

Council Reference: DA17/0498 LN11041
Your Reference:



13 October 2017

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Attention: Lance Newley

Dear Mr Newley,

Development Application for a shop top housing, serviced apartments, swimming pool and demolition of existing structures at Lot 1 DP 169524; No. 26 Marine Parade KINGSCLIFF NSW 2487

I refer to the above mentioned development application for construction of a shop top housing development at 26 Marine Parade Kingscliff. Please be advised that a comprehensive review of the proposal in accordance with relevant planning provisions has been undertaken. Based on the information provided, Council officers are of the view that a significant redesign is required to address the matters as detailed below.

Any amended plans will need to address the matters identified below and undertake a revised assessment against Tweed LEP 2014, planning principles for view sharing established by NSW LEC, the Apartment Design Guide (ADG), and relevant provisions contained under Tweed DCP 2008.

Further explanation of these concerns is provided below:

1. Tweed LEP 2014 (Clause 4.3) - Building Height

The development application demonstrates the proposed maximum building height is 14.2m which exceeds the maximum permitted building height of 13.6m prescribed under Clause 4.3 (Building Height) of Tweed Local Environmental Plan 2014 (TLEP2014).

An application under Clause 4.6 of TLEP2014 has been submitted seeking a variation to the maximum permitted building height.

The reasons to justify the variation have been considered and based on the merits provided; it is considered that compliance with the development standard should be enforced as it has found to be reasonable and necessary in the circumstance of this case, mainly due to the following key planning consideration:

- a) Whilst it is acknowledged the subject site features a steep topography with a significant increase in grade approximately 28m into the site from Marine Parade, the proposed building height is not surpassed as a result of this topography. The submitted information demonstrates up to 8m of cut into the site at this point of the development is proposed to facilitate at grade ground level parking for Units 1-3 at Marine Parade. It further seeks at grade vehicular

access from Hungerford Lane for Unit 4. Therefore, the extent of excavation and the location of excavation facilitates a larger building footprint on the site without considering amenity impacts to surrounding developments. Therefore, both the building height and extent of excavation do not respect the natural topography of the land or the character of the area. Development at the rear of the site (Hungerford Land interface) should respect a single or two storey height limits in accordance with the prevailing urban form in this streetscape. However, the development seeks to construct under croft car parking with a suspended slab to facilitate a further two levels of floor area dedicated to Unit 4 which represents a vertical height plane of a three storey development which is not supported.

- b) The area of variation impacts access to existing oceanic views for dwellings located on the western side of Hungerford Lane and therefore the variation is immediately visible to surrounding residents.
- c) The architectural merit of the development in regard to perceived bulk and scale (at both the Marine Parade and Hungerford Lane interface) does not satisfy the objectives of Clause 4.3 and therefore no merit has been found in regard to architectural excellence and design.
- d) The proportion of the development outside the building height envelope will impact on view loss from adjoining residences as compared to a complying building height in the area of the site which is subject to the height non-compliant building heights.
- e) As demonstrated below, the development is not satisfactory in regard to view sharing and the information submitted with the DA fails to comprehensively address view sharing principles established by NSW LEC.

2. View Sharing

The subject site is located in an area which is topographically constrained and sensitive to oceanic views of Wommin Bay, Cudgen Headland (where Cudgen Creek meets the ocean) as well as distant views to Cook Island.

The Statement of Environmental Effects briefly refers to the planning principles established in the NSW LEC *Tenacity Consulting v Waringah [2004] NSWLEC 140* case and makes reference to View Sharing Analysis plans submitted with the DA.

A review of the plans demonstrates the extent of obstruction is significant, especially where the development exceeds the maximum permitted building height. Whilst the plan provides some basic information as to the extent of obstruction, it fails to address the following:

- a) The value of various aspects of the view from surrounding developments in accordance with the step 1 outlined in the NSW LEC planning principles.

Council's assessment has found that access to all views from the surrounding properties (including view of the headland at the south eastern view

perspective) from surrounding sites has not been included in the view analysis and further assessment from the applicant is required in this regard.

- b) The part of the property the views are obtained. For example, views from the living area is more significant than from bedrooms or service areas. A quantitative assessment (as provided in this case) does not suffice the qualitative impacts of view loss from each site. Guidelines are provided to consider whether the view loss is negligible, minor, moderate, severe or devastating.

Based on the proposed exceedance in building height, the development fails to satisfy step four of the principles established. The development clearly demonstrates that the extent of variation to the building height further contributes to potential view loss and therefore the impact is not reasonable.

It is further noted that perspectives and view analysis has not been undertaken for many of the surrounding developments which are likely to be impacted by view loss. In particular, No. 16 Hungerford Lane, No. 14 Hungerford Lane, No. 18 Hungerford Lane, No. 28 Marine Parade and the dwelling at No. 22 Marine Parade.

Any revised plans are to include additional information in regard to impacts to significant views from the above mentioned sites.

3. NSW Department Design Guideline (ADG)

An assessment of the development in accordance with the relevant objectives of the ADG has been undertaken. The following matters are raised for your attention.

- a) Objective 2C – Setbacks and 2D - Building Depth

Zero setbacks are provided for the entire horizontal plane of the development at the Marine Street interface, and the provision of a solid wall at the north eastern aspect of the site obstructs ocean views from the private open space areas for the adjoining development at No 28 Marine Parade.

In addition to the above, Objective 2D implies the appropriate building depth for the proposed development is 12m-18m. The ADG further outlines *'depths of mixed use developments should transition from deeper commercial and retail uses at the lower levels to narrower building depths for the residential uses at upper levels'*.

Whilst it is acknowledged the subject site is relatively narrow, the proposed building depth of 37m with no transitional podium style forms or setbacks to the upper residential floors of the development is not supported due to its impact on views from the adjoining development.

- b) Objective 3B – Orientation

The development is not supported based on the guidelines listed under this section of the ADG. A summary of the planning concerns relating to Objective 3B are provided below:

- i. The proposed design seeks a 'built to boundary' design at the Marine Parade interface with solid brick walls along the north eastern side setback. This design element is not accepted as it is likely to obstruct views from the adjacent development and increase the perceived bulk and scale of the development at the Marine Street interface.
- ii. The rear portion of the development presents as a two storey development on suspended slab construction (to allow for undercroft vehicle parking of proposed Unit 4), This design elevation presents a vertical height plane closer to a three storey development.

A merit assessment of this portion of the development has revealed that the proposal bulk, scale and height is inconsistent with the existing streetscape at the Hungerford Lane interface and is likely to have adverse amenity impacts to the existing view corridors of dwellings to the rear of the subject site.



Figure 1: Photomontage of proposed development in existing streetscape

- iii. Based on the information provided, concerns are raised over solar penetration to principal private open space areas associated with the residential component of the development. The submitted shadow diagrams demonstrate

that no part of the principal private open space areas and open garden area identified on the architectural plans will receive sunlight between 9am – 3pm on 21 June. You are therefore required to address this matter as part of any amended plans.

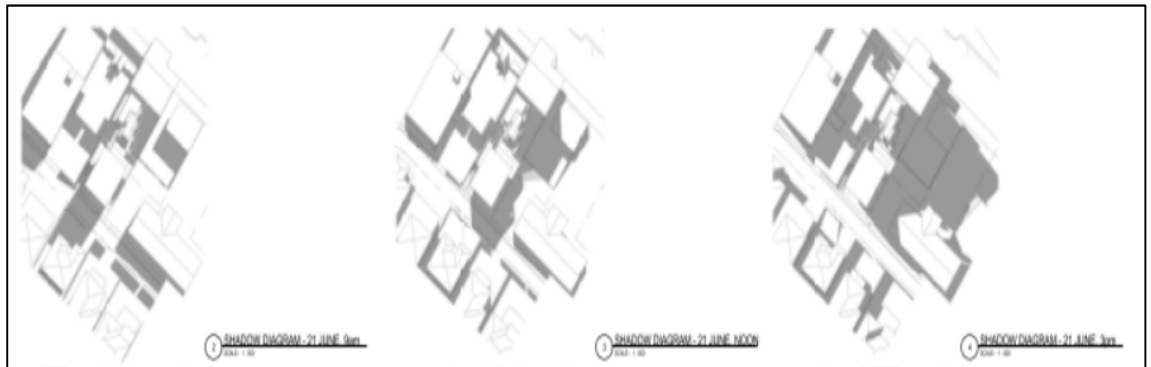


Figure 2: Extract of shadow diagram for proposed development

c) Objective 3F – Visual Privacy

Further information is required regarding the proposed schedule and location of openings at the southern elevation of the building. As mentioned in the application, the adjoining land to the south comprises of a single storey building. It is likely that future development of that site will occur and therefore consideration should be given to the location and schedule of windows and openings to optimise privacy of any future residences in this location.

d) Objective 3J - Bicycle and car parking

The following concerns are raised in regard to Objective 3J of the ADG as well as Section A2 of TDCP2008:

- i. The proposal is inconsistent with the carparking requirements for retail floor area. 1 space per 100m² of GFA retail is not provided resulting in a loss of 2 parking spaces.
- ii. The visitor car parking is not functional and its location obstructs access to the bin store area.
- iii. The pedestrian access from Marine Parade (public domain) is only provided via the vehicle access/parking area which causes a conflict between pedestrian and vehicle movement.
- iv. The building access and pedestrian entry/wayfinding at the Hungerford Lane interface (outlined in the landscape intent statement) is not accepted as there is no clear connection for pedestrian moving from the parking area to the building access and associated pathways.
- v. The extent of excavation on the site to facilitate at grade parking and access from Marine Street is not supported. Excavation for the purpose of sub or basement parking may be considered in order to achieve an appropriate

design solution to other planning concerns raised in this letter. It is recommended the applicant consider providing basement access from Hungerford Lane to accommodate vehicle parking and reduce the overall bulk and scale of the development throughout the mid portion of the site.

e) Objective 4A – Solar and daylight access

The submitted solar access diagrams fails to demonstrate living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9am – 3pm.

Given the existing shadows of the northern lot and the location of outdoor living areas for each unit are at the southern extent of a narrow site. A shadow diagram is required to demonstrated solar penetration to each floor.

f) Objective 4P - Landscape Design

The ADG outlines that landscape design should be viable and sustainable and that it contributes to the streetscape and amenity. The proposed landscaping scheme includes the provision of garden beds within the development to provide open ‘voids’ of landscaping at various points throughout the development. It is unclear, based on the information provided, how these voids would be accessed for ongoing maintenance.

Further information regarding the ongoing maintenance of landscaping on the site is required.

4. Section A2 of Tweed DCP 2008: Site Access and Parking Code

Councils Traffic Engineer has reviewed the application and raises the following comments for your consideration and response:

a) Use of on road outdoor trading area and proposed driveway access arrangements from Marine Parade

- i. The Statement of Environmental Effects (SEE) refers to Tweed Shire Council footpath Trading Policy 2007 and states that “the 2 metre clear radius has been maintained at the corner of Ocean Avenue and Cylinder Drive” and “the application does not propose a new blister.” This statement is erroneous and indicates that the use of the on road trading area has not been adequately considered as part of the design and planning of the development.

The existing on road dining blister would need to be relocated to facilitate the proposed use and access to the site. There is no assessment provided in relation to sight distance and turning movements associated with the outdoor dining structure and its proximity with the driveway access.

As such, the retail component is to be modified to provide minimum sight distance for pedestrian safety as per AS2890.

Vehicle and pedestrian entry to the residential component of the development are to be reconsidered so to provide a delineation between vehicle access and pedestrian movement through the site from Marine Parade.

The proposed driveway dimensions are to be provided indicating compliance with Council's access to property policy.

- iii. It is noted that there is an existing streetlight on Marine Parade that would require removal firstly to enable vehicle access to the property, and with the dining area being removed, the streetlight would be a hazard to motorists. A new replacement streetlight would be required within this vicinity.

As such you are advised that the existing on road dining structure, existing streetlight and brickworks are to be removed and the road reinstated to Council's requirements, and this is to be facilitated through a Section 138 Roads Act application and approvals process. An additional streetlight is to be installed adjacent to the property on Marine Parade.

- iv. The SEE states that the existing crossover to Marine Parade will continue to be used and an additional crossover is proposed from Hungerford Lane which will service the visitor car park and the double garage associated with Unit 4. However, the existing driveway on Marine Parade is located at the northern end of the site and the plans indicate that the driveway will be at the southern end of the site.
- v. The proposed driveway does not conform to the minimum sight lines for pedestrian safety as per AS2890.

Therefore you are requested to modify the plan so to ensure the retail component provides minimum sight distance for pedestrian safety as per AS2890.

b) Parking

- i. The proposed visitor parking space is not acceptable as it is not clearly available to three (3) of the four (4) units.

Suitable visitor parking that is accessible to all of the units proposed within the development is to be provided.

- ii. There is a proposed turntable arrangement in the car park which would enable vehicles to enter and leave the site in a forward direction.

You are requested to provide a statement on the ongoing use and maintenance of the vehicle turntable device.

- iii. Parking shortfall associated with the Commercial component will be levied through s94 contribution plan no. 23.

Based on the plans provided, the retail component would be assessed as a restaurant or café (C26) and therefore 5.365 spaces would be levied through Section 94 Plan No. 23.

5. Section A1 of Tweed DCP 2008: Part C: Residential Flat Buildings and Shop Top Housing

a) Landscaping and Tree removal

The proposed development includes the removal of at least three (3) trees on the site, and is likely to impact several trees on the adjoining site (refer to survey report/detail). No detail of the species of the tree is included in the application. Please provide detail of the species of trees to be removed.

b) Letterbox detail

It is understood that the proposal is for serviced apartments. The statement of environmental effects comments that a letterbox is to be provided however there is no nominated detail in any of the plans. Should a letterbox structure form part of the landscaping detail, external to the building. Please confirm the design and location of the structure as part of any amended plans.

6. Submissions

The subject application was publicly notified in accordance with Section A11 of Tweed DCP 2008. The notification period ended on 16th August 2018 and a total of ten (10) submissions were received. A summary of the matters raised are provided below:

- Objection to proposed four storey height at Marine Parade
- Objection to the proposed height of the building as it is out of character
- Objection to the proposed car turntable as it is unlikely to be utilised and therefore residents will park on the street, affecting the availability of public parking spaces.
- The building is in breach of draft Kingscliff locality plan
- Objection to impact to beach views of the land owners behind Marine Parade
- Objection to cut and fill and justification for height allowance; the development should complement the natural occurring fall of the land.
- Objection to proposed access from Hungerford Lane due to increase traffic and conflict with a local safe pedestrian route for local residents who live further up the hill.
- Objection to the design as it is not in keeping with the other buildings of the area.
- Objection to the proposed insignificant component of commercial area being undersized in proportion to residential land use.
- The Hungerford Lane portion of the development is out of character with all other residences along the lane.

- Objection regarding the loss of ocean views to residents on the south western side of the lane.
- Objection to the proposed building setback from Hungerford Lane, suggesting that it should be 6m from the property boundary.
- Objection based on setting a poor precedent for Kingscliff area.
- Objection to the proposal based on non-compliance with objectives of development for Shop top residential Building in accordance with page 12 of Tweed DCP 2008 (*residential uses are secondary importance to the commercial component of the building and are to result in economically viable commercial spaces for the occupants and future owners in the immediate and longer term*).
- Objection to circulation space which access to upper level dwellings may occupy up to 15% of the lot frontage.
- Basement carparking should be fully underground
- The development is excessive in bulk and scale and inconstant with all other buildings in the locality.
- The development appears as a 6 storey development at Martine Parade. (5 storeys at front and 2 storeys at the rear of the site).
- The vehicle entry off Marine Parade is unsightly and detracts from the streetscape.
- The vehicle access is dangerous to pedestrians using the public footpath in Marine Parade.
- The retail component is unrealistic. No provision for toilet, ablution, wash up facilities on this level. This component is tokenistic.
- Overshadowing is unacceptable.
- Objection to the use of public land for storage of materials and operation of machinery and equipment during development.
- Traffic Impacts to Marine Parade and Hungerford Lane during construction.
- Objection to lack of parking for retail component of the development

7. Building Matters

Councils Building surveyor has reviewed the application and made the following comments:

- a) The perforate brickwork to the outdoor living area of each unit and the stair lobby does not satisfy the provisions of the National Construction Code in relation to openings adjacent to property boundaries.

It is therefore recommended this matter be considered as part of any future redesign of the development.

- b) It is noted that the retail tenancy on the ground floor does not have access to any toilet facilities which is required under part F2.3 of the National Construction Code.

Whilst it is acknowledged that the development application does not include first use of the ground floor retail/commercial component. Given that outdoor dining is included in the development application, it appears likely that the future use will form a retail premises for food and drink (restaurant, café or the

like). Therefore, given that such a use required toilet facilities, you are requested to provide a design detail includes the design and location of toilet facilities as part of any amended plans.

8. Environmental Health Matters

Councils Environmental Health Officers have reviewed the application and made the following comments:

- a) The submitted plans fail to make provision within the proposed retail component of the building to duct cooking gases above the roof line in accordance with AS1668.

Having regard for the subject development and adjacent developments (residential use in upper storeys) discharge of cooking gases in the incorrect location could cause unacceptable impacts. The applicant is requested to provide modified plans which provide for internal ducting and nominate the exact discharge location relative to adjacent residences, and residences within the proposed building. Filtering and treatment (eg activated carbon) exceeding basic AS1668 requirements may be advisable dependant on the proximity of the proposed discharge location to residences.

- b) It is noted that fit out details are not provided for the ground floor retail premises.

Whilst this is not a mandatory requirement for this stage of the development, you are reminded that any future use of the retail premises will require a separate DA and detail plans demonstrating compliance with *AS4674-2004 Construction and fit out of food premise* will be required.

Please ensure the location of toilet facilities (as requested in Item 6b of this letter) and ducting (as requested in Item 7a) corresponds to the future fit-out of the premises in accordance with the above mentioned standards.

It is recommended that the applicant meet with Council officers to discuss potential design solutions and an appropriate way forward for the further assessment of this development application.

You are therefore requested to make contact with Council officers to arrange a suitable time for a meeting. Should contact not be made with Council officers within 21 days of this letter, the application will be assessed based on the information provided which is likely to result in a refusal determination.

For enquiries in respect to this matter please contact Hannah Van de Werff of Council's Development Assessment Unit on (02) 6670 2756 who is currently processing the application.

Yours faithfully

Oct 13 2017 3:51 PM

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Hannah Van de Werff

cosign

Denise Galle
Co-Ordinator Development Assessment