



**WRITTEN REQUEST PREPARED PURSUANT TO
CLAUSE 4.6 OF WYONG LOCAL ENVIRONMENTAL
PLAN 2013 IN RELATION TO A VARIATION WHICH IS
SOUGHT TO THE MAXIMUM FLOOR SPACE RATIO
DEVELOPMENT STANDARD**

**Submitted in Support of an amended Development
Application for a new three-storey 122 bed
Residential Care Facility at Nos 149-157 Main Road
and Nos 6-12 Tamar Avenue, Toukley**

**Prepared for
Opal Aged Care**

**By
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1. Introduction – Relevant Development Standard

This written request has been prepared in support of an amended development application (“amended DA”) lodged on behalf of Opal Aged Care for the construction of a new three-storey 122 bed residential aged care facility (“the amended proposal”) at Nos 149-157 Main Road and Nos 6-12 Tamar Avenue, Toukley (“the site”).

Pursuant to the provisions of Clause 4.4 (‘Floor space ratio’) of Wyong Local Environmental Plan 2013 (“the LEP”), the site is subject to a maximum floor space ratio (FSR) of 0.9:1. Pursuant to clause 48 of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, a consent authority must not refuse consent to a development application made pursuant to the SEPP for the carrying out of development for the purpose of a residential care facility if the density and scale of the buildings when expressed as a floor space ratio is 1:1 or less. As indicated on the amended architectural drawings prepared by Jackson Teece (accompanying the amended DA), the amended proposal has a maximum FSR of 1.09:1. Accordingly, the proposal contravenes the provisions of LEP Clause 4.4.

Clause 4.6 (‘Exceptions to development standards’) of the Wyong LEP allows approval to be granted to a development application where a proposal contravenes a development standard, in this instance Clause 4.3.

The objectives of Clause 4.6 are:

- “(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.”*

This written request addresses the requirements of Clause 4.6.

1.1 Site Zoning and Permissibility

The site is zoned R3 (Medium Density Residential) pursuant to the LEP (see **Figure 4A**).

The objectives of the R3 Zone are:

- “To provide for the housing needs of the community within a medium density residential environment.*
- To provide a variety of housing types within a medium density residential environment.*
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- To maintain and enhance the residential amenity of the surrounding area.*
- To encourage amalgamation of existing lots to facilitate well designed medium density development and to avoid unnecessary isolation of lots.”*

The amended proposal is consistent with the above objectives in that:

- the new 122-bed residential care facility will contribute to meeting the housing needs of the local community within the prevailing medium density residential environment;
- the residential care facility will meet the day-to-day needs of seniors and people with a disability;
- the residential amenity of the surrounding area will be maintained and enhanced;
- the proposal will amalgamate 13 lots and will not result in isolation of other lots.

1.2 Clause 4.4 of Wyong Local Environmental Plan 2013

Pursuant to the FSR Map referred to in clause 4.4 of the LEP, the site is subject to a maximum FSR of 0.9:1. Clause 4.4 states:

4.4 Floor space ratio

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

- (a) to ensure that the density, bulk and scale of development is appropriate for a site,*
- (b) to ensure that the density, bulk and scale of development integrates with the streetscape and character of the area in which the development is located,*
- (c) to facilitate development in certain areas that contributes to economic growth.*
- (ca) in relation to land at Kanwal that is within Zone B6 Enterprise Corridor and is identified as "Area 3" on the Floor Space Ratio Map:*
 - (i) to provide incentives for the development of health-related facilities in this locality, and*
 - (ii) to encourage consolidation of smaller lots to reduce the possibility of fragmented development, encourage shared facilities and manage traffic movements,*
- (d) to promote the provision of affordable housing.*
- (2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*

Pursuant to clause 48 of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, a consent authority must not refuse consent to a development application made pursuant to the SEPP for the carrying out of development for the purpose of a residential care facility if the density and scale of the buildings when expressed as a floor space ratio is 1:1 or less.

1.3 Principles and Relevant Authorities

The principles and relevant authorities which have been considered in the preparation of this replacement Clause 4.6 variation request are those found in:

- Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46;
- Wehbe v Pittwater Council [2007] NSWLEC 827 ("Wehbe");
- Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009 ("Four2Five No 1");
- Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 ("Four2Five No 2");
- Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 248 ("Four2Five No 3");
- Micaul Holdings Pty Limited v Randwick City Council [2015] NSWLEC 1386; and
- Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7.

2. Exceptions to Development Standards - Clause 4.6

Clause 4.6 of Wyong Local Environmental Plan 2013 permits consent to be granted for development even though the development would contravene a development standard imposed by the LEP.

2.1 Objectives of Clause 4.6

The objectives of Clause 4.6 are:

- “(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.”*

2.2 Clause 4.6: Requirements for DA's

Clause 4.6 of the LEP states (as relevant):

- “(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 issue.*
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) the consent authority is satisfied that:*
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) the concurrence of the Secretary has been obtained.*
- (5) In deciding whether to grant concurrence, the Secretary must consider:*
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) the public benefit of maintaining the development standard, and*
 - (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.”*



Accordingly, the provisions of Clause 4.6 can be used to vary (to the extent required) the maximum building height development standard applying to the site pursuant to Clause 4.4.

The matters raised above are addressed below in **Section 4** of this submission.

3. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case and are there sufficient planning grounds to justify contravening the standard?

3.1 Extent of non-compliance

The maximum FSR of the proposed development is 1.09:1 compared to the maximum allowable FSR of 1:1. This is a minor non-compliance.

3.2 Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

Compliance with the maximum FSR development standard is unreasonable and unnecessary in the circumstances of the amended DA for the following reasons:

- The proposed development has evolved from a detailed consideration of the characteristics of the site in its context including the prevailing planning controls contained in the LEP and DCP as an indicator of the desired future character of the area.
- The density, bulk, and scale of the development is appropriate in the context of the site's redevelopment potential as envisaged by the 'key site' development control pursuant to LEP Clause 7.11.
- the density, bulk, and scale of development is compatible with the streetscape in that the front façade of the building presents to Main Road and has a subservient rear presentation to Tamar Avenue.
- Building facades have been articulated to reduce the apparent bulk of the building.
- The proposal facilitates the redevelopment of the area in a manner which is entirely appropriate for the local character and which will contribute to economic growth.
- The site is located adjacent to a business zone and on a large lot within a block identified for redevelopment as a key site. The bulk and scale of the development when perceived from the public domain would appear as a three-storey building with articulated facades and variable setbacks from Main Road. Setbacks comply with those required for a residential building of the same height providing the opportunity for perimeter landscaping and open space.
- As described below, the objectives of the standard are achieved notwithstanding the amended proposal's non-compliance with the standard.
- The amended proposal has a bulk and scale appropriate for the key site location and is a low traffic generating development. The proposal will not result in any significant generation of traffic.

- The amended FSR does not result in an unacceptable or unreasonable intensity of development.
- The development is for the purpose of a health-related service in the form of a residential care facility that is a form of seniors housing for which there is a significant demand in the locality.

Compliance with the maximum FSR development standard is therefore unreasonable and unnecessary given the circumstances of the site and the amended proposal.

3.3 Are there sufficient environmental planning grounds to justify contravening the development standard?

The contravention of the maximum floor space ratio development standard is justified on environmental planning grounds specific to this development for the reasons set out in the Statement of Environmental Effects. The non-compliance with the FSR control does not result in any significant additional detrimental impact on the amenity of adjoining properties.

The proposal is consistent with the objectives and requirements of relevant planning instruments and development standards and will result in no significant adverse environmental planning impacts. The inherent characteristics of the site, including its size, its existing condition, and the surrounding development, make the proposal eminently suitable and justifiable on environmental planning grounds.

There is an absence of significant environmental harm associated with the non-compliance of the amended proposal with the minimum FSR development standard.

3.4 Has this written requested adequately addressed the matters required to be demonstrated by sub-clause (3)?

It is considered that the proposed development adequately addresses the matters set out in Clause 4.6(3) as required by Clause 4.6(4)(a)(i).

4. Is the development in the public interest?

Clause 4.6(4)(a)(ii) specifies that a development will be in the public interest if it is consistent with the objectives of the particular development standard and the objectives for development within the zone in which the development is proposed to be carried out.

It is considered that the development will be in the public interest for the following reasons.

4.1 Consistency with the objectives of the standards

The objectives of the maximum floor space ratio development standard are as follows:

- (a) to ensure that the density, bulk and scale of development is appropriate for a site,*
- (b) to ensure that the density, bulk and scale of development integrates with the streetscape and character of the area in which the development is located,*
- (c) to facilitate development in certain areas that contributes to economic growth.*
- (ca) in relation to land at Kanwal that is within Zone B6 Enterprise Corridor and is identified as “Area 3” on the Floor Space Ratio Map:*
 - (i) to provide incentives for the development of health-related facilities in this locality, and*
 - (ii) to encourage consolidation of smaller lots to reduce the possibility of fragmented development, encourage shared facilities and manage traffic movements.”*

In relation to Objective (a) and (b), the existing character of the area is one in transition from older style dwelling houses and a dilapidated and disused caravan park site to one that facilitates economic development in the Shire in a manner that also caters to a well-recognised community need for residential care facilities. Council’s adopted Toukley Planning Strategy recommends the redevelopment of the caravan park site and incentives to be provided for this purpose. The desired future character of the area is one that allows a higher development with site consolidation to achieve rational development sites, employment generating developments, proximity to a centre and to public transport, good urban design and associated public benefits. It is considered that the amended proposal achieves these elements of the desired future character of the area.

In relation to Objective (c), the amended proposal would make an important contribution to economic growth by the provision of jobs and increased demand for local goods and services.

In relation to Objective (ca), although the development is not located at Kanwal, it is for a health-related purpose in that it provides a residential care facility within which the frail aged can be cared for. Further the development facilitates the consolidation of lots and manages traffic movements.

It is considered that the development is consistent with the objectives of the standards.

4.2 Consistency with the objectives of the zone

The site is within Zone R3 (Medium Density Residential) under the LEP. The objectives of the zone are:

- *“To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To maintain and enhance the residential amenity of the surrounding area.*
- *To encourage amalgamation of existing lots to facilitate well designed medium density development and to avoid unnecessary isolation of lots.”*

The proposed seniors housing is consistent with these objectives in that:

- The development is for seniors housing in a three-storey built form that is a land use and form generally consistent with a medium density residential environment;
- It adds to the variety of housing in the area through the provision of residential care facility which is a form of residential accommodation;
- It comprises a facility that meets the day to day needs of residents in need of care.
- The development is for a residential use and it maintains and enhances the residential amenity of the surrounding area;
- The development incorporates the amalgamation of existing lots to facilitate well designed and avoids unnecessary isolation of lots.

The public interest is best served by the orderly and economic use of land for permissible purposes in a form which is cognisant of and does not impact unreasonably on development on surrounding land, and which satisfies a market demand for a residential care facility.

The amended proposal is in the public interest as it will:

- transform the existing site which is in poor condition in a manner which is compatible with and sympathetic to the existing and future character of the locality;
- provide a residential care facility in the area to meet future demand;
- provide high quality aged care facilities within close proximity to local services, amenities and shops within Toukley town centre;
- have positive social and economic impacts;



- provide a development that is compatible with the amenity of the site and with the adjoining area; and
- exhibit a high-quality design which will provide a high level of amenity for future residents without unreasonable impact on nearby properties.

The amended proposal is consistent with the public interest.

5. Conclusion

Compliance with the maximum floor space ratio development standard in Clause 4.4 of Wyong Local Environmental Plan 2013 is both unreasonable and unnecessary in the circumstances of the amended proposal for a new residential aged care facility at the site.

There are sufficient environmental planning grounds to justify the non-compliances, and the proposal is in the public interest because it is consistent with the objectives of the maximum floor space ratio development standard, the LEP, and the provisions of the Seniors Housing SEPP.

Further, in terms of consistency with the objectives of Clause 4.4, it is considered that strict adherence to the maximum floor space ratio development standard to this particular development is not warranted and relaxing the standard would result in a better form of development.