



paradigm  
Planning and Development Consultants Pty Ltd

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Our Ref: IA/200705/060712ltr

6 July 2012

General Manager  
Wyong Shire Council  
PO Box 20  
WYONG NSW 2259

Dear Sir,

**RE: DA/426/2012 Bayview Avenue, The Entrance**

Paradigm Planning & Development Consultants Pty Ltd has been engaged by Dunnet Properties Pty Ltd and The Entrance Plaza Pty Ltd, owners of Lakeside Shopping Centre at The Entrance, to make a submission in relation to the exhibition of the DA/426/2012 for a "mixed use development" at 2A Bayview Avenue, The Entrance. We understand that the exhibition period for the proposal has closed but that Council has agreed to accept submissions up to Friday 6<sup>th</sup> July, 2012.

Although the owners of Lakeside are committed to supporting the revitalization of The Entrance Town Centre and do not wish to see new developments in the town centre unnecessarily hampered, they have no choice in this instance but to object to the proposed development as an overdevelopment of the site which is not permissible under existing planning controls and not consistent with the broader strategic vision and masterplan for the town centre.

Fundamental problems with the proposal for 16 storeys are a maximum height of some 53 m compared to a permissible height of only 24 m and an FSR of 5.8:1 compared to the DCP limit (with site area bonus) of 1.69:1. These exceedences of numerical standards are not minor variations to produce improved design outcomes but representative of an overdevelopment of the site.

The justification for these variances is loosely based on a claim that the proposal is consistent with Council's Iconic Sites criteria and supported by the Town Centre Masterplan adopted by Council in December, 2011. However, we note that the Masterplan is not a statutory document and in terms of this site it merely reflects the proposal which was under discussion with Council at that time and primarily shows the vision for the nominated Iconic Sites and public domain improvements.

The application also claims "public benefit" through the provision of the proposed library/café space to be dedicated to Council as a matter supporting the height and FSR variances proposed. However, we note that the draft VPA exhibited with the DA clearly states that the market value of the space to be provided to Council is to be deducted from the total Section 94 contributions otherwise due for the development ie Council is paying for the space from Section 94 funds.

While we are not aware of any transparent process for selection of this site for acquisition of a library, we acknowledge that it is within the general area of the town centre nominated in the Masterplan for a new library, notwithstanding that there are other site opportunities which may also be appropriate for consideration. However, it is not clear that it is legitimate to consider the proposed café as ancillary to the library as it would appear that it could be operated independently of the library and would therefore be a prohibited use.

We agree that the frontage of the site to Bayview Avenue lends itself to community and commercial uses and the “mixed use” character is appropriate to the site and its context, but the attempt to achieve this in a residential zone by characterizing uses as either “community” or “education” uses is not appropriate.

We also note that the application makes only a rudimentary assessment of potential impacts on the Council owned Short Street car park site which is a nominated Iconic Site for future development and believe this matter needs further consideration. Indeed, the proposed building would become the tallest building in The Entrance Town Centre and may undermine the intention of the Iconic Sites program and its potential benefits for revitalization of the town centre.

Also of concern is the potential precedent which would be set for development within the 2(d) High Density Residential zone. While we are aware of the decision of the Court of Appeal in 2003 in the matter of *Smith v Wyong Shire Council*, we note that Wyong LEP 1991 (Amendment No.118) was only declared invalid “*to the extent to which it purports to amend Wyong LEP 1991 by zoning as 2(c) (Medium Density Residential Zone) land located at The Entrance and Long Jetty which is zoned 2(d) (High Density Residential Zone)*” and the other provisions of Amendment 118, including the Building Height Map, still require consideration.

Irrespective of the LEP restrictions, it is not appropriate to totally disregard the DCP provisions on building height and FSR, particularly as the main justification for variation of the DCP appears to be the perceived public benefit of the proposed library within the development.

It is therefore our view that there is a real possibility the proposed development in its current form cannot be legally approved. It is also clearly an overdevelopment of the site which cannot be supported on merit grounds.

However, it is important that Council encourages an appropriate high quality development on this site in conjunction with other developments which have been identified as supporting the revitalization of The Entrance. This requires that Council either:

1. Formally resolve to identify the site as an Iconic Site and include it in the provisions of draft Wyong LEP 2012 and draft Wyong DCP Chapter 115 Key (Iconic) Development Sites.
2. Formally resolve to prepare a draft LEP for the site to introduce specific provisions to enable an appropriate development including ground floor non-residential uses.
3. Require the current proposal to be modified to generally comply with the current LEP and DCP provisions or vary them only to an extent which can be justified on valid planning grounds.

As with the Key Site adjoining KFC and the Lakeside site, in the short term a draft LEP is appropriate given the potential for delay with the new Wyong LEP and DCP. Until such time as either the site is subject to Key (Iconic) Development Site provisions under the yet to be exhibited Wyong LEP 2012 and DCP Chapter 115 or benefits from site specific planning provisions through a Planning Proposal rezoning process, as is being done for the Lakeside Site and Key Site, then there is no legitimate basis for the extreme height and FSR variations sought for the development.

The current DA is not consistent with Council's strategy and masterplan for The Entrance, ignores the current DCP provisions and most likely is not a permissible development and must be rejected.

An appropriate development should be encouraged for the site, but it is not acceptable to undermine the Key (Iconic) Development Sites objectives and potential outcomes for the questionable benefit of the proposed Section 94 funded public library within the development.

If you have any queries in relation to this, please do not hesitate to contact me.

Yours faithfully



Ian Adams  
Director  
**PARADIGM PLANNING & DEVELOPMENT CONSULTANTS Pty Ltd**