



NSW GOVERNMENT
Department of Planning

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Our ref: MP05_0009
File: 9042977-3

Mr Cameron Davis
Sundowner Developments (NSW) Pty Ltd
PO Box 3095
Robina Town Centre QLD 4230

Dear Mr Davis,

Subject: Ballina Gateway Project, 256 – 274 River Street, Ballina – Department of Planning's comments on Environmental Assessment

I refer to your Environmental Assessment (EA) the proposed Ballina Gateway Project in Ballina lodged with the Department on 28 August 2006 and accepted on 14 September 2006.

On 18 February 2006 the Department issued the Director General's Environmental Assessment Requirements which included reference to a "Maximum Heights and Site Coverage Plan" ('the Plan') for nominated areas on the site. At that time the Department indicated that a maximum height of 22m (7 storeys) for some parts of the site may be acceptable in exchange for demonstrated public benefits including an increased setback from the Richmond River foreshore.

It is acknowledged that a significant amount of work was undertaken by your consultants and the Department to develop 'the Plan'. However, although the proposal as described within the EA complies with 'the Plan' for the site, following an assessment of the EA, the Department have concerns regarding the bulk and scale of the buildings, as discussed at our meeting on 27 October 2006. These concerns have also been expressed by Ballina Shire Council and the community.

The Department has now undertaken a review of the EA. The key issues are as follows:

- Building Height
- Built Form / Urban Design
- Permeability
- SEPP 65 Assessment

The Department's comments regarding these key issues are provided at **Attachment 1**. The Department has also identified additional information that is required to complete the assessment of the application (refer **Attachment 2**).

I am happy to meet with you and discuss these issues. If significant changes are proposed to the project, this should be in the form of a preferred project report.

As requested by Mr David Kuhn of Samtay Group, I have also enclosed a copy of all public submissions received by the Department during the public exhibition period. If you have any queries regarding this letter, please contact Sally Laing on 9228 6498 or via email to sally.laing@planning.nsw.gov.au.

Yours sincerely

Heather Warton
Director

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5.12.06



ATTACHMENT 1

Department of Planning Comments for MP 05_0009 Ballina Gateway Project

KEY ISSUES

1. Building Height

- The proposal exceeds the prescribed maximum building height of 16 metres as specified in the Ballina Local Environmental Plan (LEP). The height restriction of 16 metres has been in place since the introduction of the Ballina LEP in 1987 and has been consistently applied without exception during this time. The 16m height limit is clearly supported by the Ballina community and Ballina Shire Council as demonstrated by the recent release of the new *Ballina Shire Combined Development Control Plan*. Buildings that exceed this limit on the site are not appropriate for the desired future character of Ballina.
- Buildings within close proximity to the foreshore should not result in significant overshadowing of public open space or the Richmond River. The buildings result in significant overshadowing of the Richmond River and public foreshore areas prior to 3:00pm midwinter.
- The Department has concerns regarding the precedent that will be set by 7 storey buildings on the site. This is emphasised by the final statement in the Architectural Design Statement that states:

"The development .. will create a benchmark for future development there [in Ballina]".

- Lower scale development (Building C) on River Street fails to provide a strong street edge definition that would seem appropriate for this "gateway" location.
- The Architectural Design Statement specifies 4 design objectives. The third objective relates to integration of the proposal with streetscape and landscapes. The 7 storey building on the corner of Kerr and River Street (Building A) does not integrate with the existing streetscapes and landscapes of the existing low density (2 storey) residential development to the west of the site.

2. Built Form / Urban Design

- The Department has concerns about the substantial length and bulk of Building D.
 - The building is up to 70 metres long. Building D will read as a very large building when viewed obliquely from River Street (from the east) and when viewed from the foreshore (refer Drawing No. Z-9005A). The emphasis on horizontal articulation increases the apparent bulk of the building.
 - The building is up to 21 metres glass to glass and overall 26.5 metres deep (including balconies), which exceeds SEPP65 requirements. The depth of the building should be reduced to provide better amenity and overall a less bulky building. Consistency with the Department's "Maximum Height and Site Coverage Plan" does not constitute sufficient justification for non-compliance with SEPP65. The envelopes on 'the Plan' were indicative and did not purport to comply with SEPP65.
 - Refer to comments above regarding height.
- Council's DCP encourages public open space that accommodates active and passive recreation along the foreshore as well as active uses (preferably active frontages) as the interface between the private and public domain. The proposal does not allow for any active frontages along the Richmond River foreshore other than the café. Consideration should be given to an active frontage on the south side of Building D.
- The Department is concerned about the proposed location of the two loading zones with regard to noise and safety for adjacent residents and pedestrians. Loading zones should not be located adjacent to sensitive receivers such as the residential area in Kerr Street and Camoola Avenue.

3. Permeability

- The DGRs specified that the development must provide meaningful pedestrian (resident & public) and visual linkages to the river. The proposal currently features 3 north-south through site links, none of which provide direct visual linkages to the Richmond River waterfront or slipways. Clear, direct and unimpeded connections between River Street and the Richmond River should be provided.

4. State Environmental Planning Policy No.65 Compliance

State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development

- The SEPP65 analysis does not include an assessment against street, side and rear setback controls. Further analysis is required. Justification for any non-compliance is required. Consistency with the Department's "Maximum Height and Site Coverage Plan" does not constitute sufficient justification for non-compliance with the controls. The envelopes on 'the Plan' were indicative and did not purport to comply with SEPP65.
- It is noted that the separation distance between Level 5 of Building D and Building F is stated as being non-compliant with SEPP 65 separation distances. However, Level 5 of Building F, according to Drawing No.Z1105-A, only shows the roof of this building. It would appear that the non-compliance exists for all floors from the Ground Floor to Level 4 inclusive (refer Drawing Nos. Z-1100A – Z-1104A). Further clarification on this matter is required.

ATTACHMENT 2

Department of Planning Comments for MP 05_0009 Ballina Gateway Project

FURTHER INFORMATION REQUIRED

1. Development Control

North Coast Regional Environmental Plan (REP)

- It is noted that the EA includes an assessment against the relevant provisions of the North Coast REP. The assessment is inadequate. Further assessment as outlined below is required:
 - The assessment against Clause 15 (Development Control – wetlands or fishery habitats) does not address matters relating to water quality and quantity (Clause 15(a) and 15(b)).
 - The assessment against Clause 32B does not include adequate justification for non-compliance with the overshadowing provisions of the REP.
 - The review does not include an assessment against Clause 43 (Development Control – residential development).
 - Clause 81 (Development Control – development adjacent to the ocean or a waterway) is generally concerned with the provision of sufficient open space which is both accessible and open to the public within the vicinity of the proposed development and that buildings to be erected as part of the development will not detract from the amenity of the waterway. There is no assessment to demonstrate that the buildings do not detract from the amenity of the waterway. In particular further assessment of the impacts of overshadowing on the Richmond River and foreshore open space.

NSW Coastal Design Guidelines

- The EA does not provide an adequate consideration of the relevant provisions of the NSW Coastal Policy. Further consideration of the Policy is required. In particular, reference should be made to the desired future character of coastal cities and the relevant design principles for coastal settlements.

2. Stormwater Management

- It is noted that Ardill Payne & Partners Infrastructure and Engineering Report states that stormwater is to either be stored on site for recycling or treated on site prior to discharge to Council's stormwater system. It is also noted that primary and secondary water quality treatment will be provided such that stormwater discharges matches or exceeds baseline water quality. There is insufficient detail regarding the kind of treatment measures that will be employed on the site. The use of infiltration trenches, grass swales, gross pollutant traps and other water sensitive urban design features should be incorporated into the treatment train.
- Ardill Payne & Partners Infrastructure and Engineering Report states that stormwater design criteria of providing pipe capacity for 1 in 5 year events and defined overland flow paths for storms of events larger than 1 in 5 years. The Department requires that the drainage system planning and design should include both major (100 year ARI (average recurrence interval)) and minor (≤ 10 year ARI) drainage conveyance infrastructure in accordance with Council's DCP (Chapter 13 – Stormwater Management).
- The Department is concerned that there is insufficient detail regarding how peak discharge flow rates will be controlled and maintained at pre-development levels. The stormwater system should match the pre-development stormwater runoff regime, in both quality and quantity. The management of stormwater hydrology should be addressed in conjunction with stormwater quality in the relevant site based stormwater management plan.
- The size of all rainwater tanks must be stated on the plans to ensure compliance with the BASIX certificate provided in Appendix 8 of the EA.

3. Environmental Noise Impact Assessment (ENIA)

- It is not clear where the noise logger was deployed on Kerr Street for the Environmental Noise Impact Assessment (ENIA) undertaken by Carter Rytenskiid Group. There is no note on Sketch 1 to note its location as indicated in the report.

- The noise logger was only deployed for 3 week days (no weekend days/nights) and no operator-attended monitoring appears to have been conducted.

The DEC's *Industrial Noise Policy* requires equivalent to one week's worth of valid data covering the days and times of operation of the development. Continuous sampling should be accompanied by periods of operator-attended monitoring. In areas where the background noise levels are affected significantly by nearby road traffic with regular daily pattern, three days' worth of valid data may, in some cases, be sufficient. However, as there are commercial activities in the area which have the potential to generate more noise over the weekend (Ballina RSL, Ballina Hotel), care should be exercised in assuming a pattern of noise levels in the area. It is recommended that the full week's monitoring should be performed.

- The ENIA does not include any assessment of the existing commercial activity noise impacts from the Ballina Hotel at 253 River Street. This hotel operates until 3:00am. How will the residential accommodation in Building C be acoustically attenuated to ensure that persons staying in the accommodation cannot be disturbed from activities occurring outside?
- There is no indication of wind speed or direction given for the period of noise monitoring.
- The ENIA states that *"the northern row of the proposed buildings provide a significant level of acoustic screening to the roadway, and from commercial premises within the subject site to the off-site dwellings"*.

If the northern row of the proposed buildings provides an acoustic screening to the roadway, the Department is concerned that the residents of the serviced apartments in Building C will be exposed to unacceptable noise.

The Department is concerned that no ambient noise monitoring was undertaken on River Street, which is considered to be a highly sensitive location in terms of noise impacts from existing traffic and commercial activity.

- Section 4.1 of the ENIA refers to Bayshore Drive. There is no road with this name in the vicinity of the development. Has the correct criteria been used for the proposed activity?

4. Flooding

- Ballina Shire Council's *Policy Statement No.11 Flood Levels* outlines the minimum fill level for allotments within flood prone areas of the Shire on which buildings are proposed to be erected and the minimum floor level for those buildings. A minimum fill level of 1.8metres AHD is required for the site.

It is noted that the Architectural Design Statement states that the difference in existing ground levels will be dealt with by either locally filling the natural ground level to meet 1.8m AHD or installing ramps at a maximum gradient of 1:14 to make the transition between the existing level of River Street (generally below 1.8m AHD).

- It is not clear where the ramps will be located and how these will protect the site from flooding during a 1 in 100 year flood event. The Department's preference is for the site to be filled to 1.8m AHD as per Council's requirements.

5. Privacy

- It is noted that the 7 storey hotel building is separated from the residential buildings and oriented north-south along its axis to avoid directly overlooking the residences. However, the location of the hotel building on the corner of Kerr and River Streets will mean the patrons of the hotel will be overlooking the existing residents on the Pacific Highway, Kerr Street and Camoola Avenue, imposing a sense of reduction in privacy for the existing residents in these local areas. How will this be managed?

6. Car Parking / Access

- The Department has concerns in regard to the number of car parking spaces provided, in particular, the calculation used for the hotel component of the development. A number of assumptions have been used (e.g. 75% occupancy rate); however, there is no detail in the EA explaining why a rate of 75% has been used or which comparable sites this analysis and these assumptions have been based upon.

- An assumed 30% concurrent usage for guests has been used for calculating the car parking spaces required for the hotel restaurant parking. How has this percentage been derived?
- The occupancy rate of 75% used for the car parking analysis is contradictory to the occupancy rate of 70% which was used for the open space contributions calculations (refer Point 15 below). How have these discounted rates been derived?
- The manoeuvring area in the dead end in the north-west corner of basement car park levels 1 and 2 are too long (22 metres). The recommended length within the Ballina Shire Combined DCP Policy Statement No.2 is 15 metres.
- A minimum of 75% of total spaces provided on site for the retail component are to be accessible parking in accordance with Council's Combined DCP. Please confirm that this is the case. If there is a non-compliance this should be identified and justified.
- The Ballina Combined DCP specifies 1 car parking space per 25m² of retail space. The Traffic Impact Assessment prepared by Newton Denny Chapelle calculates a total retail space of 1160m². This requires 46.4 car parking spaces. The total number of car parking spaces proposed for the retail component, as stated on page 2 of the Project Statistics Summary within the Architectural Design Statement, is 43.9 car parking spaces. Please clarify this discrepancy.
- As there are two levels of basement car parking proposed, Council's DCP requires details showing how flood-proofing of the fire escape and any ventilation openings will be achieved.
- Natural ventilation must be provided to underground car parking areas where possible. Have ventilation grilles been incorporated into the basement car park? These should be integrated into the overall façade and landscape design of the development.
- The pedestrian access (through site link) on Kerr Street and River Street are located adjacent to the car park entrances. The Department is concerned about the safety of pedestrians at these locations. Further consideration needs to be given to the location of the car park entrance and pedestrian access points.
- The Traffic Impact Assessment (page 11) provides an analysis of projected queuing at the River Street entrance but not the Kerr Street entrance. Further analysis is required.

7. Crown Land

- Further clarification of the ownership of Lot 10 DP 244352. This land came into existence under Crown Plan Reclaimed Land registered with the Registrar General as special purchase in April 1973. Under the *Crown Lands Act 1989*, the Minister may include in a contract of sale of Crown land, or impose in connection with the grant of an application to purchase land that is the subject of a holding within the meaning of the *Crown Lands (Continued Tenures) Act 1989*, such conditions as the Minister determines including, but without being limited to:
 - a) a condition for or with respect to the erection of a building on the land by the purchaser within a specified period,
 - b) a condition for or with respect to an option or right for the Minister to repurchase the land on behalf of the Crown, or
 - c) both of the conditions referred to in paragraphs (a) and (b).

Please confirm whether there are any conditions attached to Lot 10 DP 244352 on the original Crown grant that apply to this land and the implications, if any, for the development.

8. Flora and Fauna

- It is noted that the two Norfolk Island Pines will be removed from the site. Are these being relocated or destroyed?

9. Waste Management

- The Ballina Town Centre DCP requires waste and recycling facilities to be provided at a rate of 120 litres of waste capacity per dwelling (i.e. total of 240 litres per dwelling). The Mack Group report proposes only one 240 litre bin for residential waste at the rate of 1 bin per three residential apartments and only one 50 litre bin for recyclable residential waste per two residential apartments. No justification has been given for this proposed reduction in waste capacity.

- It is noted that all residential waste will be collected by council trucks from the kerb. Will all waste be collected from the loading bay in Kerr Street? The Department is concerned that this collection area is located in close proximity to existing residences in Kerr Street and is also located adjacent to the east-west pedestrian link through the site, which poses amenity and noise issues. Council's DCP requires loading bays and garbage collection areas in mixed use developments to be located away from sensitive receivers such as residential development.

10. Economic Assessment

- Table 9 of the Economic Impact Assessment makes reference to Sans Souci, Hurstville and Dolls Point. Please confirm that the figures used in this table reflect the local conditions of Ballina and its retail centres.

11. External Materials and Finishes

- It is noted that the ground floor retail components consist predominantly of glazed shopfronts. The residential entrance lobbies are also glazed and protected by cantilevered metal awnings. The use of glazing is commended; however, it appears from Drawing No. Z9002-A that the glazing has not been broken up into sections to avoid large expanses of glass. Shopfronts should be articulated as separate units, as per Council's Combined DCP requirements.
- As glazing is also being used for residential entrance lobbies, how will the entrances to shops and the residential entrance lobbies be distinguished from one another? Entrances should be designed such that they are a clearly identifiable element of the building in the street.
- How have the roof top plant rooms been integrated into the building?
- How will the substation be integrated into the building design?
- Awning widths appear narrow (less than 1500mm). Are these similar in width to the existing awnings in River Street?

12. Open Space Contributions

- It is noted that the calculations for the open space contributions under the Draft Open Space Contributions Plan (June 2006) use an occupancy rate of 70% for the proposed tourist accommodation, which comprises 90 guest rooms. No justification has been given as to why the reduced occupancy rate of 70% has been used in this instance.

13. Retail

- What is the number/size of retail tenancies on River Street? How does this relate to existing or desired pattern of retail development?

TO NOTE

14. Integrated Development Approval

- Section 3.11 of the EA refers to other approvals required pursuant to Section 91 of the EP&A Act. Integrated Development does not apply to Part 3A of the EP&A Act. Section 75U of the Act specifies the approvals and legislation that do not apply under Part 3A. The following authorisations are not required for an approved project:
 - ⇒ Part 3A permit under Rivers and Foreshore Improvement Act 1948; and,
 - ⇒ A permit for dredging or reclamation work under Section 201 of the Fisheries Management Act 1994.

Consent under section 138 of the Roads Act 1993 is required to be applied consistently with any approval under Part 3A of the Act, granted for the site.