

APPENDIX 5

Clause 4.6 Variation – Building Height





Clause 4.6 Variation Statement – Height of Buildings (Clause 4.3)

1. INTRODUCTION AND BACKGROUND

This Variation Statement has been prepared in accordance with Clause 4.6 of Wollongong Local Environmental Plan 2009 (WLEP) to accompany the Environmental Impact Statement (EIS) for the State Significant Development Application (SSD). The SSD seeks consent for lot consolidation, demolition of five dwellings, excavation, construction of a new twelve (12) storey western wing to the existing hospital, extension of the existing basement levels and an additional three (3) basement levels for parking and a new radiation oncology, and retention of two existing buildings, including the existing heritage item on the site, to be leased to the Illawarra Aboriginal Medical Service (IAMS) for medical use at No. 15, 17, 19, 21 and 23 Urunga Parade and 360-364, 366 and 368 Crown Street, Wollongong ('the site').

Existing on the site is the Wollongong Private Hospital at No. 360-364 Crown Street which measures 4,986m². The existing hospital contains eight (8) levels utilised for a range of health services offered by the hospital above three (3) basement parking levels. The existing development on the site extends above the 32m building height limit by a maximum of 4.5m, reaching a maximum building height of 36.5m and an existing numerical variation of 14%. The proposal will not change the height of the existing building, however, seeks to provide a new western wing to provide additional health services and medical accommodation to support the existing hospital and address the demand for additional health support in the locality. That addition exceeds the height limit.

2. PROPOSED VARIATION

Clause 4.3 of WLEP 2009 prescribes the maximum building height for the site and refers to the *Height of Buildings Map*. Building height is defined as:

'...building height (or height of building) means—

(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or

(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to 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 relevant maps indicate that the maximum building height permitted at the subject site is 32m.

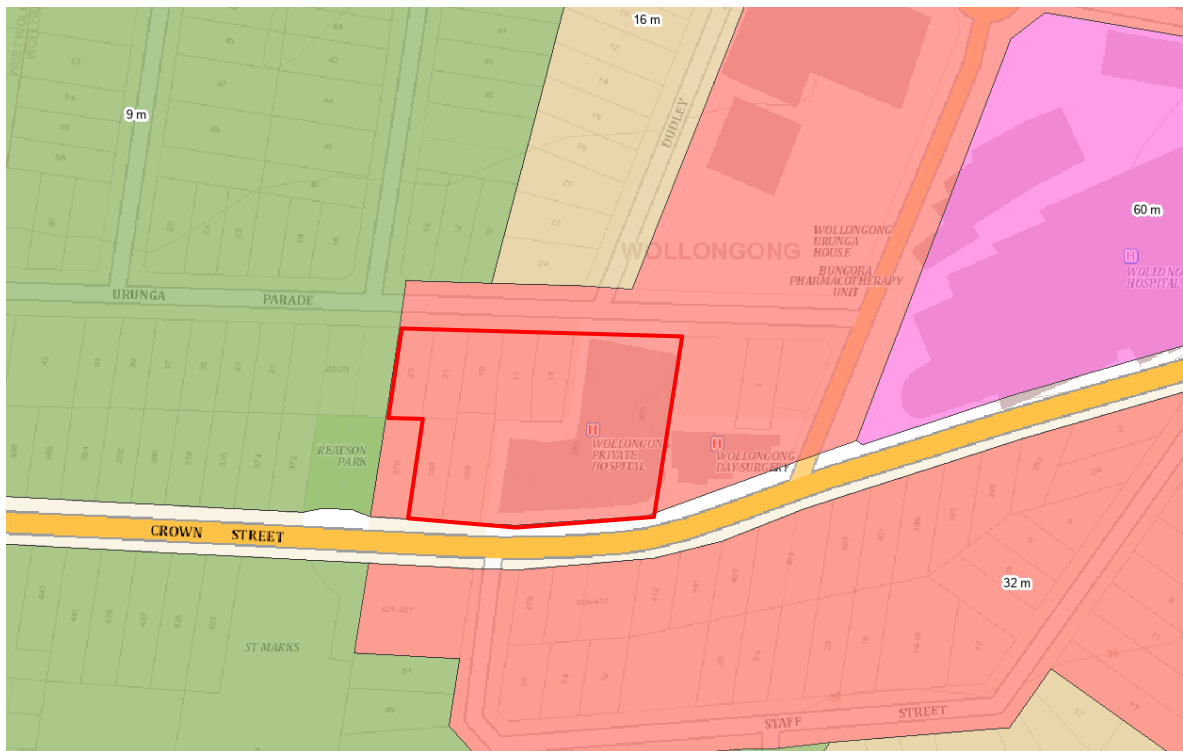


Figure 1 Extract from Height of Buildings Map (Source: NSW Planning Portal).

The maximum height control is a “development standard” to which exceptions can be granted pursuant to clause 4.6 of the LEP.

3. PROPOSED VARIATION TO HEIGHT OF BUILDINGS DEVELOPMENT STANDARD

The proposed development has a maximum height of 48.8m to the parapet and 51.2m to the roof plant and is therefore non-compliant. The non-compliance is a maximum of 19.2m or 60% to the roof plant above the new expansion at the north western corner of the building, being above the lowest point of the site. Due to the topography of the site, the proposal contains varied non-compliant heights as measured from the existing ground or floor levels, as follows:

- 45m to the building parapet at the south eastern corner of the new western wing expansion (Point A);
- 46.3m to the plant room at the south eastern corner of the new western wing expansion (Point AA);
- 45.4m to the building parapet at the south western corner of the new western wing expansion (Point B);
- 47.6m to the plant room at the south western corner of the new western wing expansion (Point BB);
- 48.8m to the building parapet at the north western corner of the new western wing expansion (Point C);
- 51.2m to the plant room at the north western corner of the new western wing expansion (Point CC);
- 46.6m to the building parapet at the north eastern corner of the new western wing expansion (Point D); and
- 48.8m to the plant room at the north eastern corner of the western wing expansion (Point DD).

The abovementioned points are shown in the height blanket analysis provided within the Architectural Plans prepared by CM+ and HPI (Annexure 8), and in the plan extracts at **Figure 2** to **5** below.

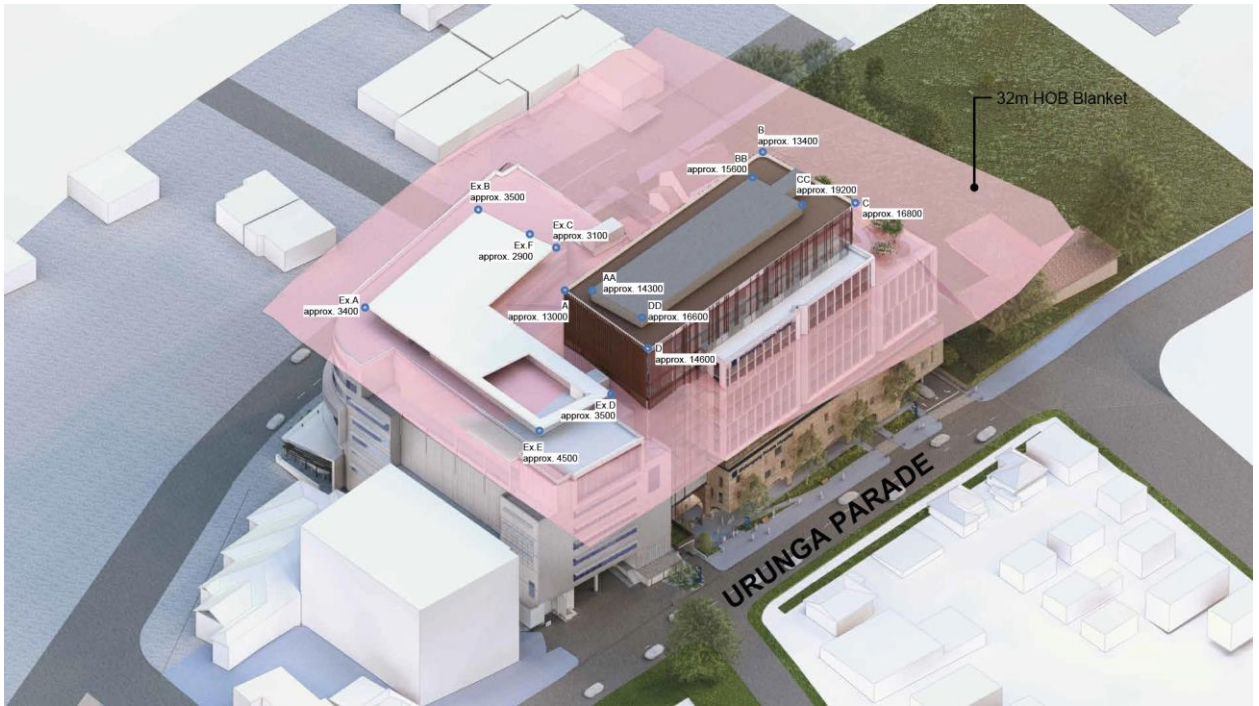


Figure 2 Height of Blanket Axonometric View – North East.

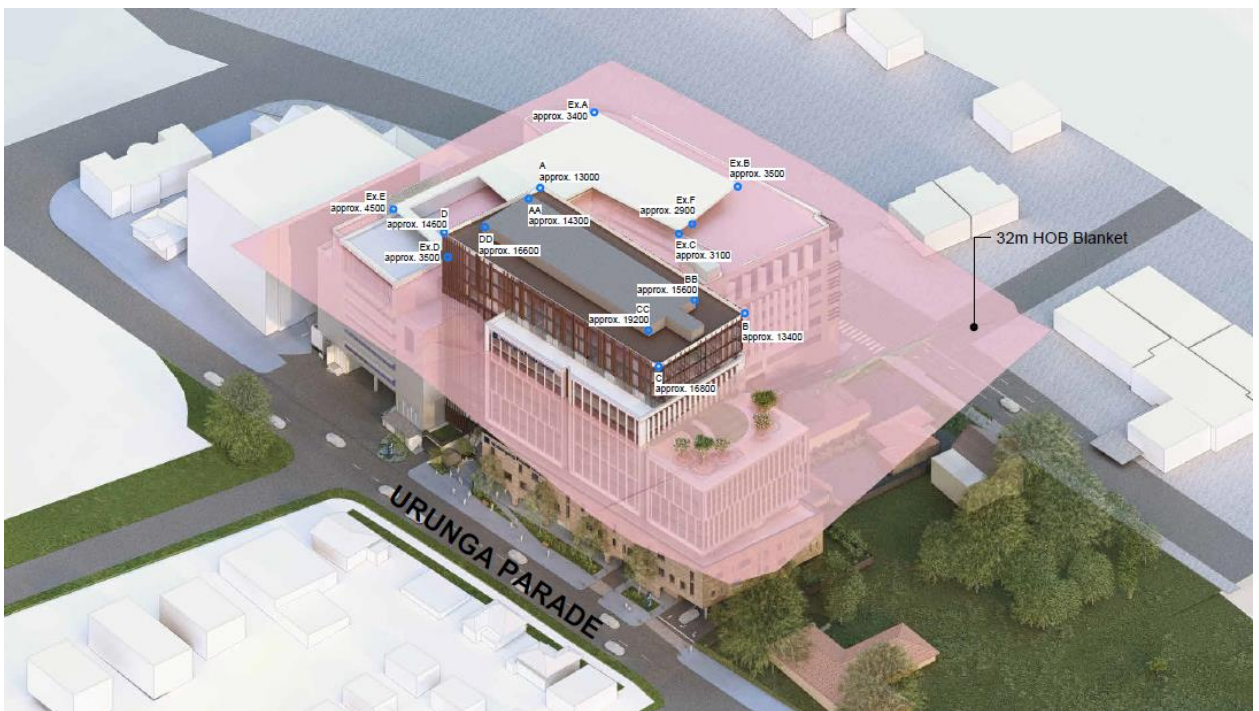


Figure 3 Height of Blanket Axonometric View – North West.



Figure 4 Height of Blanket Axonometric View – South West.

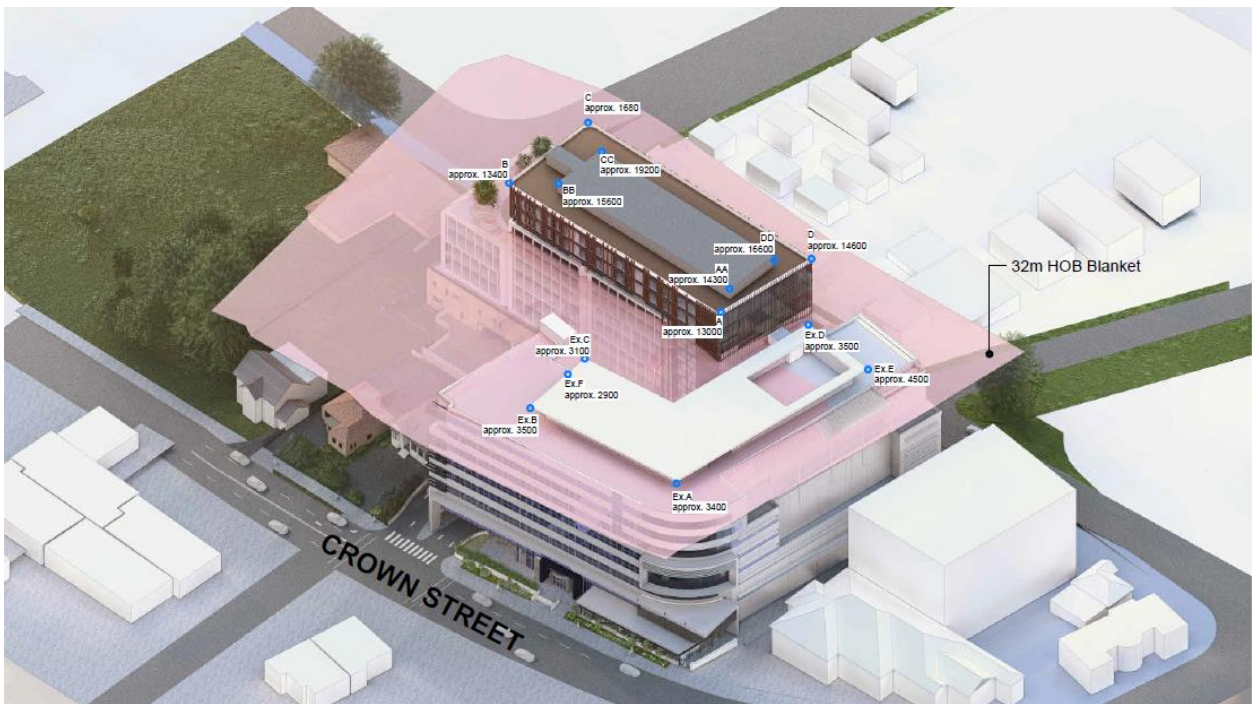


Figure 5 Height of Blanket Axonometric View – South East.

Furthermore, the proposal will involve alterations and additions to the existing hospital building which currently contains an existing maximum height non-compliance of 4.5m to the parapet.

4. OBJECTIVES AND PROVISIONS OF CLAUSE 4.6

The objectives and provisions of Clause 4.6 are as follows:

(1) *The objectives of this clause are as follows—*

(a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*

(b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

(3) *Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—*

(a) *compliance with the development standard is unreasonable or unnecessary in the circumstances, and*

(b) *there are sufficient environmental planning grounds to justify the contravention of the development standard.*

Note—

The Environmental Planning and Assessment Regulation 2021 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 paragraphs (a) and (b).

(4) *The consent authority must keep a record of its assessment carried out under subclause (3).*

(5) *(Repealed)*

(6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—*

(a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*

(b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

(7) *(Repealed)*

(8) *This clause does not allow development consent to be granted for development that would contravene any of the following—*

(a) *a development standard for complying development,*

(b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*

(c) *clause 5.4,*

(caa) *clause 5.5,*

(ca) clause 4.2A or 8.3.

(8A) (Repealed)

The development standards in Clause 4.3 are not “expressly excluded” from the operation of Clause 4.6.

Objective 1(a) of Clause 4.6 is satisfied by the discretion granted to a consent authority by virtue of Subclause 4.6(2) and the limitations to that discretion contained in subclauses (3) to (8). This submission will address the requirements of Subclauses 4.6(3) in order to demonstrate to the consent authority that the exception sought is consistent with the exercise of “an appropriate degree of flexibility” in applying the development standard and is therefore consistent with objective 1(a). In this regard, the extent of the discretion afforded by Subclause 4.6(2) is not numerically limited, in contrast with the development standards referred to in, Subclause 4.6(6).

It is hereby requested that a variation to this development standard be granted pursuant to Clause 4.6 so as to permit a maximum building height of 51.2m which equates to a numerical variation of 19.2m and a percentage variation of 60%.

5. THAT COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE (CLAUSE 4.6(3)(a))

Compliance with the maximum building height development standard is considered to be unreasonable and unnecessary as the objectives of that standard are achieved, despite the variation, for the reasons set out in this request. For the same reasons, the objection is considered to be well-founded as per the first of the five ways established by Preston CJ in *Wehbe V Pittwater Council* (2007) NSW LEC 827.

The objectives and relevant provisions of Clause 4.3 of WLEP are as follows:

(1) *The objectives of this clause are as follows—*

(a) *to establish the maximum height limit in which buildings can be designed and floor space can be achieved,*

(b) *to permit building heights that encourage high quality urban form,*

(c) *to ensure buildings and public areas continue to have views of the sky and receive exposure to sunlight.*

In order to address the requirements of Subclause 4.6(3)(a), the objectives of Clause 4.3 are addressed in turn below.

(a) to establish the maximum height limit in which buildings can be designed and floor space can be achieved,

Objective (a) is explanatory of the central purpose of the building height development standard, to establish a maximum height for land in the local area. By fixing different height standards for buildings on land in different areas by means of the Building Height Map, the clause does establish the maximum building height. The establishment of a maximum height limit is not the end to be achieved by the clause, rather it is a means to achieve the goals identified in objectives (b) and (c).

This objective does not contemplate variation to the building height limit but rather reiterates the control itself, and therefore to satisfy this objective would essentially contradict the intention of Clause 4.6 which allows for variation to the maximum height limit.

If the objective were to be construed as an end in itself, and it should not be, the proposed building height is considered to set an appropriate maximum building height for the site when considering the 60m height limit permitted just north for the Wollongong Public Hospital, with the existing hospital reaching 10 storeys in height. Furthermore, recently approved development at No. 411-417 Crown Street will sit at 7 storeys in height. Therefore, the existing and approved



context of the surrounding locality is relatively high density, as envisaged by the strategic vision for the health precinct, and the proposed building height responds to this.

As detailed in the Draft Wollongong Health Precinct Strategy, like the Private Hospital, the Wollongong Public Hospital is marked for expansion and greater density, and therefore it is likely that the built form will be increased in height to, at the very minimum, achieve the 60m control. When considering the height limit of the Public Hospital and the strategic vision for the precinct to expand the precinct, from a contextual and built environment standpoint, it would be illogical and unreasonable to restrict the height of the Private Hospital to almost half of what is permitted just north at the Public Hospital site.

The transitional context of the site is also important to consider in establishing a maximum height limit for development on the site. The Wollongong DCP 2009 identifies the health precinct as part of the outer area of the city centre and encourages new development to be of a transitional scale between the high rise buildings at the railway station to medium rise buildings within the precinct. When considering the height of development within the CBD reaches up to 120m in height, a building height of 51.2m proposed on the subject site represents a reasonable step down in scale. The proposed built form whilst reaching 12 storeys in height will step down to 7 storeys at the interface with the adjoining R2 zone, whilst also retaining the single storey buildings at No. 366 and 368 Crown Street to further mitigate the visual bulk of the proposed built form. This proposed transition is enhanced through the significant and detailed articulation of the built form at this interface as shown in **Figure 6** below. Ultimately, the proposed building height provides a suitable density of development that respects surrounding properties whilst also maximising floor space for medical services and support, in a location specifically zoned for just that.

It must also be acknowledged that there is an existing height non-compliance on the site and therefore the height limit under the LEP has previously been varied to establish a greater maximum height limit on this site.





Figure 6 Proposed 3D Perspective viewed of the southern elevation of the site.

(b) to permit building heights that encourage high quality urban form,

The proposed breach of the building height limit seeks to provide the best urban design outcome for the site. Indeed, the proposal has been designed to re-distribute the bulk and scale of the development away from the heritage item on the site and to retain that item. The position and scale of the heritage house presents an opportunity to re-align the site composition and deliver a sympathetic form adjacent to the heritage item, shifting mass towards the existing hospital building. Equally, that part of the site is constrained from providing additional building form due to its heritage listing. The positioning of built form mass enables a degree of transition, stepping down in scale towards the adjacent detached dwellings.

To achieve the highest quality urban form (i.e. urban being characteristic of city form) for the site and locality, the proposal relocates the potential compliant height mass from Nos. 366 and 368 Crown Street to the western wing expansion to create a sympathetic lower built form next to the conserved heritage house, which creates opportunity to maximise landscaping within the middle of the site. Ultimately, re-distributing the building bulk, despite breaching the building height limit along Urunga Parade, is an intentional design response to limit the height at No. 366 and 368 Crown Street to create a positive transition to the adjoining zone and a landscaped curtilage to the heritage item. The form established by the area of breach is modelled to deliver a high-quality urban form.

The proposal ensures a high quality built form which capitalises on the sites opportunities to expand the hospital in a way that recognises the transitional context of the site at the same time as delivering density which is considered to be characteristic of a strategic health node. In balancing the demand for additional medical floor space and the urban conditions of the site, the design modulates the built form at several scales to facilitate transition and allow for built form that reinforces the existing context of the precinct, but to appropriately transition at the edge of that established precinct.



The proposal reduces building footprint through redistribution of height and enables retention of a heritage item. The proposed massing is modulated in a way that breaks down the visual bulk and scale to present a high quality urban form.

Overall, the proposal is considered to directly satisfy objective (b) since the proposed variation facilitates a high quality urban form.

(c) to ensure buildings and public areas continue to have views of the sky and receive exposure to sunlight.

The proposed development has been purposefully designed to protect the solar gain of the residential properties to the west and south of the subject site, specifically, No. 29 Urunga Parade and No. 370 Crown Street, and those residential properties along the southern side of Crown Street. Despite the variations, the proposal has been designed to locate the proposed expansion, inclusive of the proposed variations, as far north on the site as possible to ensure that the majority of shadowing cast by the height non-compliant elements falls over the subject site itself and not the adjoining sites or public areas. It is however noted that due to the north-south orientation of the site, overshadowing of properties to the south is unavoidable and not a result of the height variations proposed.

Shadow diagrams for the proposal are included in the Architectural Plans prepared by CM+ and HPI at Annexure 8 and are provided at **Figure 7** overpage.



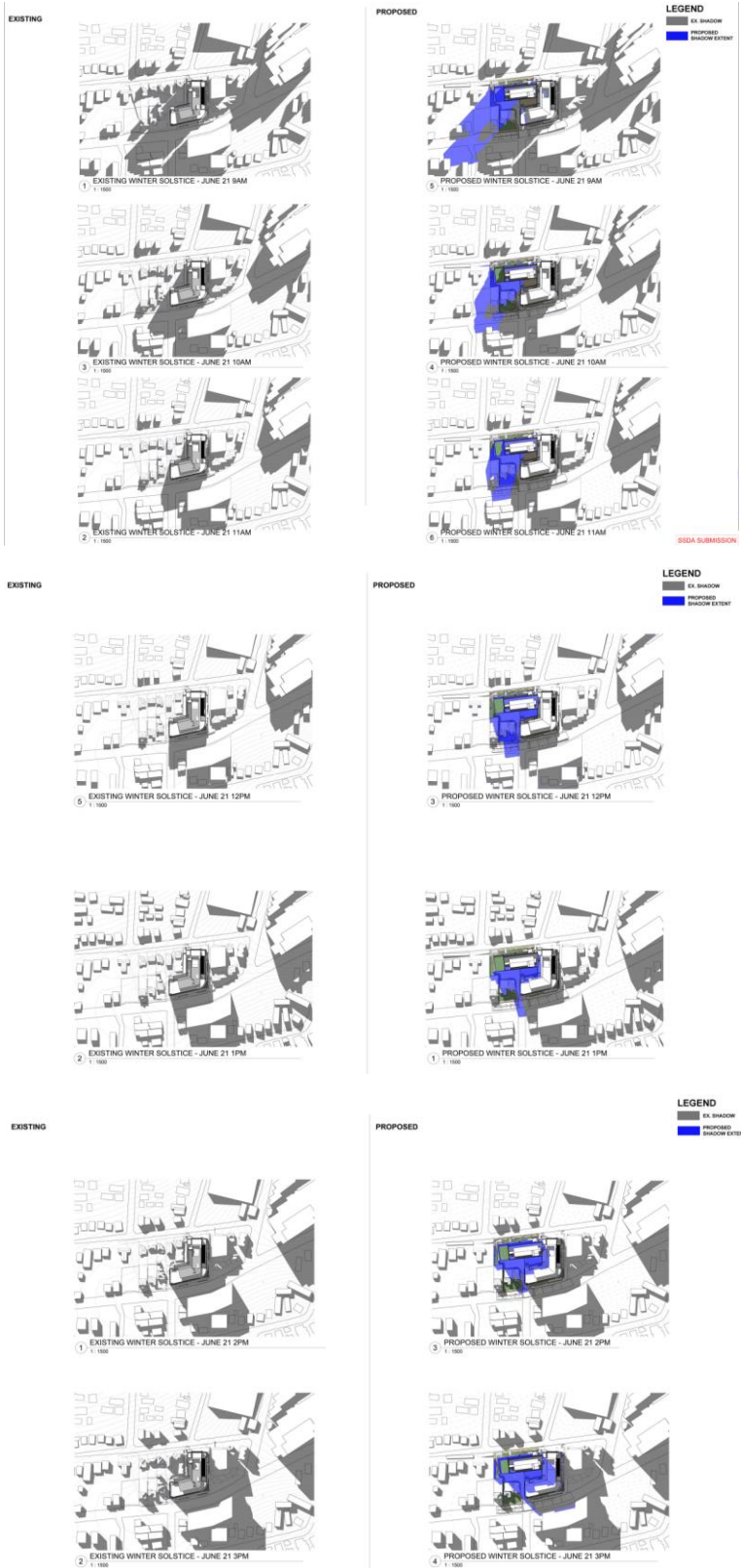




Figure 7 Existing vs proposed shadow diagrams at winter solstice.



Where the proposal increases the amount of overshadowing cast over a residential property, the property will still receive an adequate amount of direct sunlight year round, as shown in the submitted shadow diagrams for the winter solstice, equinox and summer solstice. Indeed, during the equinox and summer solstice the proposal will have negligible, if any, shadowing impacts on any residential properties with the extent of shadow cast predominantly over the subject site and the Wollongong Day Surgery. Furthermore, during these times Beatson Park will receive uninterrupted solar access from 11am until 3pm.

During the winter solstice, or mid-winter, the proposal will result in minor additional overshadowing to the surrounding properties, predominantly at 9am and 3pm. At 9am, the proposal will overshadow the residential properties at No. 29 Urunga Parade and No. 374 Crown Street, as well as No. 433 Crown Street to the south. Whilst these properties will be impacted at 9am, they will receive ample exposure to sunlight for the remainder of the winter solstice from 11am. The proposal will also overshadow the adjoining property at No. 370 Crown Street from 9am until 11am during mid-winter. The use of this building is unclear as it currently appears vacant, however the site is zoned SP1 for hospital use, and therefore, it is likely that the site will be utilised for a medical purpose rather than for residential. Nevertheless, No. 370 Crown Street will receive good sunlight access from 1pm. Other properties overshadowed by the proposal at 9am are non-residential including the general practitioner at No. 372 Crown Street, the café at No. 433 Crown Street and the group of commercial properties including the Ampol service station at Nos. 421-427 Crown Street. Whilst solar access for these properties is not critical, they will receive exposure to direct sunlight from 11am during the winter solstice. At 9am, the proposal will also cast a shadow over Beatson Park, being a public area, however, from 11am the park will continue to have views to the sky and have uninterrupted solar access for the remainder of the winter solstice.

At 11am and 1pm, overshadowing will fall over Crown Street and the non-residential properties along Crown Street only. Importantly, the properties affected by the proposal include a general practitioners office, an anaesthetic specialist, an obstetrician-gynaecologist and a vacant site that is subject to an approval for a six (6) storey health services facility building. As such, given the nature of the land uses, the extent of shadowing is not considered to have an adverse amenity impact on the users of the buildings and is considered to be a reasonable outcome for development in the SP1 zone.

By 3pm, the bulk of overshadowing caused by the proposal falls over those non-residential properties along Crown Street only and the extent of shadowing is not entirely different from the shadows cast by the existing development. As such, the height variation will not result in any significant or detrimental solar access implications at this time.

As demonstrated on the submitted Architectural Plans, the extent of non-compliance created by the proposal will not have any significant solar access implications, noting that the locality is zoned for SP1 and is predominantly non-residential in nature. Furthermore, the design and siting of the expansion have ensured that overshadowing is localised to predominantly fall within the site itself. That is, the design measures implemented ensure that the solar gain of neighbouring properties will not be adversely impacted despite the additional variations. Each property as listed above will not be adversely impacted by the proposal, when compared to a compliant envelope.

Overall, given the siting and location of the existing building, north-south orientation and steep topographical incline, it is reasonably anticipated that unavoidable overshadowing will occur to the neighbouring buildings. Notwithstanding and as discussed above, despite non-compliance, the proposal will ensure that adequate levels of solar access will be provided to the neighbouring properties. It is also noted that the proposal will not result in any adverse impact to the solar gain of the public domain. Indeed, Beatson Park will only be overshadowed at 9am during the winter solstice.

As such and despite non-compliance, the proposal will satisfy objective (c).

On this basis, the requirements of Clause 4.6(3)(a) are satisfied.

6. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS (CLAUSE 4.6(3)(b))



Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard, the following planning grounds are submitted to justify contravening the maximum building height:

1. The height variation is a product of the distribution of floor space away from the heritage item

- a. The proposed breach of the building height limit seeks to provide the best urban design outcome for the site. Indeed, the proposal has been designed to re-distribute the bulk and scale of the development away from the heritage item on the site. Additionally that part of the site is constrained from accommodating additional development to meet the health services needs. The position and scale of the heritage house presents an opportunity to re-align the site composition and deliver a sympathetic form adjacent to the heritage item, shifting mass towards the existing hospital. Positioning built form mass on the proposed hospital extension enables a degree of transition, stepping down in scale towards the adjacent detached dwellings.
- b. To achieve the most superior built form for the site and locality, the proposal relocates the potential compliant height mass from Nos. 366 and 368 Crown Street to the western wing expansion to create a sympathetic lower built form next to the conserved heritage house, which creates opportunity to maximise landscaping within the middle of the site. Ultimately, re-transitioning the building bulk, despite breaching the building height limit along Urunga Parade, is an intentional design response to limit the height at No. 366 and 368 Crown Street to create a positive transition to the adjoining zone and a landscaped curtilage to the heritage item.
- c. The proposal ensures a high quality built form which capitalises on the sites opportunities to expand the hospital in a way that recognises the transitional context of the site. In balancing the demand for additional medical floor space and the urban conditions of the site, the design modulates the built form at several scales to facilitate transition and allow scaling of the built form to reinforce the identity of the precinct.

2. The building height responds to the transitional context of the site

- a. Further to the above, the transitional context of the site is also important to consider in determining an acceptable building height for development on the site. The Wollongong DCP 2009 identifies the health precinct as part of the outer area of the city centre and encourages new development to be of a transitional scale between the high rise buildings at the railway station to medium rise buildings within the precinct. When considering the height of development within the CBD reaches up to 120m in height, a building height of 51.2m proposed on the subject site represents a reasonable step down in scale. The proposed built form whilst reaching 12 storeys in height will step down to 7 storeys at the interface with the adjoining R2 zone, whilst also retaining the single storey buildings at No. 366 and 368 Crown Street to further mitigate the visual bulk of the proposed built form. This proposed transition is enhanced through the significant and detailed articulation of the built form at this interface as shown in **Figure 6** above. Ultimately, the proposed building height provides a suitable density of development that respects surrounding properties



whilst also maximising floor space for medical services and support, in a location specifically zoned for just that.

3. The building height responds to the existing and emerging scale of development within the health precinct



- a. The proposed building height is considered to provide an appropriate maximum building height for the site when considering the 60m height limit permitted just north for the Wollongong Public Hospital, with the existing hospital reaching 10 storeys in height. Furthermore, recently approved development at No. 411-417 Crown Street will sit at 7 storeys in height. Therefore, the existing and approved context of the surrounding locality is relatively high density, as envisaged by the strategic vision for the health precinct, and the proposed building height responds to this.
- b. When considering the height limit of the Public Hospital and the strategic vision for the expansion of the precinct, it would be illogical and unreasonable to restrict the height of the Private Hospital to almost half of what is permitted just north at the Public Hospital site.

4. The building height aligns with the strategic vision for the health precinct

- a. As described in detail within the EIS prepared by Planning Ingenuity, the proposed height and scale of development is proposed in response to the strategic planning that has been undertaken for the site and broader region which identify a significant need for additional healthcare and services across NSW.
- b. The NSW Future Health Plan identifies that by 2061 that there will be 11.5 million people living in NSW, which is 3.3 million more than in 2020. Based on these projections, NSW Health advises that activity within the health system will nearly double by 2031 as a result of:
 - Rising demand at a rate beyond that attributed to population growth;
 - Changing demographics with the population of over 65s accounting for 45% of health activity; and
 - Growing complexity of chronic conditions.

Overall, the NSW Future Health Plan makes evident the increasing demand for health services based on the growing population; a demand in which the additional building height proposed under SSDA 84096206 directly responds to this through the expansion of healthcare floor space within a site already established for such.

- c. The Illawarra Shoalhaven Regional Plan 2041 identifies a need to enhance the growth potential of the Wollongong Health Precinct, identifying the Wollongong Public and Private Hospitals as the anchors to the precinct. The plan emphasises the need to transform the precinct from a collection of health and medical related uses into a nationally significant health precinct. The proposal aligns directly with this aim through the proposed expansion and capacity increase of the private hospital to better support the prosperity of the city and attract private sector investment and business. Importantly, the site has already been established for hospital use, and the



proposed expansion seeks to capitalise on this and respond to the clear strategic vision to expand the health services provided within the precinct. The proposed height allows for the provision of additional floor space to provide state-of-the-art medical services and facilities which can support cutting-edge medical treatments that are at the forefront of healthcare.



- d. The proposed building height aligns with the strategic planning for the Wollongong Health Precinct which envisages expansion of the existing precinct to meet the growing needs of the Illawarra Shoalhaven region with regard to a rising demand for health services but at a rate beyond that attributed to population growth. The Draft Wollongong Health Precinct Strategy has been prepared to encourage expansion of the precinct to accommodate the growing population of the region and specifically marks land within and around the Wollongong Private Hospital for such expansion. The proposal directly responds to the strategy in that it provides for the expansion of medical floor space on the site to increase the capacity of the hospital and diversity of the services it provides.

5. The building height addresses an existing shortfall/demand for health care services

- a. The Economic Impact Statement prepared by Macroplan at Annexure 37, identifies a gap analysis when considering the existing and approved health care supply indicating that there is an estimated shortage of over 110 private hospital beds as of 2021. Moving forward, as the study area's resident population continues to grow steadily, it is estimated that the shortage of private hospital beds within the study area will increase to 165 beds by 2026, then further to 227 by 2031, 285 by 2036 and 344 by 2041.
- b. The proposed expansion will create capacity to deliver an additional 90-100 hospital beds within the Wollongong Private Hospital following completion. This is anticipated to make a significant contribution to addressing the current and future private hospital bed undersupply within the region in the foreseeable future. This contribution could not be realised without the proposed building height which allows for additional medical floor space to be provided on the existing hospital site.



6. The subject site is the most suitable for the provision of additional medical floor space

- a. The subject is the most suitable location for the increase in private health services and facilities since it is the location of the existing Wollongong Private Hospital. Importantly, the site is specifically zoned SP1 – Special Activities for a hospital and is located within the Wollongong Health Precinct. The ability to expand within the existing precinct will provide synergies for medical services. There is no alternative site within the locality to contribute to meeting the demand for additional health services as a result of the growing and ageing population. Indeed, the vision for the Wollongong Health Precinct is to co-locate health services to ensure support and mutual reliance to enhance the overall medical offering and support for the district.

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- b. Whilst the proposal could achieve height compliance by reducing the amount of medical floorspace provided on the site, this would have a disproportionate outcome for the development potential of the site and the needs of the community. Indeed, if the proposal did not provide the necessary medical floor space, the demand would still need to be met elsewhere within the LGA, on a site that is not capable of hospital scale development.
 - c. Other reasons for the suitability of the subject site to accommodate the additional medical floor space and the subsequent height variation are:
 - i. From an economic and social standpoint, it is typically (and in this case) more beneficial to upgrade an existing hospital rather than develop a new hospital at a separate location;
 - ii. The site has favourable land use zoning, compatible neighbouring uses, is of a large size, benefits from existing building assets, availability of utilities and connections and is located within an accessible area;
 - iii. The site is suitably located with respect to sensitive land uses, including residential development;
 - iv. All potential environmental impacts of the proposal can be suitably mitigated within the site;
 - v. The proximity to the regional road network provides efficient connection to the broader regional area and Sydney;
 - vi. The proposal will be supported by a readily available pool of staff and skills for both the construction and operational phases;
 - vii. Suitable land size and available infrastructure and utilities to cater for the proposed development and operation;
 - viii. The proposal does not adversely affect any area of heritage, ecological or archaeological significance; and
 - ix. The proposal can be developed with appropriate visual amenity achieved given its surrounding context.

7. The building height allows for medical accommodation

- a. The proposed building height non-compliance primarily relates to the upper storeys of the new expansion which provide medical accommodation. The provision of medical accommodation is considered to have a significant benefit for the locality as it addresses a gap in the current healthcare system serving the Illawarra Shoalhaven region. From a review of the surrounding land uses there are limited opportunities within the immediate locality for accommodation within close proximity to the Wollongong Private Hospital. The provision of accommodation onsite supports the needs of the community, particularly when considering the characterisation of NSW as an ageing population.
- b. Indeed, Australia's population is ageing and since 2011 there has been a notable increase in both the number and the proportion of the total population aged 65 or older. The percentage of





Australians aged 65+ has increased from 8% in 1970 to 17% in 2024 and will increase to 25% by 2071. This trend can also be seen in the Illawarra Shoalhaven Local Health District, which is expected to have its residents aged 55 and older grow by 48,600 (average annual growth of 1.5%) between 2021 and 2041. The 2022 National Health Survey shows that the proportion of Australians living with chronic illness is heavily skewed to the older age cohorts, with common conditions including arthritis, hypertension, deafness, back problems, high cholesterol, heart stroke and vascular disease, and diabetes. 'Falls' are also major contributors to hospitalisations and deaths for the 65+ age cohorts and have been on an upward curve over the observed time period. Elderly people generally require greater use of health services compared to younger people, and as such, demand is expected to increase with the ageing population.

- c. The provision of medical accommodation onsite would allow for those patients, particularly those who are older and aren't quite ready to transition back to their own households, to be supported onsite with easy access to health services in the event that they require immediate medical support. Notably, it is not uncommon for elderly patients to relapse soon after they become ill and therefore medical accommodation would go a long way to support the needs of the ageing population.
- d. Furthermore, the proposed inclusion of medical accommodation supports the expansion of the Wollongong Health Precinct as a hub for medical innovation, education and support by diversifying the nature of health services and support provided. It is this type of development which can assist with transforming the health precinct into one that is of national significance.

8. There will be an absence of adverse environmental impacts on the surrounding locality resulting from the height variation

- a. The proposed development has been designed to facilitate the additional height, bulk and scale in a way that minimises environmental impacts on the surrounding locality, particularly those impacts directly resulting from the height variation. It is considered that there is an absence of any significant material impacts attributed to the breach on the amenity or the environmental values of surrounding properties, the amenity of future building occupants and on the character of the locality. Specifically:
 - i. The extent of the additional height creates acceptable overshadowing impacts to adjoining properties when compared to a compliant building envelope. That is, despite the additional shadow cast by the new non-compliant form, the overshadowing falls predominantly within the subject site itself as a result of the design and siting of the variations as far north on the site as possible. As discussed above and demonstrated on the submitted Architectural Plans, the extent of non-compliance created by the proposal will not have any significant solar access implications, noting that the locality is zoned for SP1 and is predominantly non-residential in nature. Furthermore, given the siting and location of the existing building, north-south orientation and steep topographical incline, it is reasonably anticipated that unavoidable overshadowing will occur to the neighbouring buildings. Notwithstanding and as discussed above, despite non-compliance, the proposal will ensure that adequate



levels of solar access will be provided to the neighbouring properties, and that a similar level of direct sunlight is maintained when compared to a compliant envelope. It is also noted that the proposal will not result in any adverse impact to the solar gain of the public domain. Indeed, Beatson Park will only be overshadowed at 9am during the winter solstice and this cannot be wholly attributed to the non-compliant form. As such, additional overshadowing caused by the non-compliant elements is considered to be insignificant; and

- ii. The height breach does not result in any adverse additional privacy impacts. The levels above the building height limit relate to studios within the medical accommodation which are setback over 24m from the western side boundary which adjoins the R2 zone. Whilst not technically applicable to this type of land use, the ADG would only require a 12m setback for habitable rooms and private open spaces above 9 storeys in order to ensure visual privacy is achieved. The proposed studios are setback more than double the requirement under the ADG and therefore are not considered to create any adverse privacy impacts on the adjacent properties as a result of the building separation afforded by the built form design and siting. As such any additional loss of privacy caused by the non-compliant built form would be insignificant; and
- iii. The height of building breach does not result in adverse view loss when compared to a compliant development. When considering the extent of view sharing, it is noted that the scale of development proposed is consistent with the existing hospital building and the additional extent of variation will not result in any adverse view loss to Wollongong Beach to the east or to the Illawarra Escarpment to the west. With regard to views towards Wollongong Beach, the Wollongong CBD is located further east than the subject site and permits development up to 120m in height. Development of this scale would block the views over the subject site to the beach, if any, and therefore the height exceedance proposed on the subject site will not have any adverse view loss implications. The same applies to views to the Illawarra Escarpment as a result of the Wollongong Public Hospital. Indeed, the public hospital would block the majority of views from residential properties that could be enjoyed over the subject site looking directly west and south west towards the escarpment. Furthermore, when considering the R2 zoning of the surrounding locality, views towards the escarpment from surrounding properties would be impacted by a height compliant development, and the additional storeys above the height limit will not result in an unreasonable level of view loss. Views from the public hospital itself to the escarpment will be retained due to the expansive western site boundary of the public hospital offering uninterrupted views towards the west. As such, it is anticipated the extent of view loss caused by the non-compliant built form would be insignificant or nil.

9. The proposed scale is sympathetic to the existing hospital building which already exceeds the building height limit

- a. The existing building on the site contains a height non-compliance of 4.5m reaching a maximum height of 36.5m. Therefore, it must be acknowledged that a variation to the building height limit has already been considered acceptable for the site, the land use and the surrounding context. Whilst the proposed height variation will exceed that existing on the site, the additional height proposed will not appear out of character with regard to the existing bulk and scale of the hospital, and instead the design of the expansion provides for a sympathetic addition that offers articulation in the built form of the site by providing several scales to modulate and break down the visual bulk as shown in **Figure 8** below. Indeed, by offsetting the heights of the existing and proposed hospital wings, the bulk of the development is broken up and considered to offer a better urban design outcome than if a single, continuous building height was provided for the entirety of the development. Indeed, the increased variation creates visual articulation which responds to the context of the site and locality, including the existing height non-compliance.



Figure 8 Modulation of the proposed built form.

10. Orderly and economic use of the land

- a. Object 1.3(c) of the EP&A Act 1979 is “to promote the orderly and economic use and development of land”. As discussed, the proposal will have significant social and economic benefits through the provision of additional medical floor space within the Wollongong Health Precinct. It must be stressed that the site and locality is specifically zoned and planned for health services and therefore the co-location of such development is the best possible outcome to support the community. Indeed, height compliance could be achieved if additional medical floor space was provided elsewhere in the locality, however, this would not provide the co-location benefits of a health precinct and would result in adverse environmental impacts on sites that are less suitable for this type of development.
- b. The proposal seeks to retain the existing hospital and provide an expansion that meets the needs of the community on a site that is specifically zoned for such a purpose. In addition, the social benefits of providing high quality medical services and facilities within a location marked for the same should be given weight in the consideration of the variation request. It would be a loss to

the community (and contrary to the public interest) to deny the variation and require the removal of medical floor space.

- c. Furthermore, the Illawarra Shoalhaven Regional Plan 2041 indicates that 17% of employment in the Illawarra Shoalhaven Region is within the health and medical facilities in Metro Wollongong. The proposed development will continue to support economic growth and employment within the health and medical industries specifically within Metro Wollongong to strengthen the city. The proposed building height allows for an expansion which will create a variety of new jobs such as nurses, doctors, cleaners and medical technicians to support the additional medical services and facilities provided on the site. The proposed expansion can support local economy and improve the overall health care provision within the local and wider area by providing more employment floorspace and promoting industry diversification. It will generate more employment during the planning, construction, operational and maintenance stage.
- d. When fully operational, the proposed expansion is expected to deliver a total of approximately 416 direct FTE jobs including 180 hospital jobs and 205 jobs supported by the commercial space. Further to this, the direct employment will have flow-on impacts and create another 76 production induced indirect FTE jobs and 336 consumption induced FTE jobs elsewhere in the economy.

11. The non-compliances achieve a high level of design excellence, based on site analysis

- a. The areas of non-compliance have been purposefully designed as well articulated, recessed levels with appropriate setbacks from podium level and the respective boundaries. Specifically, the greatest area of non-compliance (being the medical accommodation levels) has been designed with a setback of more than 24m from the adjoining R2 zone and a setback of more than 8m from the Urunga Parade boundary. As described, the medical accommodation levels are designed with a simplified and recessive character setback beyond the defined podium base and middle form. The design and setbacks to the non-compliant elements ensure that the extent of non-compliance will limit the visual and physical bulk and scale of the development as viewed from the public domain and neighbouring properties. That is, when compared to the existing building, the non-compliances are contained within a rationalised and refined built form.
- b. Importantly, the non-compliant service structures form part of the recessed uppermost level which is predominantly obscured as viewed from Crown Street and Urunga Parade. Where visible from the public domain these elements are lightweight in nature to limit visual impacts. The remaining built form which exceeds the height limit is part of a highly articulated built form which is setback from the defined podium and middle form. The contemporary architectural character, including sympathetic curved elements, horizontal and vertical articulation, glazing and materials limit the impact created by the proposal. Whilst resulting in significant variations, the non-compliances are consistent with the established and anticipated height for the subject site and the precinct as a whole.

12. The topography contributes to the extent of non-compliance

- a. The topography is an additional site specific reason that contributes to the extent of this variation. Specifically, the topography steeply falls from the south eastern corner of the site at Crown Street down to the north western corner at Urunga Parade. This increases the maximum height non-compliance as measured from Urunga Parade where the variation sits at its greatest. The topography of the land is a site specific condition for which the building height control does not contemplate, or account for.

13. The proposal meets aims and objectives of key planning documents

- a. The proposed development meets the objectives of the development standard and meets the objectives of the SP1 Special Activities zone;
- b. The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:
 - i. The proposal promotes 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 (1.3(a)). The height variation does this by facilitating additional floorspace for health services facilities to support the medical needs of the growing population. The proposal retains the existing resources and infrastructure on the site and provides an expansion to manage the demand on the community.
 - ii. The proposal facilitates ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment (1.3(b)). The proposal does this by maintaining the existing hospital on the site and providing an expansion on a site marked for hospital use.
 - iii. The proposal promotes the orderly and economic use and development of land (1.3(c)). The proposal does this by maximising floorspace for health services on a site that is specifically zoned for such land use.
 - iv. The proposed development promotes good design and amenity of the built environment (1.3(g)). The proposal does this through a well-considered design which is responsive to its setting and context and the redistribution of floor space to provide a superior outcome for the site, despite the numerical height variation.

The above environmental planning grounds are not general propositions and are unique circumstances to the proposed development, particularly given the development seeks to co-locate and maximise medical floor space on a site that is already zoned and utilised for such a purpose. Furthermore, the proposal seeks to provide the additional medical floor space within a built form that responds to the context of the site and locality, and as a result redistributes building bulk and scale away from the heritage item existing on the site. The additional height does not adversely impact the amenity of the neighbouring properties (when compared to a compliant development) and has been designed in such a way to ensure the additional height is not visually jarring from the public domain.

It is noted that in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome. As detailed above it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.



12. CONCLUSION

This written request has been prepared in relation to the proposed variation to the height of buildings development standard contained in Clause 4.3 of WLEP 2009.

Having regard to all of the above, it is our opinion that compliance with the maximum height development standard is unreasonable and unnecessary in the circumstances of this case as the development meets the objectives of that standard and the zone objectives. The proposal has also demonstrated sufficient environmental planning grounds to support the breach. Therefore, insistence upon strict compliance with that standard would be unreasonable. On this basis, the requirements of Clause 4.6(3) are satisfied and the variation supported.

