

Clause 4.6 Variation Request

Request to vary Clause 4.3 Height of Buildings in Port Macquarie-Hastings Local Environmental Plan 2011

Gordon Street, Port Macquarie



'Gura Bulga'

Liz Belanjee Cameron

'Gura Bulga' – translates to Warm Green Country. Representing New South Wales.

By using the green and blue colours to represent NSW, this painting unites the contrasting landscapes. The use of green symbolises tranquillity and health. The colour cyan, a greenish-blue, sparks feelings of calmness and reminds us of the importance of nature, while various shades of blue hues denote emotions of new beginnings and growth. The use of emerald green in this image speaks of place as a fluid moving topography of rhythmical connection, echoed by densely layered patterning and symbolic shapes which project the hypnotic vibrations of the earth, waterways and skies.

Ethos Urban acknowledges the Traditional Custodians of Country throughout Australia and recognises their continuing connection to land, waters and culture.

We acknowledge the Gadigal people, of the Eora Nation, the Traditional Custodians of the land where this document was prepared, and all peoples and nations from lands affected.

We pay our respects to their Elders past, present and emerging.

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1.0 Introduction

This Clause 4.6 Variation Request has been prepared by Ethos Urban on behalf of Co.Op Studio. It is submitted to Port Macquarie-Hastings Council (Council) in support of a development application (DA) for the Port Macquarie Aquatic Facility (PMAF) at Gordon Street, Port Macquarie (the site).

Clause 4.6 of the *Port Macquarie-Hastings Local Environmental Plan (PMH LEP) 2011* enables the consent authority to grant consent for development even though the development contravenes the development standard. This Clause 4.6 Variation Request relates to the development standard for the height of buildings under clause 4.3 of the PMH LEP 2011 and should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by Ethos Urban dated November 2023.

The objectives of clause 4.6 are to provide an appropriate degree of flexibility in applying certain development standards, and to achieve better outcomes for and from development by allowing flexibility in particular circumstances. Clauses 4.6(3) requires that development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances (clause 4.6(3)(a)), and
- There are sufficient environmental planning grounds to justify the contravention of the development standard (clause 4.6(3)(b)).

This document demonstrates that compliance with the building height development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravention of the development standard. As such, this document satisfies the provisions of clause 35B(2) of the *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation).

The extent of the building height variation relates to the proposed canopy and the waterslide. This Clause 4.6 Variation Request demonstrates that, notwithstanding the non-compliance with the height development standard:

- The proposed development achieves the objectives of clause 4.3 of the PMH LEP 2011:
 - Due to the ancillary nature of the canopy and waterslide which are well-setback from the public domain, the proposed building height remains compatible with the height, bulk and scale of the existing and desired future character of the locality.
 - With regard to the unenclosed design of the canopy and waterslide, and commercial/industrial land uses which surround the site, the proposed variation results in minimal environmental impact with regard to visual impact, views, privacy and solar access to existing development.
 - The exceedance in building height results in a justifiable transition in the overall built form of the proposed development, noting that the waterslide rapidly depreciates in height and is predominately contained within the 11.5m height limit.
- The proposed development demonstrates that there are sufficient environmental planning grounds to vary the control in this instance because:
 - The variation delivers a clear public benefit to the Port Macquarie community by contributing to the recreational functions of the PMAF in a manner that cannot be achieved by a compliant waterslide.
 - The proposed canopy and waterslide exhibit good amenity by minimising environmental impacts.
 - The waterslide is reflective of the intended use of the Civic Precinct and improves the sites' ability to contribute to Port Macquarie East becoming a strongly identifiable civic centre.

Therefore, the DA may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of the PMH LEP 2011.

2.0 Site and proposed development

2.1 Site description

The site is located at Gordon Street, Port Macquarie, and is located within the Port-Macquarie Hastings local government area (LGA). The site is irregular in shape with a total area of approximately 2.9ha, comprising a total of 15 allotments:

Lot	Section	DP
5	16	758852
6	16	758852
7	16	758852
8	16	758852
9	16	758852
14	16	758852
15	16	758852
16	16	758852
17	16	758852
18	16	758852
19	16	758852
20	16	758852
1		808449
2		808449
7063		1040735

The land has an approximate fall from RL 5.2 at the northeast to RL 2.6 at the southwest of the site. The site has a street frontage of approximately 102m to Gordon Street. The site currently contains Macquarie Park, a grassed recreational facility that contains two football playing fields. An aerial photo of the site is provided at **Figure 1**.



 Site Boundaries



Figure 1 *Site aerial*

Source: Nearmap / Ethos Urban

2.2 Description of the proposed development

The development application seeks approval for the following development:

- Site amalgamation;
- Site preparation including demolition of existing structures, removal of two (2) trees, and earthworks;
- Construction and operation of the Port Macquarie Aquatic Facility in two (2) stages:

Stage 1

- A recreation facility (outdoor) which comprises:
 - o An outdoor swimming pool (50m with 10 swimming lanes);
 - o A sheltered swimming pool (25m with 6 swimming lanes);
 - o Ancillary structures including a grandstand.
- A recreation facility (indoor) which comprises:
 - An indoor swimming pool (20m program pool for children);
 - Ancillary buildings including a café and kiosk, multi-purpose room, administrative offices, and change rooms.
 - A gymnasium;
- Three (3) signage zones;
- At-grade car parking for 129 vehicles; and
- Landscaping works.

Stage 2

- Ancillary structures associated with the recreation facility (outdoor) comprising two (2) waterslides and splashpad;
- Expansion of the gymnasium proposed under Stage 1; and
- At-grade car parking for 41 vehicles.

A photomontage of the proposed development is shown at **Figure 2**.



Figure 2 Photomontage of the proposed development

Source: Co.Op Studio

3.0 Planning instrument, development standard and proposed variation

A summary of the environmental planning instrument (EPI), development standard and proposed variation is summarised in **Table 1**.

Table 1 Planning instrument, development standard and proposed variation

Matter	Comment
Environmental planning instrument (EPI) sought to be varied	Port Macquarie-Hastings Local Environmental Plan 2011
The site's land use zone	RE1 Public Recreation
Development standard sought to be varied	Clause 4.3 Height of buildings
	<p>The objectives of this clause are as follows:</p> <ul style="list-style-type: none"> 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.
Type of development standard	Numerical development standard
Numeric value of the development standard in the EPI	11.5m (map extract provided in Figure 3).
Difference between the existing and proposed numeric values. Variation percentage between the proposal and the EPI	<p>The proposed maximum height of building is 16.1m at the top of the shade structure of the waterslide. A portion of the waterslide also exceeds the maximum building height. The proposal exceeds the maximum 11.5m development standard by 4.6m, which is a variation of 40%.</p> <p>In determining the proposed building height, the vertical distance has been measured between:</p> <ul style="list-style-type: none"> • Ground level (existing): RL3.9 • Highest point of the shade structure: RL20
Visual representation of the proposed variation	Refer to Figure 4 and Figure 5 .



Figure 3 Extract of Height of Buildings Map (site outlined in red, and approximate location of the building height variation indicated by the red dot)

Source: NSW Legislation

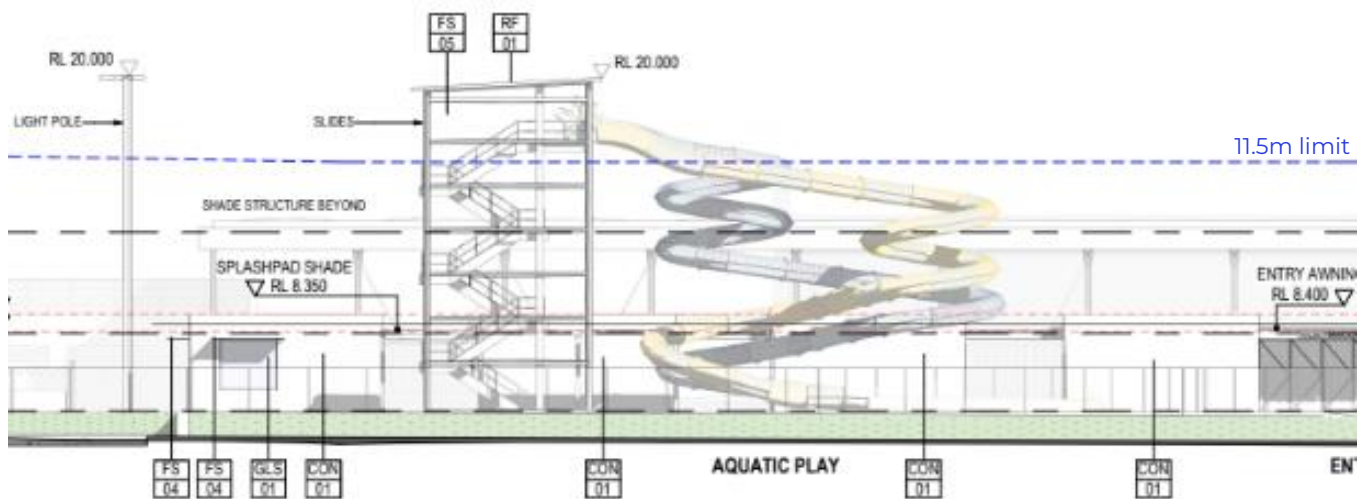


Figure 4 Extract of West Elevation – Extent of canopy and waterslide exceeding the maximum building height

Source: Co.Op Studio

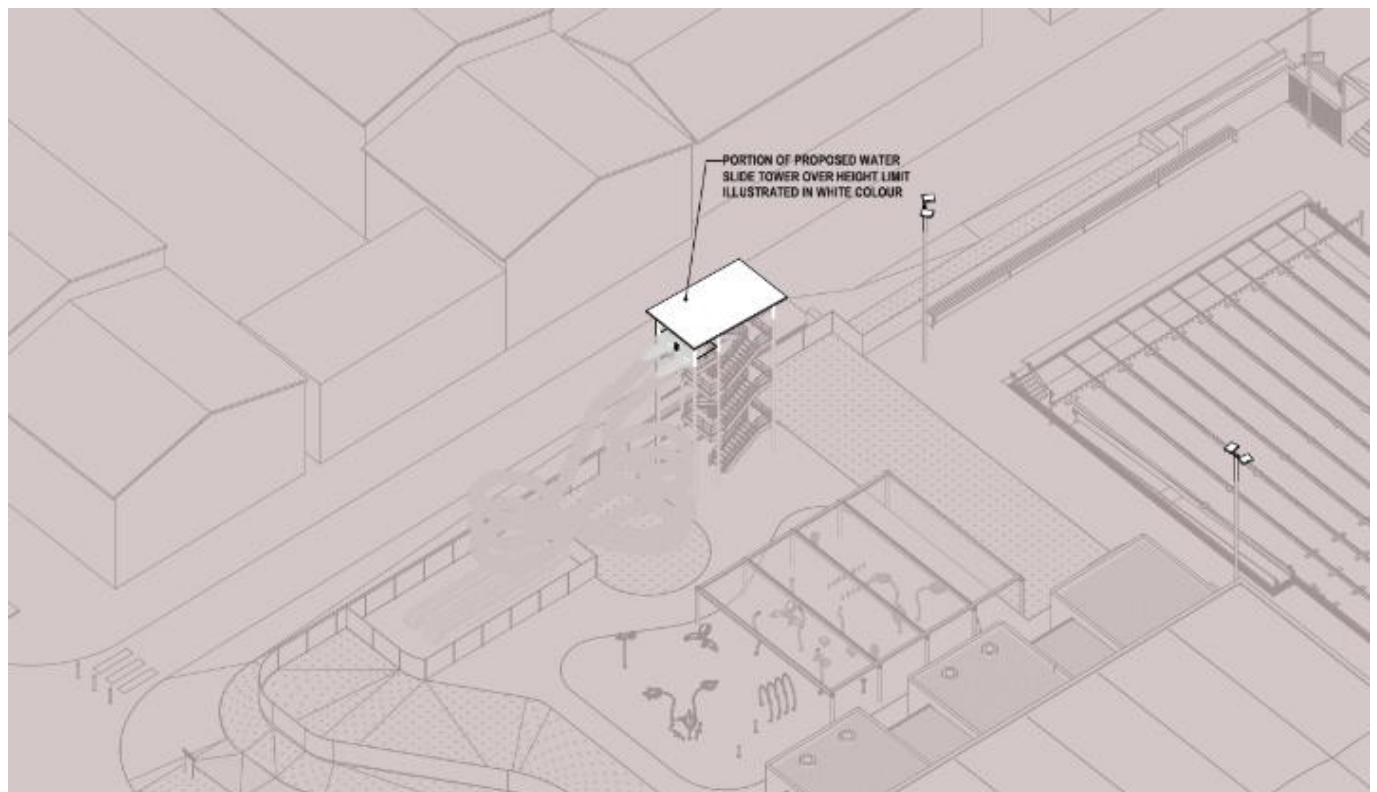


Figure 5 Extent of variation (canopy and waterslide over the maximum building height in white)

Source: Co.Op Studio

4.0 Justification for the proposed variation

Clause 4.6(3) of the PMH LEP 2011 provides that:

4.6 Exceptions to development standards

(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.

Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the NSW Land and Environment Court in:

1. *Wehbe v Pittwater Council* [2007] NSW LEC 827;
2. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
3. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (*Initial Action*); and
4. *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245 (*Al Maha*).

Role of the consent authority

The role of the consent authority in considering this request for a clause 4.6 variation has been explained by the NSW Court of Appeal in *Initial Action*. This requires the consent authority being satisfied that the applicant's written request has adequately addressed the matters in clause 4.6(4)(a)(i).¹

The consent authority is required to form this opinion first before it considers the merits of the DA and it can only consider the merits of the DA if it forms the required satisfaction in relation to the matter. In particular, the consent authority needs to be satisfied that there are sufficient environmental planning grounds to grant consent and that the contravention of the standard is justified.

This document provides the basis for the consent authority to reach this level of satisfaction. The relevant matters contained in clause 4.6 of the PMH LEP 2011 with respect to the height of buildings development standard, are each addressed below, including with regard to the above decisions.

4.1 Compliance with the development standard is unreasonable or unnecessary in the circumstances

In *Wehbe*, Preston CJ of the NSW Land and Environment Court provided relevant assistance by identifying five traditional ways in which a variation to a development standard had been shown as unreasonable or unnecessary. However, His Honour in that case (and subsequently in *Initial Action*) confirmed that these five ways are not exhaustive; they are merely the most commonly invoked ways. Further, an applicant does not need to establish all of the ways.

While *Wehbe* related to objections made pursuant to *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1), the analysis can be of assistance to variations made under clause 4.6 where subclause 4.6(3)(a) uses the same language as clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]).

As the language used in subclause 4.6(3)(a) of the PMH LEP 2011 is the same as the language used in clause 6 of SEPP 1, the principles contained in *Wehbe* are of assistance to this Clause 4.6 Variation Request.

¹ Clause 4.6(4)(a)(i) has since been repealed. The note under clause 4.6(3) references the EP&A Regulation which requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in clause 4.6(3)(a) and (b).

The five methods outlined in *Wehbe* include:

- The objectives of the development standard are achieved notwithstanding non-compliance with the standard (**First Method**).
- The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Method**).
- The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Method**).
- The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (**Fourth Method**).
- The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (**Fifth Method**).

Of particular assistance in this matter, in establishing that compliance with a development standard is unreasonable or unnecessary is the **First Method**.

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

The objectives of the development standard contained in clause 4.3 of the PMH LEP 2011 are:

- a) *to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,*
- b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,*
- 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.*

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

Height, bulk and scale of the existing character of the locality

The locality currently comprises a mix of low scale commercial to the east and west. North of Gordon Street comprises low-rise residential development including single storey detached dwellings and residential flat buildings.

The proposed development has been designed and sited to respond to the existing character of the precinct with regard to height, bulk and scale. The canopy structure and waterslide (extent of the proposed variation) is well-distanced from the public domain, noting that it is set back 62m from the Gordon Street frontage (**Figure 6**). The grandstand, which is compliant with the building height, strongly defines the Gordon Street frontage and allows this to be perceived as the primary structure from the public domain. This subdues the prominence of the canopy structure and waterslide from the public domain, and allows this building form to be read as a secondary structure. Therefore, the siting of the proposed variation ensures that the height of development generated by the exceedance does not dominate the existing character.

The proposed height exceedance is isolated to the highest point of the waterslide structure and does not contribute to an increase in bulk and scale of the development. As illustrated in **Figure 4**, the canopy is an open structure and the slope of the waterslide decreases in height. The unenclosed nature of the building height variation allows for sightlines to penetrate through which reduces the perceived bulk and scale, and does not dominate the low-rise character of the existing locality.

There is sufficient spatial separation between the canopy and waterslide and adjoining properties which reduces the perceived bulk and scale of the variation. As illustrated in **Figure 6**, these structures are set back approximately 82m from the eastern boundary. A 16m setback is proposed to the western boundary, which coupled with the retained and proposed landscaping adjacent to this boundary, will alleviate the scale of the proposed height variation. The siting of the proposed variation and proposed landscaping ensures the development is compatible in the context of the existing surrounding development.

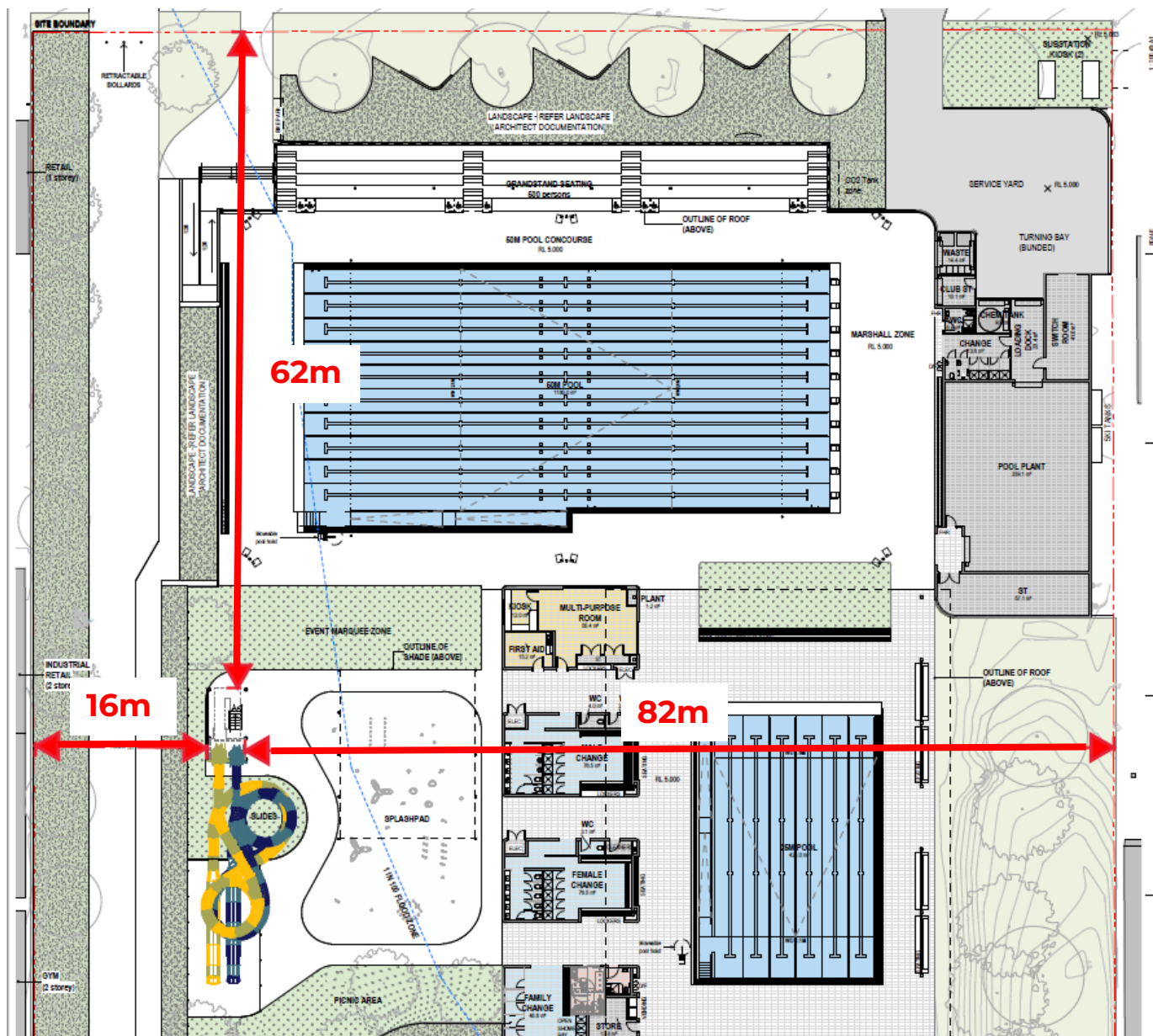


Figure 6 Approximate setbacks from the canopy and waterslide

Source: Co.Op Studio, annotated by Ethos Urban

Height, bulk and scale of the desired future character of the locality

The site is located within 'Port Macquarie East' Civic Precinct under the *Port Macquarie-Hastings Development Control Plan 2011* (PMH DCP 2011). The desired future character statement under the PMH DCP 2011 states:

"The Civic Precinct will evolve into a cohesive, strongly identifiable civic centre for Port Macquarie and the East Port neighbourhood. Consistent and large-scaled street tree planting to Gordon Street will improve Port Macquarie's civic address and define the edge of Macquarie Park.

Taller building heights along Gordon Street will spatially define Gordon Street as an edge between the Town Centre neighbourhood and the Civic Precinct and lower scale residential neighbourhoods to the south.

The Gordon Street local centre will be strengthened over time with new mixed use development, an improved public domain edge along Gordon Street and Munster Street which could include strategically placed safe pedestrian crossings.

The pedestrian experience along Grant Street would be improved by soft landscaping embellishments that could potentially include edible streetscaping, a community-driven feature that would strengthen links between schools, the university and residents in the area."

The Civic Precinct is intended to evolve into a cohesive, strongly identifiable civic centre within the Port Macquarie East neighbourhood. The proposed height exceedance does not diminish the proposal's ability to provide a high quality public recreational facility. The waterslide is reflective of the intended use of the Civic Precinct and improves the sites' ability to contribute to Port Macquarie East becoming a strongly identifiable civic centre. The waterslide will be a key attraction of the new PMAF, and will encourage the public to utilise the diverse range of recreational facilities the PMAF will provide.

Giving effect to the Port Macquarie East Civic Precinct desired future character, residential zoned land to the immediate north of Gordon Street is permitted a maximum 19m building height under the PMH LEP 2011. This reflects the desired future character of the immediate locality to provide increased heights and residential density. The proposed canopy structure and waterslide seeks a maximum height of 16.1m, which would result in a building height that is compatible with the "taller buildings" that are desired within the future character of the locality.



Figure 7 Civic Precinct Structure Plan

Source: PMH DCP 2011

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

Visual impact

The visibility of the non-compliant element does not, in and of itself, result in any visual impacts. As outlined above, the visibility of the proposed waterslide is consistent with the existing and intended future character of the precinct. The site adjoins commercial development to the east and west, which are not considered to be as sensitive when compared to other land uses such as residential development. As discussed, there is considered to be sufficient spatial separation to adjoining properties to mitigate any visual impact resulting from the proposed canopy and waterslide. The open nature of these structures ensures that the design of the proposal reduces the perceived bulk, and therefore minimises the visual appearance of the variation when viewed from adjoining properties.

- **Visual impact discussion upon land to the west:** Development to the west of the site comprises commercial development, light industrial, and a gymnasium. Land adjacent to the western boundary is proposed to be densely vegetated with native trees, mass planting, and the retention of existing mature trees. Accommodated within the 16m western side setback, the existing and proposed vegetation will soften the appearance of the waterslide and canopy structure when viewed from western adjoining properties, therefore reducing any visual impact resulting from the proposed variation.
- **Visual impact discussion upon land to the east:** Development to the east of the site comprises commercial development, including Mission Australia. Given the 82m proposed setback between the waterslide/canopy and the eastern boundary, in addition to the screening created by the single storey sheltered 25m pool and indoor swimming pool, it is expected that there will be limited visibility of the waterslide from eastern adjoining properties. On this basis, the visual impact from these properties is expected to be negligible.
- **Visual impact discussion upon land to the north (Gordon Street):** The siting of the proposed canopy is significantly setback from Gordon Street by approximately 62m. The view from the street will be largely occupied by the high-quality landscaping and grandstand, which is sited in the foreground of the proposed canopy and waterslide when viewed from Gordon Street. Proposed landscaping adjacent to the public domain will alleviate the potential impacts associated with the proposed variation. The retained trees and proposed landscaping adjacent to

the frontage will provide screening and create a visually appealing site frontage, thereby minimising the visual impact of the variation when viewed from the public domain.



Figure 8 Proposed Landscape Plan (Stage 2)

Source: Clouston Associates

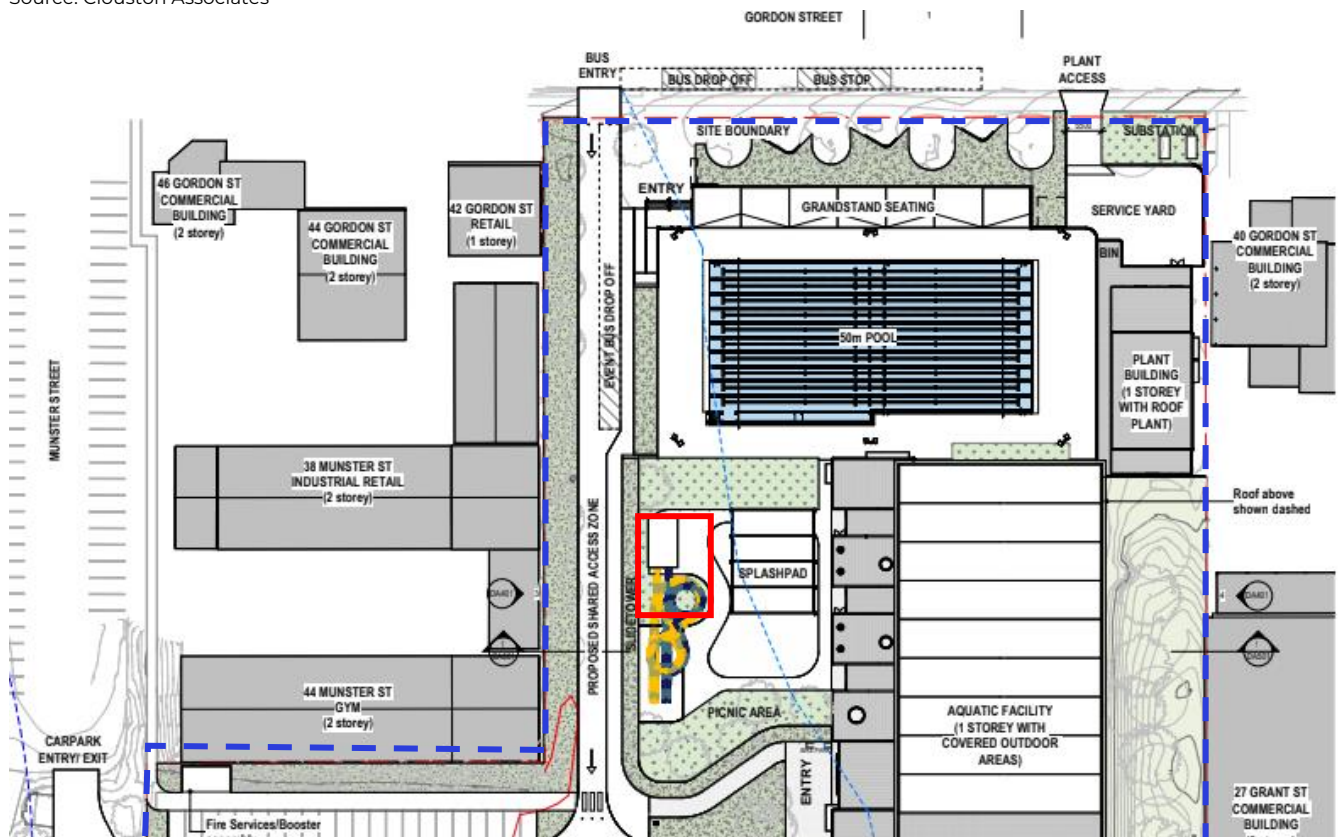


Figure 9 Waterslides position in relation to surrounding development (site boundary in dotted blue line, waterslide and canopy outlined in red)

Source: Co.Op Studio

Views

It is noted that the desired future character statements for other precincts within Port Macquarie East identify significant view corridors, foreshore and coastal views, and landscape views. However, the Civic Precinct desired future character statement, which applies to the site, does not raise views as a consideration for this precinct. On this basis, the proposed variation does not give rise to disruption of views from public vantage points.

In light of the existing low-rise residential and commercial development in the site's immediate context, the proposed variation will not disrupt views from private properties.

Privacy

The canopy and waterslide are non-habitable structures. In the context of the site's adjacent development which compromises low-rise commercial development to the east and west, the proposed variation does not give rise to privacy concerns. The closest residential properties are located greater than 100m from the platform associated with the waterslide, and therefore does not result in concerns for visual privacy.

Solar access

The shadow diagrams (**Figure 10**) distinguish between the shadows cast by a compliant building form, from the shadows cast by the non-compliant components of the canopy and waterslide. Overshadowing created by the non-compliance result in minor off-site impacts upon the buildings at 42 and 44 Munster between 9am and 9:50am at midwinter. As such, the proposal does not unreasonably overshadow the adjoining gymnasium and industrial development. The closest residential properties are located greater than 100m from the canopy and waterslide, and as such, there are no adverse solar access impacts to residential properties resulting from the variation.

After 9:50am at midwinter, the shadows cast by the variation fall completely within the subject site, across the driveway, waterslide, and recreational areas.

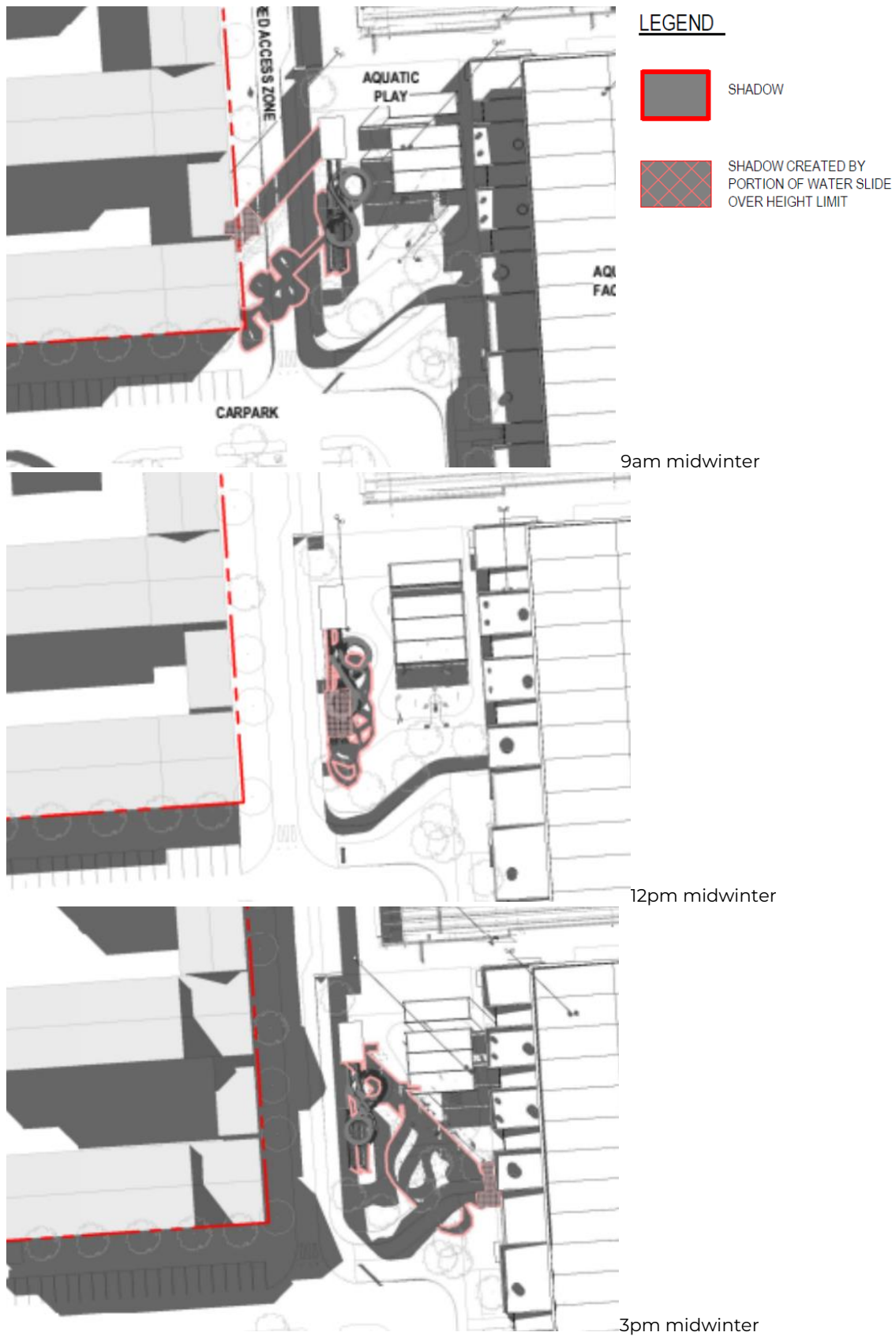


Figure 10 Shadow diagrams (shadows cast by non-compliant height distinguished in grey hatching)

Source: Co.Op Studio

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

The site does not contain any heritage items and is not located within a heritage conservation area. The site is not located within the immediate vicinity of any heritage items. Therefore, the proposed variation will not have an adverse impact upon heritage.

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

From the highest point of the waterslide and canopy at 16.1m, the waterslide rapidly depreciates in height, noting that the majority of the waterslide sits within the 11.5m height limit. The exceedance in building height results in a justifiable transition in the overall built form of the proposed development in the context of the intended use of the site for public recreation. Further, the siting of the proposed variation, which is associated with an ancillary structure to the recreation facility, allows for other buildings proposed across the site to facilitate a transition to the existing low-rise development in the site's immediate context.

The intended land use for the site is public recreation. The exceedance to the building height control accommodates an urban marker of the sites recreational land use. The waterslide positively contributes to the sites ability to be recognisable as the Civic Precinct as envisaged under the PMH DCP 2011, and provides an opportunity to be a key attraction for the PMAF. The proposed height exceedance is justifiable as it encourages the Port Macquarie community to utilise the diverse range of high-quality recreational facilities offered by the PMAF.

4.1.2 Conclusion of clause 4.6(3)(a)

The above section has demonstrated that compliance with the height of buildings development standard is unreasonable or unnecessary in the circumstances. The objectives of the height of buildings development standard, set out in clause 4.3, have been achieved by the proposed development notwithstanding the variation as:

- The siting of the proposed variation is well-distanced from the public domain, is unenclosed, and is surrounded by dense landscaping, which ensures that the perceived bulk and scale of the development is minimised.
- While the site is currently surrounded by low-rise development, land to the immediate north of Gordon Street is permitted with a building height of up to 19m. The proposed building height of 16.1m is therefore compatible with building heights envisaged in the locality under the existing planning framework. As such, the development is consistent with the desired future character of the locality.
- The site is located within Port Macquarie East which has been identified to evolve into a strongly identifiable civic centre. The waterslide is a functional design feature and is an urban marker of the sites recreational land use. As such, the development is consistent with the desired future character of the locality.
- The site is surrounded by a gymnasium, and commercial and industrial development to the east and west. As such the proposed height variation does not result in any unreasonable visual impacts, loss of privacy, disruption of views, nor adverse overshadowing impacts.

4.2 Sufficient environmental planning grounds to justify the contravention of the development standard

Clause 4.6(3)(b) of the PMH LEP 2011 requires the contravention of the development standard to be justified by demonstrating that there are sufficient environmental planning grounds to justify the contravention. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the document must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (*Initial Action* at [24]).

In *Four2Five*, the Court found that the environmental planning grounds advanced by the applicant in a clause 4.6 variation request must be particular to the circumstances of the proposed development on that site at [60]. In this instance, the relevant aspect of the development is the height exceedance of the canopy and waterslide in the exceedance of the development standard.

There are sufficient environmental planning grounds to justify contravention of the height of buildings development standard in this specific instance, as described below.

4.2.1 Improving public benefit

The proposal delivers a range of tangible public benefits including:

- The proposed height exceedance advances the recreational offering of the PMAF for the local community, and promotes a higher degree of social welfare to the community, in a manner which could not be achieved through a lower waterslide height.
- The increased height associated with the waterslide provides a design that would increase acceleration and create a more enjoyable experience for patrons. As such, the proposed variation enables a greater ability for patrons to pursue their recreational enjoyment. Enforcing strict compliance with the building height would reduce the amusement offering and would likely diminish the age demographic of patrons utilising this recreational feature.
- The height of the proposed waterslide is considered appropriate for the site's context in the RE1 Public Recreation Zone. The proposed building height improves the usability and functionality of the waterslide, catering to a wider age demographic, particularly the youth population.
- The canopy associated with the waterslide provides shading and sun protection to staff of the PMAF who are monitoring the waterslide and patrons who are in line to utilise the waterslide.

4.2.2 Good design and amenity of the built environment

The contravention to the building height standard is justified through good design and by minimising significant environmental impacts. Notably:

- The increased height associated with the waterslide and canopy facilitates an urban marker which reflects the recreational land use of the site. This is consistent with the desired future character of the Civic Precinct under the PMH DCP 2011, by allowing the civic centre to become “strongly identifiable.”
- As discussed through this written request, the environmental impacts associated with the variation have been minimised:
 - By adopting an unenclosed design which allows sightlines to penetrate through the canopy structure. The open nature of the canopy and waterslide platform minimises the perceived bulk and scale, thereby reducing the visual impact of the proposed variation.
 - By siting the proposed variation away from the public domain and adjoining properties by adopting a 62m setback from Gordon Street, 16m setback from the western boundary, and 82m setback from the eastern boundary. Coupled with landscaping, this is considered sufficient spatial separation to reduce the visual appearance of the proposed building height.
 - By appropriately siting the development. As established, the site is surrounded by commercial and industrial land uses. Off-site overshadowing impacts as a result of the variation are limited between 9am and 9:50am at midwinter. After this period, the shadows cast by the canopy and waterslide are wholly contained within the site.
 - The closest residential properties are located greater than 100m from the proposed variation. As a non-habitable structure, the proposed variation does not give rise to concerns for visual privacy.

4.2.3 Consistency with Objects of the EP&A Act

Table 2 *Assessment of consistency of the proposed development with the Objects of the EP&A Act*

Object	Comment
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources	The proposed waterslide has the potential to become a key attraction of the aquatic centre which is accessible to the broader public. The increased building height associated with the waterslide provides added benefit by appealing to a wider age demographic. As such, the proposed variation will promote the economic and social welfare of the community by providing greater opportunities for numerous recreation and leisure types at the new PMAF.
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment	The proposed waterslide and canopy structure will promote the viability and vitality of the PMAF by providing a high quality public recreational feature which will be a key attraction to the PMAF. The canopy provides suitable sun shading for staff and patrons of the aquatic centre.

Object	Comment
	The proposed waterslide has been considered in the broader ESD Assessment, prepared by Introba, which accompanies the DA.
(c) to promote the orderly and economic use and development of land	The proposed variation facilitates an ancillary recreational feature to a broader aquatic facility. This promotes the orderly and economic use and development of the land as it allows the development to encompass a range of recreation facilities, which improves utilisation of the land intended for public recreation.
(d) to promote the delivery and maintenance of affordable housing	N/A.
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats	The proposal will not have any impact on threatened species or ecological communities, including the biodiversity values of the Wrights Creek riparian corridor.
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage)	No items or areas of built or cultural heritage will be negatively impacted by the proposal.
(g) to promote good design and amenity of the built environment	Consistency with this object is discussed under Section 4.2.2.
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants	The proposed development, inclusive of the variation, can comply with the requirements of the PMH DCP 2011 and the PMH LEP 2011 and promote the health and safety of occupants.
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State	This object is not relevant to this proposal, however, the proposal has adhered to the required planning processes for the site and scale of development.
(j) to provide increased opportunity for community participation in environmental planning and assessment	The proposed development will be publicly exhibited in accordance with the requirements of Council's Community Participation Plan.

5.0 Conclusion

The assessment above demonstrates that compliance with the building height development standard contained in clause 4.3 of the *Port Macquarie Hastings Local Environmental Plan 2011* is unreasonable and unnecessary in the circumstances and there are sufficient environmental planning grounds to justify the contravention of the development standard. The extent of the building height variation relates to the proposed canopy and the waterslide.

This Clause 4.6 Variation Request demonstrates that, notwithstanding the non-compliance with the height development standard:

- The proposed development achieves the objectives of clause 4.3 of the PMH LEP 2011:
 - Due to the ancillary nature of the canopy and waterslide which are well-setback from the public domain, the proposed building height remains compatible with the height, bulk and scale of the existing and desired future character of the locality.
 - With regard to the unenclosed design of the canopy and waterslide, and commercial/industrial land uses which surround the site, the proposed variation results in minimal environmental impact with regard to visual impact, views, privacy and solar access to existing development.
 - The exceedance in building height results in a justifiable transition in the overall built form of the proposed development, noting that the waterslide rapidly depreciates in height and is predominately contained within the 11.5m height limit.
- The proposed development demonstrates that there are sufficient environmental planning grounds to vary the control in this instance because:
 - The variation delivers a clear public benefit to the Port Macquarie community by contributing to the recreational functions of the PMAF in a manner that cannot be achieved by a compliant waterslide.
 - The proposed canopy and waterslide exhibit good amenity by minimising environmental impacts.
 - The waterslide is reflective of the intended use of the Civic Precinct and improves the sites' ability to contribute to Port Macquarie East becoming a strongly identifiable civic centre.

Therefore, the consent authority can be satisfied that there is sufficient grounds for the variation to the building height development standard as proposed in accordance with the flexibility allowed under clause 4.6 of the PMH LEP 2011.