEP contains a definition of "warehouse or distribution centres" that means;

*"warehouse or distribution centre means a building or place used mainly or exclusively for storing or handling items (whether goods or materials) pending their sale, but from which no retail sales are made."*

The proposed works involve an expansion to the existing use of the premises for the purpose of a 'warehouse or distribution centres' and is permissible within the IN1 General Industrial Zone with the consent of Council.

## 4.3 Objectives Of The IN1 General Industrial Zone (Clause 2.3)

Clause 2.3 of Penrith LEP 2010 requires the Council in granting consent to development under the plan to "have regard to the objectives for development in a zone when determining a development application in respect of land within the zone". The issue of permissibility discussed

previously in this SEE is reliant upon the IN1 General Industrial Zone Land Use table.

The specific objectives of the zone are:

- *To provide a wide range of industrial and warehouse land uses*

**Comment:**

The existing use of the premises by FoodBoss is a permissible use within the zone and maintains the wide range of industrial activities that are currently undertaken within the Penrith Industrial Precinct 5.

- *To encourage employment opportunities.*

**Comment:**

The works will ensure the continued viability of the FoodBoss operations. Employment opportunities will consequently be maintained and expanded slightly on the site.

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

**Comment:**

The proposed works will have no adverse impact upon industries currently operating in the locality.

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

**Comment:**

The works will ensure the continued viability of the FoodBoss operations from within the existing and expanded industrial building.

- *To promote development that makes efficient use of industrial land.*

The proposal will involve a logical expansion to the existing cold store operation and has been designed to integrate effectively.

- *To permit facilities that serve the daily recreation and convenience needs of the people who work in the surrounding industrial area.*

**Comment:** Not applicable.

#### 4.4 Subdivision – Consent Requirements (Clause 2.6)

The 'Dictionary' in the LEP does not contain a specific definition for "subdivision".

Notwithstanding this, the proposal involves the consolidation of the two existing lots.

Consideration needs to be given as to whether the proposed consolidation of lots falls within the definition of 'subdivision of land' pursuant to Section 4B(1) - **Subdivision of Land** within the Act



being "...the division of land into two or more parts that, after the division, would be obviously adapted for separate occupation, use or disposition". Clause 2.6 prescribes that land to which this Plan applies may be subdivided with development consent.

Section 4B(3) of the Act states:

*"(3) However, subdivision of land does not include:*

*(a) a lease (of any duration) of a building or part of a building, or*

*(b) the opening of a public road, or the dedication of land as a public road, by the Crown, a statutory body representing the Crown or a council, or*

*(c) the acquisition of land, by agreement or compulsory process, under a provision of an Act (including a Commonwealth Act) that authorises the acquisition of land by compulsory process, or*

*(d) a division of land effected by means of a transaction referred to in section 23G of the [Conveyancing Act 1919](#), or*

*(e) the procuring of the registration in the office of the Registrar-General of:*

*(i) a plan of consolidation, a plan of identification or a miscellaneous plan within the meaning of section 195 of the [Conveyancing Act 1919](#), or*

*(ii) a strata plan of consolidation or a building alteration plan within the meaning of the [Strata Schemes \(Freehold Development\) Act 1973](#) or the [Strata Schemes \(Leasehold Development\) Act 1986](#)."*

Clause 2.6 states that land to which the LEP applies may be subdivided with development consent. This clause operates as an enabling provision allowing Council to grant consent to subdivision. In certain circumstances, the subdivision of land may be 'exempt development' under the provisions of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 enabling the subdivision of land to be undertaken without development consent. The proposed consolidation of lots is exempt development as the proposed consolidation does not constitute 'subdivision'.

However, the proponents seek that Council have consideration in the assessment of the Development Application to the fact that consolidation of lots is proposed as part of the DA. This has significant implications for the design and construction of the building under the Building Code of Australia (BCA).

The proposal is for the consolidated site to function as one single operation namely the extension of the FoodBoss operations.

#### **4.5 Demolition (Clause 2.7)**

Clause 2.7 of LEP 2010 requires development consent be obtained prior to undertaking any demolition works. The proposed development will involve partial demolition to the existing cold store building (internal and external). Minor demolition works are therefore proposed as part of

the development application.

#### 4.6 Minimum Subdivision Lot Size (Clause 4.1)

Clause 4.1 of the LEP makes reference to a map that identifies the minimum subdivision size for land. The map identifies a minimum subdivision lot size for the site of 2,000 m<sup>2</sup>. The two existing lots and proposed consolidated lot exceed the minimum lot size albeit that subdivision does not form part of the DA.

#### 4.7 Heights Of Buildings (Clause 4.3)

Clause 4.3(2) of the LEP states:

*“(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.”*

The maximum building height permitted under the LEP is twelve (12) metres. A variation to the height is proposed. The proposed building will have a maximum height of 17.556m. A written request under clause 4.6 of the LEP is provided at Appendix A of the SEE. The submission under clause 4.6 relies upon the objectives of clause 4.6 in support of the variation to the development standard namely:

*“ 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.”*

Ezzy Architects Pty Ltd who prepared the plans accompanying the DA have provided the following explanation for the proposed height variation:

*“The proposed roof in the design has been ‘hipped’ as per the pre-DA advice from Council and vertical fascia replaced with a continuation of the roof as a “mansard” down to a height of 9.6 m (not 14.8m) to reduce visible vertical walls to all facades to 9.6 m in contrast to a possible 14.9m being a reduction of 5.3m.*

*The vertical wall surface is punctuated by steel columns which have been established by stylised logo, to contrast corporate colour to grey walls by angled steel tubes which again visually reduce height impact when seen from cul-de-sac.*

*The added sustainable result of both the above is the introduction of a ‘solar chimney’ to cool wall surfaces added to by pergola effect of stylised logo elevation.*

*The vertical wall surfaces have also been softened by cladding panels in various light grey shades below logo pergola. True height to ridge remains at 16.10m.”*

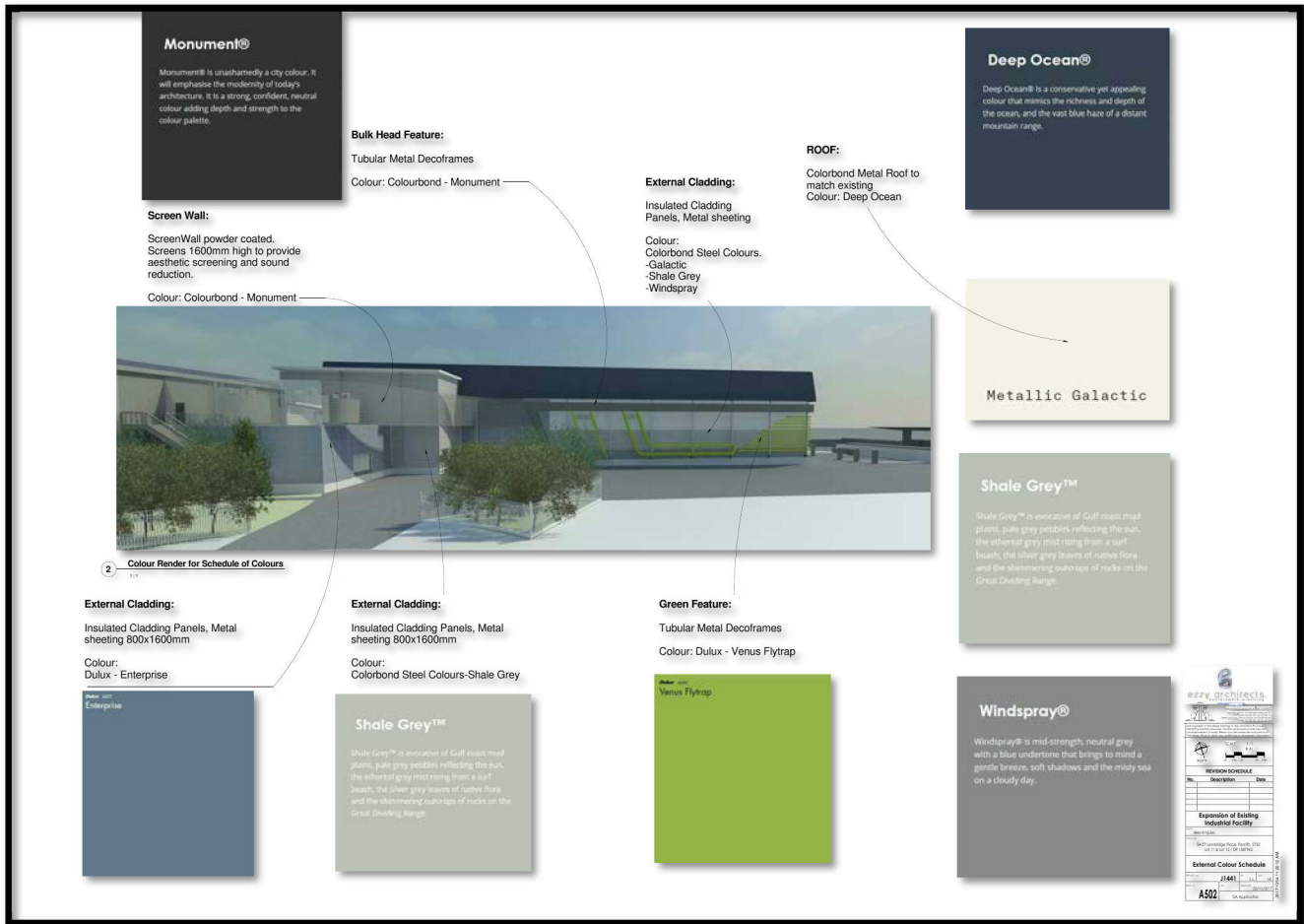


Figure 1 – External Colour Schedule (south elevation)

The clause 4.6 submission at Appendix A provides a justification for the height variation pursuant to the provisions of clause 4.6(3) of the LEP namely:

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

#### 4.8 Floor Space Ratio (Clause 4.4)

Clause 4.4 (2) of the LEP states:

*“(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.”*

The maps contained within the LEP do not specify a maximum Floor Space Ratio for the site. The proposal complies fully with the maximum Floor Space Ratio provisions contained within the LEP.



## 4.9 Exceptions to Development Standards (Clause 4.6)

Clause 4.6 provides the opportunity to provide exemptions to development standards by way of a written request. Clause 4.6 relevantly states:

*“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 Secretary has been obtained.”*

The objectives of the height standard are set out in cl 4.3 (1) and state:

*“a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,*

*(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development and to public areas, including parks, streets and lanes,*

*(c) to minimise the adverse impact of development on heritage items, heritage conservation areas and areas of scenic or visual importance,*

*(d) to nominate heights that will provide a high quality urban form for all buildings and a transition in built form and land use intensity.”*

The Dictionary to LEP 2013 defines building height as:

*“building height (or height of building) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.”*

The extent of the breach of the building height standard is 5.556m.

The written request under clause 4.6 (Appendix A) states that the development standard is unreasonable or unnecessary and that there are sufficient environmental planning grounds to justify contravening the development standard because the proposal results in a building form of bulk and scale consistent with the desired future character and sympathetic to the existing and envisaged development in the immediate locality. The failure to set aside the standard would in effect give rise to an inappropriate building form. The contravention of the control by the proposal does not give rise to any environmental effect of sufficient significance, which would cause concern.

The written request also states that the environmental benefits of the proposal providing energy efficiency through the roof design at the upper level of the building while retaining the remainder of the building at a scale envisaged for industrial development in the locality, is on balance an appropriate environmental outcome to justify the contravention of the development standard.

The Land and Environment Court of NSW in *Bramley v Coffs Harbour City Council* [2014] NSWLEC 1194 considered a development proposal involving a clause 4.6 submission seeking variation to the height standard. Commissioner Brown at para. 28 to 29 described the clause 4.6 assessment framework as follows:

*“28. Clause 4.6 of LEP 2013 imposes four preconditions on the Court in exercising the power to grant consent to the proposed development. The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)). The second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)). The third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)). The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).*

*29. In considering the question of consistency, I have adopted approach of the former Chief Judge, Justice Pearlman in Schaffer Corporation v Hawkesbury City Council (1992)*

77 LGRA 21 where, Her Honour expresses the following opinion at [27]:

*The guiding principle, then, is that a development will be generally consistent with the objectives, if it is not antipathetic to them. It is not necessary to show that the development promotes or is ancillary to those objectives, nor even that it is compatible.”*

#### 4.10 Earthworks (Clause 7.1)

The proposal will require minor earthworks to be undertaken as part of the DA. Accordingly, the objectives of clause 7.1 must be taken into account in consideration of the proposed earthworks. The objectives of clause 7.1 are as follows:

*“(a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land,*

*(b) to allow earthworks of a minor nature without separate development consent.”*

The site is situated on a floodway and accordingly, the development has been designed to maintain a ‘flow path’ for floodwaters through the site. A detailed storm water and hydraulic impact assessment has been prepared in support of the DA.

#### 4.11 Flood planning (Clause 7.2)

The objectives of the clause are:

*“(a) to minimise the flood risk to life and property associated with the use of the land,*

*(b) to limit uses to those compatible with flow conveyance function and flood hazard,*

*(c) to manage uses to be compatible with flood risks,*

*(d) to enable safe and effective evacuation of land,*

*(e) to ensure the existing flood regime and flow conveyance capacity is not compromised,*

*(f) to avoid detrimental effects on the environment that would cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or waterways.”*

The site (in part) is identified as “Flood planning land” on the clause application map contained within the LEP. A flood study has been separately prepared in support of the DA. The flood study concludes that the proposed development is:

- compatible with the flood hazard of the land, and
- compatible with the flow conveyance function of the floodway and the flood hazard within the floodway, and



- not likely to adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and
- not likely to significantly alter flow distributions and velocities to the detriment of other properties or the environment, and
- not likely to adversely affect the safe and effective evacuation of the land and the surrounding area, and
- not likely to significantly detrimentally affect the environment or cause avoidable erosion, destruction of riparian vegetation or affect the restoration and establishment of riparian vegetation, or a reduction in the stability of river banks or waterways, and
- not likely to result in unsustainable social and economic costs to the community as a consequence of flooding, and
- incorporates appropriate measures to manage risk to life from flood, and
- consistent with any relevant floodplain risk management plan.

#### 4.12 Protection of Scenic Qualities and Landscape Values (Clause 7.5)

The site is identified as “Land with scenic and landscape values” on the scenic and landscape values map contained within the LEP. Clause 7.5(3) of the LEP states:

*“(3) Development consent must not be granted for any development on land to which this clause applies unless the consent authority is satisfied that measures will be taken, including in relation to the location and design of the development, to minimise the visual impact of the development from major roads and other public places.”*

The proposed building extension will be relatively obscured from any nearby major roads and/or public places due to the configuration of the existing allotment layout in the locality and the design and positioning of surrounding development in the area. On that basis, it may be considered that no further consideration is required under clause 7.5(3).

The site is relatively constrained due mainly to flooding and lot configuration/pattern. The objectives of clause 7.5 are (in part) to “.....protect areas that have particular scenic value either from major roads, identified heritage items or other public places”. The site in its context to surrounding development (existing and proposed) is considered to have limited scenic value as viewed from any nearby major roadway or public place.

As discussed above, the development has been designed to be functional for the purpose to which the use is proposed and although the built form will exceed the height standard, the visual impacts from the proposal to surrounding areas is considered to be minimal and in the circumstances being acceptable.

The visual analysis provided below demonstrates the suitability of the proposal under clause 7.5.



## 5/

PENRITH DEVELOPMENT  
CONTROL PLAN 2014**5.1 Part C1 – Site Planning & Design Principles**

The DCP requires the preparation of a detailed site analysis. This has been undertaken in the design of the proposal. The proposed works will not impact on any existing view corridors.

The proposal will satisfy the design principles contained within Part C1 in that:

- The development will be designed and constructed to integrate with the natural topography of the site so as to avoid the need for cut and fill.
- Soil loss from development will be minimised through effective site management practices that reduce the impact of sedimentation on downstream waterways and drainage systems and that minimise wind blown soil loss.
- The development will minimise site disturbance.

The site is located within an area zoned for industrial development. The design of the development has incorporated the principles of 'Safer by design'.

Crime Prevention through Environmental Design (CPTED) is a crime prevention strategy that focuses on the planning, design and structure of cities and neighbourhoods. It reduces opportunities for crime by using design and place management principles that reduce the likelihood of essential crime ingredients (*law, offender, victim or target, opportunity*) from intersecting in time and space.

Predatory offenders often make cost-benefit assessment of potential victims and locations before committing crime. CPTED aims to create the reality (or perception) that the costs of committing crime are greater than the likely benefits. This is achieved by creating environmental and social conditions that:

Maximise risk to offenders (increasing the likelihood of detection, challenge and apprehension);

Maximise the effort required to commit crime (increasing the time, energy and resources required to commit crime);

Minimise the actual and perceived benefits of crime (removing, minimising or concealing crime attractors and rewards); and

Minimise excuse making opportunities (removing conditions that encourage/facilitate rationalisation of inappropriate behaviour).

CPTED employs four key strategies. These are territorial re-enforcement, surveillance, access control and space/activity management. All CPTED strategies aim to create the perception or reality of capable guardianship.

- **Territorial Re-enforcement** – Although the design of the proposal makes provision for landscaping around the perimeter of the building, fencing is proposed to re-enforce the boundaries of the site.
- **Surveillance** – People generally feel safe when they can connect, see and interact with others. The NSW Police Service in the CPTED design principles advise that criminals are often deterred from committing crime in places that are well supervised. The principles of natural surveillance, technical/mechanical surveillance and organised surveillance will all be achieved in the design adopted in the proposal.
- **Access Control** – Natural access control will be achieved by the use of landscaping, building design and configuration, fencing and gardens.
- **Space/Activity Management** – This principle is an important way to develop and maintain natural community control of an area. The yard areas will be used on a 24 hour/day basis.

The site has been identified as being suitable for the development for reasons stated previously in the SEE.

## 5.2 Part C2 – Vegetation Management

The general objectives of Part C2 of the DCP are:

*a) To adopt the principles of ecologically sustainable development (ESD) in protecting and enhancing Penrith's native vegetation;*

*b) To preserve existing trees and vegetation for the benefits they provide;*

*c) To preserve existing trees and vegetation, where possible, during the design, development and construction process and justify any tree or vegetation removal to Council;*

*d) To protect and enhance native vegetation and biodiversity in the Penrith Local Government Area, including habitat for threatened species, populations and ecological communities and corridors for flora and fauna;*

*e) To retain native vegetation in parcels of a size and configuration which will enable existing plant and animal communities to survive in the long term;*

*f) To protect and enhance the landscape character and scenic qualities of the Penrith*



*Local Government Area; and*

*g) To manage the conflict between protecting and removing vegetation to address natural hazards such as bushfires.”*

There is no vegetation of significance existing on the site and accordingly, the development proposal is considered to be consistent with the objectives above.

Plantings are proposed within the front setback of the property. Furthermore, the plantings will assist in site beautification.

### **5.3 Part C3 – Water Management**

The proposal will adopt the principles of Water Sensitive Urban Design (WSUD) in final storm water design and management practices. This will be achieved by an integrated approach being undertaken to water and storm water management. In this regard, the following principles will be incorporated into the storm water design:

- Water discharge from the site will be designed to ensure that contaminants are contained. For example a ‘purceptor’ will be installed within the bunded fuel storage and refueling area.
- Water quality entering natural areas shall either maintain or improve on pre-development levels.
- Cooling towers and condensers will be connected to a conductivity meter to ensure maximum circulation before discharge.

The matters contained within Council’s Flood Prone Land Policy will apply to the development proposal. A detailed Flood Study prepared by Acor Engineers accompanies the DA.

### **5.4 Part C5 – Waste Management**

Clause 5.2.4 applies waste management requirements for non-residential developments (including industrial). A Waste Management Plan accompanies the DA. General requirements for waste management under the DCP are as follows:

*“3) Waste storage and collection areas should be:*

- a) Flexible in their design so as to allow for future changes in the operation, tenancies and uses;*
- b) Located away from primary street frontages, where applicable;*
- c) Suitably screened from public areas so as to reduce the impacts of noise, odour and visual amenity; and*

*d) Designed and located to consider possible traffic hazards (pedestrian/vehicular) likely to be caused by the storage and collection of waste.”*

**Comment:**

Minimal waste is generated by the operation. A waste bin for cardboard and separate bin for general waste is currently located within the sealed yard adjacent to car parking. Access is available for contractors to collect waste bins.

Waste generation includes small quantities of plastic ‘shrink wrap’ which is compacted and bailed for transport to a recycling centre. Cardboard is placed into a skip bin for collection and recycling.

*“4) The following features will need to be considered in the design of waste storage and collection areas:*

*a) Dry recyclables including containers, paper, cardboard and toners for printers and photocopiers should be separated from other waste, for recycling;*

*b) Food scraps should be placed in specialised containment bins and collected on a regular basis (particularly where large volumes of perishable wastes are generated);*

*c) Refrigerated garbage rooms should be provided where there are large quantities of perishable wastes and infrequent collections; and*

*d) Clinical or hazardous and liquid waste should be placed in specialised containment bins and collected by specialised services.”*

**Comment:**

Minimal waste is generated by the operation. A waste bin for cardboard and separate bin for general waste is currently located within the sealed yard adjacent to car parking. Access is available for contractors to collect waste bins.

*“5) Grease traps must be provided where there is a likelihood of liquid waste entering the drainage systems (contact Sydney Water to obtain trade waste requirements).”*

**Comment:**

Not applicable.

*“6) Communal storage/collection facilities are recommended where:*

*a) The design makes it difficult for all tenants to have ready access to a collection point; or*

*b) The site characteristics restrict vehicle entry.”*

**Comment:**

Not applicable.

*“7) Where a communal facility exists, each tenant should have a designated area which is clearly signposted.”*

**Comment:**

Not applicable.

*“8) Should a collection vehicle be required to enter the property, the driveway and manoeuvring area must be suitable for a collection vehicle in terms of both its strength and design.*

*9) The system for waste management must be compatible with the collection service(s) to be used whether Council or private contractor.*

*10) Swept paths demonstrating adequate manoeuvring area are to be provided with the application.”*

**Comment:**

Existing waste collection areas function effectively and allow for trucks to enter and leave the site in a forward direction for bin emptying.

## **5.5 Part C6 – Landscape Design**

The proposed development is classified as a ‘category 3’ development under the Council’s landscape provisions adopted in the DCP. The site will provide a small landscaped area on the narrow frontage to Lambridge Place. A landscape plan accompanies the DA documents prepared by a qualified Landscape Architect.

The submission requirements under table c6.3 of the DCP have been satisfied in the documentation submitted in support of the DA.

## **5.6 Part C10 – Transport, Access and Parking**

Table C10.2 of the DCP specifies parking requirements for various development types. The following table (table 1) below provides an assessment of the car parking requirements for the development:

**Table 1 – Parking Requirements – Part C10**

Part C10 – Penrith Development Control Plan 2014		
DCP Requirements	Proposal	Complies
Warehouses or distribution centres, including ancillary office <b>1 space per 100m<sup>2</sup> of gross floor area</b>	<b>Existing development:</b> <ul style="list-style-type: none"> <li>. Warehouse (Cold store) - 1,882.8msq</li> <li>. Required = 19 spaces</li> <li>. Provided = 30 spaces</li> </ul>	<b>YES</b>
Warehouses or distribution centres, including ancillary office <b>1 space per 100m<sup>2</sup> of gross floor area</b>	<b>Proposed development:</b> <ul style="list-style-type: none"> <li>. Existing Cold Store- 1,882.8sqm</li> <li>. Cold Store (Increase) – 2,238sqm</li> <li>. TOTAL – 4,120.8 sqm</li> <li>. Required = 41 spaces</li> <li>. Provided = 37 spaces</li> </ul>	<b>NO</b>
<b>RMS Guidelines:</b> <b>1 space per 300m<sup>2</sup> of gross floor area</b>	<ul style="list-style-type: none"> <li>. Required = 14 spaces</li> <li>. Provided = 37 spaces</li> </ul>	<b>YES</b>

The current operation provides a surplus of eleven (11) spaces based on the Council DCP requirements. The proposed additions (2,238 m<sup>2</sup> GFA) will require the provision of an additional twelve (12) spaces for on - site car parking based on the DCP requirement. An additional seven (7) spaces are proposed on lot 11 as part of the development proposal. Based on the DCP requirements, a shortfall of four (4) spaces will result from the additional floor space proposed when applying the Council DCP car parking requirements.

Table 1 identifies the parking requirements for the development based on the ‘*RMS Guide to Traffic Generating Developments*’ (the “**RMS Guidelines**”). Section 5.11.2 of the RMS Guidelines specifies parking requirements for a ‘warehouse’. More specifically, the guidelines require all new warehouses on undeveloped sites to provide on - site car parking for all vehicles used by employees. In the case of wholly redeveloped sites, the guidelines state that “...*each site is treated on its merit*”. Provision of one space per 300 m<sup>2</sup> is recommended.

Applying the car parking rate recommended by the RMS Guidelines, a total on-site parking requirements of fourteen (14) spaces is required resulting in the proposal having a significant surplus of twenty-three (23) spaces. The RMS Guidelines also state:

*“Variations on the recommended parking rate must be considered in the context of both current and potential users. While surveys might justify a lesser parking rate for a particular development, provision must be made for future users by setting aside (but not necessarily surfacing), space for car parking. The recommended rate of parking provision is in the middle range parking rate observed in the RTA’s survey. The rates vary from one space per 80m<sup>2</sup> to one space per 960m<sup>2</sup>, the mean and sample standard deviation*



*figures being 338m<sup>2</sup> and 280m<sup>2</sup> respectively based on a sample of 10 sites. A particular situation where a parking rate greater than that recommended above is warranted, would be for a development with a greater than average employment density. The mean floor area per employee at the warehouses surveyed by the RTA was 226m<sup>2</sup> per employee.”*

No variation to the RMS Guidelines is sought under this development proposal. In fact, a significant surplus of car parking will be provided above the RMS recommended requirements. The current number of employees based on the site in association with the existing use is fifteen (15) office staff and eight (8) warehouse staff. An additional three (3) employees will be located on the site as a result of the expanded operation.

The RMS Guidelines state that “... provision must be made for future users by setting aside (but not necessarily surfacing), space for car parking”. The shortfall of car parking based on the Council DCP requirements can be accommodated within the sealed area forming part of the works proposed on lot 11 without compromising truck manoeuvring. The proponents seek not to line mark the additional car parking as there will not be the demand based on the operational characteristics of the total use.

The car parking and areas designed for movement of pedestrians has been undertaken in accordance with the provisions of AS 2890.1-2004. Provision of parking spaces for disabled persons is in accordance with the Access to Premises Standards, the Building Code of Australia and AS2890.

Access, parking, manoeuvring and loading facilities have been designed in accordance with AS 2890.2 - 2004 and accommodate vehicle types as outlined in Table C10.3 of the DCP (namely articulated vehicles). Details of traffic generation associated with the proposed use are provided under section 3.1 of the SEE.

The plans accompanying the DA provide information on the turning paths for articulated vehicles in accordance with AS 2890.2 – 2004.

## **5.7 Part C12 – Noise and Vibration**

Part C12.4 of the DCP applies to all industrial development that, in the opinion of Council, will impact on the amenity of the surrounding developments. The proposal involves the use of the premises on a 7 day week/24 hour day basis. Although the site is geographically removed from any sensitive land uses (except the nearby child care centre) the application is supported by an acoustic assessment prepared by BGMA.

The general controls specified in the DCP for noise and vibration are:

*“a) Council will not grant consent to any noise generating industrial development, commercial development or licensed premises unless it can be demonstrated that:*

*i) The development complies with the relevant State Government authority or agency standards and guidelines for noise, as well as any relevant Australian Standards;*

- ii) The development is not intrusive (as defined in the EPA’s Industrial Noise Policy);
- iii) Road traffic noise generated by the development complies with the provisions of Section 12.1 Road Traffic Noise of this Section;
- iv) The development complies with rail noise and vibration criteria (refer Section 12.2 Rail Traffic Noise and Vibration of this Section); and
- v) The development does not adversely impact on the amenity of the area or cause sleep disturbance.”

The Noise Impact Statement prepared by BGMA concludes that the development will comply with the relevant noise criteria specified by the EPA for industrial uses.

### 5.8 Part C13 – Infrastructure and Services

Part C13.2 of the DCP specifies requirements for utilities and services associated with a proposed development. The key objectives are:

- a) To ensure that development will not place unreasonable pressure on servicing authorities in terms of timing and extent of supply;
- b) To ensure that development will take place only where satisfactory arrangements are made with the servicing authorities; and
- c) To ensure that adequate consultation is carried out with the relevant servicing authorities during the formulation of development proposals.”

The proponents in the pre-planning of the development have ensured that satisfactory arrangements have been made with servicing authorities for the provision of services to the land to address the required demand for the proposal. The site currently contains an electricity sub-station for electricity demands for the proposed facility.

Adequate water and sewer services are provided for the site.

### 5.9 Part C4 – Industrial Development

The relevant provisions of Part C4 of the DCP are summarised in the Table below:

Parts C4 – Penrith Development Control Plan 2014		
DCP Requirements	Proposal	Complies
<p><b>D 4.2 – Building Height</b></p> <p>Industrial development should achieve a scale and height in keeping with the existing and desired future character of the area. Development may not be permitted up to the maximum height specified on the Height of Buildings Map, if it will have an adverse impact on views to or from areas of visual importance or</p>	<p>The maximum building height permitted under the LEP is twelve (12) metres. A variation to the height is proposed. The proposed building will have a maximum height of 16.10m. A written request under clause 4.6 of the LEP is provided at Appendix A of the SEE.</p>	<p><b>NO</b></p> <p>See cl 4.6 objection</p>

on heritage significance.		
<p><b>D 4.3 – Building Setbacks and Landscape</b></p> <p>a) To enhance the visual quality of industrial development through appropriate setbacks, building and landscape design, particularly when viewed from public areas;</p> <p>b) To ensure new development retains existing trees or significant stands of vegetation in the overall site layout;</p> <p>c) To provide functional areas of planting that enhance the presentation of a building;</p> <p>d) To screen undesirable views and minimise the visual impact of hard surface areas; and</p> <p>e) To create industrial precincts with their own intrinsic and unique landscape characteristics, which enhance the existing and/or natural landscape and character of an area.</p>	<p>DCP Requirement :</p> <ul style="list-style-type: none"> <li>• 9 metres Building</li> <li>• 4 metres landscaping</li> </ul> <p>Proposal:</p> <ul style="list-style-type: none"> <li>• 9.78 metres (min)</li> <li>• 9.78 metres (min)</li> </ul>	<b>YES</b>
<p><b>D 4.4 – Building Design</b></p> <p>a) To encourage a high standard of architectural design, utilising quality materials and finishes appropriate for the locality;</p> <p>b) To ensure that development is undertaken in a sustainable manner, demonstrating this through the application of the Building Sustainability Index (BASIX), Green Star and/or Australian Buildings Greenhouse Ratings (now part of the National Australian Built Environment Rating System (NABERS) certification systems, where appropriate;</p> <p>c) To ensure that new development can integrate into the existing urban fabric to contribute to the creation of a visually cohesive urban environment;</p> <p>d) To encourage innovation in building design and the use of materials; and</p> <p>e) To encourage articulated and varied frontages to minimise perceived bulk and scale.</p>	<ul style="list-style-type: none"> <li>• Building designed with a commitment to achieving no less than 4 stars under Green Star or 4.5 stars under the Australian Building Greenhouse Rating system (now part of the National Australian Built Environment Rating System (NABERS)</li> <li>• Architectural features have been used to avoid the potential of a large 'bland' looking building.</li> <li>• The development incorporates a variety of external finishes in terms of both colour and type of material used.</li> <li>• See comments under section 5.1.</li> <li>• Section J report accompanies DA.</li> </ul>	<b>YES</b>
<p><b>D 4.5 – Storage of Materials and Chemicals</b></p> <p>1) External storage of goods must be avoided, wherever possible. Where the nature of the activity or the materials means that internal storage is impractical, all external storage areas must be located behind the front building setback. In addition, when assessing development applications involving external storage of goods, Council will take into consideration:</p> <p>a) The proposed height and on-site arrangement of stored goods;</p> <p>b) The visual impact of the storage area and how this is proposed to be minimized (orientation, screening with landscaping and/or solid fencing, etc.);</p> <p>c) Access arrangements; and</p> <p>d) Safety issues.</p>	<p>All goods and materials shall be stored wholly within the building.</p> <p>A waste management plan accompanies the application.</p>	<b>YES</b>
<p><b>D 4.6 – Accessing and Servicing the Site</b></p> <p>a) To ensure the safe and efficient movement into and out of an industrial development without adversely affecting the existing and future service and safety levels of the road;</p> <p>b) To ensure industrial development provides sufficient parking on-site to accommodate all parking demands generated by the development while ensuring safe and efficient movement of vehicles within the site;</p> <p>c) To encourage the development of a parking layout that enhances the function and appearance of the industrial development; and</p> <p>d) To ensure that cyclist and pedestrian needs are adequately and safely accommodated in all industrial areas.</p>	<p>The car parking and areas designed for movement of pedestrians has been undertaken in accordance with the provisions of AS 2890.1-2004. Provision of parking spaces for disabled persons is in accordance with the Access to Premises Standards, the Building Code of Australia and AS2890.</p> <p>Access, parking, manoeuvring and loading facilities have been designed in accordance with AS 2890.2 - 2004 and accommodate vehicle types as outlined in Table C.10.3 of the DCP (namely articulated vehicles).</p>	<b>YES</b>



STATEMENT OF ENVIRONMENTAL EFFECTS

<p><b>D 4.7 – Fencing</b></p> <p>The objective for this section is to ensure that the design and location of fencing is integrated within the development, and is suitable for its purpose and setting.</p>	<p>The existing 1.8 m high teal blue fence shall be extended as necessary.</p>	<p><b>YES</b></p>
<p><b>D 4.8 – Lighting</b></p> <p>Lighting details shall be provided as part of any relevant development application.</p>	<p>Lighting details are provided on the DA plans.</p>	<p><b>YES</b></p>

## 6/

STATE ENVIRONMENTAL PLANNING  
POLICIES**6.1 State Environmental Planning Policy No. 33 – Hazardous and Offensive Industry**

The provisions of SEPP 33 have been considered in the preparation of the development application. SEPP 33 provides guidelines on risk screening to determine whether a proposed development is potentially hazardous and thus affected by SEPP No. 33.

The proposal is not deemed to be "potentially hazardous industry" under SEPP 33. The proposed works do not fit into the definition of hazardous or offensive industry as they do not pose a significant risk in relation to the locality to human health, life, property, the biophysical environment, or includes a hazardous industry or hazardous storage establishment.

**6.2 State Environmental Planning Policy No. 55 – Remediation of Land**

The Policy provides guidelines for the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment. Clause 7 requires Council to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land. Should the land be contaminated Council must be satisfied that the land is suitable in a contaminated state for the proposed use.

Clause 7 of SEPP 55 states:

*“(1) A consent authority must not consent to the carrying out of any development on land unless:*

*(a) it has considered whether the land is contaminated, and*

*(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*

*(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.”*

Clauses 7, 8 and 9 of the SEPP are not relevant to the proposed works as the site is not considered to be contaminated. Accordingly, the development application is satisfactory having regard to the relevant matters for consideration under SEPP 55. A site contamination report has been prepared and accompanies the DA. A site contamination report supports the DA.

### **6.3 Sydney Regional Environmental Plan No 20 - Hawkesbury - Nepean River (Deemed SEPP)**

The site is located within the designated hydrological catchment of the Hawkesbury-Nepean River and is subject to the provisions of the above SREP.

The general planning considerations relevant are:

- the aim of the plan, and
- the strategies listed in the Action Plan of the Hawkesbury-Nepean Environmental Planning Strategy, and
- whether there are any feasible alternatives to the development or other proposal concerned, and
- the relationship between the different impacts of the development or other proposal and the environment, and how those impacts will be addressed and monitored.

The site is within the Hawkesbury – Nepean Catchment.

The site is not located on the foreshore or adjacent to a waterway and therefore, with the exception of the objective of improved water quality, the objectives of the SREP are not applicable to the proposed development.

The development is consistent with the controls contained with the deemed SEPP.

# 7/

## SECTION 79C OF THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979

### **7.1 The likely Impacts of the Development**

These matters have been addressed above.

### **7.2 The Suitability of the Site**

The site is located within an area zoned for industrial land use. The proposed alterations are consistent with the relevant objectives of the zone. This is discussed in detail under Section 4.3 of the SEE. The proposed alterations are permissible with the consent of Council.

The site has been identified as being suitable for the development for reasons stated previously in the SEE.

### **7.3 Submissions**

This is a matter for Council's consideration under Council's notification requirements.

### **7.4 The Public Interest**

The public interest is served by developing the land in an efficient and economic way that enhances the character of the area and amenity of the neighbourhood.

The proposal meets the aims of the LEP 2010.



# 8 /

## CONCLUSION

The merits of the application have been considered in this assessment under Section 79C of the Environmental Planning and Assessment Act 1979, Penrith Local Environmental Plan 2010 and Penrith Development Control Plan 2014. More specifically, the proposal meets the requirements of the relevant General Development Controls of the DCP.

The proposal satisfies the relevant planning controls for the locality.

The proposal achieves the objectives of Council's planning controls and is considered to be suitable for approval.

**Peter Fryar**

BTP(UNSW), CERT T&CP(Ord4), MPIA

Director,

KEY URBAN PLANNING

# APPENDIX A

CLAUSE 4.6 SUBMISSION



## **Clause 4.6 – Exceptions to Development Standards**

### **VARIATION TO THE MAXIMUM HEIGHT CONTROL FOR BUILDINGS UNDER CL. 4.3 PENRITH LEP**

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#### **Lots 11 & 12 DP 1087962 No.24-27 Lambridge Place, Penrith**

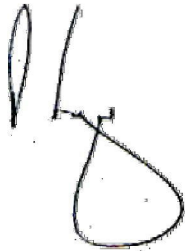
Alterations & additions to an existing 'warehouse or distribution centre' (cold store) including additional loading and refueling facilities on site.

9<sup>th</sup> OCTOBER 2017

ISSUE NO	AMENDMENT	DATE
A	Initial draft Report	5 <sup>th</sup> OCTOBER 2017
B	Final for issue to Client	9 <sup>th</sup> OCTOBER 2017

**REPORT PREPARED BY:****Peter Fryar**

BTP (UNSW), CERT T&amp;CP (Ord4), MPIA



**DIRECTOR,**  
**KEY URBAN PLANNING**

**Waiver**

*This report has been prepared in accordance with and for the purposes outlined in the scope of services agreed with Key Urban Planning and the Client. It has been prepared based on the information supplied by the Client, as well as investigation undertaken by Key Urban Planning and any sub-consultants engaged by the Client for the project.*

*Unless otherwise specified in this report, information and advice received from external parties during the course of this project was not independently verified. However, any such information was deemed to be current and relevant prior to its use. Whilst all reasonable skill, diligence and care have been taken to provide accurate information and appropriate recommendations, it is not warranted or guaranteed and no responsibility or liability for any information contained herein or for any consequences of its use will be accepted by Key Urban Planning.*

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## VARIATION UNDER CLAUSE 4.6 OF THE PENRITH LOCAL ENVIRONMENTAL PLAN 2010 TO DEVELOPMENT STANDARD FOR MAXIMUM BUILDING HEIGHT.

Peter Fryar of Key Urban Planning has prepared this clause 4.6 submission (the “**submission**”) to assist in gaining development consent for proposed alterations and additions to an existing ‘warehouse or distribution centre’ (cold store) including additional loading and refueling facilities on site.

- Peter is a Town Planner with over 30 years experience in Local Government and private practice.
- Peter holds a Degree as a Bachelor of Town Planning (UNSW) and Certificate under Ordinance 4 as a Town and Country Planner.
- Peter is a Corporate Member of the Planning Institute of Australia.

The property is known as Lots 11 and 12 in Deposited Plan 1087962, No. 24-27 Lambridge Place, Penrith (the “**site**”). The site comprises two separate allotments. The proposed additions as part of the proposal are predominantly confined to lot 11. Lots 11 & 12 will be consolidated into one lot as part of this development application.

Lot 12 has an area of 6,246 m<sup>2</sup> and contains an existing warehouse of approximately 1,882.8 m<sup>2</sup>. A survey plan has been prepared as part of the development application. The survey plan identifies that lot 12 is burdened by three (3) easements namely two drainage easements and an easement for electricity substation. Lot 12 is located on a ‘bend’ in Lambridge Place and has a western boundary fronting Lambridge Place of 75.61 m and a southern frontage to the roadway of 85.358 m.

Lot 11 adjoins lot 12 to the east and has a splayed frontage to the cul-de-sac head of Lambridge Place. The site is currently vacant. The lower (southern) portion of the site serves as a floodway for the locality. Lot 12 has a total area of approximately 6,299.5 m<sup>2</sup>. The natural ground level of lot 11 falls from the northern property boundary to the southern side boundary.

The subject land is located within a large industrial area. The site is located in an area identified in the DCP as Precinct 5 North Penrith and is located to the south of Andrews Road. The main access to the site is through Lambridge Place.

*The total site area is approximately 12,545 m<sup>2</sup>.*

In consideration of this matter, we have:

- Undertaken an inspection of the site and surrounding locality;
- Undertaken a review of the relevant provisions of the Penrith Local Environmental Plan 2010 (the “**LEP**”);
- Undertaken a review of the relevant chapters of the Penrith Development Control Plan 2014

(the “**DCP**”);

- Given consideration to the relevant provisions of the Environmental Planning and Assessment Act, 1979 (the “**Act**”) and the Environmental Planning & Assessment Regulations, 2000 (the “**Regs**”);and
- Consulted with relevant Duty Officers of the Council.

## INTRODUCTION

Key Urban Planning is providing urban planning services to Foodboss in support of the above described development application submitted to Penrith City Council.

The purpose of this submission is to request a variation to Clause 4.3 (Height of Buildings) of the Penrith Local Environmental Plan 2010. It is proposed that the overall maximum height of the building forming part of the DA will be 17.556m.

## CLAUSE 4.6 FRAMEWORK

Clause 4.6 (*Exceptions to Development Standards*) provides a mechanism for a Consent Authority to grant flexibility in Development Standards when it considers this would result in improved planning outcomes for and from a development.

The clause requires that a consent authority must not grant a variation to a development standard unless it is satisfied:

*“(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;*

*“(b) that there are sufficient environmental planning grounds to justify contravening the development standard;”*

Additionally, there is Case Law precedence that must be considered prior to determining any variation request under the Clause. The Land and Environment Court Case law has set questions to be addressed in requests for variations facilitated by Clause 4.6. The relevant precedence is in:

- *Wehbe v Pittwater Council (2007)*; and, more recently
- *Four2Five Pty Ltd v Ashfield Council (2015)*.

This application to vary a development standard is framed to provide responses to each of the heads of consideration under Clause 4.6 and to address the precedence set by this relevant Case Law. It is set out as follows:

- Verification that a statutory Development Standard is proposed to be varied;
- Description and quantification of the proposed variation
- Justification on merit of the validity of the variation requested (with particular attention to the current case law precedence in *Four2Five vs Pty Ltd v Ashfield Council*).
- Assessment against the remaining relevant statutory heads of consideration in the LEP, 2013

and other relevant case law.

### **1. DEVELOPMENT STANDARD PROPOSED TO BE VARIED**

The Development Standard proposed to be varied by this application is Clause 4.3 (Height of Buildings) of the Penrith LEP, 2010.

#### ***“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 the locality,*

*(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development and to public areas, including parks, streets and lanes,*

*(c) to minimise the adverse impact of development on heritage items, heritage conservation areas and areas of scenic or visual importance,*

*(d) to nominate heights that will provide a high quality urban form for all buildings and a transition in built form and land use intensity.*

*(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](#).”*

The map indicates that the maximum height of buildings shall be 12 metres. The proposed building extension forming part of the DA does not satisfy the maximum building height standard under clause 4.3 of the LEP.

The site is zoned IN1 General Industrial Zone under the provisions of Penrith LEP 2010.

The Dictionary to LEP 2013 defines building height as:

*“building height (or height of building) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.”*

The extent of the breach of the building height standard is 5.556m.

### **2. ARE THE PLANNING CONTROLS IN QUESTION A DEVELOPMENT STANDARD?**

Section 4(1) of the Environmental Planning and Assessment Act, 1979 defines a ‘Development Standard’ as follows:

*“development standards means provisions of an environmental planning instrument or the regulations 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 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 development on patterns of wind, sunlight, daylight or shadows,*
- (m) *the provision of services, facilities and amenities demanded by development,*
- (n) *the emission of pollution and means for its prevention or control or mitigation, and*
- (o) *such other matters as may be prescribed.”*

[UNDERLINED & BOLD BY AUTHOR.]

Clause 4.3 (Height of Buildings) falls within this definition and is a Development Standard. The provisions of clause 4.6 of the LEP can therefore be relied upon for allowing a variation to the development standard.

The Land and Environment Court of NSW in *Bramley v Coffs Harbour City Council* [2014] NSWLEC 1194 considered a development proposal involving a clause 4.6 submission seeking variation to the height standard. Commissioner Brown at para. 28 to 29 described the clause 4.6 assessment framework as follows:

*“28. Clause 4.6 of LEP 2013 imposes four preconditions on the Court in exercising the power to grant consent to the proposed development. The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)). The second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)). The*



third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)). The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).

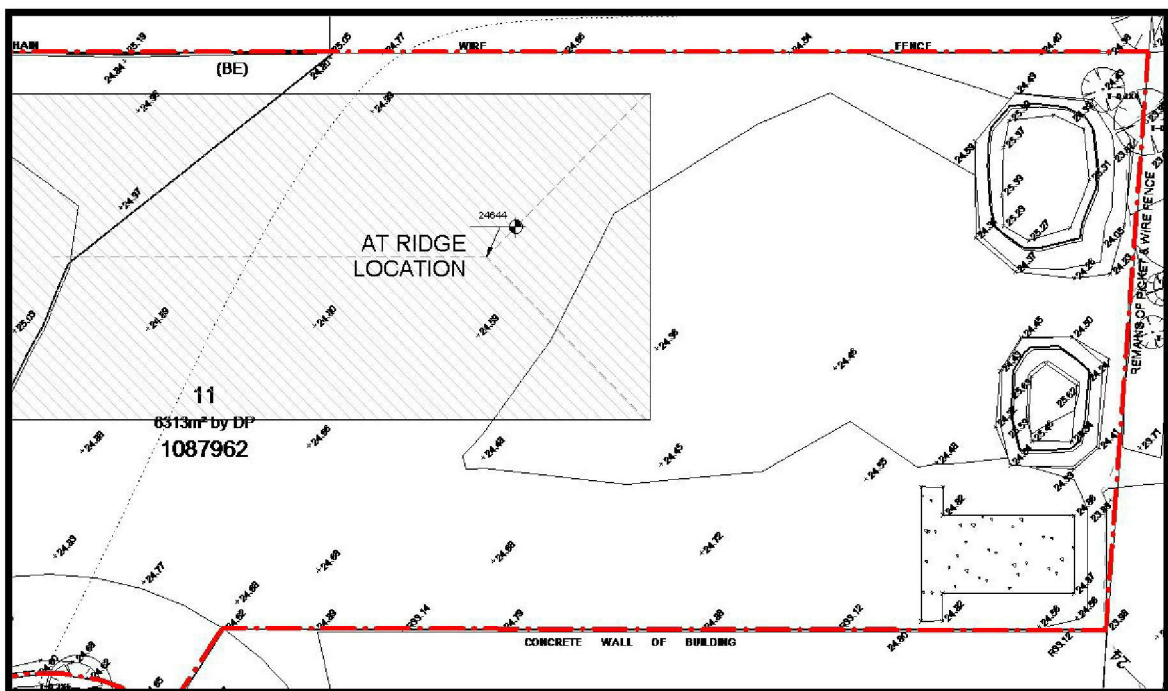
29. In considering the question of consistency, I have adopted approach of the former Chief Judge, Justice Pearlman in *Schaffer Corporation v Hawkesbury City Council* (1992) 77 LGRA 21 where, Her Honour expresses the following opinion at [27]:

**The guiding principle, then, is that a development will be generally consistent with the objectives, if it is not antipathetic to them. It is not necessary to show that the development promotes or is ancillary to those objectives, nor even that it is compatible.”**

Accordingly, the proposed building extension forming part of the DA constitutes a variation to the maximum building height development standard contained within the LEP and requires the proponent to formally seek a variation under the provisions of clause 4.6 of the LEP.

### 3. EXTENT OF VARIATION SOUGHT

The proposal results in the erection of a building as an extension to the existing cold store having a maximum building height of 17.556 metres. This constitutes a variation to the maximum permissible height of the building by 5.556m.



#### **4. JUSTIFICATION FOR CONTRAVENTION OF THE DEVELOPMENT STANDARD**

The proposed variation is justified below firstly via a merit based assessment on the recent case law and subsequently against the relevant heads of consideration in the LEP, 2010. Recent case law (*Winten Property Group v North Sydney Council, 2001* & *Wehbe v Pittwater Council, 2007*) sets the basis for decision making on tests to assess variations to a Development Standard founded in whether the varied development would achieve the objectives of the relevant zoning and the Development Standard. In the decision in *Four2Five Pty Ltd v Ashfield Council, 2015*, Commissioner Pearson found that merely showing that the development achieves the objectives of the development standard would be insufficient to justify that a development is unreasonable or unnecessary in the circumstances of the case for the purposes of a Clause 4.6 objection. This refined the test set in *Wehbe v Pittwater Council* to include an obligation to tie the test to outcomes specific to the proposed development and its site as opposed to grounds that would apply to any similar development on the site or in the vicinity. Consent authorities have since been applying this site & development specific test (“*the Four2Five Test*”) to objections under Clause 4.6. The merit based assessment of this variation request is based on this test.

With respect to the *Four2Five* test, there are a number of outcomes for the development on this site that go to justification of the variation request for building height. These include:

- The shape and locality of the site and the opportunities and constraints that arise for its development as a result – specifically the opportunity to provide benefits in the form of increased industrial development on an infill site; and
- The potential for negative town planning and urban outcomes that may arise from strict compliance with the requirement are negligible when considering the context of the site with surrounding development and the purpose for the building works; and
- The unique qualities of the site and the value of the proposed architectural response in maintaining and enhancing these and the character of the locality.

#### **5. ASSESSMENT AGAINST THE STATUTORY HEADS OF CONSIDERATION**

The proposed variation is assessed below against the relevant sub-clauses in Clause 4.6 of the Penrith LEP, 2010.

*Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (Cl.4.6(3)(a))*

In his decision in *Wehbe v Pittwater Council [2007] NSW LEC 827* (relating to the now repealed State Environmental Planning Policy No.1), Chief Justice Preston expressed the view that there are 5 different ways in which a Development Standard may be shown to be unreasonable or unnecessary (and so that an objection to the development standard may be well founded). In accordance with this precedent, the proposed variation is tested below against each of these.

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

The relevant objectives underpinning the maximum building height development standard are:



*“(a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,*

*(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development and to public areas, including parks, streets and lanes,*

*(c) to minimise the adverse impact of development on heritage items, heritage conservation areas and areas of scenic or visual importance,*

*(d) to nominate heights that will provide a high quality urban form for all buildings and a transition in built form and land use intensity.”*

Our opinion is that the proposed building height is compatible with the height, bulk and scale of other industrial buildings in the locality.

In our view, strict compliance with the development standard does not guarantee a satisfactory design outcome. While the exceedance of the height standard could be said to be numerically large, it is necessary to place this in some context when considering character. That context is that the site by its configuration and surrounding development, is relatively obscured from view from adjoining roadways and the public domain. The building proposed has different architectural forms and heights that provide a transition to the existing cold store building on the site. When considered with the other building forms on the site, the development with compatible architectural forms and heights complement each other. The building with the height exceedance will simply be seen as another building in the range of buildings on the site and immediate locality.

The adjoining site immediately to the north is vacant. A building that has a form consistent with that envisaged by LEP 2010 would largely screen the proposed building from this direction.

Objective (b) is satisfied as it has been demonstrated in the plans submitted with the application that any loss of views, overshadowing or privacy impacts are negligible.

It is clear that the objectives of the standard can be achieved, notwithstanding the variation on building height, and that a superior development outcome would result.

- *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

The underlying objective or purpose of the standard is relevant to this development but, as illustrated in the plans submitted with the development application, it is achieved not through the variation sought which has no consequence for the suitability of the ultimate built form. The strict compliance with the development standard is unreasonable or unnecessary. There are sufficient environmental planning grounds to justify contravening the development standard because the proposal results in a building form of bulk and scale consistent with the desired future character and sympathetic to the existing and envisaged development in the immediate locality. The failure to set aside the standard would in effect give rise to an inappropriate building form. The contravention of the control by the proposal does not give rise to any environmental effect of sufficient significance, which would cause concern.

The environmental benefits of the proposal include providing energy efficiency through the roof design at the upper level of the building while retaining the remainder of the building at a scale envisaged for industrial development in the locality, is on balance an appropriate environmental

outcome to justify the contravention of the development standard.

- *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

The underlying object or purpose of the standard would not be defeated or thwarted if compliance was required. However, in our opinion, strict compliance with the development standard would result in a missed opportunity specific to this site to develop a high quality development that will present in a positive manner to the adjoining street.

- *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;*

To our knowledge, Council has departed on a number of occasions from the relevant standard in past determinations for development in the locality.

- *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Not applicable. The zoning of the site is appropriate.

Our opinion in summary is that the proposed variation is consistent with the heads of consideration set by the decision of *Wehbe v Pittwater Council [2007]* and thus that for this particular case it would be unreasonable to strictly apply the numerical height standard for the development.

***There are sufficient environmental planning grounds to justify contravening the development standard (Cl.4.6(3)(b))***

The merit based justification above and in the accompanying SEE provides strong evidence that the proposed building height variation would have clear positive outcomes including provision of a high quality industrial development consistent with the provisions of the LEP for development within the IN1 zone and the protection and enhancement of identified values specific to the site.

The departure on building height is a negligible issue within the context of the greater planning benefit, including opportunities for protection and enhancement of local values and provision of high quality industrial development.

In this regard, there are sufficient environmental planning grounds specific to this site to justify the proposed departure from the development standard.

***The proposal will be in the public interest because it is consistent with the objectives of the relevant development standard and the objectives for development within the relevant zone (Cl.4.6(4)(a)(ii))***

The analysis in the SEE indicates that the proposed variation in building height to enable the expansion of the existing cold store will result in a development that is consistent with the objectives of the IN1 zone and the building height standard clause within the LEP 2010.



## **6. SECRETARY'S CONCURRENCE**

Under Clause 4.6(5) of the Penrith LEP, 2010, the Secretary's concurrence is required prior to any variation being granted. The proposal is assessed below against the matters to be considered by the Secretary.

*(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*

The variation to the maximum building height development standard will raise no matters that could be deemed to have State or Regional Significance. The proposed variation will have no potential for impacts outside the immediate vicinity of the site.

*(b) the public benefit of maintaining the development standard, and*

Maintaining the development standard in this case would negate the potential of allowing the expansion and continued operation of the existing Foodboss facility. The variation sought will not compromise that development form envisaged by the planning controls adopted by council.

*(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.*

We know of no other specific matters that would require the Secretary's consideration prior to granting concurrence.

## **CONCLUSION**

The proposed development satisfies the test established by the Land and Environment Court of NSW in *Wehbe -v- Pittwater Council* [2007] NSW LEC 827 as being appropriate for consideration of "unreasonable or unnecessary" circumstances in the application of Clause 4.6 variation request because:

- the objectives of the standard are achieved notwithstanding non-compliance with the standard;
- the underlying objective or purpose of the standard is not relevant to the development therefore compliance is unnecessary in the context of the facts of this case;
- the underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable - it would not result in the orderly and economic development of the land;

In the circumstances set out above there are sufficient environmental planning grounds to vary the numerical standard in this matter. Requiring strict compliance with the 12 metre height standard for the expansion to the existing cold store in the IN1 industrial land would hinder attainment of the relevant objects of the Environmental Planning and Assessment Act 1979.

Please do not hesitate contacting the undersigned on **0432 678 268** should you require any further assistance in this matter.

Yours faithfully,

**Peter Fryar**

BTP(UNSW), CERT T&CP(Ord4), MPIA

A handwritten signature in black ink, appearing to read 'Peter Fryar', with a large, stylized loop at the end.

Director,

**KEY URBAN PLANNING**