

From: [David Arter](#)
To: [Scott Noreen](#); [Larkin, Chris](#)
Cc: [Kate Singleton](#); [council](#)
Subject: Chris Larkin - Re: Revised Plans - 10.2018.466.2 (61 Kingsley St, Byron Bay) ...
Date: Monday, 2 December 2019 9:52:17 AM

Hi Chris & Noreen,

Thank you for keeping us informed, it is very much appreciated.

Upon receiving your email on Friday afternoon, I was optimistic (& hopeful) that amendments were made to make the Proposed Plan compliant with Council's Approved Conditional Plan (Jun-19).

Unfortunately, this is not the case, notably with respect to compliance with:

- **Condition 6** (ceiling height specifications), nor it appears ...
- **Condition 37** (planting of hedges for privacy protection).

Given this ongoing non-compliance would result in elevated levels of over-shadowing (and potentially privacy breaches) in relation to our home ... we have no choice but to continue to **Strongly Reject** to key elements of the Amended Plan (Nov-19).

Ultimately, we are mystified as to why the Applicant persists with presenting plans that are blatantly non-compliant with Council's Approved Conditional Plan (Jun-19).

This is frustrating (not to mention time consuming & very costly to us), as Council has provided a very clear path for the Applicant to receive DA approval.

This includes very generous relief under the regulations (notably with respect to significant allowances for breaches of the building height plane on the western side elevation).

(1) Non-Compliance with Condition 6 (Ceiling Heights at all Levels):

Summary:

- In the latest Amended Plan (Nov-19), the Applicant has proposed an excavation of 0.2m, but has offset this by increasing the height of the upper floor by 0.2m (i.e. no material net change).
- Compared with Council's Approved Conditional Plan (Jun-19), the amended Plan (Nov-19) has also maintained the first level ceiling height at 2.9m, **being 0.2m higher than Council's specified conditional height (of 2.7m).**
- As detailed in our recent submission to Council (6-Nov-19), it is the overall height of the first level ceiling (above ground level) that contributes materially to the building height plane breach on the western side elevation

(& the resultant over-shadowing of our home).

- As such, it is compliance with the combination of: (a) a maximum FFL height of 9.6m AHD, and (b) the first level ceiling height of 2.7m (as prescribed by Council's conditions) ... that are of critical importance to the protection of our home from the extent of resultant over-shadowing.
- While the amended plan now complies with the Council's Condition of a FFL of 9.6M AHD, of **critical importance to us is the non-compliance with a first level ceiling height limit of 2.7m.**
- Overall, the Applicant continues to non-comply with Council's Condition 6 and the very generous ceiling height limits specified for all levels (most notably with respect to the 2.7m ceiling height limit for the first level).
- As a result, this non-compliance would impose incremental building height plane breaches on the western side elevation and would elevate the extent of over-shadowing inflicted on our home.
- As such, we maintain our **Strong Rejection** to non-compliance with Condition 6.

Further Explanation:

Under the latest Amended Plan (Nov-19), the Applicant has proposed to:

- excavate to 0.2m
- but has maintained the ceiling height of the basement at 2.0m, and above Council's condition of 1.8m.
- Given the amended FFL is consistent with Council's condition of 9.6m AHD ...
- ... then this component of the amended plan appears satisfactory to us.

The issue is that despite this amendment (as above), the ceiling height of the first level is maintained at a proposed 2.9m, and well above Council's conditional height of 2.7m.

As explained, it is the height of the first level ceiling (over & above Council's condition of FFL of 9.6m AHD) that is a material contributor to the extent of the building height plane breach on the western side elevation (and the resultant over-shadowing on our home).

Since inception, the Applicant has proposed a very large dwelling, (built over 3-levels, with very modest excavation). It is the inclusion of an above ground basement (aren't basements underground?) that exacerbates the significant overall height of the first floor ceiling above ground level. This elevates the "girth" (i.e. width) of the building at height, and is a key contributor to the material breaches of the building height plane on the western side elevation (& the resultant over-shadowing of our home).

There are many recently renovated and substantial homes nearby, and all have conducted basic excavation to achieve generously-sized and discreet 2-level family homes that harmoniously fit in with the Heritage Conservation precinct. Notwithstanding this design aspect, even under the Amended Plan (Nov-19), we fail to understanding why the Applicant does not:

- (a) reduce the height of the first level ceiling from 2.9m to Council's specified height of 2.7m (to achieve a combined maximum FFL of 9.6m AHD and a first level ceiling height of 2.7m).

Or, as an alternative ...

- (b) excavate further, or
- (c) reduce the height of the above ground basement ceiling,
- ... to produce a slightly lower FFL of 9.4m AHD to facilitate a first level ceiling of 2.9m

Either of these measures would broadly satisfy Condition 6 of Council's Approved Conditional Plan. Simple!

(2) Non-Compliance with Condition 37 (planting of hedges for privacy):

Chris - I note in your email reference to *Note 5: Retain Privacy Measures ... planting of vegetation, etc.*

However, in the amended plan (Nov-19), there is **no reference or notation as to the planting of 5x native hedges** (growing to a mature maximum height of 3-metres) on the western boundary adjacent to the pool and rear deck and facing our home (59 Kingsley St), as per **Condition 37** of Council's Approved Conditional Plan (Jun-19).

It goes without saying that the planting of these hedges is absolutely critical to the preservation of our privacy across our entire backyard from the large (12.6m x 3.5m) outdoor deck (elevated at 2.0m above ground level) and extending across the expanse of the rear of the Applicant property.

Is there any reason for no notation in the amended plans? All other vegetation changes are noted.

We note that the Applicant had noted the "attempt": to relocate that Bungalow Palms to this location in the previous plan, however there are no notes in the amended plan (Nov-19) to confirm compliance with Condition 37. All other vegetation changes are note, yet there is no notation confirming compliance with Condition 37.

It is our strong view that the Plans should have clear notes confirming compliance with Condition 37.

Clearly, any non-compliance with Condition 37 remains **Strongly Rejected** by us.

(3) Privacy Screens:

We note the amended plan (Nov-19) includes privacy screens at a revised height of 1.8m along the side balcony on the western elevation (located at the front of of the property and extending towards the rear).

This revised height of 1.8m (previously 1.72m) is broadly consistent with the height of 1.82m in Council's Approved Conditional Plan (Jun-19). Therefore this amendment is satisfactory to us.

We do however note that WD3.1 of the amended plan (Nov-19) notes that the western elevation section of the rear deck has a privacy screen of 1.8m. This should read "Screen to Eaves" (as per WD4.2 of the same plan), and the previous Plan (Jul-19) and Council's Approved Plan (Jun-19).

(4) Other:

One other point is compliance with Condition 5 (External Finishes).

This was imposed by Council and prohibits the use of external finishes of surf mist (roof) and deep water dark (dark blue cladding).

We note no reference to external finishes in the Amended Plan (Nov-19), but previously noted the use of the prohibited finishes (as above) in the DA Modification Documentation (Oct-19).

We agree with Council's position that these external finishes should be prohibited in the Heritage Conservation Area of Kingsley Street, and therefore urge Council to be vigilant in enforcing the Applicant's compliance with Condition 5 of Council's Approved Conditional Plan (Jun-19).

Summary

Once again, thank you for your communication regarding the Amended Plan (Nov-19), as received by us late afternoon on Friday.

To us, a **compliant plan** from here is simple:

- **Condition 6:** Reduce the first level ceiling height to 2.7m (from 2.9m currently), or reduce the FFL to 9.4 AHD (by excavating a further 0.2m or reducing the height of the basement ceiling to 1.8m from 2.0m currently).
- **Condition 37:** Include clear notation in the Plan as to the planting of a minimum 5 Native hedges (next to the pool and on the boundary with 59 Kingsley Street, as per Condition 37).

Condition 5: Notation of use of approved external finishes for roof and external cladding in the Heritage Conservation Area.

Should you require any clarification, or simply like to have a conversation to clarify any aspect, then please do not hesitate to contact me (m: 0419 564 191).

Thank you once again for your diligent work.

Finally, we once again plead Council with Council to up-hold compliance with the Conditions (6, 37 & 5) of Councils Approved Conditional Plan (Jun-19).

Kind regards,

David Arter

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On Fri, 29 Nov 2019 at 16:27, Scott, Noreen <NScott@byron.nsw.gov.au> wrote:

Hi David and Kate,

The applicant has amended the plans further from what was originally submitted.

In summary the following now changes are proposed

1. Excavate the basement level by a further 200 mm to allow for a ceiling height of 2000mm
2. Retain 9.6 AHD level as per the conditions of consent
3. Increase ceiling height for ground floor level from 2700mm to 2900mm
4. Maintain total building height of 8.5m
5. Retain privacy measures - including screens on the western side of the dwelling and planting of vegetation – plans have been corrected in relation to height of screens
6. Approval to remove trees at the north boundary for the purpose of recycling/ relocating the dwelling. Further, that the trees be replanted post completion of construction.

7. Approval for the pool size to be increased to 10x4.5m.

Council is currently finalising its assessment of the Council report so that this matter can be determined at the next Council meeting.

Council would appreciate any further comments you have in relation to the amended plans by midday Monday.

Kind regards

Chris Larkin | Manager – Sustainable Development | **Byron Shire Council**
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