

COUNCIL ASSESSMENT REPORT

NORTHERN REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSNTH-212 – DA2023 - 244.1
PROPOSAL	Health Services Facility and Shop Top Housing
ADDRESS	Lot 1 DP 350549 and Lot 2 DP 350549, 66 William Street and 25 Church Street, Port Macquarie
APPLICANT	Heise Holdings Pty Ltd
OWNER	Heise Holdings Pty Ltd
DA LODGEMENT DATE	21 April 2023
APPLICATION TYPE	Development Application (Integrated)
REGIONALLY SIGNIFICANT CRITERIA	Section 2.19(1) and Clause 5 of Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> declares the proposal regionally significant development as the capital investment value is more than \$5 million and involves a health services facility.
CIV	\$17,406,179 (excluding GST). It should be noted that when subtracting the non-health service facility components (dwelling, pharmacy and kiosk), the CIV still exceeds \$5 million (ie equates to \$14,725,679).
SECTION 4.6 REQUESTS	A Section 4.6 has been lodged in relation to Section 4.3 (Height of Buildings) and Section 4.4 (Floor Space Ratio) of the Port Macquarie-Hastings Local Environmental Plan 2011.
KEY SEPP/LEP	<ul style="list-style-type: none"> • State Environmental Planning Policy (Biodiversity and Conservation) 2021 • State Environmental Planning Policy (Planning Systems) 2021 • State Environmental Planning Policy (Primary Production) 2021 • State Environmental Planning Policy (Resilience and Hazards) 2021 • State Environmental Planning Policy (Transport and Infrastructure) 2021 • Port Macquarie-Hastings Local Environmental Plan 2011; • Port Macquarie-Hastings Development Control Plan 2013.

TOTAL & SUBMISSIONS ISSUES SUBMISSIONS	UNIQUE KEY IN	<p>Four (4) submissions received.</p> <p><u>Key issues in submissions</u></p> <p>Damage to adjoining properties.</p> <p>Lack of parking and parking impacts.</p> <p>Height and FSR variations.</p> <p>Traffic impacts.</p> <p>Ambulance parking.</p> <p>Overshadowing.</p> <p>Stormwater.</p> <p>Pedestrian access</p>
DOCUMENTS SUBMITTED FOR CONSIDERATION		<p>SOEE</p> <p>Plans</p> <p>Section 4.6</p> <p>Traffic Report</p> <p>Acoustic Report</p> <p>Landscape Plan</p> <p>Heritage Impact Statement</p> <p>Strata Plan</p> <p>(Note: available on Portal)</p>
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)		N/A
RECOMMENDATION		Approval, subject to conditions.
DRAFT CONDITIONS TO APPLICANT		No
SCHEDULED MEETING DATE		18 October 2023
PLAN VERSION		Paula Stone Architect Plans, Revision 5 dated 26/9/2023
PREPARED BY		Clinton Tink
DATE OF REPORT		29 September 2023

EXECUTIVE SUMMARY

The development application (DA2023 - 244.1) seeks consent for a health services facility with shop top housing. The building itself will be six storeys, comprising a base/split level parking area, three storeys of health service/medical related uses and a single dwelling occupying the top two storeys. An ancillary pharmacy and kiosk will also be located on the ground floor.

Specifically, the proposal involves:

- Multiple consulting rooms, treatment rooms, offices, meeting rooms, pathology lab areas, physio areas etc. An ancillary pharmacy and kiosk will also be located on the ground floor.
- The development is to be strata subdivided.
- Consultant and staff numbers (not including customers) will be approximately 30-35 at any one time. This assumes a 60-70% occupancy rate for the consultants (see parking assessment in DCP 2013 **Attachment C**).
- Carpark will comprise 58 car spaces (includes 3 disabled car spaces) and 2 areas for parking bikes.
- Hours of operation are 7:30am to 8:00pm, Monday to Friday and 7:30am to 12:30pm Saturday.

A previous DA2007 - 270.1 approved a seven storey building and four storey building over the subject lots. The buildings were proposed to be used as tourist accommodation/serviced apartments. It is possible that the DA was physically commenced and remains active. The DA does not create any conflict with DA2023 - 244.1 as only one of the developments can fit onsite. In particular, should DA2023 - 244 be approved and built, DA2007 - 270.1 could no longer proceed.

The existing site is now currently vacant/cleared.

The subject site is known as Lot 1 DP 350549 and Lot 2 DP 350549, 66 William Street and 25 Church Street, Port Macquarie ('the site') and has a combined area of 1,214.1m². The site has two (2) road frontages, including William Street to the north and Church Street to the south. Two (2) separate entry/egress driveways are proposed off Church Street, while pedestrian access only is provided from William Street.

Surrounding the development are various forms and densities of residential and tourist accommodation. Whilst there are some 1-2 storey buildings, the future design/controls are aimed at higher density residential development. There are also some existing commercial uses interspersed within a 500m radius of the site.

The development is located approximately 450m from the CBD area of Port Macquarie and along a key road connection to the coast/beach. Public transport (buses) service Gordon Street, approximately 200m from the site.

The site is zoned R4 High Density Residential in accordance with the Port Macquarie-Hastings Local Environmental Plan 2011, as shown in the following zoning maps (Figure 1 & 2). Health service facility and shop top housing are noted as being permissible with consent in the R4 zone.

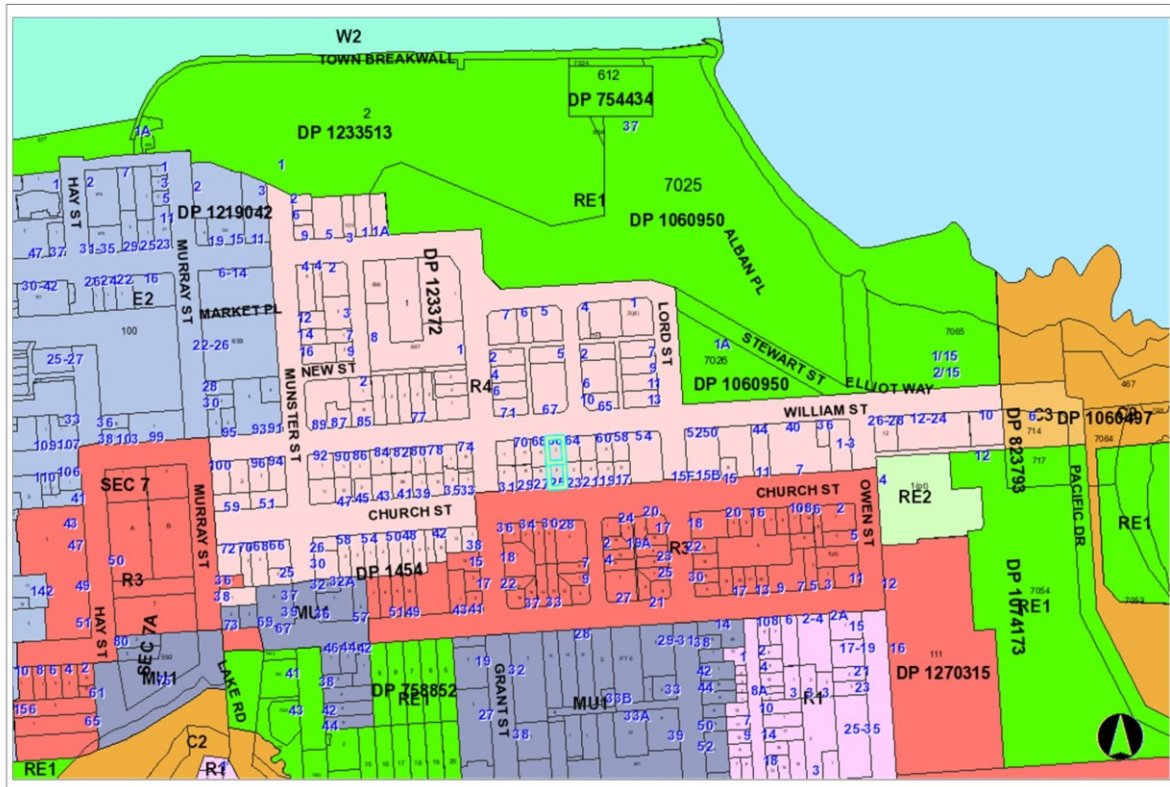


Figure 1 - Zoning (outer area)



Figure 2 - Zoning (inner area)

The existing subdivision pattern and location of existing development within the locality is shown in the following aerial photographs (Figure 3 & 4):



Figure 3 - Aerial (outer area)



Figure 4 - Aerial (inner area)

The application was lodged on 21 April 2023 but has been on hold pending additional information throughout the majority of the assessment.

There were no concurrence requirements from agencies for the proposal but the application is considered to be integrated development under Section 91 of the Water Management Act 2000 and pursuant to Section 4.46 of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'). The subsequent General Terms of Approval have been provided by Water NSW.

A referral was sent to Essential Energy pursuant to *State Environmental Planning Policy (Transport and Infrastructure) 2021* ('Transport and Infrastructure SEPP') with no objections raised. General advice around dial before you dig, setbacks to infrastructure etc were provided. Overall, jurisdictional prerequisites to the grant of consent have been satisfied or are capable of being satisfied.

A referral was also sent to the Heritage NSW as per Section 5.10 of the Port Macquarie-Hastings Local Environmental Plan 2011 (works within an Archaeological Site - Archaeology of early European Settlement). Heritage NSW supported the application, subject to conditions.

The application was initially placed on public exhibition from 9 May 2023 to 22 May 2023. However, the application was re-notified again on 15 June 2023 to 14 July 2023 when it was confirmed that the application included integrated development (ie the application was re-notified to note the proposal was integrated development and conform with the extended 30 day notification period requirement). During the exhibition periods, a total of four (4) unique submissions were received, all objecting to the proposal. These submissions raised issues relating to damage to adjoining properties, lack of parking, parking impacts, height & FSR variations, traffic impacts, ambulance parking, overshadowing, stormwater and pedestrian access. These issues are considered and addressed further in this report.

The application is referred to the Northern Planning Panel ('the Panel') as the development is '*regionally significant development*', pursuant to Section 2.19(1) and Section 5 of Schedule 6 of *State Environmental Planning Policy (Planning Systems) 2021*, which declares the proposal regionally significant development as the capital investment value is more than \$5 million and involves a health services facility.

A briefing was held with the Panel on 2 August 2023 where key issues were discussed, including privacy, bulk & scale, setbacks, solar access/overshadowing, submissions, parking, traffic, non-residential use, Section 4.6 variations, landscaping, permissibility and the proposed occupancy model.

Having considered the planning controls and the proposal in detail, the following key issues are relevant to the assessment of this application:

- Submissions received.
- Parking, traffic and access, including the Traffic Assessment.
- Non-residential use in a residential zone (privacy, noise impacts, character).
- Section 4.6 variations to height and FSR.
- Permissibility of ancillary uses.
- Landscaping.

Key issues have been addressed through the amended plans/design, submission of specialist reports and/or assessment by specialist Council staff.

Furthermore, following a detailed assessment of the proposal, pursuant to Section 4.16(1)(a) of the *EP&A Act*, DA2023 - 244.1 is recommended for approval, subject to conditions contained at **Attachment A** of this report.

1.1 The Site

- [illegible]

1.2 The Locality

- Surrounding the site is a mixture of residential housing types and densities. Whilst there are some 1-2 storey buildings, the future design/controls are aimed at higher density residential development. There are also some existing commercial type uses and smaller medical centres interspersed within a 500m radius of the site.
- The site is considered to be located on the fringe of the Port Macquarie CBD, along a key road connection to the coast/beach.
- Public transport (buses) service Gordon Street, approximately 200m from the site.

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The proposal seeks consent for a health services facility with shop top housing. The building itself will be six storeys, comprising a split level parking area, three storeys of health service/medical related uses and a single dwelling occupying the top two storeys. An ancillary pharmacy and kiosk/coffee nook will also be located on the ground floor.

Specifically, the proposal involves:

- Multiple consulting rooms, treatment rooms, offices, meeting rooms, pathology lab areas, physio areas etc. An ancillary pharmacy and kiosk will also be located on the ground floor.
- The development is to be strata subdivided.
- Consultant and staff numbers (not including customers) will be approximately 30-35. This assumes a 60-70% occupancy rate for the consultants (see parking assessment in DCP 2013 **Attachment C**).
- Carpark will comprise 58 car spaces (includes 3 disabled car spaces) and 2 areas for parking bikes.
- Hours of operation are 7:30am to 8:00pm, Monday to Friday and 7:30am to 12:30pm Saturday.

The key development data is provided in **Table 1**.

Table 1: Development Data

Control	Proposal
Site area	1,214.1m ²
Total GFA	2,134.58m ²
FSR (retail/residential)	66 William Street has an FSR standard of 2.0:1, while 25 Church Street has an FSR standard of 1.5:1. The development proposes an FSR of 2.03:1 on 66 William Street and 1.46:1 on 25 Church Street (Note: applicant had 1.45:1 for 25 Church Street but missed a 6m ² storage area in the car park above ground level).
Section 4.6 Requests	Yes, to floor space ratio and building height

No of apartments	1 dwelling proposed.
Max Height	66 William Street has a height limit of 19m, while 25 Church Street has a height limit of 17.5m. The proposed development exceeds the 19m height limit by 1.16m and the 17.5m height limit by 1.7m. The variations only occupy small sections of the rooftop and where the development transitions between the two height standards across the site. It also appears that at some stage in the past, the site was cut in, which further exaggerates the height variation on more of a technicality. In particular, the height measurement is taken from the existing cut level, rather than where the natural ground level would have been.
Landscaped area	Approximately 215m ² (includes ground and on building landscape areas)
Car Parking spaces	58
Setbacks	3m to the north 0m to the east and west but mostly 1.5m+ 3.01m to the south

Refer to Site Plan (Figure 6) below for more detail.

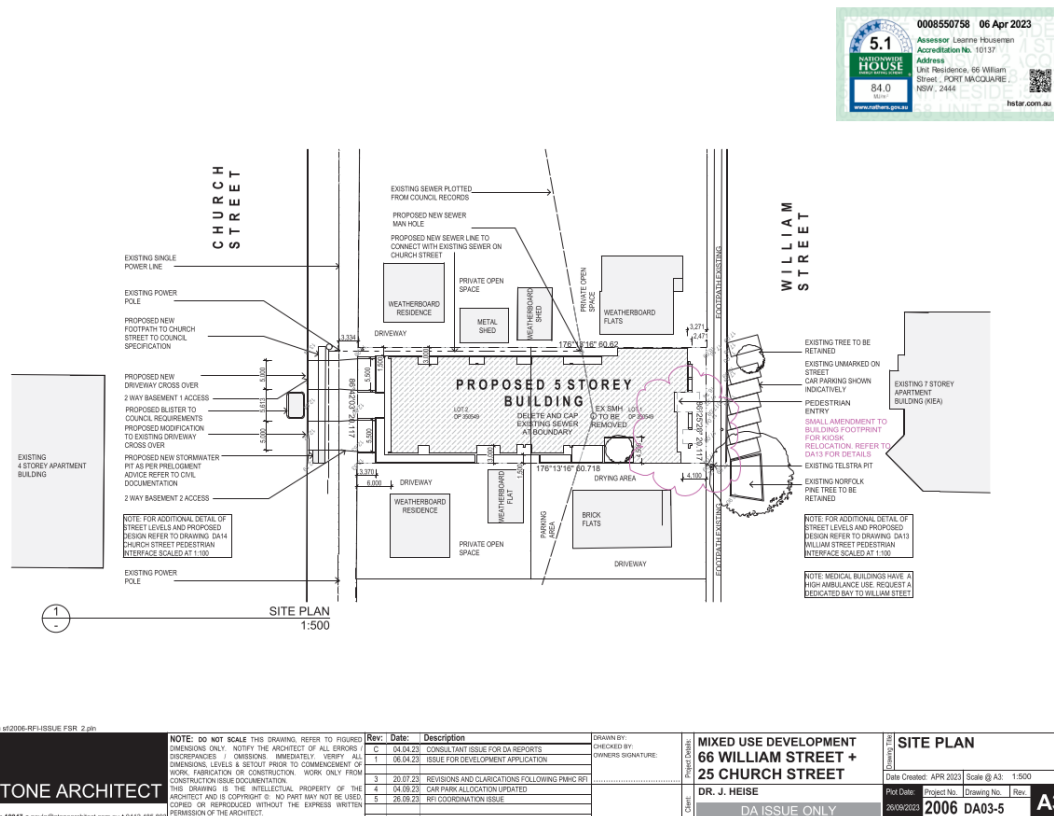


Figure 6 - Site Plan

For more detail, refer to the architectural plans by Paula Stone Architect **Attachment B**.

2.2 Background

A pre-lodgement meeting was held prior to the lodgement of the application on 7 September 2021 where relevant legislation, controls, traffic impacts, noise impacts, parking requirements, Section 4.6 variations and servicing requirements applicable to the site were discussed with the applicant. The applicant's Statement of Environmental Effects, Plans etc were submitted in response to the points raised at pre-lodgement.

The development application was lodged on **21 April 2023**. A chronology of the development application since lodgement is outlined below in **Table 2**, including the Panel's involvement (briefings, deferrals etc) with the application:

Table 2: Chronology of the DA

Date	Event
9 May 2023	Exhibition of the application and again on 15 June 2023
4 May 2023	DA referred to external agencies and also on 9 June 2023. Updated acoustic assessment lodged. No major change other than to provide final version, rather than interim. Panel Secretariat requested clarification on CIV.
5 May 2023	Request for Information (CIV) from Council to applicant.
8 May 2023	Email from neighbour regarding dilapidation reports.
11 May 2023	Essential Energy comments received. Council staff emailed the neighbour from 8 May 2023 regarding dilapidation reports.
12 May 2023	Panel Secretariat follow up on CIV.
16 May 2023	Applicant confirmed setback of development to electricity infrastructure and provided advice on CIV. Council staff requested additional information on the CIV.
17-19 May 2023	Discussion between applicant, Council staff and the Panel Secretariat on CIV.
22 May 2023	Council staff requested additional information.
25 May 2023	Heritage NSW provided comments.
30 May 2023	Panel Secretariat requested update on CIV.

1 June 2023	Council staff provided updated on CIV to Panel Secretariat.
5 June 2023	Meeting with applicant to discuss additional information request.
7 June 2023	<p>Applicant confirmed the development was integrated under the Water Management Act. Council staff requested additional integrated fees and arranged the re-notification of the proposal to note that the application also included integrated development.</p> <p>Applicant also noted meeting discussion from 5 June 2023 and requested a copy of submissions received.</p>
13-14 June 2023	Applicant provided partial response to additional information. Council clarified outstanding matters.
15 June 2023	Update to Panel Secretariat on CIV.
20 June 2023	<p>Applicant provided draft plans on a revised strata and FSR calculations. Council staff accepted in principle, subject to final plan version being provided.</p> <p>Comments from Water NSW also received and forwarded to the applicant to address.</p>
22 June 2023	Discussion with applicant on submitted CIV.
23 June 2023	Redacted submissions provided to the applicant.
26 June 2023	Discussion with applicant on submitted CIV.
28 June 2023	<p>Applicant provided further draft plans/information on a revised strata plan, FSR calculations, ancillary uses, garbage collection and privacy. Council staff accepted plans/information in principle, subject to final plan version being provided.</p> <p>Update to Panel Secretariat on CIV.</p>
29 June 2023	QS report submitted confirming CIV. CIV provided to Panel Secretariat. Applicant also responded to Water NSW. Information referred to Water NSW.
30 June 2023	<p>Additional information referred to Water NSW.</p> <p>Applicant provided partial response to additional information.</p>
5 July 2023	Traffic Consultant provided response to Council's request for additional information.
6 July 2023	Council staff provided update on potential JRPP Briefing date.
10-11 July 2023	Discussion on JRPP Briefing date.

20 July 2023	Revised plans received.
31 July 2023	Revised SOEE and Section 4.6 received.
1 August 2023	Council staff requested additional information in relation to the most recent revised plans, SOEE and Section 4.6.
2 August 2023	Panel briefing
3 August 2023	Revised Strata Plan provided.
4 August 2023	Council staff sought update from Water NSW. Updated provided by Water NSW. Discussion with Panel Secretariat on potential meeting date.
8 August 2023	Minutes from Panel Briefing provided. Key issues raised in the Minutes were forwarded to the applicant for a response. Request acknowledged by the applicant.
9 August 2023	Council Engineering concerns raised with parking numbers and layout.
15 August 2023	Council staff provided their parking calculations for the development to the applicant.
18 August 2023	Water NSW provide their General Terms of Approval.
1 September 2023	Discussion with the applicant on Section 4.6 variations.
12 September 2023	Updated on status of the DA provided to the Panel Secretariat. Council staff sent follow up to the applicant on the status of the additional information.
18 September 2023	Revised SOEE, Section 4.6, Traffic Impact Assessment and car park allocation plan provided by the applicant.
19 September 2023	Council staff requested additional information on the Traffic Impact Assessment and Section 4.6.
25 September 2023	Discussion with the applicant on FSR and parking calculations.
27 September 2023	Update to Panel Secretariat. Amended Section 4.6 lodged to account for reduced FSR.
28 September 2023	Amended plans and information provided accounting for reduced FSR.

2.3 Site History

- DA2007 - 270.1 - Approved a seven storey building and four storey building over the subject lots. The buildings were proposed to be used as tourist accommodation/serviced apartments. It is possible that the DA was physically commenced and remains active. The DA does not create any conflict with DA2023 - 244.1 as only one of the developments can fit onsite. In particular, if DA2023 - 244 were approved and built, DA2007 - 270.1 could no longer proceed.

3. STATUTORY CONSIDERATIONS

When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'). These matters as are of relevance to the development application include the following:

- (a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
 - (i) *any environmental planning instrument, and*
 - (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
 - (iii) *any development control plan, and*
 - (iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
 - (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
- (b) *that apply to the land to which the development application relates,*
- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

These matters are further considered below.

It is noted that the proposal is considered to be Integrated Development (s4.46), which is considered further in this report.

3.1 Environmental Planning Instruments, proposed instrument, development control plan, planning agreement and the regulations

The relevant environmental planning instruments, proposed instruments, development control plans, planning agreements and the matters for consideration under the Regulation are considered below.

(a) Section 4.15(1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application:

- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Primary Production) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *State Environmental Planning Policy (Industry and Employment) 2021*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *Port Macquarie-Hastings Local Environmental Plan 2011;*

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 3** and considered in more detail below.

Table 3: Summary of Applicable Environmental Planning Instruments

EPI	Matters for Consideration	Comply (Y/N)
State Environmental Planning Policy (Biodiversity & Conservation) 2021	<u>Chapter 4: Koala Habitat Protection 2021</u> Section 4.4 - Land to which the Chapter applies. Section 4.10 - Development assessment on land that is less than 1ha and not subject to a Koala Plan of Management.	Y
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	No compliance issues identified subject to imposition of conditions on any consent granted.	Y
State Environmental Planning Policy (Industry and Employment) 2021	Chapter 3: Advertising and Signage • Section 3.6 – granting consent to signage No compliance issues identified.	Y
State Environmental Planning Policy (Planning Systems) 2021	<u>Chapter 2: State and Regional Development</u> Section 2.19(1) and Section 5 of Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> declares the proposal regionally significant development as the capital investment value is more than \$5 million and involves a health services facility.	Y
State Environmental Planning Policy (Primary Production) 2021	<u>Chapter 2: Primary Production and Rural Development</u> Section 2.28 & 2.29 - Consideration of effects of the proposed development on oyster aquaculture.	Y
SEPP (Resilience & Hazards)	Chapter 2: Coastal Management • Section 2.10 - Development on land within the coastal environment area	Y

	<ul style="list-style-type: none"> Section 2.11 - Development on land within the coastal use area <p>Chapter 4: Remediation of Land</p> <ul style="list-style-type: none"> Section 4.6 - Contamination and remediation has been considered and the proposal is satisfactory subject to conditions. 	
State Environmental Planning Policy (Transport and Infrastructure) 2021	<p><u>Chapter 2: Infrastructure</u></p> <ul style="list-style-type: none"> Section 2.48(2) (Determination of development applications—other development) – electricity transmission - the proposal is satisfactory subject to conditions. Section 2.60 - Development for health services facilities permitted with consent in prescribed zones, which includes R4 High Density Residential. Section 2.121(4) - Traffic-generating development (proposal is not of a scale that triggers traffic generating development and is located over 90m from Gordon Street/classified road). 	Y
Proposed Instruments	No compliance issues identified.	Yes
Port Macquarie-Hastings Local Environmental Plan 2011	<ul style="list-style-type: none"> Section 2.3 – Permissibility and zone objectives Section 4.3 - Building Height Section 4.4 - Floor Space Ratio Section 4.6 - Exception to development standards Section 5.4 - Kiosk size limit Section 5.10 - Heritage conservation <p>Variations to building height and floor space ratio proposed.</p>	Y
Port Macquarie-Hastings Development Control Plan 2013	Part B - General Provisions	Y

Consideration of the relevant SEPPs is outlined below.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 4 Koala Habitat Protection 2021

Section 4.4 - This SEPP applies to all non-rural zoned land within the Port Macquarie-Hastings Local Government Area. The subject land is zoned R4 High Density Residential (non-rural zone) so the SEPP applies.

Section 4.10 - Having considered the SEPP, the application and on completion of a site inspection, the consent authority is not prevented from granting consent in this case for the following reasons:

1. The property is not subject to a Koala Plan of Management.
2. There are no significant koala feed trees onsite.
3. The site is disturbed from past residential uses onsite.
4. The site is not considered to be core koala habitat.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted demonstrating that the proposal will comply with the requirements of the SEPP. It is recommended that a condition be imposed to ensure that the commitments are incorporated into the development and certified at Occupation Certificate stage.

State Environmental Planning Policy (Industry and Employment) 2021

Chapter 3 Advertising and Signage

The proposed development includes proposed advertising signage in the form of business/building identification signage on the front façade of the Centre. Some minor directional signage will also be provided within the car park.

Section 3.6 - The following assessment **Table 4** provides an assessment checklist against Section 3.1(1)(a) and Schedule 5 requirements of the SEPP:

Table 4: Section 3.6 Advertising and Signage Assessment

Applicable Section for consideration	Comments	Satisfactory
Section 3.6(a) Consistent with objectives of the policy as set out in Section 3.1(1)(a).	<p>The proposal includes a relatively standard sized business/building identification sign on the front awning of the facility, facing William Street. The SOEE refers to signage also on the Church Street frontage but none is shown on the plans. Therefore, this assessment only deals with the William Street signage.</p> <p>The sign is compatible with other non-residential uses within the area, provides effective communication, is of quality design, has been kept to a minimum and will not impact on the amenity of the area. Overall, the proposed signage is consistent with the aims and objectives of the SEPP.</p>	Yes
Schedule 5(1) Character of the area.	<p>The character of the street is currently defined by residential and tourist accommodation interspersed with other non-residential uses (ie shops, cafes etc). Many of these uses, including the residential and tourist accommodation, have similar signage identifying the business and/or building. Overall, the proposed signage is not excessive in number or size, is required to identify the non-residential use and is consistent with the character of the area.</p>	Yes
Schedule 5(2) Special areas.	<p>The signage will not detract from the amenity and visual quality of the immediate locality noting it's limited scale and placement.</p>	Yes

Schedule 5(3) Views and vistas.	The signage will not impact on any views or vistas.	Yes
Schedule 5(4) Streetscape, setting or landscape.	The signage is not excessive in number or size and creates no adverse impact on streetscape, setting or landscaping principles.	Yes
Schedule 5(5) Site and building.	The signage is compatible with the site and building scale.	Yes
Schedule 5(6) Associated devices and logos with advertisements and advertising structures.	None proposed.	Yes
Schedule 5(7) Illumination.	Low intensity LED lighting proposed. Conditions will reinforce the hours that the lighting is allowed to be on and that any exterior lighting on the site shall be designed and installed so as not to cause a nuisance or adverse impact on the amenity of the surrounding area by light overspill. The lighting shall be the minimum level of illumination necessary for safe operation and must be designed, installed and used in accordance with AS 4282 control of the obtrusive effects of outdoor lighting. No flashing, moving or intermittent lighting will be permitted on the site.	Yes
Schedule 5(8) Safety.	The placement and size of the signage does not create any safety issues.	Yes

Based on the above, the signage is compliant with the requirements of the SEPP.

State Environmental Planning Policy (Planning Systems) 2021

Chapter 2: State and Regional Development

The proposal is *regionally significant development* pursuant to Section 2.19(1) and Section 5 of Schedule 6 of *State Environmental Planning Policy (Planning Systems) 2021*, which declares the proposal *regionally significant development* as the capital investment value is more than \$5 million and involves a health services facility. Accordingly, the Northern Joint Regional Planning Panel is the consent authority for the application.

The proposal is consistent with this Policy.

State Environmental Planning Policy (Primary Production) 2021

Chapter 2: Primary Production and Rural Development

Section 2.28 & 2.29 - The proposed development will create no adverse impact on any oyster aquaculture development or priority oyster aquaculture area. In particular, the development is well buffered to any watercourse, contains no hazardous type use/activities and is well separated from any oyster growing areas located within the Hastings River.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 2: Coastal Management

Section 2.10 & 2.11 - The site is located within a mapped coastal use area and coastal environment area. Having regard to Section 2.10 and 2.11 of the SEPP, the proposed development is not considered likely to result in any of the following:

- a) any adverse impact on integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment;
- b) any adverse impacts on coastal environmental values and natural coastal processes;
- c) any adverse impact on marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms;
- d) any adverse impact on Aboriginal cultural heritage, practices and places;
- e) any adverse impacts on the cultural and built environment heritage;
- f) any adverse impacts on the use of the surf zone;
- g) any adverse impact on the visual amenity and scenic qualities of the coast, including coastal headlands;
- h) overshadowing, wind funneling and the loss of views from public places to foreshores; and
- i) any adverse impacts on existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability.

Overall, the bulk, scale and size of the proposed development is compatible with the surrounding coastal/built environment and the area is zoned to allow for health services facilities. The proposed development works are also noted as being well separated from any mapped coastal wetland and no processes will occur that create an adverse impact on such an environment. Access to key coastal environments is not impacted and the area to be developed onsite is already disturbed from past uses/activities, ensuring no additional coastal environment is to be lost.

Chapter 4: Remediation of Land

The provisions of Chapter 4 of *State Environmental Planning Policy (Resilience and Hazards) 2021* ('the Resilience and Hazards SEPP') have been considered in the assessment of the development application. Section 4.6 of Resilience and Hazards SEPP requires consent authorities to consider whether the land is contaminated, and 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.

Following an inspection of the site and a search of Council records, the subject land is not identified or considered to be potentially contaminated.

State Environmental Planning Policy (Transport and Infrastructure) 2021

Chapter 2: Infrastructure

Section 2.48 - Referral to Essential Energy is required for any of the following:

- (a) the penetration of ground within 2m of an underground electricity power line or an electricity distribution pole or within 10m of any part of an electricity tower,
- (b) development carried out:
 - (i) within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists), or
 - (ii) immediately adjacent to an electricity substation, or
 - (iii) within 5m of an exposed overhead electricity power line,

- (c) installation of a swimming pool any part of which is:
 - (i) within 30m of a structure supporting an overhead electricity transmission line, measured horizontally from the top of the pool to the bottom of the structure at ground level, or
 - (ii) within 5m of an overhead electricity power line, measured vertically upwards from the top of the pool.

A referral to Essential Energy was carried out with no objection received. Standard advice about clearances, safety advice, Dial before you Dig etc was provided and forwarded to the applicant. It was noted that Essential Energy required a 1.9m clearance to the powerline in Church Street. The applicant has provided a compliant setback of over 3m.

Section 2.60 - Outlines that development for health services facilities are permitted with consent in certain prescribed zones. The site is zoned R4 High Density Residential, which is a prescribed zone and therefore medical centres are permissible with consent. The design of the development and existence of other health services facilities/non-residential uses in the area and along William Street, ensures the proposal remains compatible with the surrounding and envisaged development for the area. Furthermore, the height, floor space ratio and setbacks of the facility are comparable with those applicable to residential development, being the other dominant use in the area. This ensures an acceptable level of bulk and scale.

Section 2.121(4) - Prescribes certain traffic-generating development and thresholds and the need to refer such proposals to Transport for NSW. In this case, the proposal is not of a scale that triggers traffic generating development and is located over 90m from a classified road.

Based on the above, the proposed development addresses relevant sections in the SEPP.

Port Macquarie-Hastings Local Environmental Plan 2011

The relevant local environmental plan applying to the site is the *Port Macquarie-Hastings Local Environmental Plan 2011* ('the LEP'). The aims of the LEP include the following:

- (aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,
- (a) to protect, conserve and sustainably manage the ecological biodiversity and natural environment of the Port Macquarie-Hastings area,
- (b) to facilitate a strong and diverse local economy within the Port Macquarie-Hastings area,
- (c) to manage and coordinate the orderly, equitable and economic use and development of land within the Port Macquarie-Hastings area,
- (d) to facilitate the provision and coordination of community services and facilities within the Port Macquarie-Hastings area,
- (e) to facilitate adaptive planning for natural hazards and risks, including flooding, erosion, inundation, land stability, bush fire risk and acid sulfate soils within the Port Macquarie-Hastings area,
- (f) to reinforce the role of the Port Macquarie-Hastings area's settlement hierarchy, centred on Port Macquarie and supported by its surrounding towns and villages,
- (g) to ensure the effective management of public assets within the Port Macquarie-Hastings area,
- (h) to provide a land use framework for development within the Port Macquarie-Hastings area that is safe, inclusive and equitable, and caters for the housing, employment, entertainment, cultural, welfare and recreational needs of residents and visitors,
- (i) to ensure that development does not conflict with the hierarchy of business and retail centres in the Port Macquarie-Hastings area and the role of the Greater Port Macquarie Central Business District as the focal point for subregional functions and service delivery,

- (j) to identify and protect features of environmental, cultural or visual importance within the Port Macquarie-Hastings area,
- (k) to ensure that new urban development makes a positive contribution to the public domain and streetscape,
- (l) to facilitate efficient use of urban land and infrastructure by appropriate staging of development and ensuring appropriate density of development,
- (m) to provide effective and efficient connectivity and movement corridors within and between subdivisions.

The proposal is consistent with these aims for the following reasons:

- The development does not impact on any ecology, biodiversity or natural environment.
- The proposal will provide important health services facilities for the local community.
- The development is designed and located to ensure no adverse impacts from natural hazards.
- The development does not adversely impact on public assets.
- The development provides a use that compliments the zoning, area and nearby CBD.
- The development does not impact on any important environmental or cultural features.
- The design of the building results in a positive contribution to the public domain and streetscape.

Zoning and Permissibility (Part 2)

The site is located within the R4 High Density Residential zone pursuant to Section 2.2 of the LEP.



Figure 7 - Zoning map

According to the definitions in Section 4 (contained in the Dictionary), the proposal satisfies the definition of health services facility and shop top housing, which are permissible uses with consent in the Land Use Table in Section 2.3. The health services facility is also permitted with consent as per Section 2.60 of State Environmental Planning Policy (Transport and Infrastructure) 2021.

In terms of the kiosk and pharmacy, they are small in scale and considered to represent ancillary and subordinate uses to the main development. Furthermore, access to the kiosk and pharmacy can only occur through the main entry and when the health services facility is open, which will reinforce the ancillary aspect.

Technically, the kiosk could be altered to be more substantial and therefore be defined as a type of food and drink premises. Food and drink premises are permissible with consent in the R4 zone. However, a more substantial food and drink premises would impact on parking numbers.

The zone objectives include the following (pursuant to the Land Use Table in Section 2.3):

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for tourist and visitor accommodation in key tourist precincts of urban areas of the Council area, while also encouraging increased population levels.*
- *To encourage development that has regard to the desired future character of streets and supports active and safe uses at pedestrian level.*

The proposal is considered to be consistent with these zone objectives for the following reasons:

- The proposal is permissible with consent under State and Local legislation.
- The proposal provides a health services facility to meet the day to day needs of residents.
- The design of the building is consistent with the desired future character of the streets and appearance of other development in the area. The development also promotes an active, engaging and safe frontage at pedestrian level.

General Controls and Development Standards (Part 2, 4, 5, 6 and 7)

The LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in **Table 5** below.

Table 5: Consideration of the LEP Controls

Control	Requirement	Proposal	Comply
Subdivision (s 4.1)	2,000m ²	1,214.1m ² consolidated lots with smaller individual strata lots.	Yes. Provision does not apply to consolidated lots or strata subdivision. No further consideration required.

Height of buildings (s 4.3(2))	19 metres (66 William Street) and 17.5 metres (25 Church Street)	20.6 metres (66 William Street) and 19.2 metres (25 Church Street)	No but acceptable - see detailed assessment/comments below this table.
FSR (s 4.4(2))	2:1 or 1,230m ² (66 William Street) and 1.5:1 or 909m ² (25 Church Street)	2.03:1 or 1,253m ² (66 William Street) and 1.46:1 or 886.7m ² (25 Church Street). It should be noted that the applicant had 1.45:1 for 25 Church Street but missed a 6m ² storage area in the car park above ground level.	No but acceptable - see detailed assessment/comments below this table.
Exception to standard (s 4.6)	Refer to comments above on Height and FSR	Refer to comments on Height and FSR above. Variations proposed to both standards.	No but acceptable - see detailed assessment/comments below this table.
Controls for miscellaneous uses (s 5.4(6) kiosks)	Gross floor area of kiosk not to exceed 80m ² .	6.56m ²	Yes
Heritage (s 5.10)	Consent and consideration requirements for certain development relating to heritage items and sites.	A referral was sent to the Heritage NSW as per Section 5.10 of the Port Macquarie-Hastings Local Environmental Plan 2011 (works within an Archaeological Site - Archaeology of early European Settlement). Heritage NSW supported the application, subject to conditions. In particular, the site is unlikely to contain any archaeology due to past assessments and disturbance but conditions will cover unexpected finds.	Yes
Essential services (s 7.13)	Adequate arrangements for services required.	Satisfactory arrangements are in place for provision of essential services including water supply,	Yes

		<p>electricity supply, sewer infrastructure, stormwater drainage and suitable road access to service the development.</p> <p>Provision of electricity will be subject to obtaining satisfactory arrangements as a condition of consent.</p>	
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Section 4.3 - This section establishes the maximum “height of a building” (or building height) that a building may be built to on any parcel of land. The term “building height (or height of building)” is defined in the LEP to mean *“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 term “ground level (existing)” is also defined in the LEP to mean *“the existing level of a site at any point”*.

The building height limit for the site is identified on the Height of Buildings Map as being 19m for 66 William Street and 17.5m for 25 Church Street. The proposed development is 20.6m for 66 William Street and 19.2m for 25 Church Street. Both components of the site exceed the height (ie 1.6m exceedance for 66 William Street and 1.7m for 25 Church Street). This represents variations of 8.4% and 9.7% respectively. Refer to the elevation plans and height plane below (Figure 7, 8 & 9), which demonstrate the areas of the building that exceed the height limit. It is noted that the variation only occurs to relatively small sections of the roof, predominately central to the site. Furthermore, the variation is exacerbated by the existing ground level slope having been previously excavated. In particular, the pink dotted lines in the elevations below indicate where the likely existing ground level would have been before the site was excavated and how that would have changed the height limit.

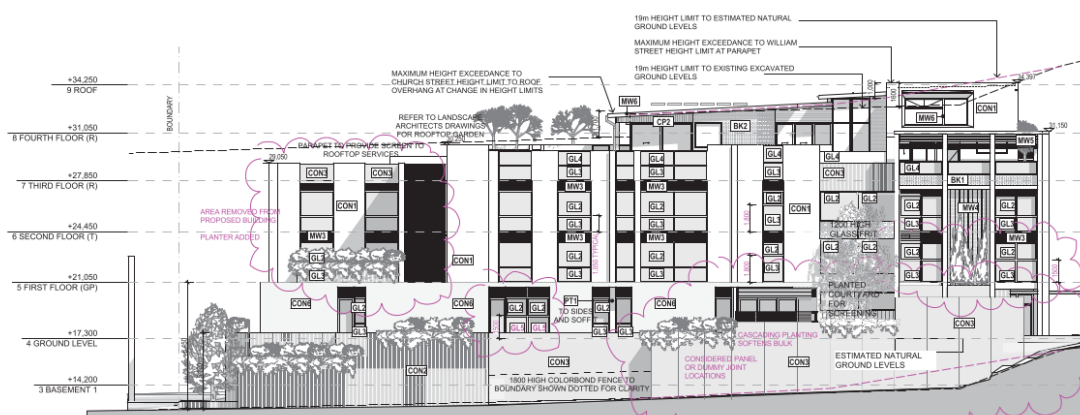


Figure 7 - Elevation and height variation

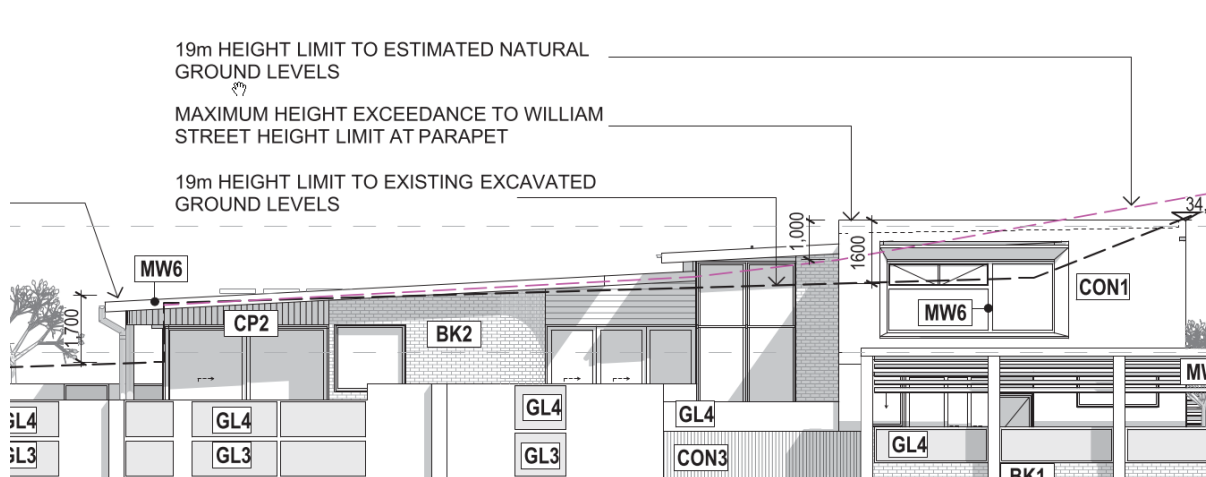


Figure 8 - Enlarged elevation of height variation

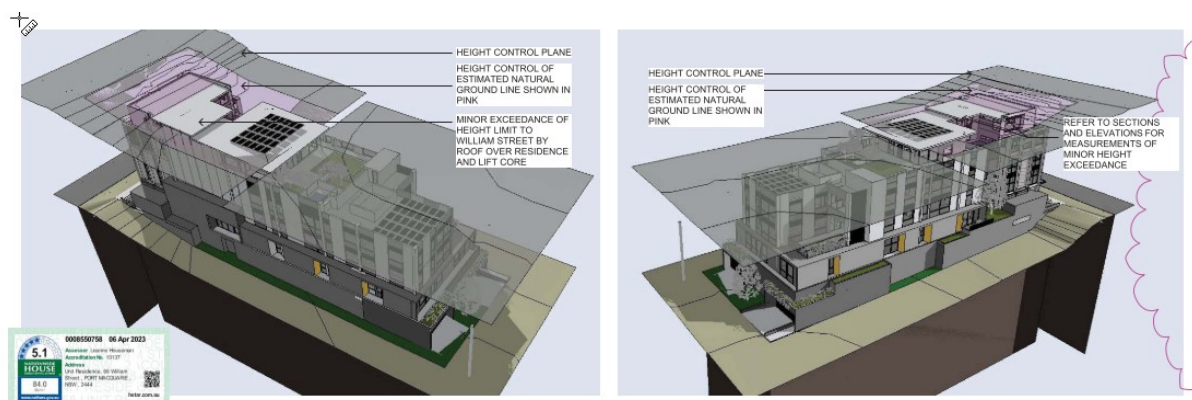


Figure 9 - Height plane showing height variation

In considering the height variation, compliance with the following objectives of Section 4.3 of the LEP must be considered:

- (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,*
- (c) *to minimise the adverse impact of development on heritage conservation areas and heritage items,*
- (d) *to nominate heights that will provide a transition in built form and land use intensity within the area covered by this Plan.*

In this case, the variation is compliant with the Section 4.3 objectives for the following reasons:

1. The building presents as five storeys to William Street and four storeys to Church Street, which is consistent with other buildings in the area and normally what is allowed via the 19m and 17.5m height limits. The height and bulk of the building is also largely compliant and compatible with the existing and desired character of the area.
2. The variation is minor (ie 8.4% and 9.7%) and more importantly only applies to a small parts of the building. The majority of the built form is well below the height limit.
3. The dwelling and height variation do not create any adverse visual impact, view loss, impact on privacy or loss of solar access.
4. The site or area does not contain any known heritage items that would be adversely impacted by the building height variation.

5. The development does not compromise any transition elements of the height controls in the Local Environmental Plan.

Section 4.4 - This section establishes the maximum “floor space ratio” of the proposal as 2.0:1 for 66 William Street and 1.5:1 for 25 Church Street. The development proposes an FSR of 2.03:1 on 66 William Street and 1.46:1 on 25 Church Street, which does not comply with the relevant standard applying to the site (66 William Street). It should be noted that the applicant had nominated a FSR of 1.45:1 for 25 Church Street but missed a 6m² storage area in the car park above ground level.

‘Floor space ratio’ is defined as *‘the ratio of the gross floor area of all buildings within the site to the site area’*. ‘Gross floor area’ is defined as *‘the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:*

- (a) *the area of a mezzanine, and*
 - (b) *habitable rooms in a basement or an attic, and*
 - (c) *any shop, auditorium, cinema, and the like, in a basement or attic,*
- but excludes:*
- (d) *any area for common vertical circulation, such as lifts and stairs, and*
 - (e) *any basement:*
 - (i) *storage, and*
 - (ii) *vehicular access, loading areas, garbage and services, and*
 - (f) *plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and*
 - (g) *car parking to meet any requirements of the consent authority (including access to that car parking), and*
 - (h) *any space used for the loading or unloading of goods (including access to it), and*
 - (i) *terraces and balconies with outer walls less than 1.4 metres high, and*
 - (j) *voids above a floor at the level of a storey or storey above.’*

The variation exceeds the standard by 1.9%.

In considering the FSR variation, compliance with the following objectives of Section 4.4 of the LEP must be considered:

- (a) *to regulate density of development and generation of vehicular and pedestrian traffic,*
- (b) *to encourage increased building height and site amalgamation at key locations,*
- (c) *to provide sufficient floor space for high quality development for the foreseeable future,*
- (d) *to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality.*

In this case, the variation is compliant with the Section 4.4 objectives for the following reasons:

1. The density of the building is consistent with the area with the proposed variation being minor in scale and not discernible from adjoining areas. The variation does not result in any significant vehicular or pedestrian traffic.
2. The height has been maximised in the design. Whilst not a specific site identified for amalgamation, the development is proposed over two lots. This does assist understand the end design for both sites and allow a more holistic design.
3. The proposed design of the building is considered to provide sufficient floor space for high quality development. The floor levels and future uses are well thought out and create an adaptable health services facility hub for the locality.

4. Having regard for some of the more recent surrounding development, the proposal is consistent in bulk and scale and in some cases of a lesser scale when view from the street. As an example, the Ki-ea apartments across the road at 67 William Street presents as a larger 7 storey building.
5. When looking at the FSR for both lots/the whole site (ie the exceedance on Lot 1 of being 1.9% over and the lesser compliant FSR on Lot 2 being 2.4% under), the net outcome is a more compliant FSR. Therefore, the minor variation on part of the site is offset by the compliant component, resulting in a balanced and acceptable density.
6. The design presents similar to a residential tower building, being the more common development type/use in the area.

The variation to floor space ratio is addressed under the following Section 4.6 component of this report.

Section 4.6 Height

Section 4.6 – This section establishes a degree of flexibility for certain development standards in certain circumstances, which have demonstrated that a better planning outcome will occur from that flexibility. In this regard, the proposal seeks a variation to the building height standard as identified under Section 4.3 of this report. Assistance on the approach to a variation is taken from NSW Land and Environment Court and NSW Court of Appeal decisions in:

1. *Wehbe v Pittwater Council (2007) NSW LEC 827 (Wehbe);*
2. *Four2Five Pty Ltd v Ashfield Council (2015) NSWLEC 1009; and*
3. *Al Maha Pty Ltd v Huajun Investments Pty Ltd (2018) NSWCA 245*

The assessment will now step through and address the requirements of Section 4.6(3) and (4).

Section 4.6(3) states the following:

4.6(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.*

Comments: In considering the above, the Applicant has submitted a request in writing to justify the contravention of the building height standard **Attachment E**. In particular, the applicant submits that the objectives of the standard are achieved notwithstanding the non-compliance for the following reasons (summarised):

1. The design follows the topography and doesn't noticeably depart from the standard, which manages bulk and scale.
2. The zone and controls express a clear intent to see high density development to which the development achieves.
3. The height is not out of character with some of the existing newer buildings in the local area. The area is also noted as being in transition to higher density.
4. The development will set a high design standard for future developments.
5. The design has tried to respond sensitively to the existing context via appropriate setbacks and measures to mitigate overlooking/privacy impacts.
6. The elevation of the building is broken up by horizontal and vertical lines, textures and landscaping.
7. The visual impact of the rooftop structures is minimal and unlikely to be visible from surrounding areas.

8. The lift overrun is integrated into the building and centrally located to minimise any impact.
9. No views have been identified or will be lost.
10. The variation creates no significant adverse overshadowing impacts.
11. Impact on heritage has been investigated and considered unlikely.

Section 4.6(4) states the following:

4.6(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 above components of Section 4.6(4) are repeated below with associated comments on compliance.

4.6(4)(a)(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)

Comments: It is noted that the applicant has submitted a written request to vary the height limit. This assessment report will now consider whether the request satisfies and adequately addresses the matters required by subclause 3.

In addressing Section 3(a), *Wehbe* established 'five methods' to test whether compliance with the standard was unreasonable or unnecessary. Having regard to the 'five methods', any of which could support consideration of the variation, the following comment is provided:

1. The objectives of the height standard are achieved notwithstanding the non-compliance with the numerical standards - refer to comments on Section 4.3 above in this report.

In addressing Section 3(b) and that there are sufficient environmental planning grounds to justify contravening the development standard, the following comments are provided:

1. The proposed development will meet the objectives of maximum building height - refer to comments on Section 4.3 above in this report.
2. The building will not have any identifiable adverse impacts to adjoining properties.
3. The proposed variation will not result in a development which is out of character with that envisioned for the immediate locality.
4. The minor variation will not be identifiable.
5. The variations are exacerbated by the existing ground level, having been created from previous excavations onsite. In particular, had the site not been cut in the past, the existing ground level (starting point to measure height) would have been much higher.
6. Part of the variation is created by the proposal developing a building across two lots, with each lot having a different height limit. The variation is created at the difficult point where the building design transitions between the two height standards. Whilst a variation is created, a more holistically designed development and better outcome is considered to have been achieved.

On the basis of the above, it is considered that the Applicant's Section 4.6 variation and proposed building, has adequately addressed the matters required to be demonstrated by Section 4.6(3).

4.6(4)(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, and

Comments: Compliance with the zone and height control objectives are addressed earlier in this report. In summary, the development was considered to comply with the relevant zone and height objectives and therefore have no implications on public interest.

4.6(4)(b) the concurrence of the Secretary has been obtained.

Comments: As per the Planning Circular PS20-002, Council/JRPP can assume the Director's Concurrence for variations to height.

Having regard to the above requirements it is recommended that the height variation using Section 4.6 be supported. Furthermore, based on the above table and assessment, the proposal is considered to be generally consistent with the LEP.

Section 4.6 - FSR

Section 4.6 - This section establishes a degree of flexibility for certain development standards in certain circumstances, which have demonstrated that a better planning outcome will occur from that flexibility. In this regard, the proposal seeks a variation to the floor space ratio standard as identified under Section 4.4 of this report. Assistance on the approach to variation to this standard is also taken from NSW Land and Environment Court and NSW Court of Appeal decisions in:

1. *Wehbe v Pittwater Council (2007) NSW LEC 827 (Wehbe);*
2. *Four2Five Pty Ltd v Ashfield Council (2015) NSWLEC 1009; and*
3. *Al Maha Pty Ltd v Huajun Investments Pty Ltd (2018) NSWCA 245*

The assessment will now step through and address the requirements of Section 4.6(3) and (4).

Section 4.6(3) states the following:

4.6(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:

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

Comments: In considering the above, the Applicant has submitted a request in writing to justify the contravention of the FSR standard **Attachment E**. In particular, the applicant submits that the objectives of the standard are achieved notwithstanding the non-compliance for the following reasons (summarised):

1. The zone and controls express a clear intent to see high density development to which the development achieves.

2. The FSR is not out of character with some of the existing newer buildings in the local area or what is intended by the controls or a compliant building. The area is also noted as being in transition to higher density.
3. The bulk of the buildings would be the same or higher, if developed individually.
4. The development will set a high design standard for future developments.
5. The design has responded sensitively to the existing context via appropriate setbacks and measures to mitigate overlooking/privacy impacts.
6. The development, when viewed from the street, is of an appropriate density. The Ki'ea apartments, across the street are of much greater density/bulk.
7. The minor variation would not materially alter the traffic generation from the development. As an example, the pathology laboratory level has quite a large area but retains the same low number of staff, with most of the floor space taken up with equipment.
8. The proposed FSR supports a better outcome/design, in line with the future desired character of the development.
9. The amalgamation of two sites and transition across two height limits and FSR standards has resulted in minor variations. The differing standards is challenging but developing both lots together has resulted in a more holistic overall design as opposed to both lots being developed individually.
10. The development complies with the objectives of the zone.
11. The public benefit will not be undermined and provides a much needed multi service to the area/CBD.

Section 4.6(4) states the following:

4.6(4) Development consent must not be granted for development that contravenes a development standard unless:

(c) the consent authority is satisfied that:

- iii. the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- iv. 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*

(d) the concurrence of the Secretary has been obtained.

The above components of Section 4.6(4) are repeated below with associated comments on compliance.

4.6(4)(a)(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)

Comments: It is noted that the applicant has submitted a written request to vary the FSR. This assessment report will now consider whether the request satisfies and adequately addresses the matters required by subclause 3.

In addressing Section 3(a), *Wehbe* established 'five methods' to test whether compliance with the standard was unreasonable or unnecessary. Having regard to the 'five methods', any of which could support consideration of the variation, the following comment is provided:

1. The objectives of the FSR standard are achieved notwithstanding the non-compliance with the numerical standards - refer to comments on Section 4.4 above in this report.

In addressing Clause 3(b) and that there are sufficient environmental planning grounds to justify contravening the development standard, the following comments are provided:

1. The proposed development will meet the objectives of the FSR - refer to comments on Section 4.4 above in this report.
2. The building will not have any identifiable adverse impacts to adjoining properties.
3. The proposed variation will not result in a development which is out of character with that envisioned for the immediate locality.
4. The minor variation will not be identifiable.
5. Part of the variation is created by the proposal developing a building across two lots, with each lot having a different FSR. The variation is created by the building design transitioning between the two standards. Whilst a variation is created, a more holistically designed development and better outcome is considered to have been achieved.

On the basis of the above, it is considered that the Applicant's Section 4.6 variation and proposed building, has adequately addressed the matters required to be demonstrated by Section 4.6(3).

4.6(4)(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, and

Comments: Compliance with the zone and FSR control objectives are addressed earlier in this report. In summary, the development was considered to comply with the relevant zone and FSR objectives and therefore have no implications on public interest.

4.6(4)(b) the concurrence of the Secretary has been obtained.

Comments: As per the Planning Circular PS20-002, Council/JRPP can assume the Director's Concurrence for variations to FSR.

Having regard to the above requirements it is recommended that the FSR variation using Section 4.6 be supported. Furthermore, based on the above table and assessment, the proposal is considered to be generally consistent with the LEP.

(b) Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments

There are no proposed instruments which have been the subject of public consultation under the EP&A Act that are relevant to the proposal.

(c) Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan

The following Development Control Plan is relevant to this application:

- *Port Macquarie-Hastings Development Control Plan 2013* ('the DCP')

The development generally complies with the Port Macquarie-Hastings Development Control Plan 2013 - refer to the attached Assessment Table **Attachment C**. There are a number of minor variations to controls in the DCP, which are outlined in the Assessment Table. The variations satisfactorily meet the objectives of the DCP in the circumstances of the proposal and do not warrant refusal of the application.

It should also be noted that whilst the DCP does not have a specific section or controls for medical centres, the height, FSR, side setbacks and front setbacks of the proposal are consistent with those applicable to surrounding development/likely to occur onsite. For example, residential flat buildings would need to comply with the same height limit and FSR.

The building also proposes 3m+ street setbacks and typically 3m side boundary setbacks for the majority of the building (Note: ground floor has lesser setbacks). Such setbacks would complement the 3m front/street setback and 1.5-3m side setbacks required for residential flat buildings under the DCP.

In terms of the Assessment Table, provisions that do not apply to the development or site have been removed where relevant.

(d) Section 4.15(1)(a)(iia) – Planning agreements under Section 7.4 of the EP&A Act

There have been no planning agreements entered into and there are no draft planning agreements being proposed for the site.

(e) Section 4.15(1)(a)(iv) - Provisions of Regulations

Section 61 of the 2021 EP&A Regulation contains matters that must be taken into consideration by a consent authority in determining a development application, with the following matters being relevant to the proposal:

- Provisions of AS 2601 (demolition) - Demolition work (removal of retaining wall) on the site is capable of compliance with this Australian Standard and is to be reinforced by conditions. See conditions in **Attachment A**.

3.2 Section 4.15(1)(b) - Likely Impacts of Development

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls outlined above and the Key Issues section below.

The consideration of impacts on the natural and built environments includes the following:

- Context and setting – The site has street frontage with William Street to the north and Church Street to the south.

Adjoining the site are various forms of residential housing, including residential flat buildings and single dwellings.

The proposal is considered to be consistent with the context of the site and area. In particular, William Street comprises a number of other non-residential uses that draw on similar shop top housing attributes. The proposal is also considered to be compatible with other development in the locality, other development envisaged for the locality and the planning controls for the area.

The bulk and scale of the development is consistent with the height, FSR and setback provisions applicable to the more dominant residential housing, located and envisaged for the area.

The proposal will not have any significant adverse impacts to existing adjoining properties and satisfactorily addresses the public domain.

The proposal does not have a significant adverse impact on existing view sharing.

The proposal does not have significant adverse lighting impacts. Non-residential uses onsite will operate predominately during day light hours and conditions will further cover the obtrusive effects of outdoor lighting. No flashing, moving or intermittent lighting will be permitted on the site. See conditions F(7) in **Attachment A**.

There are no significant adverse privacy impacts with adequate building separation and screening proposed. The placement of the health services facility and associated openings are not directed towards key living room or open space areas on neighbouring properties. Where there is potential for views and privacy impacts, fencing, screening or landscaping is proposed.

There are no significant adverse overshadowing impacts. The proposal does not prevent adjoining properties from receiving 3 hours of sunlight to private open space and primary living areas on 21 June between the hours of 9am and 3pm.

- Access and traffic – The applicant provided a Traffic Impact Assessment (TIA) by Streetwise Road Safety & Traffic Services dated 27 September 2023 **Attachment D**, which was provided as supplementary information to the DA application. The TIA included consideration of the effects of the development on local traffic and determined that the local road network would sufficiently cater for the increase in traffic.

Council Engineering staff have reviewed and accepted the report findings. Overall, the proposal will not have any significant adverse impacts in terms access, transport and traffic and the existing road network will satisfactorily cater for the increase in traffic generation as a result of the development.

- Parking and Manoeuvring - A total of 58 parking spaces (including 3 accessible spaces) have been provided onsite. In addition, dedicated bicycle parking areas are also included. Parking and driveway widths on site can comply with relevant Australian Standards (AS 2890) and conditions have been recommended to reflect these requirements. See various conditions in **Attachment A**.

Due to the type of development, car park circulation is required to enable vehicles to enter and exit the site in a forward manner. Site plans show turning areas to enable such circulation.

- Public Domain – The proposed development will not impact on the public domain. Driveways will be rationalised and footpaths maintained and/or upgraded where necessary.
- Water Supply Connection - Council records indicate that the development site is serviced by a 20mm potable water service. Final water demand will need to be determined by a hydraulic consultant. The design and any works shall be in accordance with Council's Water Supply for Development Procedure. The design and any works shall be in accordance with Council's Water Supply for Development Procedure. Minimum backflow protection for a Medical Centre is a Reduced Pressure Zone Device (RPZ) at the boundary.

Overall, the above requirements are achievable and detailed plans showing compliance will need to be submitted for assessment with the Section 68 application. Appropriate conditions are recommended in this regard.

- Sewer Supply Connection - Council records indicate that the development site is connected to two sewer junctions, one from the sewer main that crosses 66 William Street and the other from the sewer main that runs outside the property boundary of 25 Church Street. Due to the scale of the development and the increased load on sewer infrastructure, it is necessary to discharge all sewage to a new or existing manhole. The design and any works shall be in accordance with Council's Water Supply for Development Procedure. All work must comply with the requirements of Council's adopted AUSPEC Design and Construction Guidelines and Policies.

Overall, the above requirements are achievable and detailed plans showing compliance will need to be submitted for assessment with the Section 68 application. Appropriate conditions are recommended in this regard.

- Stormwater - The site naturally grades towards Church Street with the development looking to use a combination of onsite detention, pump out pits etc to collect and convey waters. The concept has been reviewed by Council's Stormwater Engineer with no objections raised.

Overall, the above requirements and stormwater collection/disposal are achievable and more specific detailed plans showing compliance will need to be submitted for assessment with the Section 68 application. Appropriate conditions are recommended in this regard.

- Utilities – Telecommunication and electricity services are available to the site. Some changes/upgrades to electricity infrastructure may be required at the applicant's expense.
- Heritage – The site is mapped as a potential Archaeological Site - Archaeology of early European Settlement within LEP 2011. The site has been previously assessed and considered unlikely to contain any items. The site is also disturbed from past activities/works onsite.

The application was referred to Heritage NSW who supported the application, subject to conditions. In particular, the site is unlikely to contain any archaeology due to past assessments and disturbance but conditions will still apply and cover unexpected finds. See condition D(5) in **Attachment A**.

- Other land resources – The site is within an established urban context and will not sterilise any significant mineral or agricultural resource.
- Water/air/soils impacts - The proposed development will not have any significant adverse impacts on water resources and the water cycle. A Geotechnical report was carried out for the site and indicated potential to intercept an aquifer. As a result, the application was treated as integrated development and General Terms of Approval were obtained from Water NSW to manage the issue.

The construction and/or operations of the proposed development will not result in any significant adverse impacts on the existing air quality or result in any pollution. Standard precautionary site management and occupation conditions recommended. See condition A(6) and Section F in **Attachment A**.

The proposed development will also not have any significant adverse impacts on soils in terms of quality, erosion, stability and/or productivity subject to a standard condition requiring erosion and sediment controls to be in place prior to and during construction. See condition A(6) in **Attachment A**.

The site is also located in an area that has potential for naturally occurring asbestos. As a result, the Geo Technical report tested for asbestos in the soil samples with none being detected. As there is still potential for naturally occurring asbestos, conditions will cover the unlikely scenario that naturally occurring asbestos is discovered during excavations. See condition D(2) in **Attachment A**.

- Flora and fauna impacts - Construction of the proposed development will not require any removal/clearing of any significant native vegetation, does not trigger the thresholds and is also not located within a mapped Biodiversity Values area. The site is also heavily disturbed from past activities onsite and unlikely to contain or impact on any threatened species. Development is considered to be compliant with the Biodiversity Conservation Act 2016.
- Natural environment – There are no significant changes to the natural environment. The site appears to have already been cut in the past. Whilst further cut is proposed as part of the basement, it will be integrated into the building design.
- Noise and vibration – An acoustic assessment by PWNA dated 1 May 2023 **Attachment G** has been submitted as supporting information with this application.

The acoustic assessment was reviewed and accepted by Council's Environmental Health Officer, subject to conditions around construction/sound insulation, mechanical plant design and restricted waste collection times. See various conditions in **Attachment A**. Furthermore, the restricted hours will ensure the site is relatively vacant at night and weekends.

- Natural hazards – The site is not affected by any natural hazards such as flooding, bushfire etc.
- Safety, security and crime prevention – The proposed development will be unlikely to create any adverse concealment/entrapment areas or crime spots that would result in any identifiable loss of safety or reduction of security in the immediate area.

The development will provide a level of natural surveillance over the site/area via openings, staff/people onsite, mixed uses generating activity etc. The high profile location will also ensure surveillance of the site by the public to further deter anti-social criminal activity.

Access points are legible and building features (ie awning, planter boxes) define the public/private space.

The strata will ensure management is in place for long term maintenance of repairs, graffiti, cleaning and a sense of ownership. Whilst the dwelling provides a further presence after hours.

Lighting, CCTV, alarms, restricted electronic access measures and management procedures can also be installed retrospectively by the owner for further security.

- Social impact – The development has potential to create negative social impacts such as parking, traffic, overshadowing, privacy and noise impacts on nearby residences. However, as outlined throughout this assessment, these potential negative impacts can be controlled and/or made acceptable via the design and conditions.

Potential positive impacts would be employment for local health care professionals and staff as well as providing important medical services to the local community.

On balance, the proposed development will lead to a positive social impact.

- Economic impact – The proposal is not considered to have any significant adverse economic impacts on the locality. A likely positive impact is that the development will maintain employment in the medical and construction industries, which will lead to flow on impacts such as expenditure in the area.
- Site design and internal design – The proposed development design satisfactorily responds to the site attributes and will fit into the locality.
- Construction – Construction impacts are considered capable of being managed. Standard construction and site management conditions have been recommended, including limited hours of operation. See condition A(6) in **Attachment A**.
- Cumulative impacts – The proposed development is not considered to have any significant adverse cumulative impacts on the natural or built environment or the social and economic attributes of the locality.

Accordingly, it is considered that the proposal will not result in any significant adverse impacts in the locality as outlined above.

3.3 Section 4.15(1)(c) - Suitability of the site

The proposal will fit into the locality and the site attributes are conducive to the proposed development.

Site constraints have been adequately addressed and where relevant, appropriate conditions of consent recommended.

3.4 Section 4.15(1)(d) - Public Submissions

Submissions are considered in Section 4.3 of this report.

3.5 Section 4.15(1)(e) - Public interest

Ecologically sustainable development requires the effective integration of economic and environmental considerations in decision-making processes.

The four principles of ecologically sustainable development are:

- the precautionary principle,
- intergenerational equity,
- conservation of biological diversity and ecological integrity,
- improved valuation, pricing and incentive mechanisms.

The principles of ESD require that a balance needs to be struck between the man-made development and the need to retain the natural vegetation. Based on the assessment provided in the report and with recommended conditions of consent, it is considered an appropriate balance has been struck.

The proposal is not considered to be vulnerable to any risks associated with climate change.

Overall, the proposed development satisfies relevant planning controls and will not have any significant adverse impacts on the wider public interest.

4. REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

The development application has been referred to the following agencies for comment/concurrence/referral as required by the EP&A Act and outlined below in **Table 6**.

There are no outstanding issues arising from these concurrence and referral requirements subject to the imposition of the recommended conditions of consent being imposed.

Table 6: Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Concurrence Requirements (s4.13 of EP&A Act) - N/A			
Referral/Consultation Agencies			
Electricity supply authority	Section 2.48 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development near electrical infrastructure	A referral to Essential Energy was carried out with no objection received. Standard advice about clearances, safety, Dial before you Dig etc was provided and forwarded to the applicant. The applicant confirmed clearances and remaining requirements will occur need to occur during construction.	Y
Heritage NSW	Section 5.10 of the Port Macquarie-Hastings Local Environmental Plan 2011 (works within an Archaeological Site - Archaeology of early European Settlement) requires referral to Heritage NSW.	<i>The</i> site is mapped as a potential Archaeological Site - Archaeology of early European Settlement within LEP 2011. The site has been previously assessed and considered unlikely to contain any items. The site is also disturbed from past activities/works onsite. The application was referred to Heritage NSW who supported the	Y

		application, subject to conditions. In particular, the site is unlikely to contain any archaeology due to past assessments and disturbance but conditions will still apply and cover unexpected finds.	
Integrated Development (S 4.46 of the EP&A Act)			
Natural Resources Access Regulator/Water NSW	S91 – <i>Water Management Act 2000</i> activity approval under Part 3 of Chapter 3	The application is considered to be integrated development under Section 91 of the Water Management Act 2000 and pursuant to Section 4.46 of the Environmental Planning and Assessment Act 1979 ('EP&A Act'). In particular, the excavations for the basement were shown to have potential to intercept an aquifer. Water NSW have subsequently reviewed/support the application and provided their General Terms of Approval, which will form part of the conditions of consent.	Y

4.2 Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 7**.

Table 7: Consideration of Council Referrals

Officer	Comments	Resolved
Engineering	Council's Engineering Officer reviewed the application, TIA, access, and parking arrangements. No objections raised, subject to conditions.	Y
Health	Council's Environmental Health Officer reviewed the application and acoustic assessment. No objections raised, subject to conditions.	Y
Water & Sewer	Council's Water and Sewer Section reviewed the application. No objections raised, subject to conditions.	Y
Stormwater	Council's Stormwater Officer reviewed the application and concept stormwater design. No objections raised, subject to conditions.	Y

The outstanding issues raised by Council officers are considered in the Key Issues section of this report.

4.3 Community Consultation

The proposal was notified in accordance with the DCP/Council's Community Participation Plan from 9 May 2023 until 22 May 2023 and again on 15 June 2023 until 14 July 2023. The notification included the following:

- Notification letters sent to adjoining and adjacent properties.
- Notification on the Council's website.

The Council received a total of four (4) unique submissions, comprising four (4) objections to the proposal. The issues raised in these submissions are considered in **Table 8**.

Table 8: Community Submissions

Issue	No of submissions	Council Comments
<p>Damage to adjoining properties</p> <p>Concern for damage to adjoining properties during construction and need for dilapidation report. Management of the site, damage to property and dilapidation reports can be covered by conditions and/or as a civil matter.</p>	2	<p>Management of the site, damage to property and dilapidation reports can be covered by conditions and/or as a civil matter.</p> <p>Outcome: This issue has been satisfactorily addressed.</p>
<p>Parking</p> <p>The development contains insufficient parking and should be amended to provide extra spaces.</p> <p>On street parking will be impacted/reduced</p>	3	<p>The assessment shows that sufficient parking will be provided onsite to cover the proposed development. The application and parking layout has also been reviewed and accepted by Council's Engineering staff.</p> <p>Restrictions on consultant and staff numbers will further be used to ensure the parking provided onsite complies with the numbers required by Council's DCP.</p> <p>The above will ensure no significant adverse impact on amenity or character of the area.</p>

<p>in the area due to the development.</p> <p>People will end up parking in the street, which will impact on amenity and change the character of the area to a more commercial zone.</p> <p>Adjoining properties rely on the street parking.</p>		<p>In addition, adjoining properties/development should not be relying solely on street parking to serve their property.</p> <p>Outcome: This issue has been satisfactorily addressed.</p>
<p>Variations</p> <p>The height and FSR variations are not supported and should be made to comply.</p> <p>The height variation will result in a building out of proportion to the area.</p>	2	<p>The variations are addressed earlier in this report and considered to be acceptable/justified.</p> <p>Outcome: This issue has been satisfactorily addressed</p>
<p>Traffic</p> <p>Concern raised around parking and traffic impacts as well as the accuracy of the traffic impact assessment.</p> <p>Assumptions in traffic/parking assessment are unenforceable.</p> <p>Impact of traffic on surrounding area.</p>	3	<p>The assessment shows that sufficient parking will be provided onsite to cover the proposed development and that the traffic impacts are acceptable. The application, parking layout and traffic impacts have also been reviewed and accepted by Council's Engineering staff.</p> <p>Where Council staff do not agree with some of the parking assumptions in the Traffic Impact Assessment, the DCP parking requirements have been utilised. Restrictions on consultant and staff numbers via conditions of consent will further be used to ensure the parking provided onsite complies with the numbers required by Council's DCP. Restricting consultant/staff numbers via conditions is common practice by Council and can be checked/enforced by compliance investigations.</p> <p>Outcome: This issue has been satisfactorily addressed.</p>
<p>Ambulance parking</p>	1	<p>There is no specific requirement in Council controls for a non-hospital related health services facility to provide an ambulance bay. Therefore, the dedicated</p>

<p>Concern over dedicated ambulance bay/parking on the street.</p> <p>Ambulance bay should be provided in the basement parking.</p>		<p>space shown on the street is not required or supported.</p> <p>Furthermore, any request for the dedicated space would need to be considered separately via Council's Traffic Committee.</p> <p>As a side note, it does appear that a standard sized ambulance vehicle would not be able to access the basement parking area. In the event of an emergency at the facility whereby an ambulance was required, temporary informal arrangements would need to be made (ie park at the front of the building or in the rear driveways). This is not dissimilar from other development types with standard size basement parking heights.</p> <p>Outcome: This issue has been satisfactorily addressed.</p>
<p>Overshadowing</p> <p>The development will overshadow adjoining properties.</p>	1	<p>Shadow diagrams indicate the development does not overshadow any adjoining property by more than 3 hours between 9am and 3pm on the winter solstice. This is due to the north orientation of the lots.</p> <p>Outcome: This issue has been satisfactorily addressed.</p>
<p>Stormwater</p> <p>Stormwater drainage through the site and potential impacts on neighbours.</p>	1	<p>The development appears capable of capturing and disposing of stormwater without creating any impact on neighbouring properties. In particular, stormwater flows from the site will not be specifically directed onto a neighbour or result in flows above pre-development. Overland flows from adjoining properties, can be picked up via new drainage and re-directed to the street.</p> <p>Furthermore, Council's Stormwater Engineer raised no objection to the application or concept stormwater design with the more detailed design to be considered at the s68 stage.</p> <p>Outcome: This issue has been satisfactorily addressed.</p>
<p>Pedestrian access</p> <p>Pedestrian access be provided to the development from the Lord Street and Grant Street parking (ie the existing public</p>	1	<p>In this case, the assessment shows that sufficient parking is provided onsite, subject to conditions around management of the uses.</p> <p>In addition, Council will still require pedestrian footpaths be constructed along the full frontages of the site. As other sites develop into the future or a more locality wide need arises for connections to be brought forward, the development will eventually connect with surrounding street parking.</p>

parking in the street).		Outcome: This issue has been satisfactorily addressed.
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5. CONTRIBUTIONS

Section 7.11 Contributions

Whilst the development contains a single dwelling residential component, the contributions for s7.12 equate to a greater amount. It is noted that a consent authority can only charge s7.11 or s7.12, not both. As a result, s7.12 will be levied in this case (greater amount) and s7.11 contributions do not apply.

Section 7.12 Contributions

In assessing s7.12 contributions, Council staff have reviewed the development in accordance with the Port Macquarie-Hastings Council Development Contributions Assessment Policy (DCAP) and the Port Macquarie-Hastings Council Section 94A (now s7.12) Levy Contributions Plan 2007.

The proposed development will comprise a health services facility and is deemed to increase the demand for public amenities/services. As a result, s7.12 contributions apply and a condition of consent has been imposed to ensure payment. See condition B(5) in **Attachment A**. A Notice of Payment Estimate is also included as **Attachment H** to show contribution amount payable.

Section 64 Water and Sewer Contributions

In assessing s64 water and sewer contributions, Council staff have reviewed the development in accordance with the Port Macquarie-Hastings Council Development Contributions Assessment Policy (DCAP) and applicable Development Servicing Plans.

The site has been provided contribution credit based on the existing two (2) residential lots.

The proposed development will comprise a health service facility and shop top housing (dwelling).

Having considered the above, the proposed development will increase the demand on water and sewer services. As a result, s64 contributions apply and a condition of consent has been imposed to ensure payment. See condition B(4) in **Attachment A**. A Notice of Payment Estimate is also included as **Attachment H** to show the contribution amounts payable.

6. KEY ISSUES

The following key issues are relevant to the assessment of this application having considered the relevant planning controls and the proposal in detail:

6.1 Non-residential use in a residential zone (privacy, noise impacts, character)

Whilst the development will comprise a number of non-residential uses within a residential zone, it is noted that the zone and area currently permit and contain non-residential uses. The design of the building, height, bulk and scale are also similar to other residential flat buildings within the area and that envisaged by the planning controls. The use is considered to compliment the locality and will not adversely impact on the character of the area.

An acoustic assessment by PWNA dated 1 May 2023 **Attachment G** has been submitted as supporting information with this application.

The acoustic assessment was reviewed and accepted by Council's Environmental Health Officer, subject to conditions around construction/sound insulation, mechanical plant design and restricted waste collection times. See various conditions in **Attachment A**. Furthermore, the restricted hours will ensure the site is relatively vacant at night and weekends to minimise impacts on surrounding residential uses.

In terms of privacy, the applicant has employed a range of design measures, separation and placement of openings adjacent to neighbouring areas that contain a lack of residential living/private open space areas to maintain privacy. See images in Figure 10 below showing some of the design measures used to maintain privacy, which will be reinforced through conditions of consent.

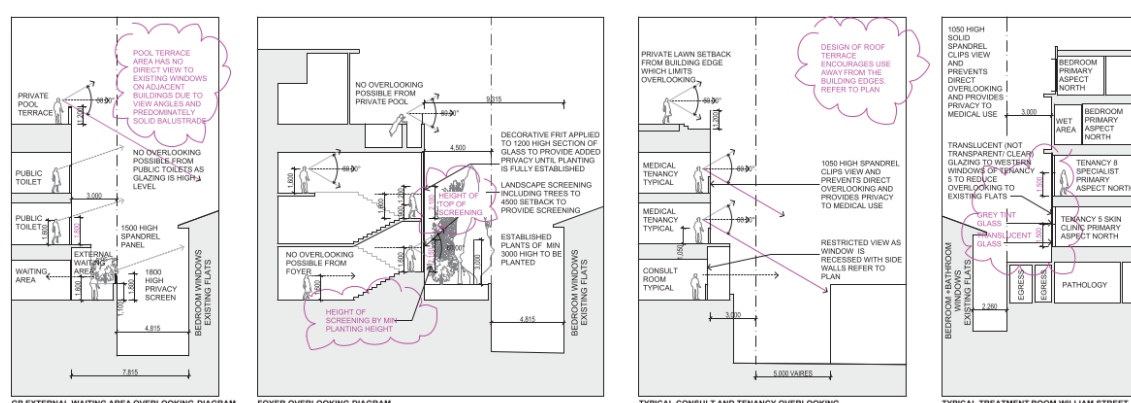


Figure 10 - Privacy measures

Resolution: The issue has been resolved through the design and recommended conditions of consent as outlined in **Attachment A**.

6.2 Section 4.6 variations to height and FSR

The variations have been addressed previously in this assessment and deemed acceptable in this case.

Resolution: The issue has been resolved through the design and Section 4.6 process.

6.3 Permissibility of ancillary uses

The development proposes a kiosk and pharmacy that would normally be considered prohibited development in the R4 zone. However, the uses are small in scale and

considered to represent ancillary, subordinate and subservient uses to the main development. In this case, the particular purpose of the development is a health services facility with shop top housing. The primary purpose of the two prohibited uses is to serve the main health services facility by providing occupants and clients with light refreshments and also relevant pharmaceutical needs following their appointment (Note: it is common practice after seeing a health care professional to require certain pharmacy goods or medication).

It is also noted that access to the kiosk and pharmacy can only occur through the main entry and when the health services facility is open. This will be reinforced via conditions of consent to ensure the two prohibited uses do not alter into standalone components.

Technically, the kiosk could be altered to be more substantial and therefore be defined as a type of food and drink premises. Food and drink premises are permissible with consent in the R4 zone. However, a more substantial food and drink premises would create more of an impact on parking numbers.

Overall, the prohibited uses are considered to be consistent with the Planning Circular PS21-008 relating to *How to characterise development*.

Resolution: The issue has been resolved through the design and recommended conditions of consent as outlined in **Attachment A**.

6.4 Parking, traffic, access and the Traffic Impact Assessment

The development has potential to create traffic and parking issues given the health services facility and non-residential uses. The applicant submitted a Traffic Impact Assessment (TIA) by Streetwise Road Safety & Traffic Services dated 27 September 2023 **Attachment D**, which was provided as supplementary information to the application. The TIA included consideration of the effects of the development on local traffic and determined that the local road network would sufficiently cater for the increase in traffic.

Council Engineering staff have reviewed and accepted the report findings. Overall, the proposal will not have any significant adverse impacts in terms access, transport and traffic and the existing road network will satisfactorily cater for any minor increase in traffic generation as a result of the development.

In terms of parking, a total of 58 parking spaces (including 3 accessible spaces) have been provided on-site. An assessment on parking requirements and justification for the 58 spaces was included in the TIA. Council staff have subsequently reviewed and accepted the proposed parking numbers, subject to conditions restricting consultant/staff numbers. The restrictions are to reiterate some of the findings within the TIA.

Parking and driveway widths on site can comply with relevant Australian Standards (AS 2890) and conditions have been recommended to reflect these requirements.

Due to the type of development, car park circulation is required to enable vehicles to enter and exit the site in a forward manner. Site plans show compliance with turning areas provided.

The use of a split driveway and two separate basement parking areas off Church Street is a slightly different approach. However, the number of driveways is similar to that which could occur from a dual occupancy and is offset by no driveway being provided on the William Street frontage. It is noted that any development could face a situation of a car entering a parking area, not finding a space and then have to exit. However, it is considered that the separate driveways/parking areas has potential to compound the situation. As a result, a lighting system (similar to that used in larger commercial premises/parking areas), will be conditioned to alert drivers whether there are spaces free in each basement. This will help alleviate the situation of people going into one level, not finding a space and then having to drive out and go into the next driveway/level.

Overall, the traffic, parking and layout are considered acceptable and will create no significant adverse impacts, subject to conditions. See various conditions, including B(23), E(20), F(1) & (2) in **Attachment A**.

Resolution: The issue has been resolved through the design and recommended conditions of consent.

6.5 Landscaping

To soften and articulate the development and provide screening for privacy purposes, a landscape plan was considered a key element for the design. The applicant subsequently provided a landscape plan, prepared by a registered landscape architect.

The plan identifies a range of landscaping/plantings in key locations and on structure landscaping design requirements, resulting in selected species of various shapes and size. The application has also since evolved from the original design to include some additional on structure planting areas, which will further break up the bulk and scale of the design.

Once in place, the continual maintenance of the landscaping can be controlled via conditions of consent and the strata management. In particular, conditions will cover the perpetual maintenance of the landscaping and replacement of any lost plantings.

Overall, the proposed landscape plan complements the design and addresses screening requirements in key areas.

Resolution: The issue has been resolved through the design and conditions of consent as outlined in **Attachment A**.

7. CONCLUSION

This development application has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application can be supported.

Overall, the site is considered suitable for the proposed development and the proposal adequately addresses relevant planning controls. The development is not considered to be contrary to the public's interest and will not result a significant adverse social, environmental or economic impact. It is considered that the key issues as outlined in Section 6 have been resolved satisfactorily through amendments to the proposal and/or in the recommended draft conditions at **Attachment A**.

8. RECOMMENDATION

That the Development Application DA2023 - 244.1 for a health services facility and shop top housing with Section 4.6 variation to Section 4.3 (height of buildings) and Section 4.4 (floor space ratio) of the Port Macquarie-Hastings Local Environmental Plan 2011 at Lot 1 & 2 DP 350549, 66 William Street and 25 Church Street, Port Macquarie be approved pursuant to Section 4.16(1)(a) of the *Environmental Planning and Assessment Act 1979* subject to the draft conditions of consent attached to this report at **Attachment A**.

The following attachments are provided:

- Attachment A: Draft Conditions of consent
- Attachment B: Architectural Plans
- Attachment C: DCP Table of Compliance
- Attachment D: Traffic Impact Assessment
- Attachment E: Section 4.6 Request
- Attachment F: Landscape Plan
- Attachment G: Acoustic Assessment
- Attachment H: Notice of Payment Contributions Estimate
- Attachment I: General Terms of Approval from Water NSW