

29 September 2017

Customer Service | 1300 292 872 | (02) 6670 2400

Attention: Michelle Niles
Department of Planning & Environment
Planning Services - Modification Assessments
GPO Box 39
SYDNEY NSW 2001

tsc@tweed.nsw.gov.au
www.tweed.nsw.gov.au

Fax (02) 6670 2429
PO Box 816
Murwillumbah NSW 2484

Please address all communications
to the General Manager

ABN: 90 178 732 496

Dear Michelle,

**Bay Grand Mixed Use Approval, Tweed Heads
(DA 43-3-2005 Mod 5) – Tweed Shire Council Comments**

I refer to the Department's email of 8 September 2017 in relation to an invitation to provide comment on the proposed modification to the approved Bay Grand mixed use development (DA 43-3-2005 Mod 5) and provide the following comments.

1. Removal of Commercial Tenancies / Street Frontage Activation

Achieving activated edges within the Tweed CBD is a requirement under the *Tweed City Centre Local Environmental Plan (TCCLEP) 2012 Clause 6.8 Ground floor and first floor development in certain business zones* which states:

6.8 Ground floor and first floor development in certain business zones

- (1) *The objective of this clause is to promote uses that attract pedestrian traffic along certain ground floor street frontages in certain business zones.*
- (2) *This clause applies to land in Zone B3 Commercial Core and Zone B4 Mixed Use.*
- (3) *Development consent must not be granted to the erection of a multi storey building, or a change of use of a multi storey building, on land to which this clause applies unless the consent authority is satisfied that:*
 - (a) *the building will have an active street frontage after its erection or change of use, and*
 - (b) *the ground floor of the building will be used for the purpose of commercial activities, and*
 - (c) *if the building is, or will be, located on land in Zone B3 Commercial Core, the first floor of the building will also be used for the purpose of commercial activities.*
- (4) *Subclause (3) does not apply to any part of a building that is used for any of the following purposes:*
 - (a) *entrances and lobbies (including as part of a mixed use development),*
 - (b) *access for fire services,*
 - (c) *vehicular access.*
- (5) *In this clause, a building has an active street frontage if all premises on the ground floor of the building facing the street (that is not a service lane) are used for the purposes of business premises or retail premises.*
- (6) *In this clause, commercial activities means amusement centres, business premises, function centres, hotel or motel accommodation, medical centres, office premises, registered clubs or retail premises*

Given that the subject site falls within B3 Commercial Core Zone of the TCCLEP 2012, there is a requirement that the building will have an active street frontage and that the first floor will be used for the purposes of commercial activities. It is considered that the removal of one of the ground floor tenancies and the infilling of the equivalent first floor void areas (above street level retail tenancies) as additional residential units, would thereby fail to meet the intention of Clause 6.8.

Further, under the Tweed City Centre Development Control Plan (TCCDCP) Section B2 the subject site is located within the Tweed City Centre *Commercial Core* and is identified within *Figure 4-5: Active Street Frontages Map* where the Bay street frontage is mapped as '*active street frontages required and outdoor dining encourage*' and the Thompson Street frontage is mapped as '*active street frontage required*'.

The objectives of the active frontage provisions are to promote pedestrian activity, maximize active street frontages within Tweed City Centre and encourage positive building address to the street. It is noted that since the Tweed Shire Council streetscape works along part of Bay Street, including the creation of a number of dining out areas that these active edge and outdoor dining objectives are starting to be realized with two new food and beverage businesses being established.

The deletion of one of the retail tenancies, which was located on one of the development sites prominent corners (Bay and Thompson Streets), will effectively reduce the active frontage by approximately 30m. Further the replacement of this retail tenancy with additional car parking will likely result in a blank or unarticulated elevation to this visually prominent street corner. As such, it is considered that the proposed modification will significantly compromise the proposed development's ability to provide a continuous activated edge along the Bay and Thompson Street frontages.

The 'closing in' rather than 'opening up' of this prominent corner is thereby deemed to be counter to the planning and design intent of the TCCLEP and DCP, which is to provide a lively and active frontage throughout the CBD. This lack of active edge will compromise the activation of this part of the CBD and would represent a lost opportunity to introduce human scale active uses and elevational treatment on this key prominent corner. The retail tenancy on the corner should thereby be reinstated.

Similar concern is raised in relation to the proposed infilling of the void spaces above the ground floor retail tenancies as additional residential units. This proposed configuration reduces the overall availability of commercial floor area available within this part of the Tweed CBD. It is noted that earlier development proposal iterations included commercial units at the first floor level which is the preferred configuration. There is opportunity for the applicant to explore a range of alternate commercial uses across the first floor which could gain access from the Thompson Street entrance lobby.

The application is not considered to have adequately addressed the abovementioned requirements of the TCCLEP or the DCP. The justification for the removal of the Thompson Street commercial tenancy is not supported. Whilst the viability of the commercial tenancy may be questionable in the short term, the long term opportunities of the site have not been taken into consideration.

The Planning Report notes that “...*the site opposite is a heritage listed fire station and Council car park which are both unlikely to be developed*”. This statement is not supported. High level cross border discussions have identified the site opposite as a potential transport hub, which would result in the immediate area being a highly activated area of the CBD area in the future. The statement that the “...*commercial activation of the Thompson Street end of Bay Street will not be possible to the extent encouraged by the DCP*” is therefore not supported.

2. Car Parking

The number of required car parking spaces will depend on the final number of residential units and commercial tenancy GFA supported by the Department.

A review of the proposed car parking has been undertaken. Although the proposal remains in surplus, the mix of car parking uses raises concern.

It is noted that Mod 5 results in there being a loss of five visitor spaces (i.e. nil provided in the proposed Stage 2 of the development). No justification has been provided for such an amendment. Whilst two additional disabled spaces are proposed in Stage 2, there is a loss of two disabled spaces in Stage 3, leaving no such provisions in Stage 3. It is also noted that one less commercial space is proposed in Stage 2. Although the loss of a commercial car space may be attributed to the proposed removal of the commercial tenancy in Stage 3, the overall loss of 6 commercial / visitor spaces across both stages raises concerns.

An alternative scenario could be the replacement of the car wash bays with visitor / commercial spaces. Car wash bays are no longer a requirement of Council and as such presents an opportunity to provide appropriate visitor / commercial parking spaces. This would also trigger a need to revise the residential / visitor car parking boundary.

It is also noted that Stage 1 now proposes an additional six car spaces from that approved under Mod 4 (as shown in Table 2 (Page 6) of the Planning Report). No details or justification has been given for the Stage 1 amendments in this regard.

As noted previously, Council does not support the removal of the Stage 3 Commercial Tenancy. As such, the Ground Floor car parking in this component of the development will need to be reviewed, if the Department concurs with Council on this matter.

3. Storage

The proposed Mod 5 plans indicate that the Storage areas within the Ground Floor of Stage 3 have been deleted and not replaced elsewhere. Whilst the proposed new pedestrian entrance lobby is a positive outcome, no explanation or justification has been provided for the loss of storage areas.

4. View Corridors

Although the proposed reduction in tower separation may provide a better outcome for the residents within Stage 2 of the development (by way of better solar orientation etc.), the potential impact to surrounding properties in terms of view loss will need to be considered in detail by the Department.

5. SEPP 65

It is recommended that a detailed assessment of the proposal against the provisions of SEPP 65 (including the new Apartment Design Guidelines) be undertaken.

6. Amenity Impact

If the proposed amendments to the commercial tenancies and residential units are supported by the Department, to address potential amenity impacts between residential and commercial uses, it is recommended that a qualified acoustic consultant review the amended layout in consideration of the recommendations of the original Noise Impact Assessment prepared by Palmer Acoustics (Australia) Pty Ltd dated 15 February 2005 and any addendums to this report as approved by the Department. The consultant should confirm whether the recommendations remain applicable for the modified development.

7. Condition A1 – *Development Description*

It is proposed to amend Condition A1 as follows (changes shown in bold):

- (1) *Construction of a mixed-use residential and commercial development consisting of a continuous 1 to 4 storey podium stretching across both the Bay and Enid Street frontages and 3 tower developments, as follows:*
 - a. *3 main towers comprising **201 residential apartments (21,118 sqm GFA) and 3 ground floor commercial tenancies** fronting Enid Street and Bay Street (364 sqm GFA), in the following arrangement:*
 - *Enid Street tower Building A (10 storeys, MAX RL 36.70m AHD);*
 - *Bay Street tower at the corner of Bay and Enid Streets Building B (16 storeys, MAX RL 54.10m AHD);*
 - *Thompson Street tower at corner of Thompson and Bay Streets Building C (16 storeys, MAX RL 57.0 m AHD); and*
 - b. *328 car parking spaces over 3 levels;*
 - c. *manager's office located on the ground floor and communal residential facilities including pool, gym and function room;*
 - d. *landscaping;*
 - e. *provision of services to the site; and*
 - f. *public domain works including the following:*
 - *reticulation of electricity supply underground within the immediate vicinity of the site (Bay, Thompson and Enid Streets) at the Applicant's expense;*
 - *replacement and widening of footpaths within both Bay and Enid Streets, subject to consultation and approval from Council; and*
 - *provision of significant street plantings, streetscaping and features including water feature and relevant plantings within the intersection of Bay and Enid Streets*

Comment:

Whilst an amendment to Condition A1 is not opposed, there are several components of the condition that require further review.

Firstly, the number of units proposed and commercial tenancy GFA need to be reconsidered to take into account Council's concerns with regard to street frontage activation requirements of the Tweed City Centre LEP 2012 and Council's DCP Section B2 – Tweed City Centre.

Secondly, Section 3.1 (Page 6) of the Planning Report makes reference to "...A small increase in car parking numbers from 334 to 338", yet Section 6.4 (Page 32) states that "...the proposed modifications will result in a minor decrease to car parking by 8 spaces (336 to 328)".

Clarity on the correct number of car spaces is considered necessary in order for the correct amendment to be made to Condition A1. Currently the proposal is to amend Condition A1(1)(b) to reference 328 car parking spaces, which does not correspond with the car parking figures (totalling 340) shown in Table 2 of the Planning Report.

8. Condition A1A – Staging

It is proposed to replace Condition A1A with the following staging (changes shown in bold):

1. Stage 1A will comprise the construction of Enid Street tower (Building A) including;
 - a. 47 units over 8 levels commencing at Podium Level.
 - b. Stage 1a landscaping to the podium as per the application plan.
 - c. The southern swimming pool.
 - d. Car parking for 87 vehicles.
 - e. Entrance lobby to Building A.
 - f. New sub-station and service areas
 - g. Streetscaping on the Enid Street Frontage adjacent to Building A.
2. Stage 1B will comprise the construction of the following:
 - a. 4 units over 2 levels commencing at Podium Level.
 - b. Stage 1a landscaping to the podium as per the application plan.
 - c. The northern swimming pool.
 - d. Car parking for 79 vehicles.
 - e. Entrance lobby to Building B.
 - f. Streetscaping on the Enid Street Frontage adjacent to Building A.
3. Stage 2 will comprise the construction of Bay Street tower (Building B) including;
 - a. 3 Commercial Tenancies at Ground Level
 - b. 74 units over 14 levels commencing at Podium Level.**
 - c. Stage 2 landscaping to the podium as per the application plan.
 - d. Car parking for 103 vehicles (including 16 tandem spaces).
 - e. The pedestrian entry to the podium from Bay Street
 - f. Streetscaping on the Bay Street and Enid Street Frontages adjacent to Building B.
4. Stage 3 will comprise the construction of Thompson Street tower (Building C) including **76 units** over 15 levels commencing at Podium Level.

Comment:

Section 5.2 of the Planning Report states that "...No changes to the wording of the Stage 1A and 1B component of the condition have been proposed". However, the wording associated with Part 1 of Condition A1A (in relation to Stage 1A), with regard

to the number of approved car parking / loading spaces, differs from the same component of the approved Mod 4 document.

The proposed number of units and car parking for Stages 2 and 3 will need to accurately reflect the approved plans, taking into consideration the comments made within this submission.

The proposed wording for Item 3d (Stage 2) of Condition A1A does not reflect the car parking figures proposed by Condition B24.

The proposed wording for Item 4 (Stage 3) of Condition A1A does not include car parking requirements. Commercial tenancy provisions for Stage 3 will also need to be incorporated, should the Department concur with Council's submission in this regard.

9. Condition A2 – Development in Accordance with Plans

The proponent proposes to amend Condition A2 to include the Mod 5 approved plans.

Comment:

Reference to the revised plans is not opposed, subject to the matters raised within this submission being satisfactorily addressed and plans amended accordingly.

10. Condition B24 – Number of Car Spaces

It is proposed to amend Condition B24 to reflect the number of car spaces as noted in the Table 2 of the Planning Report, as shown below:

Level	Approved				Proposed			
	STAGE 1a & b	STAGE 2	STAGE 3	TOTAL	STAGE 1a & b	STAGE 2	STAGE 3	TOTAL
BASEMENT	32	56	37	125	35	54	37	126
RESIDENT	26	42	31	99	28	44	32	104
RESIDENT	6	14	6	26	7	10	5	22
GROUND	29	43	34	106	29	38	37	104
RESIDENT	0	19	22	41	0	18	28	46
RESIDENT	0	4	6	10	0	4	5	9
COMMERCIAL	0	11	0	11	0	10	0	10
VISITOR	21	5	0	26	21	0	0	21
PWD	3	1	2	6	3	3	0	6
CAR WASH	3	3	4	10	3	3	4	10
LOADING	2	0	0	2	2	0	0	2
LEVEL 1	38	40	27	105	41	32	37	110
RESIDENT	36	36	27	99	38	26	32	96
RESIDENT TANDEM	2	4	0	6	3	6	5	14
TOTAL	99	139	98	336	105	124	111	340

Comment:

As previously noted, the Planning Report mentions on several occasions that there are no changes proposed for Stages 1A and 1B. However, Table 2 and the corresponding

figures proposed for Condition B24 incorporate amendments to the approved parking figures for Stages 1A and 1B with no justification or explanation. For instance, Mod 4 approved 70 residential car spaces (99 spaces overall), yet Mod 5 indicates 76 spaces (105 spaces overall).

No objection is raised to the amendment of Condition B24, subject to the above comments (in terms of car parking, overall number of residential units and commercial tenancy GFA) being satisfactorily addressed and the Table amended accordingly.

11. Additional Comments

Council's review of the proposed Mod 5 has highlighted the following matters for further consideration:

Developer Contributions:

Condition B41 (S94 Contributions) and **Condition B42** (S64 Contributions) will require amendment should the Department support any additional units within Stages 2 and 3.

Council will be happy to provide advice on the revised monetary amounts, once the final approved number of units has been ascertained for each stage.

It is noted that whilst the number of units for Stage 1 remains unchanged, the proposed unit mix for Stage 1 has been amended, despite the Planning Report stating that the proposed amendments apply only to Stages 2 and 3. The developer contributions are based on bedroom numbers for each unit. Therefore, an increase in the number of units with higher bedroom numbers (as identified in Table 3 (Page 7) of the Planning Report) would generate higher contributions for such an amendment. Mod 5 does not address this issue.

Car Wash Bays:

Whilst it is noted that Council has recommended the replacement of car wash bays with visitor car spaces, if any of the car wash bays remain as part of the proposal, Council's Water / Wastewater Unit has requested a number of new conditions be placed on the approval.

The car wash bays as proposed will discharge to the Council sewer system. Council is requesting a requirement for the internal system plumbing to have a reflux valve installed, so that there is no risk of the Council sewerage system backing up into the basement. The proposed new conditions are as follows:

- # *A reflux valve shall be required on any sewer fixtures located within the basement.*
- # *The disposal of all wash water, oil, grease or other pollutants from the business shall be disposed of to the satisfaction of Council's General Manager or his delegate as outlined in the Liquid Trade Waste Services Agreement and General Conditions of Approval.*

Sewer Design:

The sewer diversion proposed within the basement of Stage 1 of the building has been designed by the proponent's Engineers to be minimum grade in order to provide the required clearance between the diverted sewer and the floor slab in the basement. As a result, the hydraulic capacity of the new sewer will be less than the previous sewer design. This has reduced the capacity that the developer can discharge to Council's sewer and the developer will no longer be able to discharge to one single sewer connection for the entire development.

A second connection to the sewer will be required for Stages 2 and 3 of the development. Council is requesting that a new condition be added to the modification for the requirement to submit a S68 application for sewer works to Council's Water and Wastewater Unit for Stages 2 and 3 to ensure that an appropriate design is undertaken and constructed. The proposed new condition is as follows:

- # *An application shall be lodged together with any prescribed fees including inspection fees and approved by Tweed Shire Council under Section 68 of the Local Government Act for sewerage for Stages 2 and 3 of the development prior to the issue of a construction certificate, to approve the connection to Council's public sewer infrastructure.*

For further information regarding any of the matters raised above, please contact Colleen Forbes on (02) 6670 2596.

Yours faithfully

Lindsay McGavin
Manager Development Assessment and Compliance