

11.04.2016

Variation Statement

Height of Buildings - Clause 4.3 of Wyong Local Environmental Planning 2013

43 Howarth Street, Wyong

Introduction

This Variation Statement has been in support of a development application for the redevelopment of 43 Howarth Street, Wyong, and seeks to vary clause 4.3 of Wyong Local Environmental Plan 2013 (Wyong LEP 2013) in relation to Height of Buildings.

This Statement has been prepared in accordance with clause 4.6 – Exceptions to Development Standards of the Wyong LEP 2013, and the NSW Department of Planning and Infrastructure (DP&I) “*Varying development standards: A Guide*”, August 2011.

1. Development Standard to be varied

The development standard to be varied is clause 4.3 of Wyong LEP 2013.

Clause 4.3 provides objectives for this clause and requires development to ensure that the maximum height of a development on any land does not exceed the nominated figure shown for the land on the Height of Buildings Map. Clause 4.3 is worded as follows:

4.3 Height of Buildings

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

- (a) *to establish the maximum height limit for buildings to enable the achievement of appropriate development density,*
- (b) *to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,*
- (c) *to ensure that the height of buildings protects the amenity of neighbouring properties in terms of visual bulk, access to sunlight, privacy and views.*
- (ca) *...*

(2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

The height of building control for the site is 13m (refer to **Figure 1**).



Figure 1: Extract from the Wyong LEP 2013 HOB Map

Building Height is defined as:

'the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like'.

2. Proposed Development

The application seeks approval to construct a 5-storey Boarding House development, with 62 self contained rooms, a managing agent supported by on-site management 24 hours a day, 7 days a week, and basement parking (SEPP Affordable Rental Housing).

The application proposes a building height of 18.18m (RL24.70) above EGL6.52. The proposal does not comply with the development, exceeding the control by 5.18m.

The site is located within the Baker Park Precinct. The objectives of the precinct have been outlined in the DCP, which aims to *'create residential opportunities through the provision of more floor space with higher density residential development ranging between **four and six storeys**'*.

3. Principles of Exceptions to Development Standards

Clause 4.6 provides a nexus to enable the flexibility of development standards where it is demonstrated that the proposed variation to a development standard may, in some circumstances, achieve the underlying purpose of the standard as much as one which complies. If the development is not only consistent with the underlying purpose of the standard, but also with the broader planning objectives for the locality, strict compliance with the standard can be deemed to be unreasonable and unnecessary and Council could approve an exception.

It is noted that the NSW Department of Planning and Infrastructure (DP&I) provides guidance on how to prepare clause 4.6 variations in the form of "Varying development standards: A Guide August 2011". This written request to vary the standard is based on the DP&I guide, in particular Appendix 3 which provides a template for and "Application Form to vary a development standard".

The following has been prepared in accordance with this Guide:

4. What is the name of the environmental planning instrument that applies to the land?

The Wyong Local Environmental Plan 2013 (Wyong LEP 2013).

5. What is the zoning of the land?

The zoning of the land is B4 Mixed Use.

6. What are the Objectives of the zone?

The Objectives of the B4 Mixed Use zone are:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximize public transport patronage and encourage walking and cycling.*
- *To permit residential accommodation while maintaining active retail, business and other non-residential uses at street level.*
- *To encourage development that supports or complements the primary office and retail functions of the zone.*
- *To minimise conflict between land uses within the zone and land uses within adjoining zones.*

The proposal is consistent with the zone objectives of the B4 Mixed Use zone in the following manner:

- Boarding houses are a compatible land use, providing affordable housing and reinforcing the commercial function of the zone.
- The proposed boarding house locates a well integrated mixed use development within immediate proximity of Wyong train station as well as other public transport options.
- The proposed boarding house includes a commercial premises at ground level to activate the street.
- The future occupants of the boarding house will support the local businesses within the Wyong Town Centre.
- Boarding houses and residential uses are permitted within both the B4 Mixed Use zone and R3 Medium Density Residential zone. Given both uses are permitted in both zones, and the proposal does not include a high intensity non-residential use, it is unlikely that any land-use conflicts would occur.

7. What is the development standard being varied?

The development standard being varied is Height of Building (HOB) development standard.

8. Under what Clause is the development standard listed in the environmental planning instrument?

The development standard is listed under clause 4.3 of the Wyong LEP 2013.

9. What are the objectives of the development standard?

4.3 Height of Buildings

- (1) The objectives of this clause are as follows:
- (a) to establish the maximum height limit for buildings to enable the achievement of appropriate development density,
 - (b) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,
 - (c) to ensure that the height of buildings protects the amenity of neighbouring properties in terms of visual bulk, access to sunlight, privacy and views.
- (2) The height of building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

The site is located within the Baker Park Precinct, and is subject to a Masterplan outlined in Chapter 5.2 of the Wyong DCP 2013.

Part 3.7.3 of the Chapter 5.2 outlines that the Baker Park Masterplan looks at 'reinforcing the recreational precinct in the Wyong Town Centre. Commercial development and car parking is located to the west of Howarth Street and mixed use is encouraged to the east, and residential development surrounds the recreational facilities. There is the opportunity for northern orientation and visual links between the Town Centre and new development'.

The proposal will complement the existing context and character of the Baker Park Precinct, and be consistent with the objectives of the Height of Building clause for the following reasons:

- The proposed density is consistent with the maximum allowable in accordance to the bonus FSR awarded by the ARH SEPP.
- The Masterplan map provides a desire for mixed use developments with a height of 6 storeys to be located on the eastern side of Howarth Street.
- The proposed height will not affect the existing view lines from the western side of the train track toward the racecourse.

Even though the proposal results in a non-compliance with the development standard, as demonstrated above, the proposal is considered consistent with the objectives of the height of building development standard.

10. What is the numeric value of the development standard in the environmental planning instrument?

The numeric value of the development standard is 13m.

11. What is the proposed numeric value of the development standard in your development application?

The maximum numeric value proposed is 18.18m, and exceeds the control by 5.18m

12. What is the percentage variation (between your proposal and the environmental planning instrument)?

The percentage variation is 39.8%.

13. How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

In the circumstances of the case, the provision of strict numerical compliance would be unreasonable due to the following:

- The current maximum height of buildings development standard contained in the Wyong LEP (13metres) is not consistent with the desired future character, and building height outlined in the Baker Park Masterplan (6storeys). The proposed boarding house provides a development form that is more consistent with the Masterplan.
- Given the lower ground level of the eastern side of Howarth Street, the building will not impair the existing view corridors from the Wyong Town Centre to the Baker Park Sporting Fields. The sightlines contained within the Masterplan will be maintained.
- The proposed height and density will support the additional supply of additional affordable housing within Wyong Town Centre, within a development that is consistent with council's desired future character of the locality.
- The proposal relocates the building height from the rear of the site to the front of the site to improve solar access to the future private open space area to the southern properties, as outlined in the Baker Park Masterplan. A development strictly complying with the height control would result in greater overshadowing impacts upon the southern property, as Building 2 would be higher in height.
- The rear building form contains a smaller footprint than identified in Council's DCP controls due to the reallocation of the building bulk to Building 1. A development strictly complying with the control would result in Building 2 having a reduced setback to the side and rear boundaries. This would result in a reduced landscape area and will reduce the internal amenity for the intended occupants.
- The additional building height will maximise the quantum of boarding rooms that receive good amenity in terms of cross-ventilation, outlook/views and solar access. A development strictly complying with the height control would result in Building 2 obscuring the outlook/views and overshadowing upon Building 1. This would result in reduced internal amenity for the intended occupants.
- As shown in Figure 13 of the SoEE, Council has approved the variation of the building height control on the redevelopment of 51-53 Howarth Street, Wyong. Council supported a building height of 16.325m (front) and 17.65m (rear), representing an average variation of 23% across the whole site. The variation sought for the proposed boarding house relates only to the front part of the site to ensure a consistent building edge to the Street to complement the development approved by Council. In council's assessment of the clause 4.6 variation, it is noted that the height variation was supported 'due to its consistency with the adopted Baker Park Masterplan which identifies the subject site as having a height limit of up to 6 storeys'. The proposal presents a 5 storey building form, and is consistent with council's future vision for the Baker Park Masterplan area.

Given the circumstances of the case, the provision of a strict numerical compliance would be unreasonable on the basis that the proposed development achieves compliance with the objectives of the standard.

14. How would strict compliance hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act?

Compliance with the standard would hinder the attainment of the objects of section 5(a)(i) and (ii) of the Act, which are to encourage development that promotes the social and economic welfare of the community and a better environment, and to promote and co-ordinate orderly and economic use and development of land.

The proposal satisfies the zone and development standard objectives and therefore strict compliance with the standard is not required in order to achieve compliance with the objectives.

Strict compliance would result in an inflexible application of policy. It does not serve any purpose that is outweighed by the positive outcomes of the development and therefore a better planning outcome overall.

Strict compliance would result in an unnecessary reduction of affordable housing supply for no environmental, or economic benefit to the streetscape or Wyong Town Centre.

The development as proposed is consistent with the provisions of orderly and economic development.

15. Is the development standard a performance based control? Give Details.

The HOB development standard is not a performance based control as it provides a numerical control to which compliance with the standard is required to achieve.

16. Would strict compliance with the standard, in your particular case, be unreasonable or unnecessary? Why?

Compliance with the standard would hinder the attainment of the objects of section 5(a)(i) and (ii) of the Act, which are to encourage development that promotes the social and economic welfare of the community and a better environment, and to promote and co-ordinate orderly and economic use and development of land.

The proposal will comply with the objectives of the development standard and the objectives of the zone. Strict compliance with the standard is not required to ensure compliance with those objectives.

Development standards are a means of implementing planning purposes for a development or area. The desired future built form character for site establishes 6 storey mixed use developments along the eastern side of Howarth Street. Whilst the proposal provides a development with a 5 storey appearance, it still achieves the B4 mixed use zone objectives, and the objectives of the HOB development standard.

This density and building height is complementary to the future developments identified in the Baker Park Masterplan. The additional height does not directly contribute to any adverse impacts by way of overshadowing, privacy, or bulk and scale impacts in comparison to a compliant scheme. In fact, the proposal provides a better outcome than that identified in Council's controls.

Strict compliance would not improve the amenity of the proposed apartments, and nor improve the amenity of adjoining properties. Further, in the context of the locality it would be unreasonable for strict compliance to be enforced, as the density and scale of the proposed development reinforces the function of Wyong Town Centre as a local centre, and will result in a positive outcome for the locality.

The development is consistent with the provisions of orderly and economic development.

Under these circumstances, strict compliance with the development standard is both unreasonable and unnecessary.

17. Are there sufficient environmental planning grounds to justify contravening the development standard? Give details.

Yes. In the circumstances of the case, there are sufficient planning grounds to justify contravening the development standard being:

- The current maximum height of buildings development standard contained in the Wyong LEP is not consistent with the desired future character, and building height outlined in the Baker Park Masterplan. The proposed boarding house provides a development form that is more consistent with the Masterplan.
- Given the lower ground level of the eastern side of Howarth Street, the building will not impair the existing view corridors from the Wyong Town Centre to the Baker Park Sporting Fields.
- Compliance with the height control would result in a reduced landscaped area, as the building footprint would be required to be enlarged.
- Compliance with the standard would reduce the internal amenity for the intended occupants, as the building height to Building 2 would be increased.
- Compliance with the standard would increase overshadowing upon the southern property, as Building 2 would be required to be higher in height.

- Compliance with the standard does not impede or constraint the future redevelopment of other lots immediately adjoining the site. Redevelopment of the immediately adjoining lots can occur in accordance with the desired future character of the locality.
- Compliance with the standard would contravene Council's recent consent and support for a height control variation for the redevelopment of 51-53 Howarth Street (DA/857/2014).

18. Is the objection well founded?

Yes. It is concluded that the objection is well founded as compliance with the standard is unreasonable as the development does not contravene the objects specified within 5(a)(i) and (ii) of the Act and the development will satisfy the B4 Mixed Use zone objectives and the objectives of the HOB standard.

A development that strictly complies with the standard is not consistent with the desired future character of Wyong Town Centre, based upon the Bakers Park Precinct Masterplan. Strict compliance is unnecessary in this circumstance as no appreciable benefits would result for adjoining properties, by restricting maximum height to 13m and it has been demonstrated that the proposal will promote the social and economic welfare of the community and will have positive outcomes for the locality.

19. Conclusion

Development standards are a means of implementing planning purposes for a development or area. The proposal provides a 5 storey height within a well integrated mixed use zone, and within a Masterplan area that identifies a 6 storey height requirement.

This building height is consistent to the desired future character of the Baker Park Precinct, as outlined in the Masterplan. The additional height does not directly contribute to any significant adverse impacts by way of overshadowing, privacy, or bulk and scale impacts.

The proposed height provides a reasonable balance in achieving council's population projection and the desired future character of the locality, whilst achieving good apartment design and minimising impacts upon adjoining properties.

A development strictly complying with the numerical standard would not significantly improve the amenity of surrounding land uses. In the context of the locality it would be unreasonable for strict compliance to be enforced, as the density and scale of the proposed development is compatible with surrounding existing and likely future development.

It is concluded that the objection is well founded as compliance with the standard is both unnecessary and unreasonable.