

Wyang LEP 2013
CLAUSE 4.6
APPLICATION TO VARY A
DEVELOPMENT
STANDARD:
Height of Building

Proposed shop top housing development at

**Nos. 5-7 & 8 Beach Parade,
Canton Beach**

Prepared for:

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WYONG LOCAL ENVIRONMENTAL PLAN 2013 CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

APPLICANT'S NAME: Renee & Darin Butcher
c/- X.PACE Design Group

SITE ADDRESS: Nos. 5-7 & 8 Beach Parade, Canton Beach

PROPOSAL: Proposed new Shop-top Housing Development

1. (i) **Name of the applicable planning instrument which specifies the development standard:**
Wyong Local Environmental Plan 2013

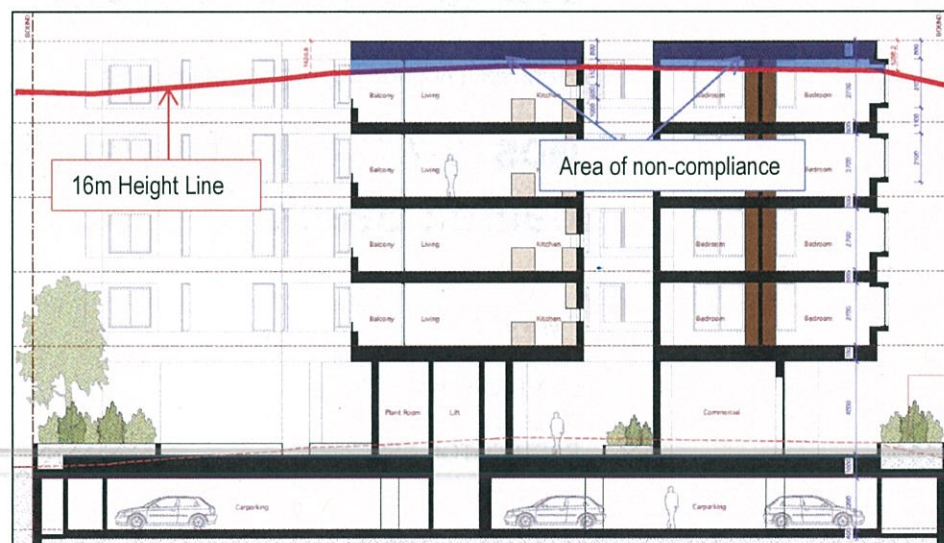
(ii) **The land is zoned:** SP3 Tourist

(iii) **The number of the relevant clause therein:**

Clause 4.3 – Height of Buildings

2. **Specify the nature of Development Standard sought to be varied and details of variation:**

The Height of Buildings map prescribes a maximum building height of 16 metres. The proposal has a height ranging from 16.81m - 18.41m, which exceeds the control by maximum of 2.41m (see Figure 1).



Source: X.PACE Design Group

Figure 1: Section Showing Extent of Height Non-Compliance

Council has identified the subject site as a key renewal site known as the Lakedge Caravan Park, and prescribed significant uplift in height (up to 23m) and FSR. This is to assist the transformation of the site from a derelict Caravan Park to a vibrant mixed use development that is consistent with the objectives of the SP3 Zone.

On this basis, Council has accepted a higher height control that is larger than any current developments in the surrounding area. Therefore, the proposed maximum height of 18.41m and the variation of 2.41m are appropriate in this instance. The proposal is also considered as an appropriate architectural response for a particularly exposed site with two street frontages.

3. Consistency with Objectives of Clause 4.6

It is noted that the objectives of Clause 4.6 seek to recognise that in particular circumstances strict application of development standards may be unreasonable or unnecessary. The clause provides a means by which a variation to the standard can be achieved. The objectives of Clause 4.6 and our planning response are stated, inter alia:

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

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

The proposal seeks flexibility in the application of the height development standard in the circumstance of this particular case. The site is located within the SP3 Tourist zone and is part of a Key Site under the provision of the LEP, which prescribes building height and density controls that encourages a variety of large scale mixed use tourist-oriented and residential developments.

The proposal is for a variation of approximately 2.41m. Given the future character of the locality anticipated by the Council, the extent of variation is considered appropriate in this instance. The flexibility in these particular circumstances allows a better outcome for the development, by allowing the building to have a density that is consistent with the future characteristic of the locality. Furthermore, the proposal will embellish the existing vacant site to accommodate an 'iconic development', which comprise active ground floor commercial spaces and provide an opportunity for improved pedestrian connectivity. It will also assist in supporting the tourism industry and the local economy of Canton Beach, as well as strongly satisfying the demand for additional high quality residential accommodation in the locality. In our opinion, the proposal will make a positive contribution to the future of Canton Beach and is consistent with the objective of the SP3 Tourist Zone.

Strict compliance with the height limit would reduce potential for maximising the potential of the site, where a fourth floor cannot be achieved with sufficient roof space. Given the corner location and the key site objectives, the proposal contributes significantly to the streetscape character, and reflects the future bulk and scale of the Lakedge Caravan Park. The development is also a better planning outcome for the subject site in terms economic use of the land and provides an iconic development for the renewal of this corner site.

It is noted that a number of amendments to the plans were made in response to Councils requests including a compliant FSR, increased setbacks, additional screening plantings and revised balcony orientations.

Furthermore, there are numerous proposed residential flat building and commercial building within the Wyong Local Government Area that have been approved by Council with heights exceeding the LEP standard. Developments include No. 104 Ocean Parade, Blue Bay (DA/674/2016), with approved 27.30% departure from the height control, and at No. 15-23 Hely Street, Wyong, with approved 12% departure from the height limit. Accordingly, in our opinion, the proposed 15% increase from the height limit is appropriate in this instance and should be accepted by Council.

Accordingly in our opinion, the proposal is consistent with the objectives of Clause 4.6 and that irrespective of the interpretation of building height, the variation is appropriate in this instance.

4. Justification of Variation to Development Standard

Clause 4.6(3) outlines that a written request is required when seeking to vary a development standard, along with justification of the contravention. The clause is stated, inter alia:

(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."*

The following sections will outline why, in our opinion, the development standard is unreasonable and unnecessary and will set out the planning justification for the variation.

5. Compliance with the Development Standard is Unreasonable and Unnecessary in the Circumstances of the Case

Clause 4.6(3) (a) requires the applicant to provide justification that strict compliance with the height requirement is unnecessary and unreasonable in the exceptional circumstances of the case. In *Wehbe v Pittwater Council* (2007) NSWLEC 827, Preston CJ established five potential tests for determining whether a development standard could be considered to be unreasonable or unnecessary. The Court's recent decision in *Four2Five Pty Limited v Ashfield Council* [2015] NSWLEC 90 has altered the way the five tests ought to be applied, requiring justification beyond compliance with the objectives of the development standard and the zone. That is, more than one of those five grounds is now arguably required to be made out.

It is our opinion, that the proposal satisfies a number of the five tests established in *Wehbe* and for that reason; the development standard is unreasonable and unnecessary in this instance.

The relevant tests will now be considered;

Test 1 – The objectives of the standard are achieved notwithstanding non-compliance with the standard

In our opinion, the proposal remains consistent with the relevant objectives of the height of buildings development standard and these objectives will now be considered.

Objective (a): to establish the maximum height limit for buildings to enable the achievement of appropriate development density

Response:

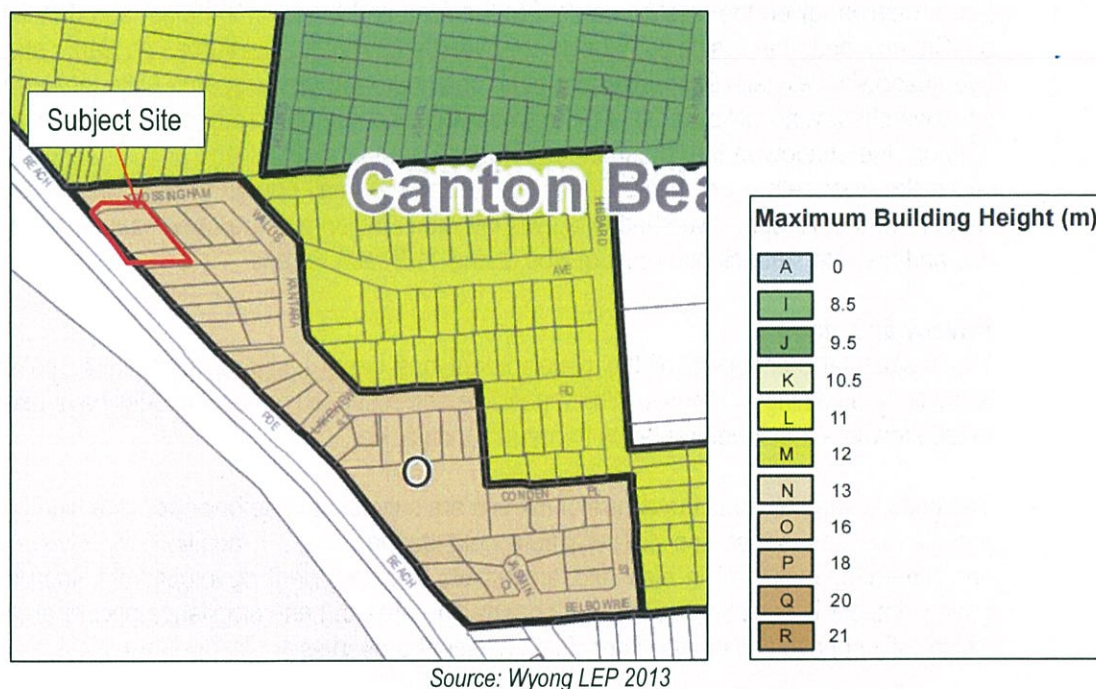
As mentioned, the subject site is within the Lakedge Caravan Park key site, which has been identified for redevelopment in order to stimulate high density mixed use development, to promote tourism and provide high quality residential accommodation in the Canton Beach foreshore area. The proposed mixed use building will be constructed on an amalgamated site with generous lot size and two street frontages

To respond to the desired vision for the Lakedge Caravan Park and the lot size, the proposed building will have a compliant Floor Space Ratio of 1.44:1 and maximum height of 18.41m, which is appropriate for the density provided. The additional height is marginal in the context of the development and the size of the subject site. Accordingly, the proposed height is necessary and appropriate for the subject site and the proposed density, in order to present a high quality urban design outcome for this prominent corner site.

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

Response:

The maximum height for the subject site and adjoining land recognises the desire for renewal of the area. Council intend to reinforce this by prescribing heights which are greatly in excess of the existing one, two and three storey buildings (see Figure 2). Furthermore, Clause 7.11 Key Site Provision prescribes a maximum height of 23m for the subject site and the Lakedge Caravan Park. While the proposal does not rely on the Key Sites provisions, Council and residents are anticipating for a higher scale development on the site. Accordingly, the proposed building is much lower than the anticipated height of 23m, and is an appropriate scale for the subject site.



Source: Wyong LEP 2013

Figure 2: Maximum Building Heights in the vicinity of the site

Whilst the proposal represents a departure from the character of the existing development in the locality, it is a benchmark for the future built form and character of the Lakedge Caravan Park. The proposal will satisfy the future characterises of the Lakedge Caravan Park. As the subject site is currently vacant, it presents poorly to the street and does not make any contribution to the locality. The proposal will revitalise the site by providing a contemporary mixed use development, which will activate the street frontages and contribute to the diversity of uses in the locality. The proposed forecourts proposed at the ground floor will also encourage pedestrian traffic and providing a more vibrant interface. New landscaping will improve the scenic quality of the site and enhance visual presentation when viewed from the street and Tuggerah Lake foreshore. The provision of residential units will also contribute to the evolution of dwelling types within the area.

Accordingly, in our opinion, the proposal is compatible with the height, bulk and scale for the redevelopment of the site and satisfies the relevant desired future character objectives of the Lakedge Caravan Park.

Objective (b): to ensure that the height of buildings protects the amenity of neighbouring properties in terms of visual bulk, access to sunlight, privacy and views

Response:

Detailed assessment on visual bulk, access to sunlight and privacy and views are discussed in the Statement of Environmental Effects. The key points are summarised below.

Visual bulk

The proposal adopts a building design where the ground floor built form has been divided into two portions by landscaped communal open space in order to reduce bulk. As well as providing ventilation and light throughout the development. The communal open space with improved landscape setting will also assist in breaking up the visual bulk and improving the interface of the site when viewed from adjoining properties. Furthermore, the proposal will utilise balconies, window openings and a mix of materials and finishes to form articulated and modulated building facades, which will also minimise visual bulk. The area of non-compliance is at the roof level, and the proposal provides a flat roof form, which will also assist in minimising the bulk of the building.

Access to sunlight

In our opinion, given the existing context of the area and the uplift in height and density anticipated by Council and the residents, additional overshadowing is inevitable. At 9am, majority of the overshadowing will fall within foreshore open space area of the Tuggerah Lake located opposite the site, overshadowing will also fall within a small portion of the front setback of No. 9 Beach Parade. At 12noon, the shadow at the foreshore open space area is reduced and additional shadow will occur within the front setback of No. 9 Beach Parade and a small portion of the front setback of No. 11 Beach Parade. At 3pm, overshadowing will fall within majority of the open space area of the subject site and the rear setback and roofs of Nos. 9 and 11 Beach Parade.

Privacy and views

The residential component of the development has been designed to minimise potential privacy impacts on adjoining properties. Where possible, the proposed residential units have been orientated to face towards the street frontages to prevent overlooking.

The units located towards the centre of the site are substantially setback from the side boundaries, to provide sufficient separation distance from neighbouring sites. In addition, windows and balconies are screened, restricted in size and are offsets from adjacent developments, therefore potential privacy impact is minimised. More importantly, the area of non-compliance occurs at the roof level, which will not have any privacy impacts on adjacent properties.

It is noted that we have not undertaken an inspection of nearby properties and our assessment has relied on an inspection of the subject site, aerial photography and survey information.

It is likely that properties surrounding the subject site currently obtain views to Tuggerah Lake across the subject site. It is also noted that as the topography is relatively flat in the locality, even a modest development on the subject site would impinge on views. As mentioned, Council have identified the site as being suitable for heights up to 23m and FSRs of up to 20% above the control. On this basis, any compliant scheme on the site would likely result in view loss. Therefore the non-compliant elements of the proposal do not result in view loss worse than a compliant scheme.

Test 3 - The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

It is our opinion that the underlying objective or purpose outlined above would be defeated if compliance with the maximum height was necessary.

The proposed building is considered to be a suitable design solution on an amalgamated site that is part of the Lakedge Caravan Park key site. The non-compliance is minor and is located at the roof level. Full compliance would either require the top level to be lowered, which would reduce internal amenity, or additional excavation, which result in a poor relationship between the ground level and the street. Given that the proposal satisfies the zoning and height objectives, the proposal is considered appropriate and the requirement for compliance is unreasonable.

Furthermore, the proposed high quality contemporary mixed use development will activate the street frontages and provides new residential accommodation, which will be in the public interest.

Strict compliance with the height standard would unnecessarily complicate orderly and economic development of the land in accordance with the intentions of the zoning and the objectives of the Environmental Planning and Assessment Act (1979). For the reasons contained in the SEE and outlined above, the development standard is unreasonable and unnecessary.

6. There are sufficient environmental planning grounds to justify contravening the development standard

The proposal is permissible within the SP3 Tourist Zone and is consistent with the relevant objective, of both the zone and the height development standard. The proposal is also consistent with the desired future character of the locality.

The proposal will be in keeping with the desired future character of development along Beach Parade as depicted by the transitioning character of the area. The proposed height of the development will facilitate additional residential dwellings at the upper level and assist the development in satisfying the zone objectives by providing additional preeminent accommodation in a mixed use context.

The area of non-compliance is located on the roof level, strict compliance with the standard would require the lowering the entire building in order to reduce the height. This will unreasonably and unnecessarily reduce the ceiling height and unit size of level four units, which would reduce the amenity to occupants and compromise the design of the roof form. In our opinion, the proposal's height is appropriate in the setting of the site and its location bounded by two street frontages.

In our opinion, the proposed built form with a maximum height of 18.41m and the extent of non-compliance of 2.41m are modest in comparison to the key site compliant building envelope anticipated by the council, which has a maximum height of 23m. In addition, given the existing built up nature of the surrounding area, adverse impact on views from surrounding properties is inevitable from any compliant building envelope, and the proposed development will have less impact compared to a building that is fully compliant with the key site height provision. It is also noted that an increased setback has been applied at the north-eastern boundary to comply with the ADG at levels 1 to 4 and, for the most part, the upper level maintains the 9m side setback.

Furthermore, there are numerous developments within the Wyong Local Government Area that have been approved by Council with heights exceeding the LEP standard. Developments such as the proposed residential flat building at No. 104 Ocean Parade, Blue Bay (DA/674/2016), which was approved with 27.30% departure from the height control, and the proposed commercial building at No. 15-23 Hely Street, Wyong, which was approved with 12% departure from the height limit. Accordingly, in our opinion, the proposed 15% increase from the height limit is appropriate in this instance and should be accepted by Council.

Flexibility in these circumstances allows a better outcome for the building to introduce an appropriate built form that is anticipated from this key site. The form and scale proposed is also consistent with the future characteristic of the locality identified in the LEP and DCP. It is our view that compliance with the 16m height control is unreasonable in the circumstances of the case and that the proposed development exhibits sufficient planning reasons to vary the development standard.

7. Clause 4.6(4) Requirements

Clause 4.6(4) guides the consent authority's consideration of this Clause 4.6 variation request. It provides that:

"(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"

The applicant submits that the consent authority can and should be satisfied of each of these requirements of clause 4.6(4), for all of the reasons set out in this request, and also having regard to the future characteristics of the locality.

As indicated, it is our opinion that the proposal is in the public interest. In accordance with Test 1 in Wehbe and Clause 4.6(4) (a) (ii) an assessment of the proposal against the objectives of the standard and the zone has been undertaken. The consideration of the objectives of the standard is set out in this submission and in our opinion, the proposal is consistent.

A detailed assessment of the proposal against the objectives of the zone is undertaken in the submitted Statement of Environmental Effects. From this, it is our opinion that the proposal is consistent with the zone objectives and should be supported.

For all the above reasons it is our opinion that the variation is appropriate, consistent with the intent of Clause 4.6 and should be supported.