

Clause 4.6 Variation to Development Standards for Building Height & Floor Space Ratio

Health Services Facility & Shop top dwelling

66 William St & 25 Church St, Port Macquarie: Lots 1 & 2 DP 350549

Contents

1.0	Request to Vary a Development Standards.....	1
2.0	Development Standards to be varied	2
3.0	Nature of Variations (Numerical Summary)	3
4.0	Site Context.....	6
5.0	Design Considerations.....	9
6.0	Justification for Contravention of the Development Standards.....	10

1.0 Request to Vary a Development Standards

The request to vary the development standards pertaining to both Height of Building and Floor Space Ratio has been prepared under Clause 4.6 of the Port Macquarie Hastings Local Environmental Plan 2011 (the LEP) and is submitted to Council as part of the Statement of Environmental Effects to the development application for a Health Services Facility and shop top dwelling at 'the site', No.66 William Street and 25 Church Street, Port Macquarie.

Clause 4.6 of the LEP allows Council to grant consent for development even though the development contravenes a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to a development to achieve better outcomes for and from development.

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to the development that relies upon contravention of the development standard.



- That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- That the applicant has adequately demonstrated there are sufficient environmental planning grounds to justify contravening the development standard; and
- That the proposed development would be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the particular zone within which the development is proposed to be carried out.

This Clause 4.6 variation request utilises the relevant principles established by the Court relies upon more recent rulings around the role of development standards in *Desired Future Character*. This submission is best read in conjunction with the Statement of Environmental Effects for the proposal.

2.0 Development Standards to be varied

The development standards to be varied as part of this development application are Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio. Under the LEP the building height is 19 metres for 66 William Street and 17.50 metres for 25 Church Street. Under the LEP the floor space ratio is 2:1 for 66 William Street and 1.5:1 for 25 Church Street.

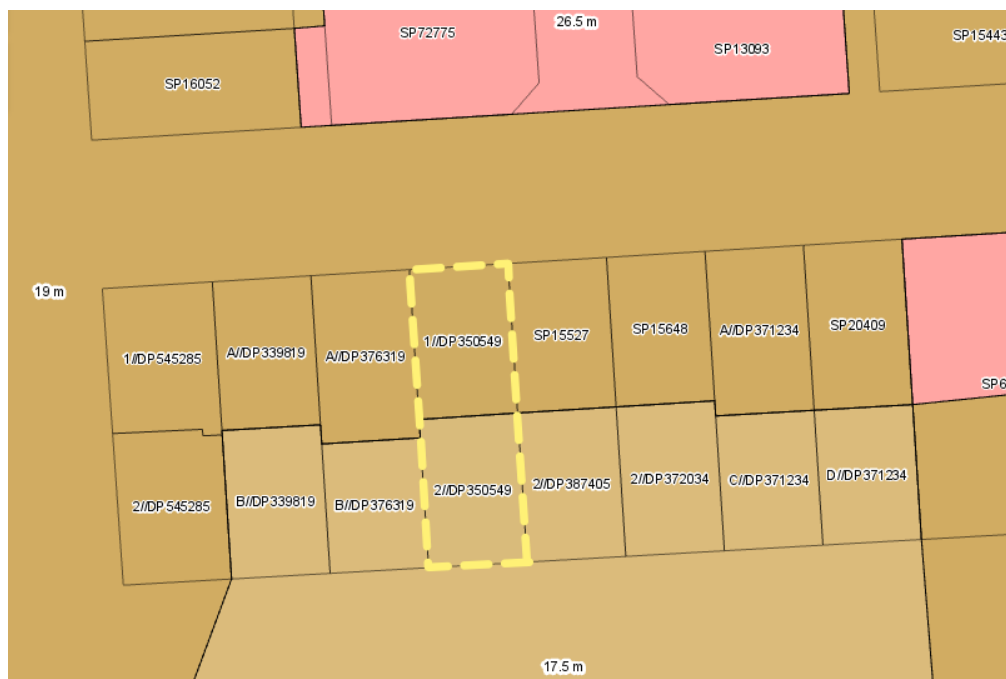


Figure 1: PMHC LEP HoB map (source: ePlanning Spatial Viewer)



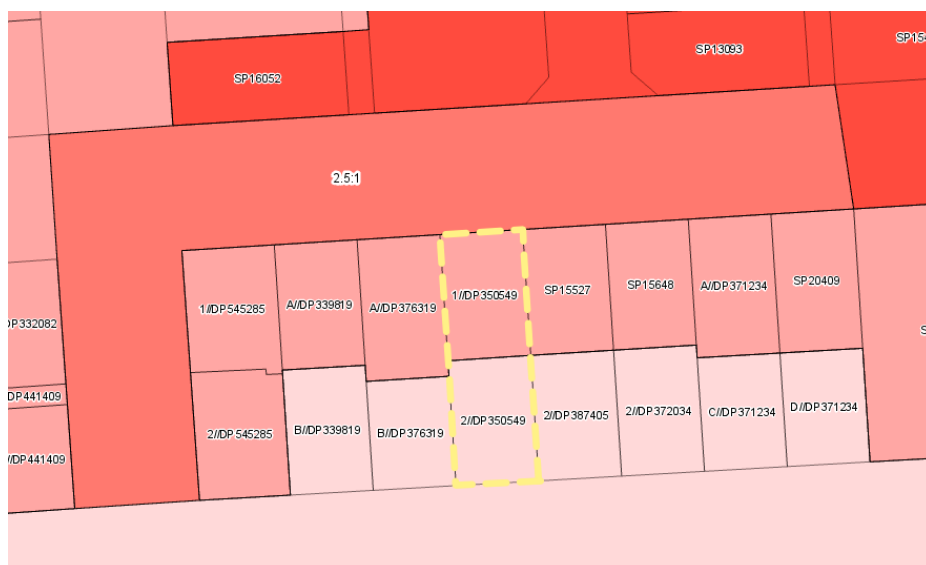


Figure 2: PMHC LEP FSR map (source: ePlanning Spatial Viewer)

3.0 Nature of Variations (Numerical Summary)

The proposal seeks approval for brief variations to the Height limit of 8.4% for Lot 1 and 9.7% for Lot 2 caused by slope and split height limits.

The proposal seeks approval for variation to the FSR of 1.9% for Lot 1 and -3.2 % under for Lot 2. Averaged across the combined site this amounts to a variation of -0.2% under the limit.

3.1 Height of Building

Lot 1 has a Height of Building limit of 19m and Lot 2 has a Height of Building limit of 17.5m.

The surface levels of Lot 1 & 2 combined range from RL17.0 m AHD (approx.) at the William Street frontage to RL13m AHD (approx.) at Church Street, at which point the land has a cross fall of approximately 1m.

The detailed survey for the site shows an existing retaining wall and stepped excavation of approximately 2m at the front of Lot 1 (William Street). Near the western boundary with 68 William Street the survey shows the more likely Natural Surface Levels of the land.

The requested height variation is presented in the context of both the original natural ground level and the actual site topography which includes the abovementioned stepped excavation at the William Street frontage.



The nature of the variation at the point of the stepped excavation is 1600mm above the 19m HoB (8.4%). However, when the natural surface level is applied, the variation reduces to a minimal 1000mm (5.3%) as illustrated on the East Elevation Sheet DA11-3 of the PSA drawings.

The vast majority of the building on Lot 2 is under the 17.5m height limit as illustrated in Figure 3. At the interface between the two height limits, the Eave of the shop top dwelling overhangs by 1500mm into Lot 2 at a height of 1700mm (9.7%) above the 17.5m height limit. (Figure 4).

Overall the building, follows the topography and doesn't noticeably depart from the objective of the height provisions to manage the bulk and scale of building. (Figure 5).

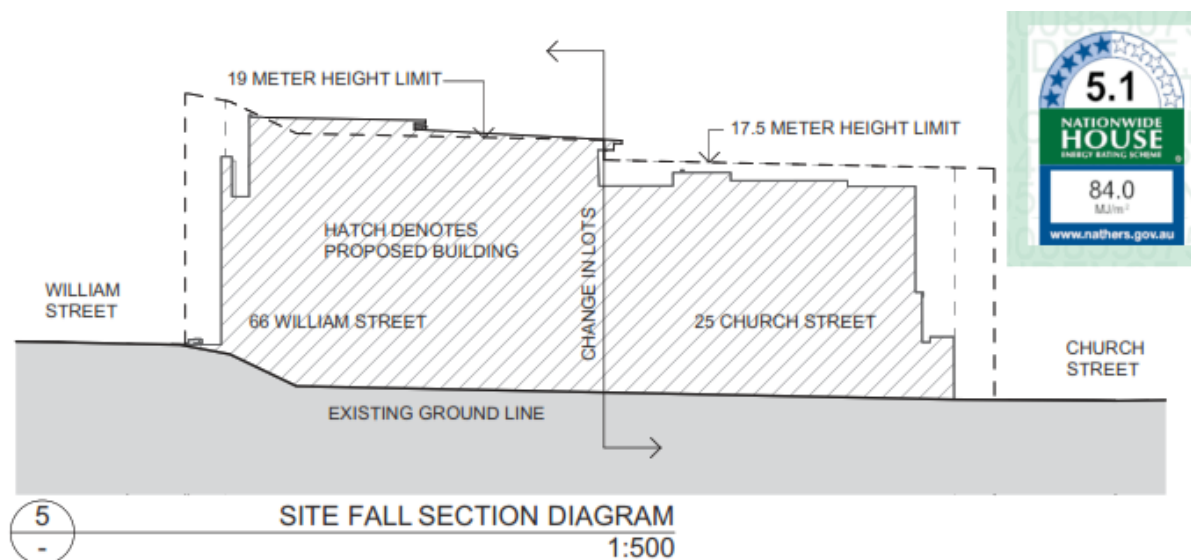


Figure 3: Site Fall Section Diagram

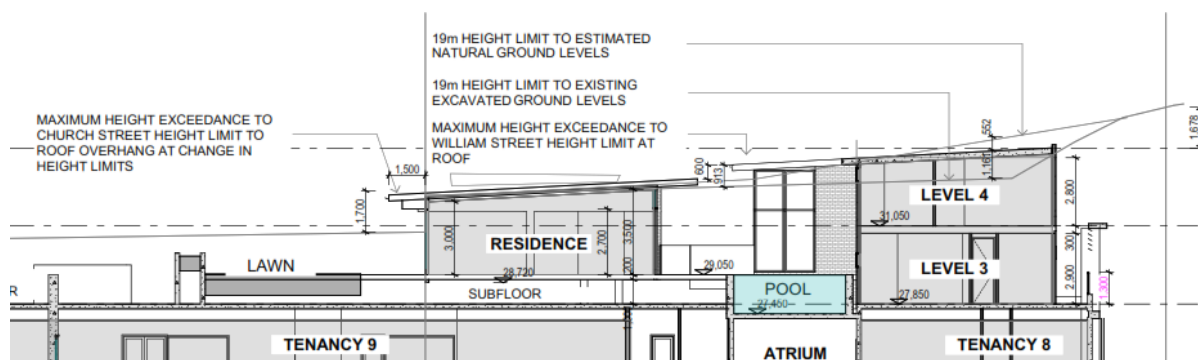


Figure 4: Detail of height variation comparing averaged slope and stepped excavation.



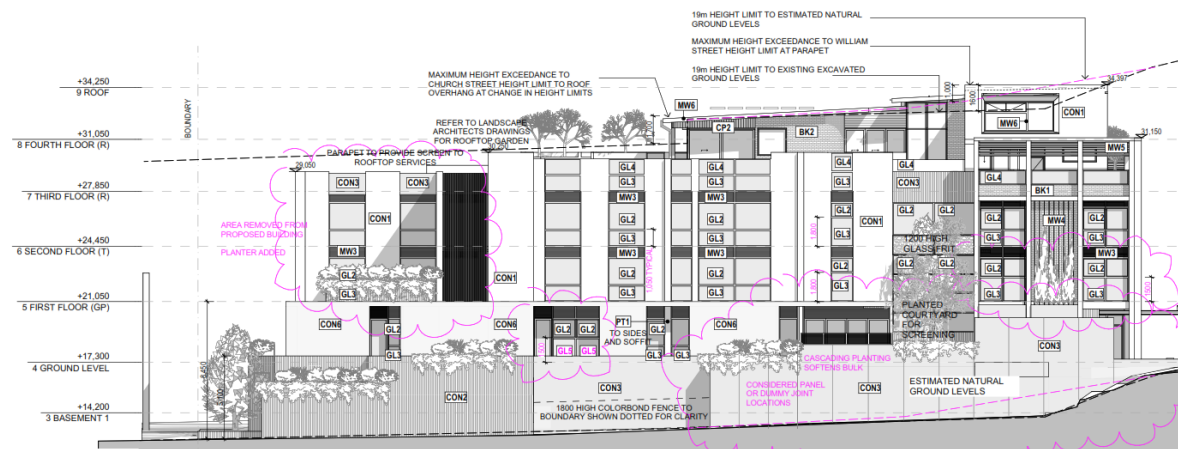


Figure 5: East Elevation with height plane

3.1.1 Building Height Planes

The building height planes as they apply to the proposal are illustrated below.

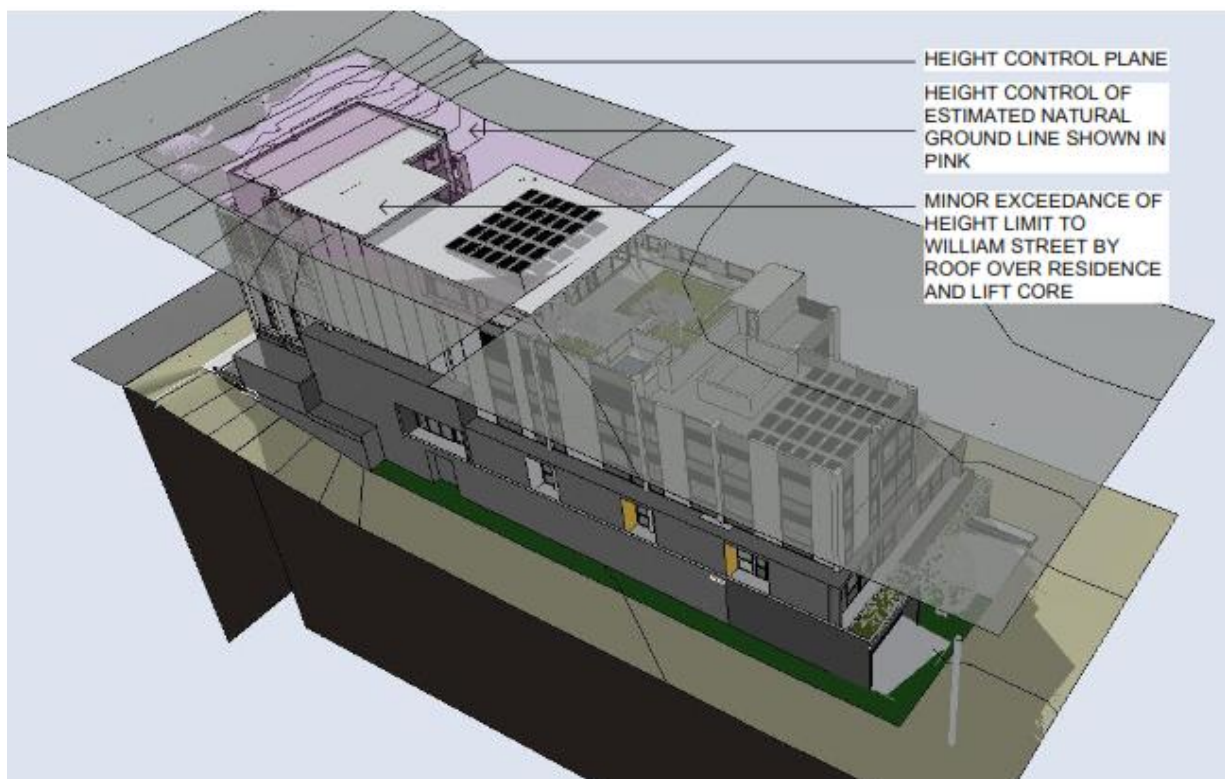


Figure 6: Height Plane from Southwest



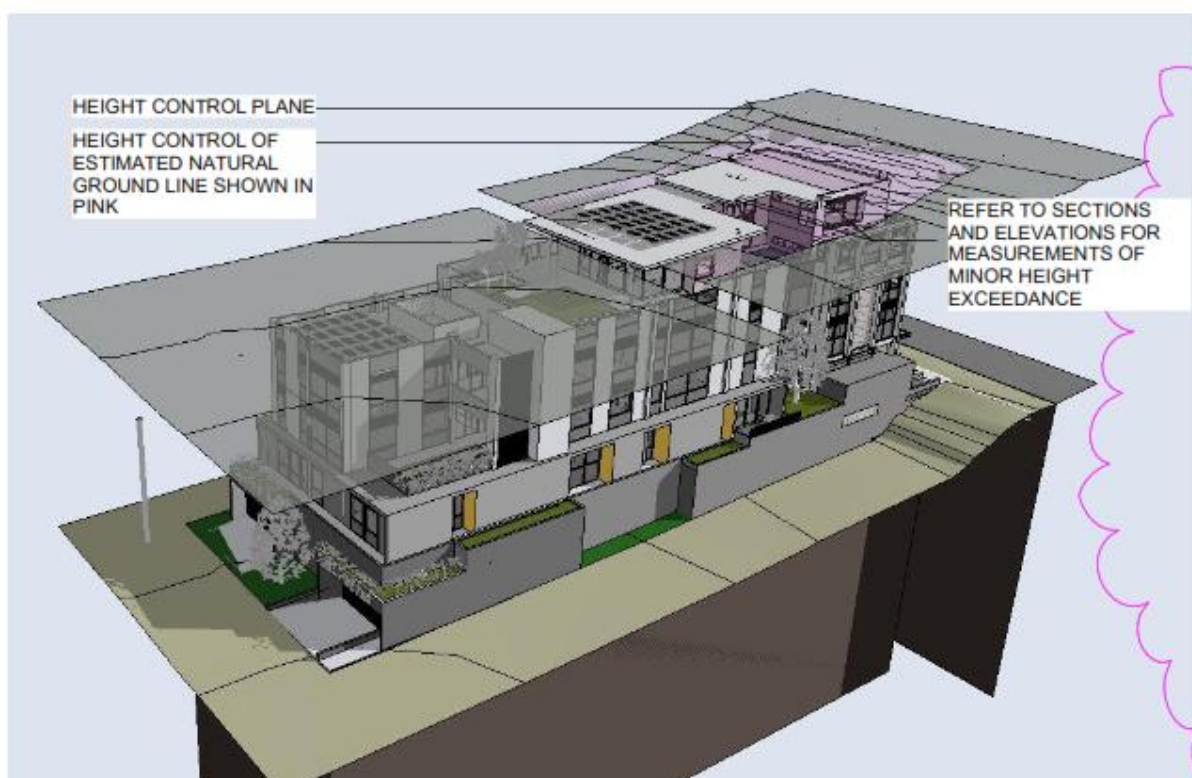


Figure 7: Height Plan from Southeast

3.2 Floor Space Ratio

Lot 1 has a Floor Space Ratio (FSR) of 2:1 and Lot 2 has a FSR of 1.5:1. The site area of Lot 1 is 615.04 and Lot 2 is 606.13 sqm. The allowable floor area is up to 1230.08 sqm and 909.19 sqm respectively, as calculated pursuant to *Clause 4.5 Calculation of floor space ratio and site area*.

The proposal seeks approval for variation to the FSR of 1.9% for Lot 1 and -3.2% under for Lot 2.

Using the permissible FSR in the (PM-H LEP) for each lot and adding these together this allows for a 2139.27m² of gross floor area. This application seeks to provide a total gross floor area of 2134.58 m². This is under the combined FSR by -0.2% or 4.69sqm below the maximum FSR and would provide an averaged FSR of 1.74:1 for the proposed development. To best fit a building form that is appropriate and desirable for this precinct the FSR has been shared across the two lots.

4.0 Site Context

Site context is a relevant consideration in determining whether it is reasonable and/or necessary to conform strictly to a development standard. The site is within the Town Beach precinct, which



is a long-established urban area, with a mix of tourist & visitor accommodation and medium to high density residential developments.

The precinct zones are primarily R4 High Density and R3 Medium Density residential with height limits ranging from 26.5 m down to 14.5 m supported by commensurate FSRs. These core planning controls express a clear intent to see high density development expanding across the precinct book-ended between the CBD to the West and the B4 Mixed Use zone to the South.

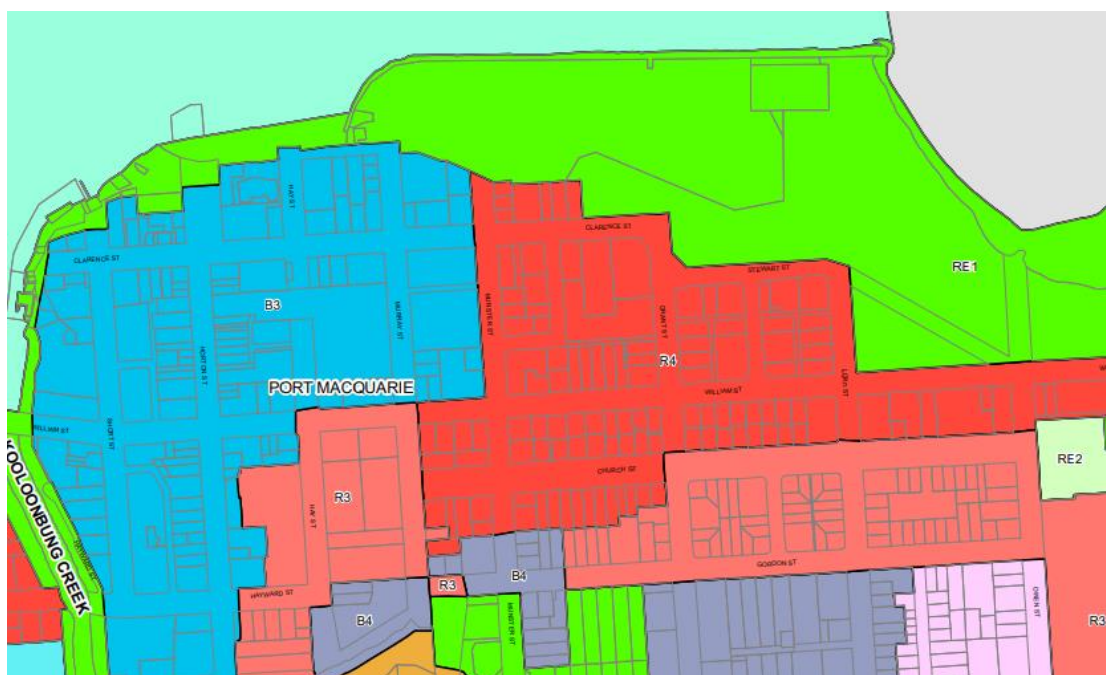


Figure 8: East Port Precinct R4 & R3 residential density zones

The proposed 5 storey Health Services facility faces William Street and sits opposite, and downslope of an existing 7 storey building on William Street (*Ki'ea*). *Ki'ea* is of much greater density, bulk and scale than the proposed building.

At the Church Street frontage, the proposed facility presents primarily as 3 storeys with twin basement car park entries below. Opposite the site on Church Street is a 5-storey medium density housing development on the corner of Church Street and Mowle Street.

In the context of the nearest multi storey buildings, the minor height & FSR exceedances would not appear out of character or excessive. From an architectural perspective, if the Church Street allotment were developed on its' own as multi storey residential, the bulk and scale of such a building would be similar, if not greater than that presented in this proposal facing Church Street.





Figure 9: William Street North side



Figure 10: Seven story building (Ki'ea) opposite 66 William Street





Figure 11: Five storey building opposite 25 Church Street

The remainder of the building forms surrounding the site are single and two storey, older housing stock on large allotments, which are yet to be redeveloped.

5.0 Design Considerations

The proposed building is designed to address the Council's desired future character for the area. This is an area of significant change, and as one of the initial developments on the south side of William Street the proposed building design will set a high design standard for future developments.

The site currently sits between two low rise residential flats buildings and two single residential dwelling houses. As such the proposed design has tried to respond sensitivity to this existing context. This is achieved using building setbacks and architectural design strategies mitigate overlooking.

The proposed building as viewed from the primary address at William Street is within the intended height as set by Council at the facade. To William Street the proposed building presents as a 5-story building. Opposite the site is an existing 7 storey residential building. The subject site falls away quickly from William Street due, in part, to past excavation and alteration of the natural ground line. The proposed design steps back in height as the site falls toward Church Street.



The building when viewed from William Street is of an appropriate density. The proposed minor overrun in FSR does not present as any visual increase in density to this frontage. It is worth noting that immediately adjacent the proposal is an existing residential apartment building (Ki'ea) of a much greater density, bulk and scale.

The street facade to William Street is considered and composed. The facade is visually broken down with horizontal and vertical elements. The use of textured materials and integrated landscaping elements soften the facade and add visual interest. An awing to the street level and a café kiosk activates the street scape. The pedestrian experience is welcoming and designed to the human scale. This considered facade treatment wraps around the east and the west of the building to William Street and as such reads in the round when the building is viewed in passing.

The proposed building is a health services facility. The facade design is sensitive to the mainly residential context so that the proposed building will sit well in desired future character of this precinct. The building entry is immediately identifiable, open, and well-lit to feel safe and welcoming to the user. The user experience is enhanced with a generous foyer that is naturally light with a high volume and outlook to a landscaped courtyard.

6.0 Justification for Contravention of the Development Standards

Sub clause 3 and 4 of the *Clause 4.6 Exemptions to development standards* set forth matters which Council must consider and must be satisfied of, in order to justify the contravention of the development standard:

(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.

6.1 Clause 4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

The case of *Whebe v Pittwater Council (2007)* outlined five ways through which a variation to a development standard has been considered unreasonable or unnecessary.

- 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 and therefore compliance is unreasonable.
- The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.
- The development standard has been virtually abandoned or destroyed by the Council's own actions in granting departures from the standard and hence compliance with the standard is unnecessary and unreasonable.
- 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.

In considering the five ways expressed above, it is considered that the first of the five ways is satisfied as follows:



6.1.1 The objectives of the standard are achieved not withstanding non-compliance with the standard.

Clause 4.3 Height of buildings Objectives

Objective (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 is generally consistent with the height, bulk and scale provisions of LEP as devised through Council's Liveable Neighbourhoods work. Preceding sections describe the context of this location, and the bulk & scale of the nearest multi storey buildings. In this context the minor height & FSR exceedances would be unlikely to appear out of character with the desired future character of the locality. The existing character of the area could be described as in transition from older housing stock on large allotments toward high density residential and other suitable forms of urban development.

Objective (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.

The visual impact of the roof top structures is considered minimal and is unlikely to be visible from either street frontage. The lift overrun is integrated into the building form and the outdoor area structures for the shop top dwelling are centrally located and in the middle of the roof area.

No water views or other vistas available to adjacent properties have been identified as impacted.

Measures to address privacy of adjacent dwellings are detailed in the architectural drawings and use a combination of setbacks, boundary walls, window locations and screening materials.

Overshadowing on the North South oriented site has been modelled as shown in the plans by Paula Stone Architect.

Objective (c) to minimise the adverse impact of development on heritage conservation areas and heritage items.

Potential Archaeological Heritage has previously been investigated for the site and no potential adverse impacts were identified.



Objective (d) to nominate heights that will provide a transition in built form and land use intensity within the area covered by this Plan.

The 17.5m height limit on Church Street, transitions to 19m along the south side of William Street and steps up again on the north side of William Street to 26.5 m.

Clause 4.4 Floor space ratio Objectives

Objective (a) to regulate density of development and generation of vehicular and pedestrian traffic,

The mixed nature of health services proposed in each tenancy has necessitated a use specific analysis of traffic generation as presented in the traffic impact assessment accompanying this application. The proposal provides sufficient car parking as outlined in the traffic report. The building will generate traffic consistent with anticipated development to this precinct. The variation of 1.9% for Lot 1 and compliant FSR for Lot 2 does not alter the traffic generation from the proposal. For example, the pathology laboratory level has the same number of staff, with most of the floor space taken up by equipment and process areas. Similarly, the single dwelling on the top floors will be owner occupied by a single family regardless of the number of bedrooms.

The density of the building proposed is appropriate in the context of other already developed sites along the William Street precedent and the desired future character for the locality. The building when viewed from William Street is of an appropriate density. The proposed overrun of less than 2% at the William Street frontage is not considered to generate any substantial increase in traffic generation (vehicular or pedestrian).

Objective (b) to encourage increased building height and site amalgamation at key locations,

The subject site is considered a key location, highly accessible from the Port Macquarie CBD and situated along the main bus and vehicle travel routes. Pedestrian linkages along William Street and coastal pathways one block to the north support pedestrian and cycle access as well.

The proposal will amalgamate two sites, front to back. The transition of the building across two height limits and two different FSRs has resulted in the need for modest variations to both Height and FSR which this Clause 4.6 submission seeks to demonstrate are reasonable and for a planning purpose.



The increase in FSR proposed supports the amalgamation and development of this site which has laid vacant for many years. The less than 2% FSR exceedance has assisted in providing a quality development of appropriate bulk and scale for the William Street frontage.

Objective (c) to provide sufficient floor space for high quality development for the foreseeable future,

The client brief for this Health Services facility has been strongly driven by a desire for a high-quality building setting the tone for the precinct. The proposed development is a high-quality architecturally designed health service facility building in an area of increasing density close to Port Macquarie CBD. The proposed FSR overrun supports the larger floor plates required for medical and ancillary health use and will support a high-quality building with high internal performance that will continue to provide adequate space for these uses into the foreseeable future.

Objective (d) to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality.

The detailing and design character of the proposed building seeks to emulate the character of a residential tower building, through a compatible horizontal rhythm and residential styling through the use of balconies, the scale of windows and their privacy treatments.

The proposed building is not considered likely to appear out of context with other high density residential buildings in the area and likely to be compatible with the desired future character of the precinct.

The proposed building bulk and scale is sensitive to the existing character and amenity of existing buildings as demonstrated with limited overshadowing and design strategies to control and prevent overlooking.

In conclusion, compliance with the development standard is considered unnecessary as the objectives of the development standards for both height of buildings and for floor space ratio are considered satisfied, notwithstanding non-compliance with the standard.



6.2 Clause 4.6(3)(a)(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.

The proposal is consistent with the objectives of the development standards applying to building height and FSR as discussed in Section 6.1.1 above.

The proposal is acceptable in accordance with the objectives of the R4 High Density Residential zone in the following manner:

Zone R4 High Density Residential

Objective a) To provide for the housing needs of the community within a high density residential environment.

Not applicable, as proposal is for a health services facility. A single shop top dwelling is proposed.

Objective b) To provide a variety of housing types within a high density residential environment.

As above

Objective c) To enable other land uses that provide facilities or services to meet the day to day needs of residents.

Complies. The health services facility includes a large GP, pathology services, specialist consulting rooms and allied health services such as physiotherapy.

Objective d) To provide for tourist and visitor accommodation in key tourist precincts of urban areas of the Council area, while also encouraging increased population levels.

The proposal does not conflict with this objective and would provide much need services in an accessible and proximate location for residents and tourists alike.

Objective e) To encourage development that has regard to the desired future character of streets and supports active and safe uses at pedestrian level.

The PM-H LEP 2011 does not define or express a “desired future character” for this precinct.



Under Council's Development Control Plan 2013 the subject land is part of the East Port Neighbourhood and then within a Town Beach Precinct. Whilst not specifically title "desired future character' the opening paragraphs for the Town Beach Precinct state

The Town Beach Precinct will continue to evolve into an urban precinct that supports tourist activity with a strong street grid culminating in landscape and foreshore views.

Clarence Street is a transition to the CBD and will continue to develop a mixed use character, retaining a mix of both tourist and permanent residential apartment and hotel/motel buildings, with the north side of Clarence Street predominantly residential in this precinct. Development design will reinforce a clear distinction between the Port Macquarie Town Centre and the Town Beach Precinct, with each having their own discrete character. Shop top housing will increase the residential population adjacent to the CBD.

William Street's mixed use urban characteristics will further develop with retail and commercial uses at ground level. Soft landscaping and the promotion of restaurants and cafes below residential buildings towards the eastern end will serve local and tourist needs.

Church Street will become a higher density residential street with generous street tree planting. The view corridor to St Thomas Anglican Church will be retained and strengthened with building alignments, tree planting and the implementation of night lighting to key features and landmarks.

Owen Street and Grant Street will link the foreshore to the southern precincts, while Munster Street will remain the key link from Town Beach to the Civic Precinct. Soft landscaping and street planting will enhance pedestrian amenity along these routes.

Under the DCP *Development Guide – Precinct Structure Plans* Objective 211 seeks to ensure that development occurs in accordance with the desired future character of the East Port neighbourhood. Development Provisions supporting this objectives states:

- a) *Development is generally in accordance with the precinct structure plans shown in the previous section.*

The Town Beach Precinct Structure Plan anticipates residential built forms along Church Street and mixed use along William Street. The proposal which utilises the provisions of the SEPP (Infrastructure & Transport)2021 is a mixed-use for the combined site.





Figure 61: Town Beach Precinct Structure Plan

The proposal conforms to the structure plan to the extent that it provides for mixed use development fronting William Street and is consistent with the structure plan emphasis on pedestrian access along William Street. The design has sought to provide a high quality and nuanced building, which sets the standard for the future character of the area. The design supports active and safe use of the street front, has inviting pedestrian scale access to the building and provides vehicle access to parking from the Church Street, a much more manageable traffic environment for the users of the facility, who may not be well or are elderly.

6.3 Clause 4.6(3)(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Environmental planning grounds which may be relevant when considering a design outcome that contravention of the development standard facilitates include:

- Internal privacy, amenity & solar access.
- External privacy & amenity.
- Overshadowing & solar access at nearby residential properties.
- Increased accommodation options.
- View sharing.
- Pedestrian amenity & access.



- Visual impact of height exceedance.
- Urban design context.
- Colours & material; and
- Character of the area.

As discussed above the proposed height variation relates to the site sloping quickly away from the street frontage. The proposed development exceeds the prescribed FSR ratio by a minor amount but still meets the objectives of the clause 4.4 in the PM-H LEP. The exceedance in FSR supports a better built outcome on an amalgamated site.

Privacy and amenity are considered in detailing of window treatments, on building landscape features, and on boundary wall heights.

Overshadowing and solar access have been considered and the shadow diagrams demonstrate impacts on for adjacent properties. The minor height and FSR variations do not alter the extent of overshadowing generated by a multi storey building on a north -south orientated allotment.

The proposal provides for a range of health services across multiple levels and the pedestrian entry area at William Street has been designed to create a pleasant space and provide a clearly legible point of entry.

There are no view sharing issues identified. The height and FSR variations do not alter the number of floors permitted. The proposed building form, façade articulation and materials present as fresh and contemporary, softened by a carefully considered narrative of elements.

The proposal will contribute positively to the character of the area and is considered to set the standard for future buildings in the precinct.

The provision of a multi-profession health services facility in this location is considered highly desirable and of significant public benefit to residents and accommodation visitors in the high-density area but also to the wider township.



6.4 Clause 4.6(4)(b) & (5) the Concurrence of the Secretary

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

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

6.4.1 whether contravention of the development standard raises any matter of significance for State or regional environmental planning.

The proposed variation to the height of the building for the architectural roof treatments and lift over run structure and the small exceedance of the FSR, are considered reasonable and unlikely to raise any matter of significance for State or Regional Planning.

6.4.2 the public benefit of maintaining the development standard.

The public benefits of maintaining the development standard are expressed through the objectives of the *Clause 4.3 Height of Buildings* and *Clause 4.4 Floor space ratio*. As addressed in the preceding sections of this submission, the proposal would still satisfy the objectives of the Height of Buildings clause and the Floor Space Ratio clause, despite the proposed variations. The proposed variations to the development standards do not undermine the public benefit of maintaining the development standard. Compliance with them is shown to be unnecessary and redesign of the project to achieve compliance would be unreasonable in that it would have not improve the design of the building nor improve any contribution to the public domain by way of building presentation and design aesthetic.

The proposed use as a health service facility is considered to be in the public interest by providing a much needed multi service medical centre in one of the main high density residential and tourism precinct close to the CBD.

6.4.3 any other matters required to be taken into consideration by the Secretary before granting concurrence.

No other matters raised for consideration at this juncture.



In light of the above, it is submitted that strict compliance with the development standards is unnecessary to achieve the desired future character of the area and the proposed variations to development standards for height of building and floor space ratio area are reasonable and can be supported.

Yours faithfully

A handwritten signature in black ink, appearing to read 'G Haigh', with a stylized, cursive script.

Geraldine Haigh

Director & Senior Planner GEM Planning Projects

September 2023

