

From: Lydia Charman
To: "Nick Folkers"
Cc: Patrick Mackey; leslebrvce@bigpond.com; GAVIN DUFFIE
Subject: RE: DA15/0711 - 19 Queen st, Fingal head
Date: Wednesday, 20 January 2016 9:28:24 AM
Attachments: [image002.png](#)
[image003.png](#)
[image004.gif](#)

Hi Nick,

The amended plans now seek a variation to Clause 4.3 Height of Buildings of the *Tweed Local Environmental Plan 2014* (TLEP 2014). Accordingly full consideration of Clause 4.6 Exceptions to development standards of the TLEP 2014 is required (extract of Clause 4.6 below).

In particular clauses 3 and 4 apply. Clause 3 essentially advises that ***the applicant is to provide a written request 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 covering letter as provided to Council is not considered to satisfy the above. Accordingly, further justification in relation to the TLEP 2014 variation is required to be provided to Council for consideration. It is also my understanding that the application will now need to be reported and voted on at Council in relation to the height variation.

As advised yesterday it is suggested that a meeting be arranged to discuss the application. I will contact you this morning to discuss.

Regards,
Lydia

4.6 Exceptions to development standards

- (1) The objectives of this clause are as follows:
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

- (3) Development consent must not be granted 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.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:
- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note. When this Plan was made it did not include all of these zones.

- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:
- (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which [State Environmental Planning Policy \(Building Sustainability Index: BASIX\) 2004](#) applies or for the land on which such a building is situated,
 - (c) clause 5.4.

Lydia Charman Town Planner
Planning and Regulation Development Assessment (Mon, Tues, Thurs, Fri)



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From: Nick Folkers [<mailto:nickf@coastlinecertification.com.au>]
Sent: Monday, 4 January 2016 9:48 AM
To: Lydia Charman; Corporate Email
Cc: Patrick Mackey; lesliebryce@bigpond.com; GAVIN DUFFIE
Subject: DA15/0711 - 19 Queen st, Fingal head

Hello Lydia,

Find attached amended plans and covering letter.

regards

Nick Folkers
logo



Town Planner

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