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Clause 4.6 Variation to Development Standard Clause 4.3 Height of Building



Perspective, CKDS, 2017

Document Control

Title: Clause 4.6 Request to Amend Development Standard

Proposal: Affordable Housing Development

Address: 6-10 Dunleigh Street, Toukley

Job No: 17NEW0161

Client: Yoomin Choi

Document Issue

Issue	Date	Prepared by	Reviewed by
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Final	18/01/2018	Liam Buxton	
Revised Final	09/08/2018	Kirsty Tepper	

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1 Request to Vary a Development Standard

1.1 Purpose

This variation under Clause 4.6 of the *Wyang Local Environmental Plan 2013* (WLEP 2013) has been prepared by Barr Property and Planning on behalf of Compass Housing (the Applicant). It is submitted to Central Coast Council in support of a development application for a new affordable housing development at 6-10 Dunleigh Street, Toukley.

Specifically, this clause 4.6 request to vary a development standard seeks to increase the maximum building height provision stated within clause 4.3 of the Wyong LEP. Clause 4.3 sets a 12m height limit for development on the site. The proposed development achieves a height of RL 18.1m, including the lift overrun atop the roof. This can be seen in the revised elevations prepared for the proposal, in Appendix A. RLs across the site are variable between 4.52 and 4.25m, as demonstrated within Appendix B.

The proposed height increase is calculated within Section 0. The variation is minor, is unique to the proposed development, and will not set precedence for surrounding development.

This variation request made under Clause 4.6 has been revised following comments received from Council, regarding variations to the height for the proposed development. It is noted that the initial request for variation to height was a variation of 6.6m to allow the development of 40 units on the site. The proposal has been revised since lodgement, in response to public submissions and Council concerns. The proposal now presented to the JRPP represents a significant decrease in height from that initially proposed.

This variation request is considered to replace the request lodged in January 2018 which accompanied the initial development application, and has been revised to relate specifically to the proposed 34 unit development.

1.2 Statutory and Legal Context

Clause 4.6 of the Wyong LEP is the statutory mechanism that allows the consent authority to grant consent to development that departs from a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards, including Height of Building control, to achieve better outcomes that are in the public interest. The objectives of this clause 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.*

Furthermore, clause 4.6(3)-(5) of the Wyong LEP 2013 provides that:

4.6 Exceptions to development standards

- (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.*

Clause 4.6 requires that a consent authority be satisfied of the following objectives, before granting consent to a development that contravenes a development standard:

- That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl.4.6(3)(a)),
- That the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard (cl. 4.6(3)(b)), and
- That 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 (cl. 4.6(4)(a)(i)).

The consent authority's satisfaction as to those matters must be informed by the objective of providing flexibility in the application of the relevant control to achieve better outcomes for and from the development in question.

1.3 Consistency with Common Law Guidance

Assistance on the approach to justifying a development standard variation is found in certain defining decisions of the NSW Land and Environment Court, in particular in the judgements for:

- *Wehbe v Pittwater Council [2007] NSWLEC 827,*



- *Four2Five Ltd v Ashfield Council* [2015] NSWLEC 1009,
- *Micaul Holdings Pty Ltd v Randwick City Council* [2015] NSWLEC 1386,
- *Moskovich v Waverly Council* [2016] NSWLEC 1015, and
- *Zhang and anor v Council of the City of Ryde* [2016] NSWLEC 1179.

The Land and Environment Court has established questions to be addressed in variations to development standards lodged under *State Environmental Planning Policy 1 – Development Standards* through the judgement of Justice Lloyd, in *Winten Property Group Ltd v North Sydney Council* [2001] 130 LGERA 79 at 89. The test was later rephrased by Chief Justice Preston, in the decision of *Wehbe v Pittwater Council* [2007] NSW LEC 827 (Wehbe).

In *Wehbe v Pittwater* [2007] NSWLEC 827 (Wehbe), Preston CJ of the Land and Environment Court identified five ways in which an applicant might establish that compliance with a development standard is unreasonable or unnecessary. It was not suggested that the five ways were the only ways that a development standard could be shown to be unreasonable or unnecessary. Nor does the development need to demonstrate satisfaction of more than one of five ways outlined.

While *Wehbe* related to objections made pursuant to *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1), the analysis can be of assistance to variations made under clause 4.6 where subclause 4.6(3)(a) uses the same language as clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]).

The five ways outlined in *Wehbe* include:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Way**),
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Way**),
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Way**),
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (**Fourth Way**),
5. The zoning of the land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the parcel of land should not have been included in the zone (**Fifth Way**).

1.4 Scope

In accordance with the statutory requirements, and as guided by the above case law, this clause 4.6 request:

- Identifies the development standard to be varied (**Section Error! Reference source not found.**),
- Identifies the extent of the variation sought (**Section 0**),

- Establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances (**Section 4.1**),
- Demonstrates that there are sufficient environmental planning grounds to justify the variation (**Section** Error! Reference source not found.),
- Demonstrates that the consent authority can be satisfied that the proposal is in the public interest because it is consistent with the objectives of the standard and the objectives for development within the R3 Medium Density Residential Zone (**Section** Error! Reference source not found.), and
- Provides an assessment of the matters the Secretary is required to consider before granting concurrence (**Section 4.4**), namely:
 - Whether the contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - The public benefit of maintaining the development standard, and
 - Any other matters required to be taken into consideration by the Secretary before granting concurrence.

It is concluded in **Section** Error! Reference source not found. that development consent can be granted to the proposal despite the proposed deviation from the development standard because, pursuant to clause 4.6(4)(a), the consent authority can be satisfied that:

- This written request has reasonably addressed the matters required to be demonstrated by clause 4.6(3), and
- The proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone; refer to Section 4.4.2.



2 Land Subject to this Variation

2.1 Site Description

This Clause 4.6 request to vary a development standard pertains to land at 6-10 Dunleigh Street, Toukley. The property description of the site comprises the following parcels of land:

- (a) 6 Dunleigh Street: Lot 6 in Deposited Plan 22986,
- (b) 8 Dunleigh Street: Lot 5 in Deposited Plan 22986, and
- (c) 10 Dunleigh Street: Lot 4 in Deposited Plan 22986.

The site has a rectangular configuration with an area of 2,160 square metres. It has a primary (east-facing) street frontage to Dunleigh Street, a secondary (south-facing) street frontage to Tamar Street, a side (north-facing) boundary to 161 Main Road and a rear (west-facing) boundary to 14 Tamar Street.

2.2 Urban Structure and Built Form

The urban structure and built form of the area is influenced by local coastal topography, lake systems and the construction of Main Road, which provides a link between the Pacific Highway and the Coast, connecting Wyong to the south-west. The local street network is generally rectilinear in form and influenced by topographical conditions.

Land use in the area is varied although predominantly residential, within the immediate locality of the site. There is a range of commercial and business uses along Main Road to the east and west, including hotels, motels, restaurants, retail, motor vehicle related premises, and light industrial uses.

The site is approximately 450 metres west of Toukley town centre on the NSW Central Coast, on a peninsula separating Tuggerah Lake and Budgewoi Lake. The site is approximately six kilometres east of Wyong Hospital.

2.3 Topography

The gradient of the site is relatively flat; ranging from RL 4.43 metres (AHD) to 4.26 metres (AHD). Further topographic details are provided on the Site Survey, prepared by Trehy Ingold Neate Land Development, included as Appendix B of the Statement of Environmental Effects.





Figure 1: Aerial image of the subject site as depicted by the red box (maps.six.nsw.gov.au)

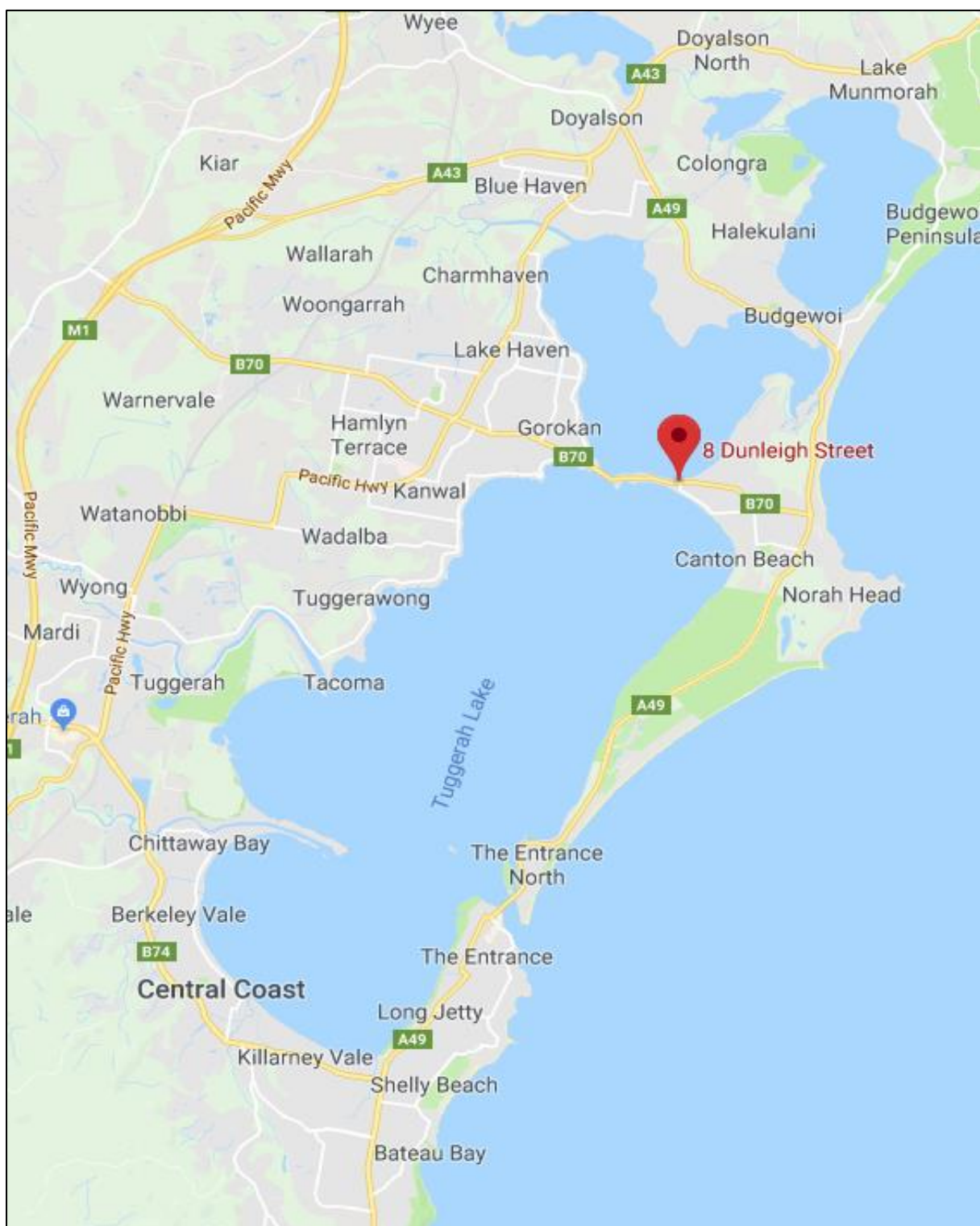


Figure 2: Location of the subject site in the broader locality (maps.google.com.au)

2.4 Strategic Planning Context

The strategic planning context of the site is set by the hierarchy of plans and policies applicable to the site and its region. While the State Environmental Planning Policies (SEPPs), Local Environmental Plan (LEP), and Development Control Plan (DCP) apply the relevant development controls under the EPA Act, the broader context for development of the site is based on the characteristics of the locality. These characteristics are defined in terms of the present, and likely future, social, environmental and economic trends affecting the region. Such trends are accounted for within the Central Coast Regional Plan. The proposed development is reviewed for consistency with the Regional Plan below.

The Department of Planning and Environment released the Central Coast Regional Plan 2036 in October 2016. The Regional Plan provides an overarching framework that will guide the preparation of detailed land use plans.

Goal 4 of the Regional Plan is to provide “a variety of housing choice to suit needs and lifestyles”. To this end, the Regional Plan states under Goal 4 that:

Demographic trends towards smaller households and an aging population will fuel the need for greater housing diversity in locations with good access to transport, health and community services, and more affordable housing. Providing a variety of housing types, including more affordable options in both existing and new areas across the region will allow people to age-in-place and maintain their connections with social networks and family. It may also avoid concentrations of particular types of housing, such as seniors housing and holiday housing with absentee owners.

The benefits of affordable housing and smaller housing types for the region are clearly highlighted within the Regional Plan. These include housing diversity, leading to a mix of dwelling types and creating greater potential for a diverse residential community. Increased small and affordable housing in the locality provides an opportunity for the existing community to age in place, retaining social ties and community fabric.

The Regional Plan aims to provide a variety of housing types, including more affordable options in both existing and new areas across the region.

In order to achieve this additional housing, the Regional Plan has proposed a variety of ‘Actions’. All relevant Actions have been addressed below:

Action 19.2 Review development controls to accelerate housing supply

This application seeks a variation to a development standard to permit additional building height within an area that has been identified for higher density development. The Central Coast Regional Plan Implementation Plan 2016 identifies that this Action should be delivered within the short term, with the assistance from the Department of Planning and Environment. This action recognises an urgent need to increase housing supply throughout the Region. The additional building height applied to the site will enable this development of 34 units within the determined timeframe in accordance with the Action. This request for a variation should be considered consistent with Action 19.2 and the delivery timeframe.

20.1 Improve housing choice by supporting housing delivery in and near the growth corridors and local centres

Toukley is identified within the Regional Plan as a local centre (Department of Planning 2016, pg. 52). Local centres as defined by the regional plan as:

Local centres provide jobs and services such as shopping, dining, entertainment, health and personal services to meet the daily and weekly needs of the local community. The Central Coast region hosts a number of local centres including Toukley, the Entrance, Long Jetty, Terrigal, Umina, Ourimbah, Ettalong, Point Clare, Kincumber and Killarney Vale.

The proposed development seeks to develop 34 units for the provision of affordable housing on a site that has been identified by the Wyong LEP 2013 (cl.7.11 Wyong LEP) and Central Coast Regional Plan (as above) for increased housing development. The Implementation Plan has identified Action 20.1 to be ongoing. The request for additional building height will facilitate improved housing choice in an identified local centre and is considered consistent with this Action.

20.2 Promote renewal opportunities in other local centres that have good accessibility and can support small-scale renewal

As stated within the supporting Statement of Environmental Effects (Barr Property and Planning 2017) and SEPP 65 Design Report (CKDS 2017) the subject land is located within an area that is highly accessible by public transport and has access to neighbouring community facilities.

This is further enforced through the application of *State Environmental Planning Policy (Affordable Rental Housing) 2009 (AHSEPP)*, which requires infill development outside the Sydney Regional area to be 'accessible', as defined by clause 10 of the SEPP.

The proposal seeks a unique infill renewal opportunity, to amalgamate three existing allotments to provide a suitable lot for the proposed development.

The additional building height will allow better design outcomes for the locality, while providing additional housing choice within an accessible area, pursuant to the requirements of SEPP 65.

The additional building height is considered consistent with the outcomes identified in Action 20.2 of the Regional Plan.

21.1 Provide greater housing choice by delivering diverse housing, lot types and sizes, including small-lot housing in infill and greenfield housing locations.

The Regional Plan has indicated that more one and two-bedroom units are required within the Local Centres to cater for the projected demand. In addition, it states that



Social and affordable housing will be needed for people on low incomes and a variety of housing solutions will be developed for different parts of the region. Increasing the overall supply of housing will help to reduce upward pressure on the cost of housing.
(Department of Planning and Environment, 2016, pg. 47).

The additional building height that is proposed as part of the development application will facilitate additional one and two-bedroom housing units, within an area identified as a key site to support higher density accommodation. The request for additional building height should be considered favourably, in support of Action 21.1.

The above review demonstrates that the proposal is entirely consistent with the strategic planning context of the site. This is particularly evident in the way the proposal seeks to increase the supply of small affordable dwellings within an existing infill development site, in close proximity to the recognised local centre of Toukley.

2.5 Central Coast Housing Market

The NSW Department of Family and Community Services (FACS) has assessed the housing market for the Central Coast Region. Wyong has been identified to have a high need for affordable housing. The assessment has concluded that the vast majority of dwellings in the Central Coast are separate houses built for families, which do not cater for the growing number of single person households (FACS, 2017).

Studio apartments and one and two-bedroom dwellings combined comprise 14.2% of the total dwellings in Wyong (FACS, 2017). The trend to decline in the proportion of rental housing that is affordable for lower income households to rent is evident in the Central Coast, as depicted in Figure 3 below.

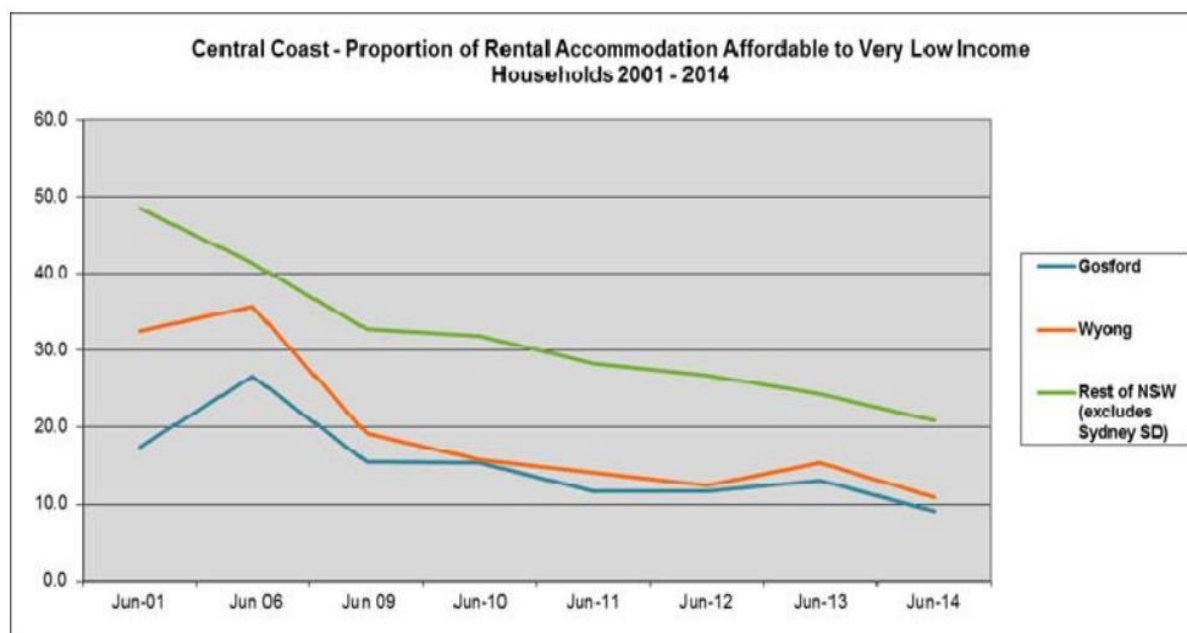


Figure 3: Proportion of Rental Accommodation Affordable to Very Low Income Households (FACS 2017)

The graph shows the change in proportion of private rental accommodation that is affordable to very low-income households in Gosford, Wyong and the Rest of NSW (excluding Sydney). It is evident in the above figure that Wyong is deficient in affordable housing stock available to very low-income earners compared to the rest of the State.

FACS has calculated the number of rental bonds lodged that were affordable to low income households in 2006, 2010 and 2013 in Wyong. There has been a substantial reduction in the number of affordable bonds lodged over that period. The table below illustrates the number of new bonds lodged that were affordable to low income households in the aforementioned monitoring period.

Table 1: Decline of Affordable Rental Housing Stock in Wyong.

Number of Affordable Rental Properties for Low Income Households			
LGA	2006	2010	2013
Wyong	4,795	2,916	2,410

The Wyong Local Government Area (LGA), now part of the Central Coast LGA, experienced a significant decline in the number of bonds lodged for affordable housing between 2006 and 2013, with an approximate 50% reduction. It is assumed that the reduction in bonds lodged is directly linked to the availability of affordable rental housing. This represents a decrease in the total number of affordable rental properties for low income households to half its initial level, over only seven years.

2.5.1 Housing Demand

Located between Sydney and Newcastle, with significant areas of national park, forest, conservation areas, beaches and waterways, the Central Coast has a population of over 312,000. This region has historically been regarded as more affordable for rental and owner-occupied housing than neighbouring Sydney and is forecast to experience significant population, household and dwelling growth to 2031.

2.5.1.1 Household Type

There has been minimal change in household types between 2001 and 2011, with Wyong LGA experiencing a small decrease in the proportion of couple families with children and couple only households and a slight increase in one parent families and lone person households. Figure 4 depicts the household type for the Central Coast, as reported by FACS.



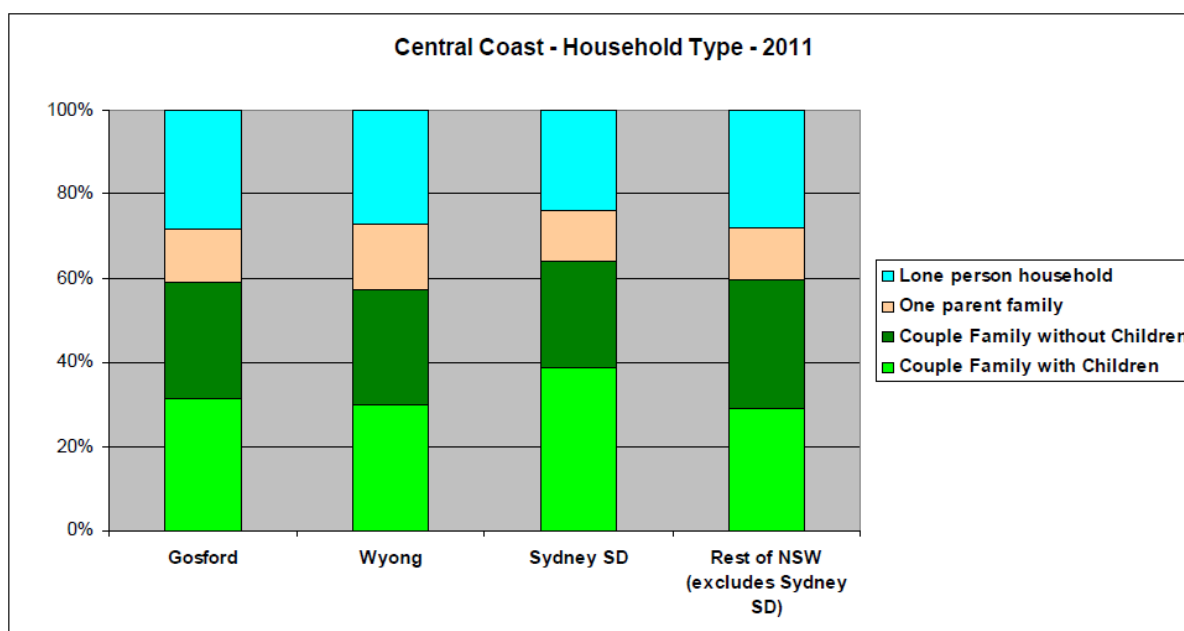


Figure 4: Central Coast Household Type, 2011 (FACS, 2017)

The figure above illustrates the proportion in each of the key household types in Gosford, Wyong, Sydney and the Rest of NSW at the 2011 Census. It is evident that the dominant household type is families with and without children. However, housing for this cohort has dominated market supply. Additional housing stock is to be provided for the emerging cohorts of lone person and one parent family households.

2.5.1.2 Income

In Wyong, the largest income cohort was the 'low income' bracket, which constituted 55% of the population; unlike Sydney which had 37.6% comparatively. Figure 5 below depicts the proportion of low, moderate and high-income households in Gosford, Wyong, Sydney and the rest of NSW at the 2011 Census.

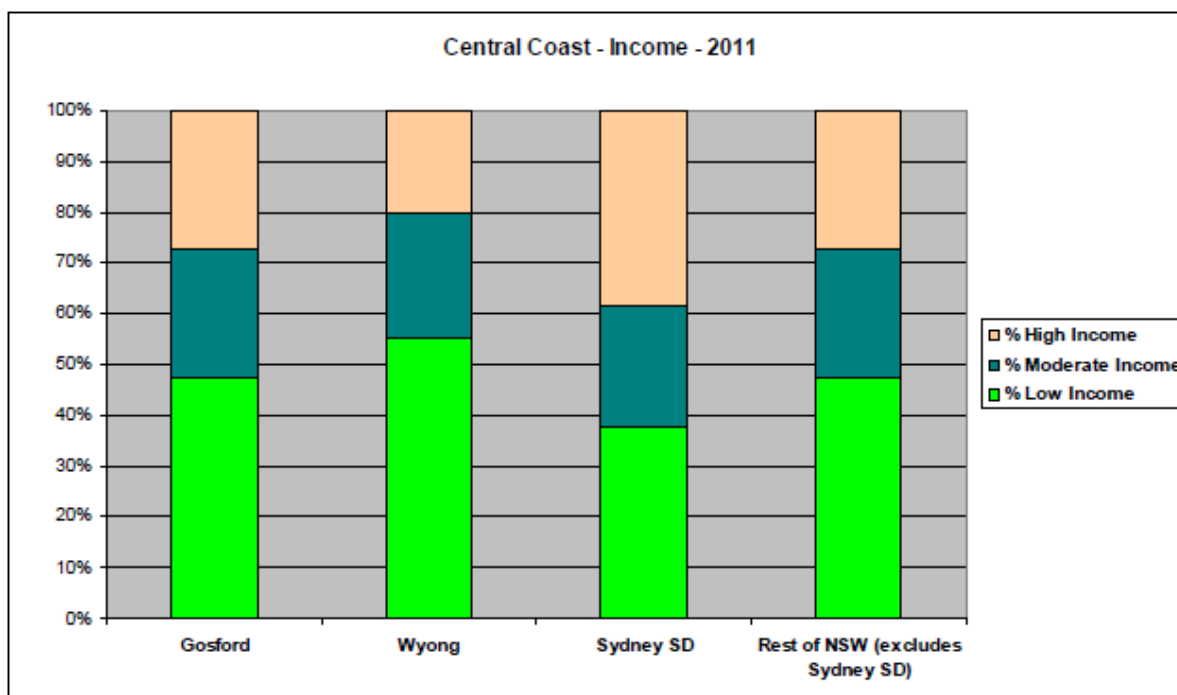


Figure 5: Central Coast income distribution (FACS 2017)

Figure 5 shows that Wyong has the largest percentage of low income earners and the smallest percentage of high income earners when compared to Gosford, Sydney and the rest of NSW.

The number of low income households increased between 2006 and 2011 in the Central Coast Region, as demonstrated in Figure 6 below.

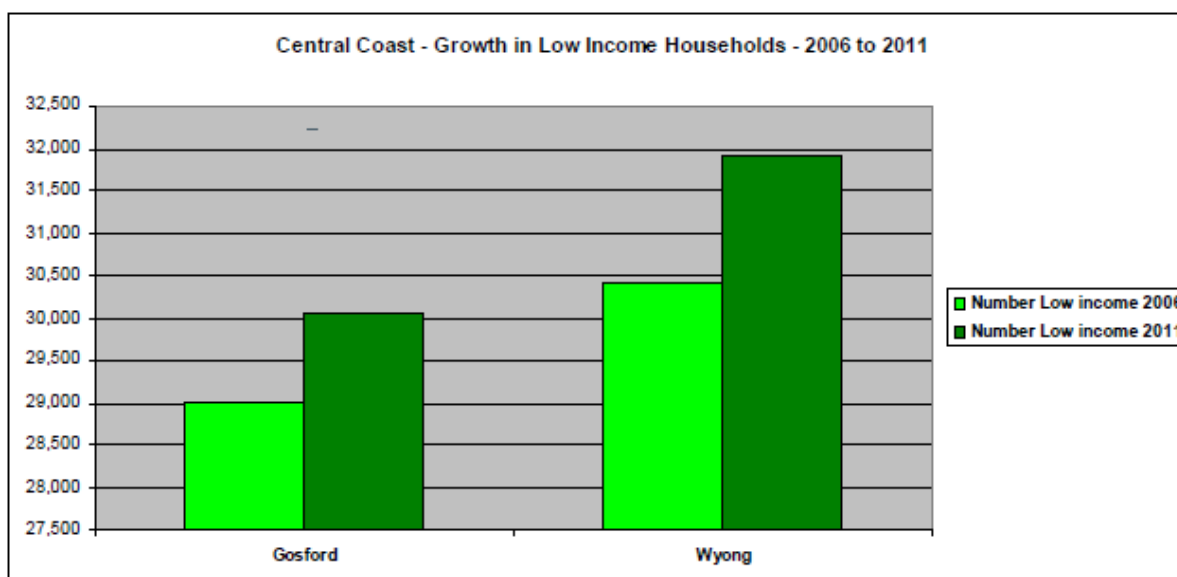


Figure 6: Growth in low income households within the Central Coast Region between 2006 and 2011. (FACS 2017)

2.5.2 Housing Supply

The vast majority of dwellings in the Central Coast (75%) are separate dwellings built for families, which do not alleviate the strain placed on the housing market for the emerging cohort of single occupant households.

2.5.2.1 Dwelling Type

Between 2006 and 2011, the majority increase in dwelling type within Wyong was for Separate Dwellings. Attached dwellings comprised just 8.1% of all dwellings in Wyong, with units being only 5.2% of total dwellings. The figure below depicts the proportion of each of the key dwelling types in Gosford, Wyong, Sydney and the rest of NSW at the 2011 Census.

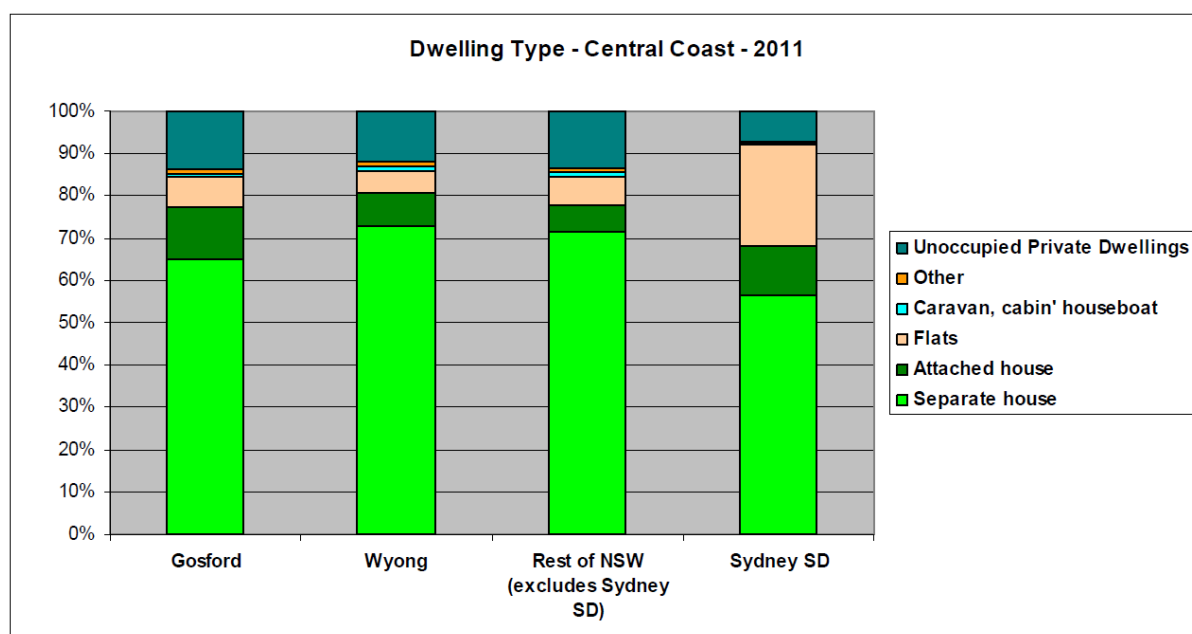


Figure 7: Central Coast Dwelling Type, Census 2011 (FACS 2017)

Over 70% of the total housing stock in Wyong is detached housing, with unoccupied dwellings comprising approximately 11% of the housing stock. Gosford exhibits similar trends to Wyong as well as the rest of the State. It is evident that a greater diversity of housing stock is required to be provided throughout the Central Coast region to satisfy the demand (as discussed in Section 2.5.1).

The forecast increase in older age cohorts in the population and the increased number of single person and couple only households would ideally be accompanied by an increase in the number of studio, one and two-bedroom dwellings. However, the Central Coast region has conversely exhibited a decrease in studio, one and two -bedroom housing stock. Consequently, the diversity in housing stock has decreased throughout the Central Coast region.

The table below illustrates the change in the number of studio, one, two, three and four or more bedrooms dwellings between 2001 and 2011.

Table 2: Change in number of bedrooms (FACS 2017)

Change in number of bedrooms 2001 – 2011

Area	0	1	2	3	4	total
Gosford	-3	-131	-703	-761	3,205	1,607
Wyong	-20	-59	-260	-340	5,087	4,408
Sydney SD	1,414	8,969	26,166	-3,731	84,406	117,224
Rest of NSW (excludes Sydney SD)	-268	-515	-7,180	-7,379	59,288	43,946

Wyong has shown a decrease in housing stock for studio, one, two and three-bedroom dwellings. This has been displaced by an increase in four-bedroom dwellings. The additional building height will enable the construction of 33 two-bedroom units and one one-bedroom unit, to provide needed housing supply within a deficient dwelling type.

The increased building height applied to the site is intended to directly achieve the provision of additional one and two-bedroom units to increase the provision of affordable housing. The provision of additional building height will enable these units within a locality that has been identified to have a shortage (as identified in Figure 1 and Table 1), as well as, being an area identified to support affordable housing growth (see section 2.4).

The provision of additional building height as part of this proposal is in alignment with the strategic vision of the local centre (as described above) to assist in alleviating pressure on housing affordability. This will be achieved by the provision of additional affordable rental housing stock (as a result of additional building height) within an area that has had a significant reduction in affordable housing stock since 2006.



3 Development Standard to be Varied

This section of the report aims to provide a detailed insight into the legislative controls applied to the proposal and the variation sought under clause 4.6 of the LEP. Specifically, this clause 4.6 request to vary a development standard seeks to increase the building height permitted for the site under clause 4.3 of the Wyong LEP. The proposal seeks to provide 34 units for affordable housing, based on a variation to the height permitted under clause 4.3. The proposed increase as calculated within Section 0 (below) is minor, is unique to the proposed development, and will not set precedence for surrounding development.

3.1 Wyong Local Environmental Plan 2013

The development standard that is sought to be varied as part of this application is Clause 4.3 of the Wyong LEP 2013, which stipulates the maximum height of building applicable to the subject development proposal. Relevant sections of clause 4.3 of the Wyong LEP are reproduced below:

4.3 Height of Buildings

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

- (a) To establish the maximum building 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) [Not applicable]

(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.

(2A) [Not applicable]

(2B) [Not applicable]

(2C) [Not applicable]

The site is mapped under the Wyong LEP 2013 to have a maximum building height of 12 metres, as indicated by Figure 8 below.

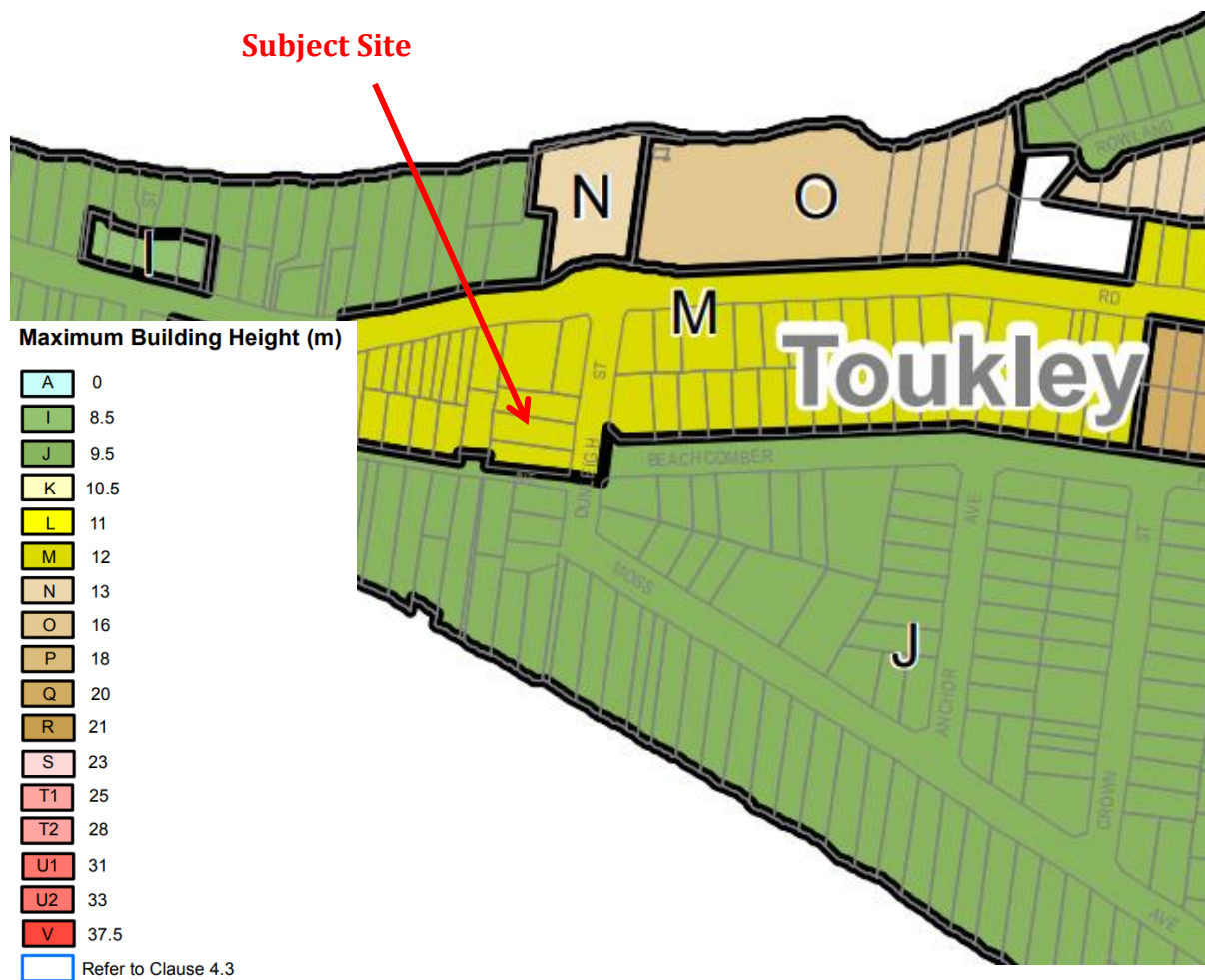


Figure 8: Map extract from the Wyong LEP 2013, Maximum Building Height

It is important to note that the surrounding development has an inconsistent maximum building height; ranging from 9.5m in the residential area to the south & east and 13-16 metres within the mixed-use area north of the subject site. It is also important to note that the site is identified as a Key Site under clause 7.11 of the Wyong LEP 2013, as illustrated in Figure 9 below.

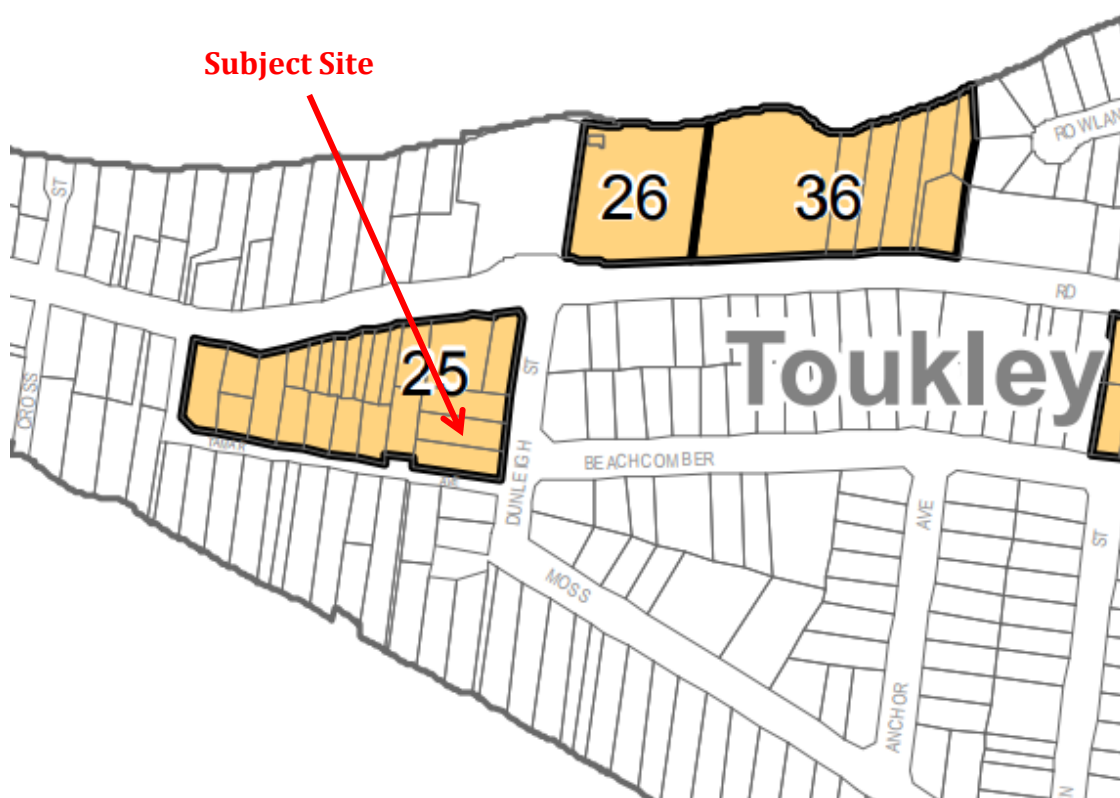


Figure 9: Extract from the Wyong LEP 2013 Key Sites Map

Key Site 25, of which the development site is a part, is mapped to have a maximum height limit of 25 metres, in accordance with clause 7.11 of the Wyong LEP 2013. This represents an increase of 13 metres over and above the height permitted as mapped on Sheet HOB_19 of the Wyong LEP 2013 (Figure 8).

Nomination of the site as a 'Key Site' indicates that Council has identified the subject site and adjacent allotments for high density development in the future. This is portrayed through the increase in allowable development height depicted in Figure 9. The objectives of key sites as stated within clause 7.11(1), include:

- (a) *To deliver a high standard of design excellence for certain key sites in Wyong,*
- (b) *To encourage the amalgamation of those key sites to provide opportunities for the expansion of, and improvements to, the public domain,*
- (c) *To provide a catalyst for the social and economic development of centres within Wyong,*
- (d) *To deliver significant public benefit to the community.*

The proposal does not seek to apply for consent for additional height up to 25m, permitted under clause 7.11 of the Wyong LEP 2013. This is due to the fact that a DCP would be required for the site in order to make use of the key site provisions. The proposed development is subject to stringent time constraints arising from State Government funding, which are aimed at facilitating the efficient provision of affordable housing throughout the State. In order to achieve the additional height requested for the

proposed development, it is necessary to submit a request for variation to the development standard relating to height.

Although the proposal will not utilise clause 7.11 to attain this increased height, it is noted that the proposal is consistent with the prescribed objectives for development of key sites. It will:

- provide a design that is of a high standard of excellence, as illustrated within the Revised Plans within Appendix A;
- include the amalgamation of three allotments within the key site;
- provide an increased number of residents, consequently being a catalyst for social and economic development within the Toukley local centre; and
- deliver a significant benefit to the local community in the form of the provision of increased diversity and affordability of dwelling stock, which is an identified need for the locality and the region.

3.2 Nature of the Variation

This clause 4.6 request to vary a development standard seeks to increase the maximum building height provision stated within clause 4.3 of the Wyong LEP. Clause 4.3 sets a 12 metre height limit for development on the site. The proposed building has a maximum building height of RL 18.1 metres, as illustrated on the elevations (SK-201 Issue C) prepared by CKDS (Appendix A). This accounts for the highest point of the building, being the lift overrun within the centre.

The calculated height of the building is based on consideration of the RLs across the site. These are illustrated within Appendix B, and vary between 4.52 metres and 4.25 metres.

Architectural plans for the site are based on an averaged RL of 4.4 metres. The RL for the centre of the site, below the proposed location of the lift overrun, is 4.29 metres and is shown in Appendix C.

The proposed height of the building, based on RLs below the lift well, is calculated below:

Natural Ground Level = 4.29m AHD (A)

Maximum Reduced Level = 18.1m AHD (B)

Height of Building = (B) – (A) = 13.81 metres (C)

Clause 4.3 maximum height = 12 metres (D)

Proposed variation = (C) – (D) = 1.81 metres (15%)

The overall height of the proposed building is 13.81 metres above natural ground level. This is an exceedance of 1.81 metres above the maximum building height limit as stated by the *Height of Buildings Map Sheet HOB_019* of the Wyong LEP 2013, refer to Figure 8; and a departure from the total allowable maximum building height of 15%.

The applicant seeks to vary the maximum height of building permitted for the site by requesting a variation to clause 4.3 of the Wyong LEP, from 12 metres to 13.81 metres, as shown in the table below.

Clause 4.3 of the Wyong LEP	
Current Maximum Height of Building	Proposed Maximum Height of Building
12 metres	13.81 metres

The proposed height is less than the intended future use of the site as a 'key site', and will facilitate the provision of 34 affordable housing units within a local centre (section 2.4), accessible to public transport. The site does not intend to abuse the use of the key site provision with over development, however, respects the current amenity of the locality while maintaining the intended vision for the subject land (section 3.1) and locality as a local centre (section 2.4).



4 Justification for Contravention of the Development Standard

Section 4.1 and 4.2 of this document address the matters in clause 4.6(3)(a), and how the objectives of the development standard are achieved, notwithstanding the non-compliance with the numerical control.

4.1 Clause 4.6(3)(a): Compliance is unreasonable or unnecessary

This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved notwithstanding non-compliance. Accordingly, the variation to the building height is justified pursuant to the First Way outlined in *Wehbe*.

4.1.1 The objectives of the standard are achieved notwithstanding non-compliance with the standard

The objectives of the maximum building height development standard under (clause 4.3 of the Wyong LEP 2013) are:

- (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) [Not applicable]*

Consistency with those objectives, and the absence of any substantial environmental impacts, would demonstrate that strict compliance with the height standard would be both unreasonable and unnecessary in this instance. The contentions below demonstrate how this proposal is consistent with the objectives in Clause 4.3.

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

As detailed within Section 4.2.1.2 the defined height limit for the subject site is 12 metres. However, Council has identified this site to support an increase in density by mapping it as a Key Site. Clause 7.11 of the Wyong LEP 2013 allows development to a maximum of 25 metres. The proposed development has a maximum building height of 13.81 metres, which is less than the key site limit. Notwithstanding the lack of take-up of opportunities afforded by key site provisions, the site's identification as a key site does highlight its unique, iconic nature and accessible and appropriate location for higher density development. The proposed height will enable the development to achieve a density more appropriate to the site's iconic nature, location, and identified future character. The proposal is considered appropriate with respect to density due to the unique, iconic nature of the subject site.

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

The immediate locality represents an array of height limits ranging from 9.5 metres in the east to 16 metres in the north. Furthermore, the site has been identified by Council to be a Key Site with a maximum prescribed height of 25 metres, as discussed in Section 4.2.1.2. As a result, it can be inferred that there is no defined uniform height limit for the immediate locality.

As calculated within Section 3, the proposed development has a maximum building height of 13.81 metres. The subject site has been identified to support future high-density development within the Central Coast Regional Plan and within Clause 7.11 of the Wyong LEP 2013, as previously discussed in Section 2.4 & 3.1. Notwithstanding, the departure from the prescribed height standard should be considered consistent with the envisaged density of the area, in accordance with cl.4.3(a) of the Wyong LEP.

4.1.1.3 *Objective (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*

There are a number of aspects to this objective that need to be considered as follows:

- Visual bulk,
- Access to sunlight, and
- Privacy and views.

Each of these items are further addressed below.

Overshadowing - Access to Sunlight

A series of shadow diagrams have been prepared by CKDS which confirms that the proposal ensures appropriate levels of solar access to the neighbouring dwellings (Appendix B). The shadow diagrams have assessed the proposed development for the March and September equinox and the winter solstice (June 21); for both the proposed development and a 'compliant' building height (12m). A summary of the assessment is provided below.

In the **autumn equinox**, there is some minor overshadowing from the proposed development towards 14 Tamar Avenue occurring between 9am and 12pm; this is reflected for both the proposed and compliant development. Due to the movement of the sun throughout the day, the shadow is cast over Tamar Avenue and finally Dunleigh Street. No other properties are impacted by overshadowing from the proposed development past 12pm.

In **mid-winter**, the sun is at [its] lowest point in the sky. As a result, the shadow cast from both the proposed development and compliant option extended further across Tamar Avenue, which impacts 17-21 Tamar Avenue. As the sun rotates, the shadow is cast towards 4 Dunleigh Street, with it ultimately projecting across to the façade of 2 Dunleigh Street. It is evident from the shadow diagrams that the proposed building (with increased height) has a negligible difference when compared against the compliant alternative (12

metres high). Notwithstanding, all neighbouring dwellings achieve the minimum 3 hours of solar access between 9am and 3pm on June 21.

Visual Bulk

The building has been designed to ensure that the visual bulk of the development has been reduced. The development includes the amalgamation of three allotments, with the proposed building to fit within the defined setbacks in accordance with the Wyong DCP. Notwithstanding, the rear setback has been increased to 11.5 metres to provide greater building separation between the proposed building and adjoining dwellings. The increased setback contributes to the increased height, due to the narrower floor plate and the retention of the proposed FSR.

The proposed building has been architecturally designed with compliance against *State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development* and the *Apartment Design Guidelines*. Both the SEPP and ADG regulate visual bulk. Compliance has been demonstrated within the supporting documentation prepared by CKDS Architecture (CKDS, 2017).

In the **spring equinox**, between 9am and 3pm the proposed development (with increased height) does not impact any of the neighbouring dwellings. The shadow from the proposed dwelling is cast towards the west over the rear of the subject lot until the boundary. Throughout the day, the shadow rotates over Tamar Avenue and Dunleigh Street. Both the proposed building and neighbouring dwellings receive the minimum solar access between 9am and 3pm.

Privacy and Views

The building has been designed to ensure that the height of the building does not have any adverse visual or privacy impacts on neighbouring dwellings. The proposed building includes an increased rear setback of 10 metres from the nearest dwelling to mitigate any adverse visual effects from the increased building height. The proposal also includes landscaping around the boundary line, which will be further assisted by detailed design and articulation of building facades to ensure minimal visual impact.

Compared to a complying design, the proposed building enables increased side and rear setbacks, allowing the built form to be pulled back from boundaries with neighbouring properties. This decreases the impact of the proposed building on adjoining private open space, reducing the opportunities for overlooking and enabling increased air and light between the proposed building and adjacent existing built form. The intent of utilising increased height is to allow the overall reduction of impacts on adjoining development, as achieved by increased side and rear setbacks at ground and upper levels.

4.2 Clause 4.6(3)(b): Environmental planning grounds to justify contravention

The purpose of this section of the report is to discuss the environmental planning grounds in support of the proposed development to justify the contravention of the development standard in accordance with clause 4.6(3)(b) of the Wyong LEP.



There are sufficient environmental planning grounds to justify a flexible approach to the application of the height of building control as it applies to the site. The non-compliance with the building height control results from the opportunity to create an enhanced integrated affordable housing development that is better suited to the site, its neighbourhood context and future desired character of the locality.

4.2.1 Legislative Planning Context

This section of the request to vary cl. 4.3 of the Wyong LEP 2013 describes the legislation in support of the proposed development, including the *EPA Act 1979, and Wyong LEP 2013*.

4.2.1.1 *Environmental Planning and Assessment Act 1979*

The proposal seeks to supply the Central Coast region with an additional 34 affordable housing units including a mix of one and two-bedrooms. This proposal seeks a variation to the development standard within cl.4.3 of Wyong LEP 2013 to provide additional affordable housing units. This is underpinned by a legislative mandate to provide affordable housing in NSW and Central Coast, pursuant to the EPA Act, which includes the provision and maintenance of Affordable Housing as an object, as stated within section 5:

(5) To encourage...

(a)(viii) the provision and maintenance of affordable housing.

The first and foremost environmental planning ground for contravening the development standard is to better achieve the objects of the Act, particularly that relating to affordable housing. Contravention of the development standard relating to building height will assist with both the provision and maintenance of affordable housing, as it will allow the development of additional floor space as a part of the proposed affordable housing development. As stated above, this is within a location that has been targeted for increasing both the diversity and affordability of dwellings in line with the Department of Planning and Environment's aims for the Central Coast.

4.2.1.2 *Wyong Local Environmental Plan 2013*

The proposed development is located in Toukley and is subject to the Wyong Local Environmental Plan 2013. The aims of the LEP are:

- (a) to foster economic, environmental and social wellbeing so that Wyong continues to develop as a sustainable and prosperous place to live, work and visit,*
- (b) to encourage a range of housing, employment, recreation, human services and appropriately located tourism-related development in Wyong to meet the existing and future needs of residents and visitors,*
- (c) to promote the efficient and equitable provision of public services, infrastructure and amenities,*
- (d) to provide for a range of local and regional community facilities for recreation, culture, health and education purposes,*



- (e) to apply the principles of ecologically sustainable development to guide future development within Wyong,*
- (f) to conserve, protect and enhance the environmental and cultural heritage (both indigenous and non-indigenous) values of Wyong,*
- (g) to protect areas of high scenic landscape value,*
- (h) to maintain and enhance the existing character, amenity and environmental quality of Wyong,*
- (i) to minimise risk to the community in areas subject to environmental hazards, including flooding, climate change and bush fires,*
- (j) to promote a high standard of urban design that responds appropriately to the existing or desired future character of areas,*
- (k) to encourage development that increases public transport patronage, walking and cycling.*

The second environmental planning grounds for contravention of the development standard is that the proposed development will achieve a number of relevant aims of the LEP. As an affordable housing development and through the development of additional small dwellings, it will increase the diversity of dwelling stock and resident mix, enhancing the social well being of the locality. It will also foster economic well being, bringing increased residential density into the local area and creating the scope for increased services, educational and other employment, as outlined by the Regional Plan. It will encourage a greater range of housing development in the area, to meet existing and future needs of residents and allowing more existing residents to age in place, thus preserving and enhancing the area's existing social capital.

The Wyong LEP 2013 supports the provision of additional housing within a locality that is serviced by public infrastructure. The proposed development is of high architectural design that responds appropriately to the desired future character and amenity of the area.

4.2.2 Consistency with Central Coast Regional Plan

The proposal gives effect to the following Directions of the Regional Plan:

- The proposal represents a unique and innovative opportunity to grow Toukley as an identified Local Centre within the Regional Plan to support increased housing diversity and supply to meet the needs of the projected demand (Action 19.1 & 19.3),
- The proposed development provides additional housing choice to support housing delivery in and near the local centre of Toukley (Action 20.1),
- It will provide renewal opportunities in the identified local centre that has good accessibility and connectivity with public transport routes (Action 20.2),
- The proposal will provide greater housing choice by delivering diverse housing, lot types and sizes for infill development (Action 21.1), and
- It will encourage housing diversity for one and two-bedroom development to match forecast changes in household sizes and provide greater housing choice (Action 21.4).



The proposed development is entirely consistent with the Regional Plan, as outlined above, representing the fourth environmental planning grounds for contravention of the development standard.

4.2.3 Environmental and Amenity Impacts

An overshadowing assessment has been conducted to illustrate the comparative difference between a 'compliant design' and the development proposed, refer to Appendix A. The results depict negligible difference of impact on the adjoining properties.

The nature of this control (cl. 4.3) is to regulate the scale of development in the zone. The proposal will provide a suitable transition from the adjoining developments to the east, and the additional building height allows for building setbacks and internal separation to be provided while maintaining the proposed FSR. The proposed variation will not give rise to any significant impacts on surrounding properties. The proposal gives effect to this direction as follows:

- The proposal represents a unique and innovative opportunity to grow Toukley as an identified Local Centre within the Regional Plan to support increased housing diversity and supply to meet the needs of the projected demand (Action 19.1 & 19.3),
- The proposed building provides additional housing choice with 34 additional one and two bedroom units to support housing delivery in and near the local centre of Toukley (Action 20.1),
- The additional building height will provide renewal opportunities in the identified local centre that has good accessibility and connectivity with public transport routes, along Main Road Toukley (Action 20.2),
- The additional building height will provide greater housing choice by delivering diverse housing, lot types and sizes for infill development (Action 21.1), and
- The additional building height will encourage housing diversity to match forecast changes in household sizes and provide greater housing choice (Action 21.4).

Accordingly, the fifth environmental planning grounds for contravention of the development standard is a lack of significant increased impact on the environment, and on residential amenity.

The additional building height is sought to provide affordable housing units in a manner that is consistent with the objectives of the EPA Act, the clause (see section 4.1.1) and the strategic vision for the locality (see 2.4). The proposal represents a unique opportunity to provide continuity between the NSW strategic agenda and the objectives of the statutory framework for the provision of affordable housing in a locality in which it is clearly in demand. This can be achieved with minimal impact on residential amenity and the environment, due to the location of the site, its relatively unconstrained natural characteristics, its northerly aspect, and separation from most other residential dwellings. The site is in an ideal location, with a unique development opportunity, in order to take advantage of a variation to height standards in order to provide a key public benefit in the form of affordable housing units.



4.3 Clause 4.6(4)(a)(ii): In the public interest because it is consistent with the objectives of the zone and development standard

The purpose of this section is to adequately address cl. 4.6(4)(a)(ii) of the Wyong LEP in regard to the variation is in the benefit of the public interest due to consistency with the objectives of the R3 Medium Density Residential Zone.

4.3.1 Consistency with objectives of the zone

The proposed development is consistent with the objectives of the R3 Medium Density Residential land use zone as detailed in the following sections. The objectives of the R3 Medium Density Residential 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 proposal in its entirety satisfies the R3 Medium Density Residential zone objectives because:

- It recognises the housing needs of the community as a local centre (Toukley) within a medium density residential environment, refer to Section 2.4.
- The proposal represents a unique opportunity to increase the variety of housing types within the medium density zone, refer to Section 2.5.1.
- The proposal is located within an identified local centre that is close to vital facilities and services, refer to Section **Error! Reference source not found..**
- The proposal has been designed to enhance the residential amenity of the surrounding area, as discussed in Section 4.1.
- The proposal includes the amalgamation of three existing lots to facilitate a more orderly and economic use of the R3 Medium Density zoned land.

The proposal seeks consent for the construction of 34 units, in the form of a residential flat building for the provision of affordable housing, which is permissible within the zone with consent. The proposal seeks to amalgamate 3 existing lots into 1 to provide a suitable allotment for higher density housing. This proposal will provide additional housing stock to the locality, which is considered consistent with the objectives of the prescribed zone. The additional building height will further facilitate the provision of additional affordable housing stock, with a typology that has been identified to be deficient throughout the LGA (Section 2.5). The request to vary the development standard (cl. 4.3 of the Wyong LEP) should be considered consistent with the relevant aims of the prescribed R3 Medium Density Residential zone.



4.3.2 Consistency with objectives of the development standard

The proposed development is consistent with the objectives of the building height development standard, for the reasons discussed in Section 4.1.1 of this report.

4.3.3 Overall public interest

In accordance with the requirements of Clause 4.6(4)(a)(ii), the proposed development and variation to the development standard is in the public interest because it achieves the objectives of both the development standard and the land use zone. It has been demonstrated that the proposed development is consistent with the objectives of the R3 Medium Density Residential land use zone and the objectives of the maximum building height development standard under the Wyong LEP 2014 (Section 4.3.1).

Accordingly, the consent authority can be satisfied that this written request has adequately addressed the matters in clause 4.6(3) and that the proposed development would be in the public interest because it provides a number of benefits, and 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.

4.4 Other matters for consideration

Under clause 4.6(5), in deciding whether to grant concurrence to the proposed variation, the Secretary must consider the following matters:

- (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.*

These matters are addressed below.

4.4.1 Clause 4.6(5)(a): Whether contravention of the development standard raises any matter of significance for State or regional environmental planning

The variation of the maximum building height development standard does not raise any matter of significance for state or regional planning. We do note, however, that the proposal is consistent with the Central Coast Regional Plan 2036 (Regional Plan), with the following Directions:

- Direction 19 Accelerate housing supply and improve housing choice.*
- Direction 20: Grow housing choice in and around local centres.*
- Direction 21: Provide housing choice to meet community needs*

As discussed in Section 4.2.3 the proposal represents a unique and innovative opportunity to grow Toukley as a Local Centre. The additional building height will provide greater housing choice by delivering diverse housing to match forecast changes in housing sizes as previously identified in Section 2.5.



4.4.2 Clause 4.6(5)(b): The public benefit of maintaining the development standard

There is no public benefit in maintaining the building height development standard in this instance. Maintaining and enforcing the development standard in this case would unreasonably constrain the orderly and economic development of this strategically significant site, and unnecessarily reduce the various community benefits this development brings.

In some circumstances, it may be in the public benefit for development controls to be strictly applied, for example if an undesirable precedent could be set. This site and the development project, is however unique and therefore unable to create an undesirable precedent for varying the building height standard in other land in the Central Coast.

The development proposal is located on a site identified by Central Coast Council as a 'Key Site', pursuant to clause 7.11 of the Wyong LEP 2013, which postulates a building height increase. The AHSEPP also promotes development incentives for the provision of additional affordable housing. Furthermore, the site is located within a local centre as defined within the Central Coast Regional Plan, aimed to facilitate future housing growth. These site-specific and project-specific circumstances cannot be replicated, and could not have been foreseen by the Council when setting the generic building controls that are currently applied to the site.

The site and the proposed building envelope represent an exceptional circumstance that warrants a variation of the building height control to allow a better outcome to be delivered. It is therefore considered to be in the public interest that a variation to the development standard is supported in this case.

4.4.3 Clause 4.6(5)(c): Any other matters required to be taken into consideration by the Secretary before granting concurrence

To our knowledge, there are no other matters that the Secretary is required to take into consideration when granting concurrence to the Clause 4.6 variation request.



5 Conclusion

Compliance with the building height development standard contained in Clause 4.3 of the Wyong LEP 2014 is unreasonable and unnecessary in the circumstances of the case, and the justification to vary that standard is well founded. The proposed variation allows for a better planning outcome for the site and recognises the unique circumstances of the proposal. These include:

- the proposed development being for a 100% affordable housing development on the site with related public benefits for dwelling diversity and affordability;
- the site's location close to a Local Centre (Toukley) and identification for residential growth within the Regional Plan;
- the site's identification by Council as a 'Key Site' (LEP clause 7.11 – Key Site "Toukley Caravan Site"), with requisite development incentives in return for public benefit;
- consistency of the proposed development with the objects of the EPA Act, relevant SEPPs including SEPP (Affordable Rental Housing) 2009, and LEP zone objectives.

Notwithstanding the contravention of the development standard relating to building height, this clause 4.6 variation request demonstrates that:

- compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved;
- the proposed development is consistent with the objectives of the development standard relating to FSR;
- the proposed development is consistent with the zone objectives for the R3 Medium Density Residential zone; and therefore
- the proposed development is in the public interest.

The clause 4.6 request demonstrates that the proposed development will deliver a holistically better outcome for the site, and the broader community. Overall, the proposal optimises the extraordinary opportunity to establish a high-quality development that creates a revitalized site, providing significant public benefits, including housing diversity and affordability within an area of high need, and with minimal adverse impact on the environment and on residential amenity.

In accordance with this written request, it is recommended that the proposal be approved with the variation to height as proposed, in accordance with the flexibility permitted under Clause 4.6 of the Wyong LEP 2013.



6 References

- NSW Department of Family and Community Services (2017a). *Central Coast Region – What’s Happening in the Housing Market?*
- NSW Department of Family and Community Services (2017b). *Central Coast Region – What’s Happening with housing supply and is it a good match?*
- NSW Department of Family and Community Services (2017c). *Central Coast Region – What’s the housing demand?*
- Department of Planning and Environment (2016). *Central Coast Regional Plan 2036.*

Appendix A

Revised Plans

CKDS, 2018





Appendix C Reduced Levels

(CKDS, 2018)

