

13 June 2014

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Planning and Regulation
Tweed Shire Council

Hello Michelle

Response to submissions

The following letter is a combined letter from planning consultants Budget Town Planning and the applicant and owners of 38 Sunnycrest Drive Terranora, Cliff and Susan Peiffer in response to the submissions received during the notification period of development application DA14/0257 for a dwelling and secondary dwelling.

This letter outlines the issues raised by the submitters and provides a planning response and for certain issues Mr & Mrs Peiffer provide a more personal insight to this proposal. The objective for this letter is to:

- provide Council with some additional information in support of the proposal
- distinguish what can be regulated and what is out of reach from planning regulation
- dispel some of the fears of the submitters
- satisfy the legitimate concerns by neighbours

Budget Town Planning has researched previous development applications on Sunnycrest Drive. It is worth noting that the majority of existing dwellings have been approved without notification to the community. Budget Town Planning has learnt from experience that when a community has a rare opportunity to legitimately object to a proposed development this can increase the number of submissions received.

A number of issues have been raised by submitters that are 'out of reach' from planning regulation. The Planning and Assessment Act 1979 (P&A Act 1979) is not the panacea for all potential or perceived impacts and it is the professional judgment of Budget Town Planning that the following list of concerns by residents should not be considered any further by Council as they are not regulated by the P&A Act 1979. They are:

- Property values will be deflated if development is approved
- Traffic will increase due to on lookers of the finished development

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- The development has not been approved by Chiltern Homes
- The development offends scenic views

In addition there have been a number of objections based around the concern that this development may become a bed and breakfast, a boarding house, or a place of worship. In this location a bed and breakfast requires a further development application for a change of use and a boarding house and place of worship are prohibited.

Although, what should be a private issue, it is evident from respondents letters the need to disclose that Mr Peiffer is of Australian European descent and Mrs Peiffer has English Indian origins. Submissions that imply that this development could be a place of worship and any other assumptions about the final use of this development are unsubstantiated.

Mr Peiffer says:

“This dwelling, despite its grandeur is ultimately going to be our family’s dream home. My wife, my four children and my elderly parents of Dutch descent (who will use the second dwelling) intend to make this our wonderful home.”

The majority of objections have been focused on the development not being in character to the existing Azure estate. Developments should be in character with its surrounds however character has nothing to do with matching the design of existing dwellings. It should be noted at this stage that this proposed development only became a development application and not complying development (assessed by a private certifier) because we were seeking a reduction of the complying development standards namely:

- A reduced side setback; and
- An increase in overall height of the building

If the development did not require these reductions then this proposed development could have been assessed as complying development under Part 3A of the State Environmental Planning Policy 2008 (Exempt and complying development codes) and State Environmental Planning Provision (Affordable rental housing) 2009, without notification and would be approved. In the form of a development application to Council the Tweed Development Control Plan and Local Environmental Plan 2014, notable; allows for the reduced side setback and increase in height. The exempt and complying development codes have a few standards that relate to character being front, side and rear setbacks, landscaping, height, site coverage and floor area of which this development (except side setbacks and height) complies. The exempt and complying development codes do not require a subjective analysis of the existing design and built form of the area and how the proposal is consistent with this. It is important to note at this stage that unreasonable conditions relating to a change of façade or design of this proposal under the guise of character concerns would be a harsh line to take and potentially only delay this development rather than preclude it.

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A couple of submissions raised planning case law which attempted to define character, however the example used was Project Venture Developments v Pittwater Council which is a 10 year old case that relates to a 17-apartment, 3 storey complex and has not set a precedent for character assessment and is not relative to this development application. Politics, planning and planning regulation has changed significantly over the past decade including DCP A1 (2008) and Tweed LEP 2014.

A couple of objections stated that the design at 38 Sunnycrest Drive was not of contemporary Australian design and therefore was not of a standard or consistent with the existing designs in the street.

Mr and Mrs Peiffer state:

“In any contemporary Australian estate or suburb we find architectural influences from around the world. The Azure estate houses many such designs including; Tuscan, Federation design, Californian bungalow design, Bali influences, Japanese influences, Georgian and Victorian influences, Queenslander design, a massive Greco-Roman design and the plethora of skillion roof designs. Many of these designs could not be considered contemporary Australian.

Existing residences have had the opportunity of building their dream home of the above cultural designs & Influences. Our design may be unique and may not be what is considered ‘contemporary Australian’, but it gives yet another style in what is an already a diverse palette.”

Respondents talk of visual amenity and character of the area and of the Tweed Shire Council DCP A1 – Residential and Tourism Development Code Controls. Crucially, respondents fail to first quote Part A Objectives 01, 03 and 04 namely:

- 01. To ensure development responds to the characteristics of the site and the qualities of the surrounding built and natural contextual environment.*
- 03. To encourage innovative design for all forms of residential development which is of a high standard of architectural design and merit.*
- 04. To provide a diversity of housing types and sizes within residential areas that meets the needs of the wide range of family and household types and encourages greater availability of varied and affordable housing.*

This development has been carefully designed in accordance with the site it is occupying. The site analysis shows that the orientation, airflow, windows, open space, drainage and landscaping is designed to respond the best to the sites attributes. It is a quality built form that is located next to other quality dwellings in the estate. It is the opinion of Budget Town Planning that DCP Objectives 01, 03 and 04 have clearly been achieved.

Mr and Mrs Peiffer state, that the city of Fatehpur Sikri where palace of Jodha Bai is located is an

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inspiration of this proposal. Fatehpur Sikri is a UNESCO World Heritage Site and notably, the prestigious Smithsonian Institute site writes:

"There is hardly a more impressive city in all India."

The British travel writer Eustace Alfred Reynolds-Ball opined in 1907:

"Here we see the impress of Akbar's architectural genius, as if fresh from the builder's hands."

Eighty years later, scholars Michael Brand and Glenn D. Lowry wrote that the buildings:

"represent a splendid achievement of planning, design, craftsmanship and good taste".

Mr and Mrs Peiffer continue :

"Our Scalloped colonnade verandas are copied directly from the main colonnade at the Taj Mahal, one of the Seven Wonders of the World and described by most architectural scholars and travel writers as the most beautiful building in the world."

It would be tremendously hard to deny that the DCP objective 03 has not been met despite personal views that the proposal is unsightly.

A few submissions had concerns regarding the secondary dwelling size and that it may set a precedent for the area. The SEPP (affordable rental housing) 2009 has set the legislation that makes it easier to develop secondary dwellings. DCP objective 04 is facilitating a diverse range of housing as State and National research suggests there is a shortage of smaller dwellings and an increasing ageing population. Mr Peiffer is utilizing SEPP (affordable rental housing) 2009 in precisely the manner that the drafters of this State policy intended by proposing a second dwelling for his ageing parents.

Mr Peiffer also sheds some light on the likely cost of this development of which a couple of submitters felt obliged to provide opinion on.

This family home has been in the development for more than three years. However, we are owner-builders and have negotiated for the past three years with Australian and Indian suppliers and contractors and have meticulous budgets prepared, which puts paid to any misleading suggestion that the cost is not realistic.

One respondent claims that the building will receive mould and will have a very run down appearance in a 'few years' time as the sand stone will break down because the sun light will not break through the verandahs. In response it should be said that it is modern contemporary Australian homes that are not built to last and should have verandahs to protect them from the weather like the original Queenslanders many of which still stand strong. The buildings at Fatehpur Sikri are 445 years old and have weathered the harsh interior of central India and after 445 monsoon seasons according to Mr and Mrs Peiffer look like the day they were built. This building material similar in colour to Tweed

volcanic red soil will look fantastic. Every house requires maintenance and this proposed family home will require less than most.

The height limit is an area where this development required consent by Council. However and importantly, the new LEP 2014 Miscellaneous provision 5.6 allows for architectural roof features to exceed the height limit. The additional height of the finial of less than 1 metre above the height limit should not be a concern of any neighbouring properties as there is no direct impact on them. Some objections relating to loss of views are not valid as there are very few examples in planning case law where a property with dwelling entitlements is prevented to build due to the reduction of views from an existing dwelling.

Mr & Mrs Peiffer state:

“In regards to the concern of height on the ridgeline, it is our advantage that we managed to secure this property with magnificent views, an opportunity that was open to any others. We have made every effort to keep the second storey of the building as small as possible and well set back from the adjoining properties. Crucially, less than 1% of the building is proposed above the 9 metre height limit. Irrespective of this argument, it is noteworthy that all existing surrounding houses face away from our proposed building thus not impacting on their views.”

The neighbour to the west is concerned with the reduced side setback. Unfortunately the block to the west is vacant so there were no constraints to the design. It will be the responsibility of the developer of this western block to design their future development with consideration of the existing built form.

The neighbour to the south (18 Sunnycrest) is concerned with the rear setback however due to the stormwater easement, the rear half of this rear property is unlikely to ever be built upon. The reduced rear setback is allowed under LEP 2014 for the second dwelling and should not impact on the immediate neighbours.

In regards to the argument of breaching the Estate Covenants, this is incorrect. The covenant allows for Individual Entry Statements, see 4 (l) (iv) of the covenant. Achieving the covenant design standards should be proof enough that this proposed dwelling is appropriate in this location. As an aside it is interesting to note the high number of properties in the estate that breach some of the primary covenants, namely: 4 (h), 4 (g), 4 (l) (i) & 4 (m).

There were some anecdotal concerns with this development regarding the capacity of the drainage easement and its implications on neighbouring properties. The drainage easement conveys storm water from properties 6, 8, 10, 12, 34, and 36 Sunnycrest Drive which is a catchment area several times greater than that of 38 Sunnycrest Drive. The development of 38 Sunnycrest with the inclusion of water storage tanks that will capture the majority of runoff and act as retention tanks will in fact improve the current situation. In any case Council's plumbing and drainage department will provide advice on this plan.

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Mr & Mrs Peiffer state:

“The claim that our building is going to create flooding is provocative. For the past seven years there has been no flood mitigation on the site. Irrespective, a cursory look from our rear boundary or a contour map critically shows number 18 Sunnycrest Drive serves as the main catchment from nearly all neighbours on the higher side of Sunnycrest Drive, a catchment area immensely larger than the small rear portion of our block.”

There were a couple of submissions, which raised the issue of boundary fences. Perhaps this was not clear on the plans but the existing boundary fences, which are in accordance with the Azure Estate covenants, are being retained. A hedge will be used along the perimeter to give privacy to Mr and Mrs Peiffer's family and privacy for the future dwellings on the adjacent sites. Many other Azure Estate owners have grown hedges to the same effect.

In conclusion it is the advice of Budget Town Planning that this proposal has carefully addressed all of the planning issues but will certainly provide more detailed information to Council to assist with the assessment of this development if required.

I will conclude this letter from Mr Peiffer who states:

“We can assure our new neighbours that we will provide a home of great quality, style and character that will enhance the neighbourhood and raise its values.”

Regards

Brendan O’Loan
Principal Planner
Budget Town Planning