# APPENDIX 6

## Clause 4.6 Variation –
Floor Space Ratio

# Clause 4.6 Variation Statement – Floor Space Ratio (Clause 4.)

## 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, an oncology radiation facility, 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 has a site area of 4,986m$^2$. 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 has a total gross floor area of approximately 18,100m$^2$, equating to an FSR of 3.63:1 and an existing numerical variation of 20.85%.

The SSSD seeks to expand the existing hospital and consolidate No. 15, 17, 19, 21 and 23 Urunga Parade and No. 360-364, 366 and 368 Crown Street to accommodate the new expansion. The new site area for the hospital will be 9,399m$^2$. The proposed development seeks to provide a gross floor area of 39,061m$^2$ which equates to an FSR of 4.15:1, based on the new site area of 9,399m$^2$. As such, the proposal will exceed the permissible GFA for the site by 10,864m$^2$ which equates to a numerical variation of 38.5% to the FSR development standard.

## 2. FLOOR SPACE RATIO DEVELOPMENT STANDARD

Clause 4.4 of WLEP 2009 prescribes the maximum FSR for the site and refers to the *Floor Space Ratio Map*. With regard to calculating the FSR, the WLEP defines gross floor area as:

> *'**gross floor area** 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 relevant map indicates that the maximum FSR permitted at the subject site is 1.5:1 under Clause 4.4 of the WLEP.

Notwithstanding the above, Clause 4.4A of the WLEP applies to development within the Wollongong City Centre and permits a maximum FSR within the SP1 zone for non-residential development of 3:1.

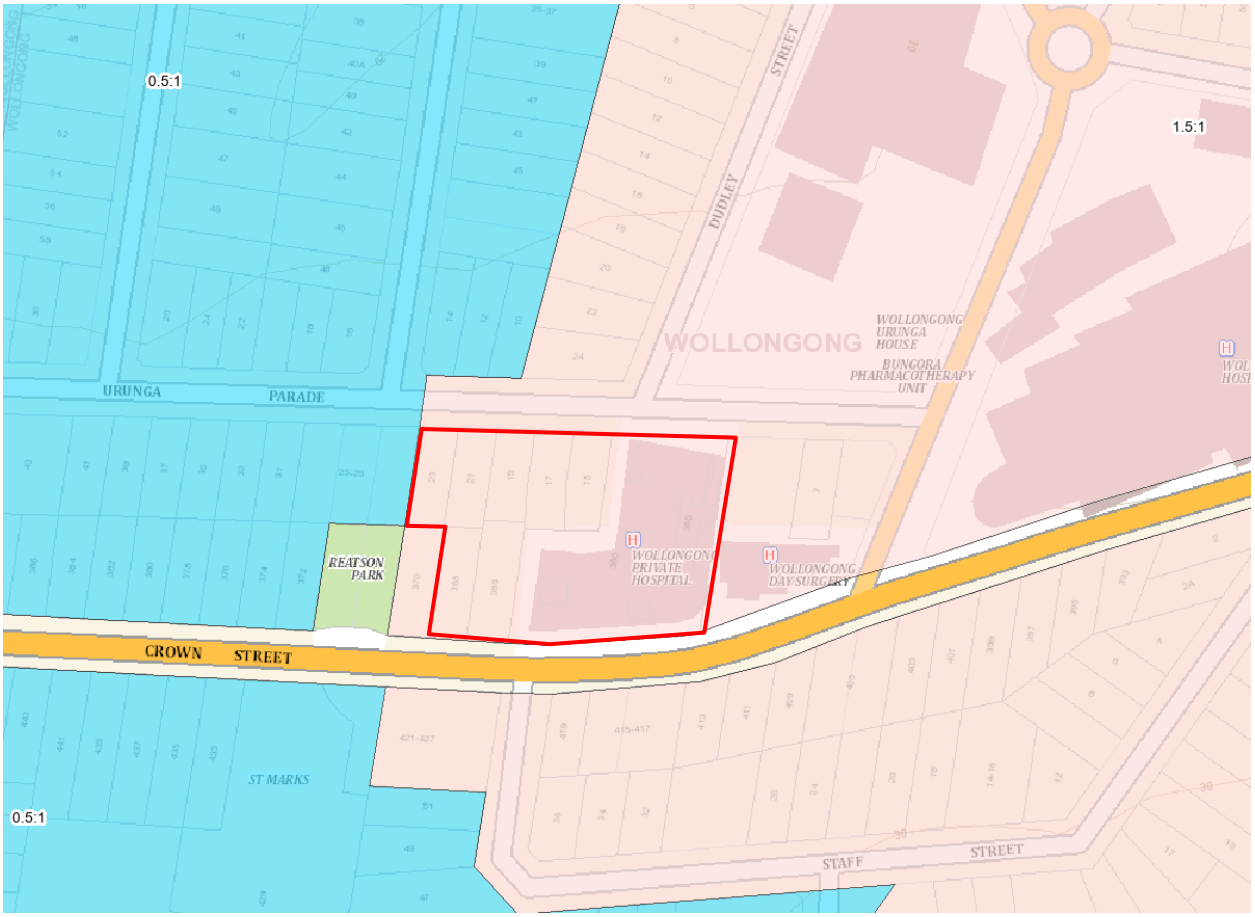



**Figure 1** Extract from FSR Map (Source: NSW Planning Portal).

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

### 3. PROPOSED VARIATION TO FSR DEVELOPMENT STANDARD

The proposed development seeks to provide a gross floor area of 39,061m$^2$ which equates to an FSR of 4.15:1, based on the new site area of 9,399m$^2$. As such, the proposal will exceed the permissible GFA for the site by 10,864m$^2$ which equates to a numerical variation of 38.5% to the FSR development standard.

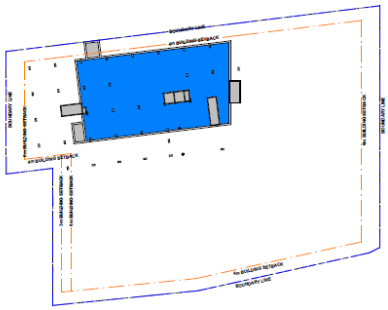
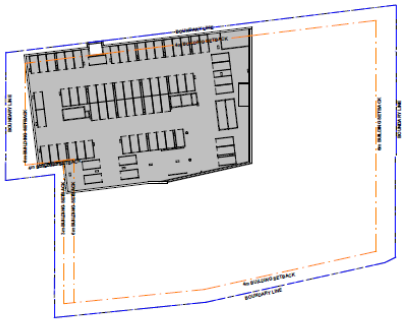
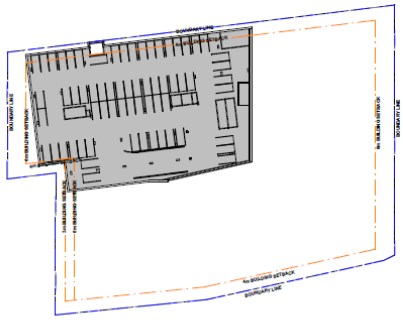
As noted above, the existing development on the site has a total gross floor area of approximately 18,100m$^2$, equating to an FSR of 3.63:1 and an existing numerical variation of 20.85%.

GFA diagrams showing the existing and proposed floor plans is provided in the Architectural Plans and in the table below.

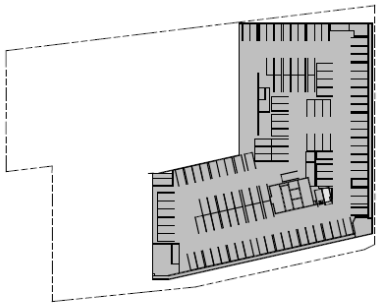
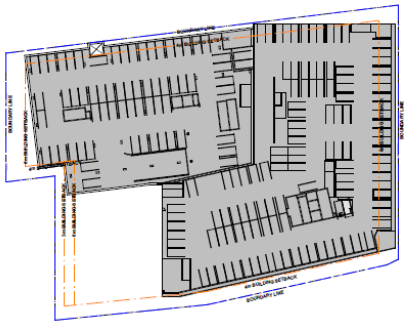
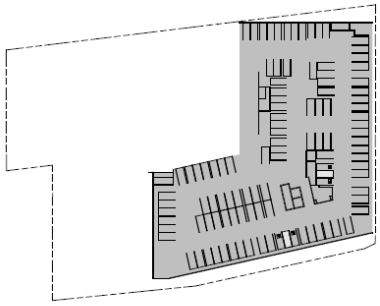
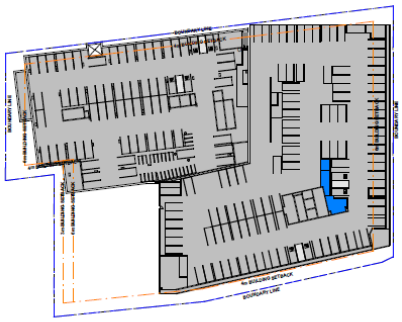
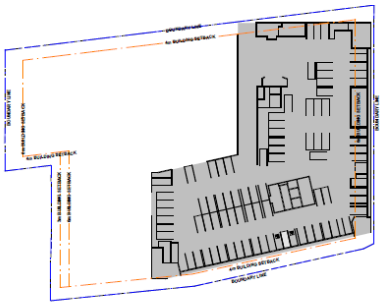
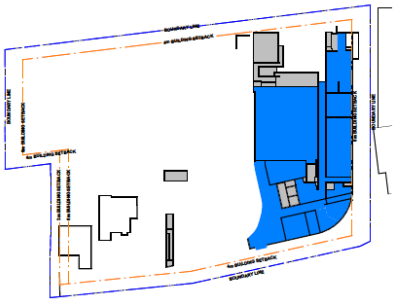
As shown in the diagrams below, the existing hopsital wing contains a significant amount of the existing GFA.

Furthermore, a portion of the additional GFA proposed under this application is located within the basement levels. Indeed, the proposed radiation oncology at Basement Level 6 provides 1,220m$^2$ of GFA, equating to approximately 11% of the FSR exceedance proposed on the site.

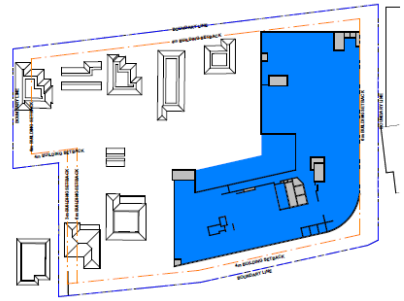
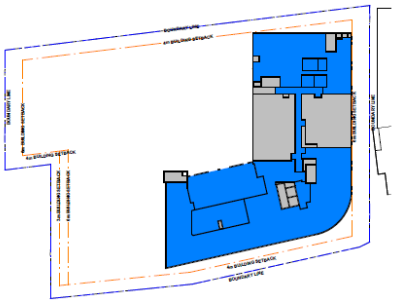
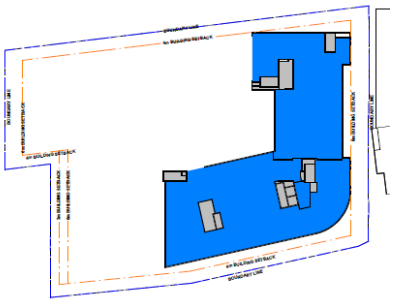
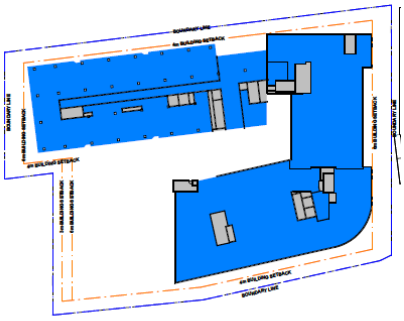
**Table 1 Comparison between Existing and Proposed GFA Diagrams**

| Plan | Existing | Proposed |
|---|---|---|
| Basement 6 | N/A |  GFA-Basement 6 Proposed |
| Basement 5 | N/A |  GFA-Basement 5 Proposed |
| Basement 4 | N/A |  GFA-Basement 4 Proposed |

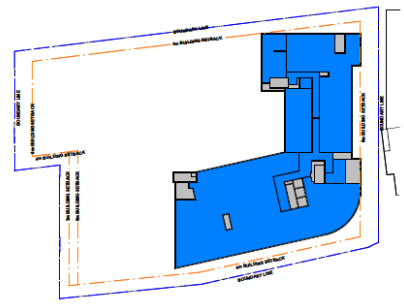
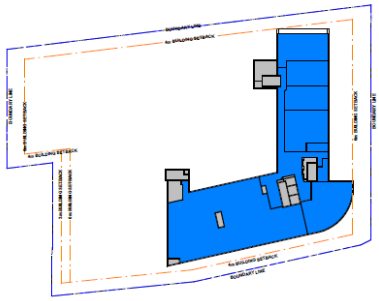
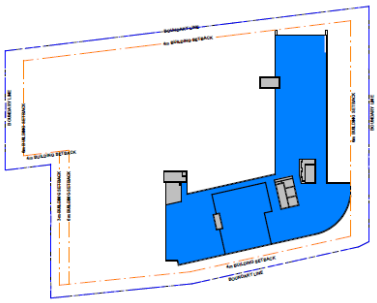
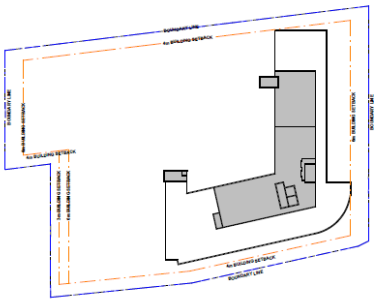
## Table 1 Comparison between Existing and Proposed GFA Diagrams

| | | |
|---|---|---|
| Basement 3 |  GFA-Basement 3 Existing |  GFA-Basement 3 Proposed |
| Basement 2 |  GFA-Basement 2 Existing |  GFA-Basement 2 Proposed |
| Basement 1 |  GFA-Basement 1 Existing |  GFA-Basement 1 Proposed |
| Ground Floor |  3FA-Ground Floor Existing |  GFA-Ground Floor Proposed |

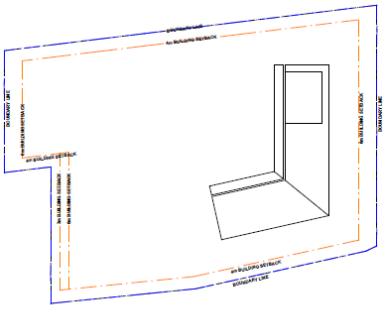
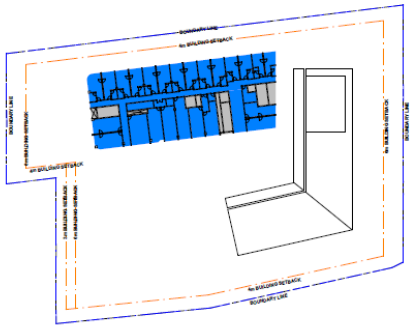
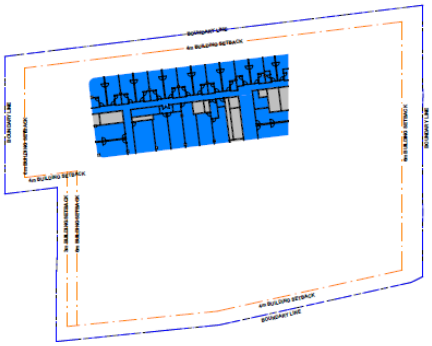
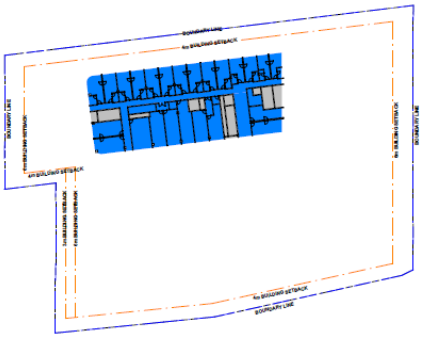
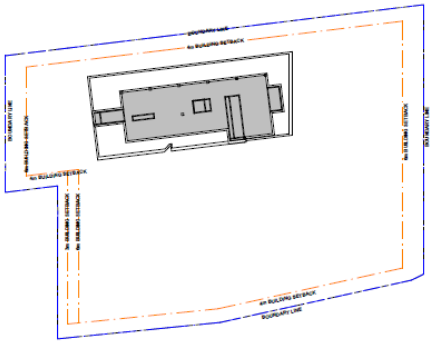
## Table 1 Comparison between Existing and Proposed GFA Diagrams

| | | |
|---|---|---|
| Level 1 |  GFA-Level 1 Existing |  GFA-Level 1 Proposed |
| Level 2 |  GFA-Level 2 Existing |  GFA-Level 2 Proposed |
| Level 3 |  GFA-Level 3 Existing |  GFA-Level 3 Proposed |
| Level 4 |  GFA-Level 4 Existing |  GFA-Level 4 Proposed |

## Table 1 Comparison between Existing and Proposed GFA Diagrams

| | | |
|---|---|---|
| Level 5 |  GFA-Level 5 Existing |  GFA-Level 5 Proposed |
| Level 6 |  GFA-Level 6 Existing |  GFA-Level 6 Proposed |
| Level 7 |  GFA-Level 7 Existing |  GFA-Level 7 Proposed |
| Level 8 |  GFA-Level 8 Existing |  GFA-Level 8 Proposed |

## Table 1 Comparison between Existing and Proposed GFA Diagrams

| | | |
|---|---|---|
| Level 9 |  <br>GFA-Level 9 Existing |  <br>GFA-Level 9 Proposed |
| Level 10 | N/A |  <br>GFA-Level 10 Proposed |
| Level 11 | N/A |  <br>GFA-Level 11 Proposed |
| Level 12 | N/A |  <br>GFA-Level 12 Proposed |

## 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 4.4 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 an FSR of 4.15:1 which equates to a numerical variation of 10,864m$^2$ and a percentage variation of 38.5% to the FSR development standard.

**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 FSR 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.

Whilst the relevant map indicates that the maximum FSR permitted at the subject site is 1.5:1 under Clause 4.4 of the WLEP, Clause 4.4A of the WLEP applies to development within the Wollongong City Centre and permits a maximum FSR within the SP1 zone for non-residential development of 3:1.

Therefore, the proposal seeks to vary Clause 4.4A.

Notwithstanding this, Clause 4.4A does not contain any objectives, and therefore the objectives of Clause 4.4 are considered to be both relevant and applicable to address Clause 4.6(3)(a).

The objectives and relevant provisions of Clause 4.4 of WLEP are as follows:

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

*(a) to provide an appropriate correlation between the size of a site and the extent of any development on that site,*

*(b) to establish the maximum development density and intensity of land use, taking into account the availability of infrastructure to service that site and the vehicle and pedestrian traffic the development will generate,*

*(c) to ensure buildings are compatible with the bulk and scale of the locality.*

In order to address the requirements of Subclause 4.6(3)(a), the objectives of Clause 4.4 are addressed in turn below.

***(a) to provide an appropriate correlation between the size of a site and the extent of any development on that site,***

Objective (a) is explanatory of the central purpose of the FSR development standard, to establish a correlation (or ratio) between site size and development size (or extent) for land in the local area. By fixing FSR standards for buildings on land in different areas by means of the FSR Map, the clause establishes that correlation. The establishment of an FSR 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).

If the objective were to be construed as an end in itself, and it should not be, the proposed FSR provides for an appropriate correlation between site size and extent of development.

This SSD seeks to expand the existing hospital and consolidate No. 15, 17, 19, 21 and 23 Urunga Parade and No. 360-364, 366 and 368 Crown Street to accommodate the new expansion. The new site area for the hospital will be 9,399m$^2$, almost double the size of the existing hospital site which measures 4,986m$^2$. The gross floor area on the site reflects a similar proportionate increase to account for the density of development approved and established for the site.

Furthermore, as detailed above, a portion of the proposed GFA is located within the basement and therefore would not be perceptible or have any adverse environmental impacts. Whilst technically calcuable GFA, when excluding Basement Level 6 on the basis that it would not be discernible to the public eye, the GFA non-compliance would be reduced by a further 1,220m$^2$, and the proposal would provide a total perceptible GFA of 37,841m$^2$, being just over double the GFA of the existing hospital.

As such, the proposal is considered to provide a proportionate and appropriate correlation between the size of the site and the extent of the development proposed.

Importantly, the proposed distribution of floor space across the site is considered to have a lesser visual bulk than the existing hospital building. Indeed, the existing hospital building covers the majority of the existing site area whilst the proposal provides a larger extent of the site that will retain a lower density built form (through the retention of the existing single storey buildings at No. 366 and 368 Crown Street), and provide for a central landscaped area to soften the overall development when viewed from Crown Street and the west adjoining residential properties.

Overall, when compared to the existing extent of development on the existing site, the proposed FSR is considered to be appropriate for the consolidated allotments.

> ***(b) to establish the maximum development density and intensity of land use, taking into account the availability of infrastructure to service that site and the vehicle and pedestrian traffic the development will generate,***

The proposed increase in medical floor space on the site responds to the suitability of the subject site and the locality for this scale of development for the purpose of a hospital. Importantly, the site is specifically zoned for the hospital land use and the strategic vision for the site and locality is that the existing Wollongong Private and Public Hospitals are expanded to act as the anchors for the Wollongong Health Precinct. The strategic vision to transform the precinct from a collection of health and medical related uses into a nationally significant health precinct encourages the proposed increase in development density and intensity of the Private Hospital. Importantly, the expansion represents a high quality, innovative development opportunity to provide state of the art medical services, facilities and accommodation which can support cutting-edge medical treatments that are at the forefront of healthcare. It is this type of development which can assist with transforming the health precinct into one that is of national significance. It is assumed, expected and is the case that the precinct can accommodate the expansion identified in the strategy.

With regard to the site itself, the new land size provides a significant increase in the existing hospital site area in order to accommodate the additional GFA proposed. It is the presence of the existing hospital which makes the site the most suitable location for additional private health services and facilities within the precinct, and therefore the increase in

density and intensity of the hospital use. Indeed, the site benefits from existing available infrastructure and utilities that can accommodate for the proposed density and intensity of the hospital use with little updates or additions required to support the proposed development and operation. Importantly, the proposed increase in FSR seeks to address the gap in the current provision for health services and facilities and the projected demand. If this demand is not met on the subject site, it would be met on another, less suitable site, that does not benefit from the existing hospital and the associated infrastructure and connections that are already well-established. That said, vehicular and pedestrian traffic would remain in the precinct.

With regard to vehicle and pedestrian traffic, the site is located within a highly accessible location within the city centre with two street frontages, including one to a classified road. Therefore, the site is capable of supporting additional vehicle and pedestrian traffic associated with the increase in density. The proposal has been designed to retain existing vehicular access off Crown Street and provide greater separation between ambulance routes and general traffic routes. On this basis, it is proposed to limit the Crown Street driveway to ambulances accessing the new ambulance parking facility and to vehicles picking up and dropping off passengers to ED. The driveway off Urunga Parade will be provided as two-way (comprising one access lane, and two egress lanes) to accommodate general vehicle access to/ from the basement car park and to the new pick up/ drop off facility in the lower ground level. The existing egress ramp from the basement car park to the ground floor which leads to the Crown Street access will be disused, ensuring that all traffic access the site through Urunga Parade. This arrangement will ensure the proposal will not have any adverse impacts on the operation of the surrounding road network, particularly on the classified road being Crown Street/Princes Highway. A detailed assessment of the traffic generation of the proposed development is provided in the Transport Impact Assessment prepared by TTPP to accompany this application (Annexure 21). The assessment concludes that the development traffic would not result in any additional delays to the performance of nearby intersections and that the proposal, which includes the increase intensity of the land use, will not cause any adverse impacts on the local road network.

The proposed design and distribution of floor space enhances pedestrian access and connection through the site. Whilst the proposed 'hospital street' within the development will create additional floor space, the benefit of providing a connection between Crown Street and Urunga Parade is considered to be an appropriate and contextual outcome. Paved pedestrian footpaths are currently provided along the Crown Street and Urunga Parade site frontages, with the footpath on the south side of Urunga Parade terminating just west of the existing Hospital. The footpath on Urunga Parade will be extended to the west for the entire length of the future site boundary (including the 15,17,19, and 21 Urunga Parade frontages), as part of the proposed development. The extension of the paved pedestrian footpath on Urunga Parade aligns with the vision for the precinct, which has identified Urunga Parade as a future pedestrian focused area. The pedestrian footpath along the Crown Street frontage will be retained as per the existing condition, with paved footpath provided along the northern side of Crown Street. Overall, the site has a good level of pedestrian access and connectivity opportunities which will only be enhanced by the proposal to ensure that the additional floor space provided will not result in any conflicts in the capacity of the pedestrian network.

***(c) to ensure buildings are compatible with the bulk and scale of the locality.***

It is noted that objective (c) refers to being "compatible" with adjoining development. It is well established that "compatible" does not promote "sameness" in built form but rather requires that development fits comfortably with its urban context. Of relevance to this assessment are the comments of *Roseth SC in Project Venture Developments Pty Ltd v Pittwater Council [2005] NSWLEC 191*:

> *"22 There are many dictionary definitions of compatible. The most apposite meaning in an urban design context is capable of existing together in harmony. Compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve."*

In accordance with the above, the subject site is located within one of the Wollongong City Centre character areas identified as 'Special Activities – Hospitals and Medical Research and Development' under the WDCP 2009. The 'Description' of the character area (Chapter D13, Section 1.1 of the DCP) is reproduced below:

> *This area has an excellent potential to become a hub of innovation, education and research in the city centre. The area can be supported by student and nursing staff accommodation, medical centres, doctors' surgeries, specialise rooms and associated uses. The upgrading of the railway station will offer a safe and attractive street environment and railway/bus interchange facility. The scale of new development is to be of a transition scale between the high buildings at the station to medium rise buildings to the north and south of Crown Street.*

As detailed further below, the proposal is consistent with the above-mentioned description. The above statement aligns with the strategic planning documents for Wollongong and the wider Illawarra Shoalhaven Region in that the vision for the Wollongong Health Precinct is that it is transformed and enhanced to increase and improve the offering of health services and facilities to support an interconnected and innovative hub for health. The proposed bulk and scale addresses the vision for the locality to expand existing health infrastructure to support the growth of the precinct within the Wollongong City Centre.

The character statement also specifically refers to the scale of new development and encourages a transitional scale between the high rise buildings at the railway station to the medium rise along Crown Street. 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 from the higher density development at the railway station. 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 modulation of the massing and the articulation of the built form to break down the scale of the development, as shown in **Figure 2** 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.


**Figure 2** Architectural sketch of the modulation of the proposal in the surrounding context.

Furthermore, the development seeks to maintain the established (non-compliant) FSR and provide an environmentally sustainable, contemporary development sympathetic to the existing hospital. As a result of the increased site area, the proposed expansion provides a FSR non-compliance that is relatively consistent with the existing non-compliance, and as such will provide a visual bulk that is compatible with the existing development on the site, proportionate to the development site area.

When considering the bulk and scale of development within the locality, and whether the proposal is compatible with that bulk and scale, it is also important to acknowledge the scale of development at the Wollongong Public Hospital site. Indeed, the Wollongong Public Hospital is almost entirely built over (**Figure 3**) with a variety of buildings of different sizes, with the building closest to the subject site at the corner of Crown Street and New Dapto Road sitting at 10 storeys in height as shown in **Figure 4** below. Whilst information and plans for the Wollongong Public Hospital are not publicly available via Council's online system, based on the height of development and the site coverage, it is likely

that the hospital well exceeds the permissible 3:1 FSR permitted under the LEP. Furthermore, recently approved development at No. 411-417 Crown Street will sit at 7 storeys in height to the south of the site, as shown in **Figure 5**, which is consistent with the desired increase in density for the precinct**.** 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 DCP character area description, and the proposed scale of development, including the FSR non-compliance, responds to this.

Following the above, in contemplating the scale of development within the locality and the strategic vision for the expansion of the precinct, it would be unreasonable and unnecessary to restrict the scale of development at the Private Hospital.


**Figure 3** Wollongong Public Hospital (Source: NearMaps 2025).

**Figure 4** Wollongong Public Hospital, as viewed from Crown Street.

**Figure 5** Approved seven (7) storey medical building at No. 411-417 Crown Street under DA-2022/395 (Source: Illawarra Mercury).

Overall, the proposal represents a sympathetic contemporary form to limit the perceivable visual and physical impact of the non-compliance. This is achieved by virtue of a defined podium, sympathetic and recessive upper levels and further recessed uppermost floor. Furthermore, the proposal is consistent with the established bulk and scale of the existing Private Hospital and will not adversely impact the amenity of neighbouring properties or the public domain.

The proposal will positively contribute to the character of the locality when viewed against the surrounding buildings. Given the varying character in the immediate and wider locality, the contemporary, sympathetic design which is inclusive of materiality and a colour scheme respecting the heritage fabric, is considered acceptable. The defined base and recessive upper levels will reduce the sense of perceived bulk and scale created by the non-compliance and ensure compatibility with the character of the locality. Overall, the proposal has a contemporary appearance with visual cues to the surrounding heritage fabric and is designed to reenvisage the existing non-compliant FSR, thus ensuring a compatible streetscape character and relationship to neighbouring properties.

Therefore objective (c) is achieved despite the variation.

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 FSR:

1. **The existing hospital exceeds the FSR development standard**
    a. The existing hospital has a total gross floor area of approximately 18,100m$^2$, equating to an FSR of 3.63:1 based on the existing site area of 4,986m$^2$. This constitutes an existing numerical variation of 20.85% to the FSR development standard. As a result of the existing FSR variation on the site, it would be difficult for any meaningful or worthwhile expansion to deliver additional medical floor space and achieve compliance with the FSR requirement, particularly when considering the proposal will retain the existing hospital building on the site. As such, at the very least, it is both logical and reasonable that the extent of the existing FSR non-compliance would be retained.

    b. This SSD seeks to expand the existing hospital and consolidate No. 15, 17, 19, 21 and 23 Urunga Parade and No. 360-364, 366 and 368 Crown Street to accommodate the new hospital expansion. The new site area for the hospital will be 9,399m$^2$, almost double the size of the existing hospital site which measures 4,986m$^2$. As such, it is considered reasonable that the gross floor area on the site would reflect a similar increase to account for the density of development approved and established for the site.

    c. Furthermore, as detailed above, a large extent of the proposed GFA is located within the basement and therefore would not be perceptible or have any adverse environmental impacts. Whilst technically countable GFA, when excluding Basement Level 6 on the basis that it would not be discernible to the public eye, the GFA non-compliance would be reduced by a further 1,220m$^2$, and the proposal would provide a total perceptible GFA of 37,841m$^2$, being just over double the GFA of the existing hospital. As such, the proposal is considered to provide a similar and appropriate correlation between the size of the site and the extent of the development proposed.

2. **The extent of the FSR non-compliance is increased by the retention of the heritage item**

a. The proposed breach of the FSR development standard is increased by the retention of the dwellings at No. 366 and 368 Crown Street, with No. 366 being an item of local heritage significance. Whilst the retention of these buildings contributes to the exceedance of the FSR control, the proposal is considered to have a superior outcome for the site and the locality with regard to heritage impacts and streetscape appearance. The proposal seeks to retain and reuse the heritage building and the adjoining single storey building for use by Illawarra Aboriginal Medical Services (IAMS). Importantly, this arrangement will not only protect the heritage significance of the site but also provide an opportunity to support IAMS and the Indigenous community through the provision of accessible health care. The use of the site will also provide an appropriate and meaningful connection to the country for the community.

3. **The bulk and scale responds to the existing and emerging scale of development within the health precinct**

a. The proposed FSR is considered to provide an appropriate bulk and scale for the site when considering the existing and approved context of the surrounding locality which is relatively high density, as envisaged by the strategic vision for the health precinct. As detailed above, 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 density of development within the CBD, the proposed 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 which mitigates the visual bulk of the development and the FSR non-compliance. Ultimately, the proposed FSR 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.

b. When considering the scale and density of development for the Public Hospital and the strategic vision for the expansion of the precinct, it would be illogical and unreasonable to restrict the density of the Private Hospital to less than what is currently proposed.

4. **The FSR aligns with the strategic vision for the health precinct**

a. As described in detail within the EIS prepared by Planning Ingenuity, the proposed 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 medical floor space proposed under SSDA 84096206 directly responds to 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 FSR 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 FSR 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 bat 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 FSR 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 FSR 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.

b. Whilst the proposal could achieve FSR 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 FSR 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 FSR allows for medical accommodation**

a. In addition to providing additional floor space for health services and facilities, the FSR non-compliance will 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 FSR variation**

a. The proposed development has been designed to facilitate the additional bulk and scale in a way that minimises environmental impacts on the surrounding locality. 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 proposed expansion creates acceptable overshadowing impacts to adjoining properties when compared to a compliant building envelope. That is, despite the additional shadow cast by the proposed built 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 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 a non-compliant form. As such, additional overshadowing caused by the proposed built form is considered to be insignificant; and

    ii. The FSR breach does not result in any adverse additional privacy impacts. The proposal has been designed to maximise privacy for adjoining residential properties through the orientation of windows and openings, proposed building separation and landscaping to the shared boundary. Specifically with regard to the upper levels of the development where the studios for the medical accommodation are proposed, a setback over 24m from the western side boundary adjoining the R2 zone is provided. 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. Furthermore, the proposed density of development is not considered to create any aural privacy impacts that would be unreasonable or unnecessary for the zone. Indeed, the site is zoned for SP1 hospitals and therefore any noise caused by the land use is contemplated by the zoning. Furthermore, the design of the built form in terms of the location of windows and openings, building separations, and the finishes and materials that will be used to limit noise intrusion will ensure the intensity of the land use will not have any acoustic

implications for residential properties. As such any additional loss of privacy caused by the non-compliant built form would be insignificant; and

iii. The scale of the development 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 proposal 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, if any, and therefore the scale of development 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 fully compliant development, and the additional bulk in exceedance of the FSR 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. 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, FSR 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 FSR 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.

**10. The non-compliance is mitigated through the careful design of the built form**

a. The proposal ensures a high quality built form which capitalises on the sites opportunities to expand the hospital in a way that recognises the strategic vision for the precinct and 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.

b. Despite the FSR non-compliance, the proposed built form has been purposefully designed through the provision of well-articulated elevations and recessed upper levels to mitigate the visual bulk of the development when viewed from the surrounding properties and the public domain. This is aided by the retention of the building at No. 366 and 368 Crown Street, which ensure the scale of the development when perceived by the casual observer would not appear to be excessive for the site or present an unreasonable visual bulk. Instead the proposed design and siting of the built form offers relief from the higher density scale through the single storey forms and the provision of landscaping in and around the site visually softens the built 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 a significant variation, the proposal is consistent with the established and anticipated scale of development for the subject site, noting the existing hospital is non-compliant, and is considered to be designed in a way that the building bulk is not overwhelming for the site or the precinct as a whole.

**11. 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 FSR variation does this by providing 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 distribution of floor space to provide a superior outcome for the site, despite the numerical FSR 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. The FSR non-compliance does not adversely impact the amenity of the neighbouring properties (when compared to a compliant development) and the built form has been designed in such a way to ensure the additional bulk and scale 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 FSR development standard contained in Clause 4.4 of WLEP 2009.

Having regard to all of the above, it is our opinion that compliance with the maximum FSR 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.