



Clause 4.6 Variation – Height of Buildings (Clause 4.3)

Proposed Warehouse and Distribution Facility with Additional Proposed Access Road and Bulk Earthworks

128 & 130-172 Andrews Road, Penrith
(Lot 20 DP 1216618) & (Lot 13 DP 217705)

Prepared by Willowtree Planning Pty Ltd on behalf of Cadence Property

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PART A PRELIMINARY

1.1 INTRODUCTION

This Clause 4.6 Variation request has been prepared in support of the Development Application (DA) for a proposed Warehouse and Distribution Facility with additional proposed access road and bulk earthworks at 128 Andrews Road, Penrith (Lot 20 DP 1216618).

This Clause 4.6 Variation has been submitted to assess the non-compliance of the development with *Clause 4.3 Height of Buildings of Penrith Local Environmental Plan 2010* (PLEP2010). This Clause 4.6 Variation has been prepared in accordance with the requirements of Clause 4.6 of PLEP2010, which has the following aims and objectives:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

The proposed variation relates to *Clause 4.3 Height of Buildings* of PLEP2010. In summary, the following variations are proposed:

PLEP2010 Clause	PLEP2010 Development Standard	Proposed Development Non Compliance	Percentage of Variation
Clause 4.3 Height of Buildings	Maximum 12 m building height	The proposal seeks development consent for a 13.65 m maximum building height	13.75%

In accordance with Clause 4.6(3) of PLEP2010 Council is required to consider the following:

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

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

This request has been prepared in accordance with the aims and objectives contained within Clause 4.6 and the relevant development standard.

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PART B THE STANDARDS BEING OBJECTED TO

2.1 CLAUSE 4.3 (HEIGHT OF BUILDINGS) OF PENRITH LOCAL ENVIRONMENTAL PLAN 2010

The development standard requested to be varied is *Clause 4.3 Height of Buildings* of PLEP2010, which provides as follows:

Clause 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 (refer to **Figure 1**).*

The PLEP2010 “Height of Buildings Map” referred to in subclause (2) above, identifies the Site as being subject to a 12 m maximum building height. Pursuant to Clause 4.6, the proposed development, for purposes of a Warehouse and Distribution Facility, seeks exception to the applicable 12 m building height standard prescribed by Clause 4.3 under PLEP2010.

The Site is zoned IN1 General Industrial under the provisions of PLEP2010 where industrial related uses, including Warehouse and Distribution Facilities (being the proposed use), are permitted with development consent.

The subject DA, therefore relies upon what is reasonably concluded to be the underlying objectives of the standard imposed in the IN1 General Industrial zone.

2.2 THE OBJECTIVES/UNDERLYING PURPOSE OF THE CLAUSE

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

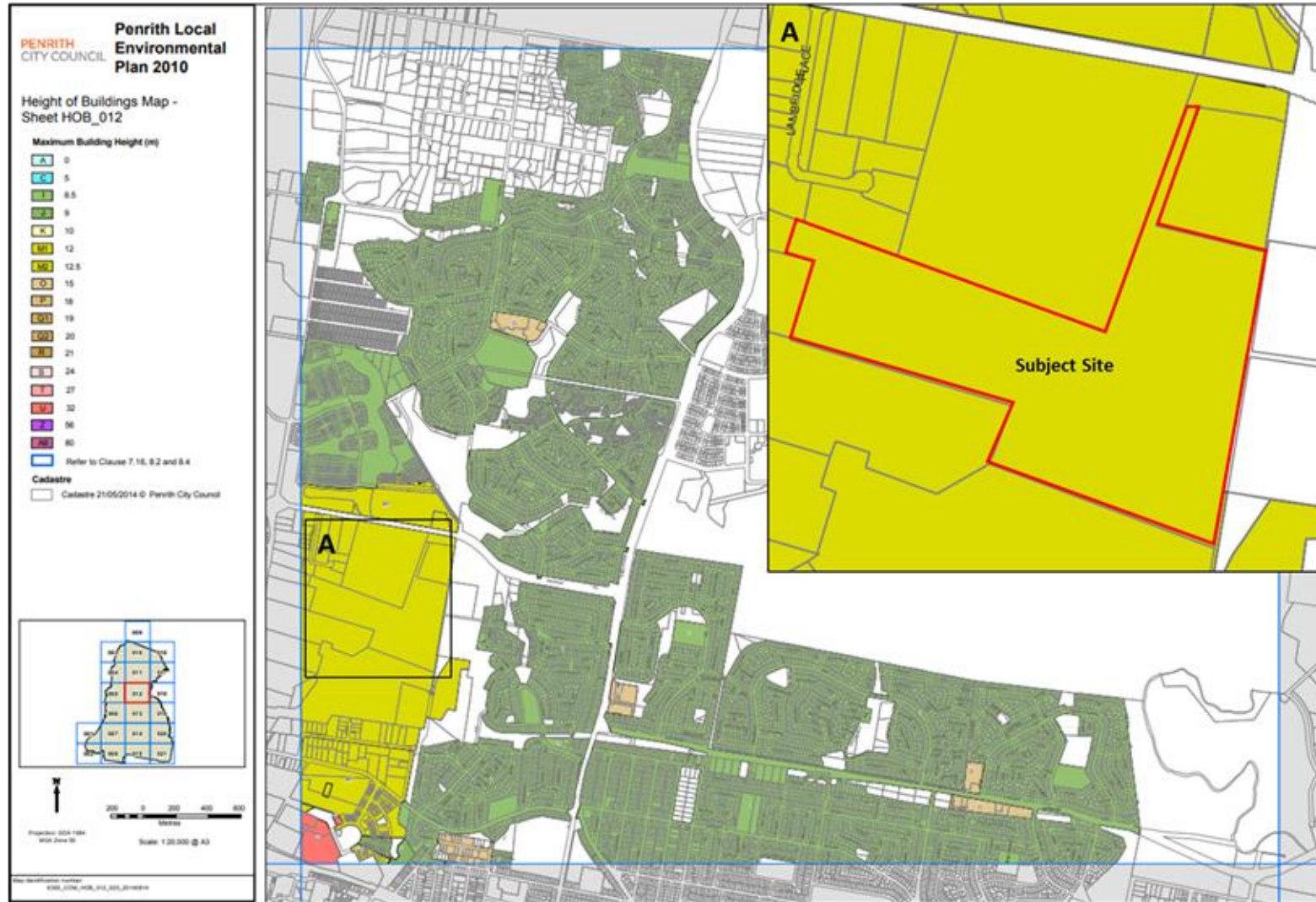
Part C of this Clause 4.6 Variation addresses the proposed variation to the Clause 4.3 development standard under PLEP2010.

2.3 PROPOSED VARIATION TO STANDARDS

The proposed development seeks development consent for a proposed Warehouse and Distribution Facility, proposed access road and bulk earthworks at 128 Andrews Road, Penrith. The proposed development would result in a building exhibiting a maximum building height of 13.65 m. The proposed 13.65 m building height represents a breach of 1.65 m under Clause 4.3 of PLEP2010.

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PART C PROPOSED VARIATION TO CLAUSE 4.3 HEIGHT OF BUILDINGS

Pursuant to Clause 4.6 of PLEP2010, exception is sought from the 12 m height of buildings standard applicable to the Site pursuant to Clause 4.3 of PLEP2010. Clause 4.6(4)(a)(ii) requires that such a request must establish that the proposed contravention is consistent with the objectives of the standard of the zone.

3.1 OBJECTIVES OF THE STANDARD

The objectives of the standard as stated in PLEP2010 are:

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

The proposed development for purposes of a Warehouse and Distribution Facility, would remain generally consistent with regard to building height achieved in the IN1 General Industrial zone concerning surrounding developments (northern and western aspects).

Furthermore, the built-form of the Site would be further complemented by the relationship of adjoining built-form; the streetscape; and, amenity of the surrounding area, particularly existing industrial developments in close proximity to the Subject Site.

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

(b) to 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,

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

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

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

The proposed development is not subject to any heritage items of significance including Aboriginal or Historic (European) Heritage items. Under Clause 7.5 of PLEP2010 the Subject Site is identified within an area subject to the protection of scenic value and landscape values. As a result of the proposed development, landscaping would be provided where considered necessary including a combination of exotic and native flora species, creating an activated and welcoming aesthetic to the Subject Site (refer to **Appendix 3**). Notwithstanding, it is important to note, that the Subject Site is zoned IN1 General Industrial for which it is surrounded by existing industrial development's, whose Site's exhibit rather minimalistic landscaping.

Furthermore, the Subject Site is considered to be visually concealed by the existing industrial developments along the northern and western boundaries; densely vegetated wetlands to the east; and, the Penrith Water Recycling Plant to the south.

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- (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 overall scale of the proposed development seeks to provide a transition from the existing industrial developments along the northern and western interfaces comprising developments of similar nature, which are considered compatible in terms of built-form and scale. Additionally, the proposed development attributes to the IN1 General Industrial zone objective of providing an employment-generating land use that is considered adaptable and responds accordingly to shifting economic conditions. Therefore, the proposed development would be considered compatible with existing built-form of surrounding developments, for which it would provide a smooth and gradual transition accordingly.

3.2 OBJECTIVES OF THE ZONE

The Subject Site is zoned IN1 General Industrial under PLEP2010, for which the proposed development (Warehouse and Distribution Facility / Centre) is considered permissible with development consent.

The proposed development is considered consistent with the IN1 General Industrial zone objectives, in that:

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

The proposed development provides an industrial premise (incorporating ancillary office space), for purposes of a Warehouse and Distribution Facility on the Subject Site, which is considered highly compatible with regard to the range of industrial land uses in close proximity to the Subject Site. The proposed development would positively contribute to the desired industrial character of the Subject Site and the surrounding area.

- *To encourage employment opportunities.*

The proposed development for purposes of a Warehouse and Distribution Facility would provide employment-generating opportunities to the immediate community and wider locality within the Penrith Local Government Area (LGA) during both the construction and operational phases of development. This further contributing to the viable economic return on the local and regional economy the proposed development offers.

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

The proposed development is positioned on land that is designated for industrial purposes, and thus would ensure that support is met for the desired outlay of the Site, as-well-as the wider locality. Consideration has also been given to surrounding land uses, for which the proposed development is further complemented by existing industrial developments along the northern and western boundaries. Additionally, the eastern boundary is densely vegetated (further east comprising recreational land uses) and to the south comprises a water recycling facility. Therefore, there are no impacts anticipated on the existing surrounding land uses.

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

The proposed development is located on land that is designated for industrial purposes, and thus would ensure support is met for the desired outlay of the Site, and wider locality. As mentioned above, the proposed development would provide employment-generating opportunities in both the construction and operational phases, further advocating the continued support of industrial land the IN1 zone objectives.

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

The proposed development would utilise an underperforming and underdeveloped site zoned for such permissible industrial development. Furthermore, the proposed development would be promoted and further complemented by the smooth transition it offers with regard to surrounding industrial developments in close proximity to the Subject Site, particularly along the northern and western boundaries.

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

The proposed development would support the viability of an existing industrial area. As described above, the provision of a proposed Warehouse and Distribution Facility (including ancillary offices) proposed on the Subject Site would positively contribute to the desired industrial character of the Site.

3.3 ESTABLISHING IF THE DEVELOPMENT STANDARD IS UNREASONABLE OR NECESSARY

Compliance with the standard would be unreasonable and unnecessary given that the proposed development generally maintains the height permitted under Clause 4.3 of PLEP2010 with regard to the Subject Site. The non-compliance primarily arises due to the exceedance in height proposed that exceeds the standard imposed under PLEP2010.

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

- The proposed development, for purposes of a Warehouse and Distribution Facility, would generally maintain the maximum permitted building height under PLEP2010 with regard to the Subject Site (exceedance by 1.65 m). Accordingly, the density and scale of the built-form proposed, would remain generally consistent with the existing industrial buildings surrounding the Site. Additionally, the proposed development would effectively integrate the streetscape and character of the area into the proposed scheme.
- By providing a transition between the existing industrial buildings in close proximity to the Subject Site, the built-form relationship of the Site contrasted to the surrounding built-form, would remain consistent with existing situation currently experienced with the IN1 General Industrial zone.
- The built-form character of the surrounding industrial developments is generally consistent with the built-form proposed under this Application, for which it is considered to respond to the local context.
- The proposed development would respond to the existing industrial developments on the northern and western interfaces, for which the protection of amenity would be ensured accordingly. Furthermore, there are no sensitive receptors in close proximity to the Subject Site; however, consideration for solar access, privacy, overshadowing and view / outlook would be considered (where possible).
- The proposed development's building height is considered a key attribute in creating an internal building environment that would ensure the delivery of space and amenity that is required to support the operations of the future tenant involved and thereby enabling the productive use of the Site.

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

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3.4 SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD

The variation to the development standard for building height (Clause 4.3) under PLEP2010 is considered well-founded on the basis that:

- The proposed development is entirely consistent with the underlying objective(s) or purpose of the building height standard, as demonstrated in **Section 3.1**.
- The proposed development fully achieves the objectives of PLEP2010 for the IN1 General Industrial zone, as described in **Section 3.2**.
- Compliance with the standard would be unreasonable and unnecessary for the reasons outlined in **Section 3.3**.
- The proposed development generally maintains the height experienced on surrounding industrial developments in close proximity to the Subject Site, for which the proposed development would provide a smooth transition.
- Materials and finishes would activate and provide a visual outcome that seamlessly integrates with the surrounding industrial character. Additionally, colour and material direction would be utilised (where possible) to blend with the varied architectural forms. The proposed ancillary office would integrate various volumetric shapes and materials, conducive to transparency of function and response to sustainable building practices.
- The overall scale of the proposed development seeks to provide a transition from the surrounding industrial developments in close proximity of the Subject Site, being compatible in terms of built-form and scale. Additionally, the proposed development would provide an employment-generating land use that is considered adaptable and responds accordingly to shifting economic conditions.
- The proposed development, particularly the proposed height would integrate with the local context, specifically the IN1 General Industrial zone that surrounds the Subject Site. The relationship of the proposed development, for purposes of a Warehouse and Distribution Facility with surrounding developments, with respect to height, would remain consistent via the smooth transition offered between sites.
- The proposed development would maintain neighbouring amenity as-well-as the amenity of the public domain. It is important to note, that the proposed development is relatively enclosed and shielded by existing industrial development's to the north which directly face the public domain.
- The proposed development would support the productive economic use of the Site that is ideally located within an area zoned for such permissible industrial use, as-well-as being located within close proximity to major commercial centres (Penrith City Centre) and nearby transport infrastructure, such as rail and bus networks and the wider regional road network.

For the reasons outlined above, it is considered that the proposed variation to the building height control under Clause 4.3 is entirely appropriate and can be clearly justified having regard to the matters listed within PLEP2010 Clause 4.6.

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PART D CONCLUSION

It is requested that Council supports the proposed variation to *Clause 4.3 Height of Buildings* of PLEP2010 for the following reasons:

- Consistency with the objectives of the standard and zone is achieved.
- Compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.
- There are sufficient environmental planning grounds to justify contravening the development standard.
- No unreasonable environmental impacts are introduced as a result of the proposed development.
- There is no public benefit in maintaining strict compliance with the standard.

Given the justification provided above, this Clause 4.6 Variation under PLEP2010 is well founded and should be favorably considered by Council. As each of the relevant considerations are satisfied for the reasons outlined elsewhere in this Report, concurrence can be assumed under Clause 4.6(5).