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Angela Kenna
Joint Regional Planning Panel
GPO Box 3415
SYDNEY NSW 2001

21 October 2010

Dear Ms Kenna

LDA2010/79 – 20 Goulding Road, Ryde
LDA2010/78 – Cudal Reserve 22 Henry Street, Ryde

I refer to your e-mail dated 20th October 2010 regarding Architectus's response to Council's draft conditions of consent.

It should be noted that whilst both applications were initially recommended for approval by Council staff, at its meeting on the 17th of August 2010, Council deferred both applications to undertake further discussions with Sydney Water regarding the use of both sites for open space.

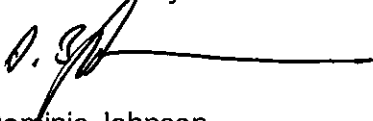
Following the above resolutions of Council, the applications were subsequently referred to the Joint Regional Planning Panel (JRPP) for the assessment and determination, pursuant to Clause 89(2)(b) of the *Environmental Planning and Assessment Act 1979*. As such, the conditions of consent commented upon by Architectus have not been adopted by Council.

In addition to the above, please be advised that Council resolved at its meeting on the 19th of October 2010 to oppose the subdivision of land at Cudal Reserve (22 Henry Street).

Notwithstanding the above, I note that the JRPP has now become the Consent Authority and is now responsible for the above identified applications. I have reviewed the comments made by Architectus and provided a response in Attachment 1.

I trust the provided attachment adequately addresses any concerns the JRPP may have regarding the draft conditions that accompanied Council's report.

Yours sincerely



Dominic Johnson
Group Manager Environment and Planning
City of Ryde Council

Attachment 1

| LDA2010/78 – 22 Henry Street, Ryde (Cudal Reserve) | |
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| Condition | Comment |
| Part 1 – Conditions relating to a Deferred Commencement pursuant to Section 80(3) of the Environmental Planning and Assessment Act 1979 | |
| 1(a) | <p>1 (a) Protection of Sacred Fig. "The Sacred Fig shall be amended so that the of subdivision between the proposed lots diverts around the canopy of the Sacred so that the tree falls within Lot 21....."</p> <p><i>This is not agreed by Sydney Water.</i> The Sacred Fig tree stands within the proposed Lot 21 to be dedicated by Council. The tree is protected by Council's Tree Significant Tree Register. The canopy of the tree cannot therefore not be altered without the first approval of Council. Amending a proposed subdivision line to suit a tree canopy "at a point in time" when canopies are subject to natural growth is not a fair and reasonable request in the light of protections already in place which can be imposed by Council in future Development Approvals for development of proposed Lot 22.</p> <p>The deletion of the above condition is not supported as it is considered necessary to ensure the retention of the Sacred Fig.</p> <p>The Sacred Fig has been inspected by Council's Officers and it is considered that should the site be subdivided as originally proposed by Sydney Water, it will most likely result in substantial impacts upon the tree. This is as the original subdivision will result in a large portion of the tree's canopy and root system being located with Lot 22.</p> <p>This tree has been listed on Council's Significant Tree Register and an Arborist Report was submitted with the Development Application. This report recommended the implementation of tree management procedures within a 9m tree protection zone around the tree. Council's officers are concerned that these measures, as suggested in the Arborist's Report, do not satisfactorily demonstrate how the tree would survive the construction impacts as a result of the indicative layout as suggested by the applicant. There were no details in respect of the driveway construction other than an Arborist's note that the driveway should be laid at grade to minimise the requirement for surface excavation and/or compaction. In this respect, due to the significance of the tree there should be no excavation or compaction within the canopy of the tree. Additionally, provision of any such access way and/or alternative future development of Lot 22 would require pruning of the tree which is not supported by Council's officers.</p> <p>For the above reasons, deferred commencement Condition 1(a) was recommended by Council's officers. The purpose of the condition is to amend the line of subdivision to ensure that the canopy of the sacred fig tree is entirely located within Lot 21 which is to be dedicated to Council.</p> <p>The current survey has not adequately detailed the canopy of the tree and cannot be relied upon for this purpose.</p> <p>It is noted that Sydney Water have suggested that the placement of the Sacred Fig on Council's Significant Tree Register provides adequate protection of the tree. In this respect, the location of the entire canopy and root area within Lot 21 greatly increases the likelihood of the trees preservation.</p> <p>With respect to the recommended boundary adjustment, the proposal has been carefully considered by Council staff and it has been determined that adequate space exists at the access point to ensure that all of the canopy and root area of the Sacred Fig could be located within Lot 21 and still provide sufficient vehicular access to Lot 22.</p> |

LDA2010/78 – 22 Henry Street, Ryde (Cuda! Reserve)

| Condition | Comment |
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| | Given the above, it is strongly recommended that the condition be maintained as it will ensure the retention and protection of the tree from any future development impacts that may occur as a result of the subdivision, should it be approved by the JRPP. |
| 1(b)-(c) | Accepted by Sydney Water, therefore no comments |
| Part 2 – General Conditions of Consent: the following requirements shall apply upon satisfactory completion of the requirements outlined in part 1 of this consent (above) | |
| 1 | Accepted by Sydney Water, therefore no comments |
| 2(a)-(b) | <p>2 (a) – (b) "The land shall not be developed for residential purposes until the applicant has submitted to Council a site investigation report.....if</p> <p>remediation is required then the site shall be remediated to the extent necessary for the proposed use prior to any development taking place".</p> <p>Not agreed by Sydney Water. This draft condition should be restricted to the land contained by proposed Lot 22 only. Sydney Water should not be required to incur cost on proposed Lot 21 which is to be dedicated to Council as open space and has been leased by Council for that purpose for many years.</p> <p>The above change is supported.</p> |
| 3 | Accepted by Sydney Water, therefore no comments |
| 4 | <p>4 On-site Detention. "To minimise downstream impacts due to future development on proposed Lot 1, an instrument setting out terms of restrictions on the use of land to be created.....proposed Lot 22 shall incorporate an on-site stormwater detention system.....The instrument may not be extinguished or altered without prior approval being obtained from Ryde City Council. The wording of the instrument shall be submitted to and approved by Council prior to release of the Subdivision Certificate"</p> <p>Not agreed by Sydney Water. Council should impose this as a condition of any future development on proposed Lot 22. It is unreasonable for Sydney Water to incur expense in drafting and registering such a covenant and registering such an instrument when Council can impose the condition readily if and when future DA's occur on proposed Lot 22, by others. LDA 20110/0078 relates only to a paper subdivision.</p> <p>The deletion of this condition is supported</p> |

LDA2010/78 – 22 Henry Street, Ryde (Cudal Reserve)

| Condition | Comment |
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| 5 | <p>5 Registration of Easements. "The registration of all necessary easements as required to ensure that all proposed lots will have legal access to all utility services, inter-allotment drainage and vehicular access. This shall include the creation of a reciprocal right of way over the first 6m of the access driveway to Lot 22. Prior to release of the Subdivision Certificate....."</p> <p><i>Not agreed by Sydney Water.</i> This condition is considered to have no use for proposed Lot 21, which is to be owned (after dedication by Sydney Water) by Council as open space. With respect to proposed Lot 22, the location of utility services, inter allotment drainage etc will not be known if and when a Development Application is lodged for construction of dwellings on the proposed Lot 22, by others. Accordingly, this should be a condition of such a future Development Approval for the proposed Lot 22 as it will be the responsibility of such a future developer of Lot 22 to secure all necessary easements to suit the development plans.</p> <p>The deletion of the above condition is supported.</p> |
| 6 | <p>6 "Inter-allotment Drainage System. To facilitate legal disposal of stormwater from Lot 22 onto Lot 21, the following shall be implemented at no cost to Council:</p> <p>(a) The design and construction of an inter allotment drainage system to facilitate stormwater disposal from lot one into Council's existing drainage system located on Lot 21. The inter-allotment drainage system shall be located adjacent and parallel to the southern boundary of Lot 21 and connecting to the southwest corner to Lot 22.....</p> <p>(b) The registration of a 1.2m wide easement.....</p> <p>(c) The design and construction of the inter allotment pipe line shall ensure that it will have the capacity to convey 1 in 100 year flow generated from Lot 21 and in accordance with Part 8.2 of Council's Stormwater Management Manual".</p> <p><i>Not agreed by Sydney Water.</i> Council should impose this condition in a future Development Approval for the proposed Lot 22, as until then there is no change to the stormwater situation. There should be no obligation to construct until such development plans for Lot 22 are known by Council. A future developer of proposed Lot 22 should have the obligation to manage stormwater and construct infrastructure in accordance with the development design lodged with the DA for development of Lot 22.</p> <p>The deletion of the above condition is not supported. Given that the proposal seeks to create a new allotment that may be developed at a later date, the provision of appropriate and effective drainage infrastructure is required. The imposition of the above condition ensures that this is achieved.</p> |

LDA2010/78 – 22 Henry Street, Ryde (Cudal Reserve)

| Condition | Comment |
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| 7 | <p>7 Provision of Services. "To ensure satisfactory effluent disposal and utility services are available to all proposed lot, the applicant is required to submit to Council with the application for Subdivision Certificate certificates a s.73 Certificate from Sydney Water indicating that sewer has been made available to each lot".</p> <p><i>Not agreed by Sydney Water.</i> This condition should be restricted to proposed Lot 22.</p> <p>It is Council's responsibility to service the open space Lot 21, which is being dedicated to Council by Sydney Water, if it requires sewer connection after many years of the licensing the land for open space without such a need. Sydney Water will apply for, and comply with conditions imposed by Sydney Water for a Section 73 Certificate for the proposed Lot 22.</p> |
| | The change identified above is supported. |
| 8 | <p>8 Works as Executed Plan. "A 'Works as Executed plan of the constructed Inter-allotment drainage system prepared by a registered surveyor....."</p> <p><i>Not agreed by Sydney Water.</i> This should be a condition of a future Development Approval for development of proposed Lot 22. A developer of that site should undertake the work when the development plans are known for this proposed Lot.</p> |
| | This condition relates to the necessary drainage works to be provided under Condition 6 and as such, its deletion is not supported. |
| 9 | <p>9 88B Instrument. "The submission of an instrument under Section 88B... creating any easements.....with Ryde City Council being the authority empowered to release vary or modify the same".</p> <p><i>Not agreed by Sydney Water.</i> Any Section 88B instrument should not automatically make Ryde City Council the only authority empowered to release vary or modify the terms an easement, positive covenant and restriction on use. This is dependant on who is affected by such easement, positive covenant or restriction on use. The wording should be changed to:</p> <p><i>"The instrument may not be extinguished or altered without prior approval of all parties either burdened or benefited by the easement, positive covenant and restriction on use."</i></p> |
| | This condition relates to the necessary drainage works to be provided under Condition 6 and as such, its deletion is not supported. |
| Advisory Condition | <p>Protection of Fig Tree. The existing Sacred Fig tree located adjacent to the Arnold Street entrance to the site shall be protected during the future development of Lot 22.</p> <p><i>Not agreed by Sydney Water.</i> Council should impose this condition in a future Development Approval for development of the proposed Lot 22 or note it as an advisory condition only and not required for the issue of the Subdivision Certificate.</p> |
| | The above condition has been listed as an advisory condition as suggested by Sydney Water. This condition does not make any reference to the issuing of the Subdivision Certificate and strictly relates to the future development of Lot 22 only. It is recommended that there are no changes to wording of this condition. |

LDA2010/79 – 20 Goulding Road, Ryde

| Condition | Comment |
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| 1 | <p>1. <i>Agreed by Sydney Water</i> provided the words "prepared by Architectus" are replaced with "prepared by AWT survey".</p> <p>The above change is supported.</p> |
| 2-8 | <p>2- 8. <i>Agreed by Sydney Water</i> provided the words "Any future development of Lot 1 will be subject to the following conditions" is inserted after the heading "GENERAL".</p> <p>The above is not supported as these conditions relate to additional works required to ensure that both proposed lots can operate independently of one another. These works relate primarily to Lot 2 and include the provision of a Stormwater Management System which will divert stormwater run off from Lot 2 to Council's stormwater infrastructure and an access way along the northern boundary of the subject site. These works are required under Conditions 15 and 16, respectively.</p> <p>The Stormwater Management System, is required in order to ensure that no stormwater run off from Lot 2 will affect Lot 1 which is to be created under the proposed subdivision.</p> <p>With regards to the access way, it should be noted that access is currently provided to the reservoir via an existing bitumen path located over Lot 1. Given that the proposed subdivision involves the creation of two new lots which are to operate independently of one another, dedicated and suitable access including adequate turning areas is to be contained wholly within Lot 2. In order for this to be achieved, a dedicated access way completely contained within the access handle of Lot 2 must be provided as part of the subdivision.</p> <p>Whilst it is recognised that the above works could potentially be undertaken pursuant to <i>State Environmental Planning Policy (Infrastructure) 2007</i> (SEPP Infrastructure), it must be recognised that these works form part of the Development Application and as such consent is being sought for their undertaking. Given that consent is being sought, they must be undertaken in accordance with Council's policies, procedures and other associated legislative requirements. The provided conditions ensures that this occurs.</p> <p>In addition to the above, in respect to Conditions 6-8 it should be noted that pursuant to Clause 91 of the <i>Environmental Planning and Assessment Act 1979</i> and Clause 138(2) of the <i>Roads Act 1993</i>, the proposed development requires concurrence to be provided by the Roads and Traffic Authority (RTA) prior to its approval. In its letter dated the 28th April 2010, the RTA provided concurrence subject to Conditions 6-8 being met by the development. A copy of the RTA's correspondence has previously been provided to the JRPP.</p> |
| 9 | <p>9. <i>Agreed by Sydney Water</i> however should be provided under "PRIOR TO SUBDIVISION CERTIFICATE".</p> <p>The above change is supported.</p> |
| 10-15 | <p>10-15. <i>Agreed by Sydney Water</i> provided the words "Any future development of Lot 1 will be subject to the following conditions" is inserted after the heading "PRIOR TO CONSTRUCTION COMMENCING".</p> <p>The above is not supported. These conditions of consent relate to the additional works required for the purposes of Lot 2. These works include the construction of the access way and a Stormwater Management System. See the above discussion</p> |

LDA2010/79 – 20 Goulding Road, Ryde

| Condition | Comment |
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| | in relation to Conditions 2-8 for further information. |
| 16 | <p>16. Access. "To formulise safe access to the proposed Lot 2 a minimum of 4M wide sealed access driveway including a turning are at the end of the battle axe handle to enable the largest vehicle using the site to enter and leave in a forward direction must be provided. Additionally, a slay corner of at least 3 by 3 m must be provided to the northeast corner of the proposed Lot 1. Engineering plans for the above works shall be prepared and submitted for approval, prior to commencement of construction."</p> <p><i>Not agreed by Sydney Water.</i> Sydney Water should be allowed by Council to construct the new access road to the reservoir in accordance with the Infrastructure SEPP. Sydney Water should be afforded the opportunity to ensure that its road and turning circle design do not impinge on the reservoir operations and a subdivision approval should not be delayed for this to occur when the provisions of the Infrastructure SEPP will ensure that Sydney Water will be governed by suitable safe access and egress conditions suitable to Council).</p> <p><i>This condition should be restricted to "Engineering plans for the above works shall be prepared and submitted to Council in accordance with the Infrastructure SEPP prior to commencement of construction".</i></p> <p>The above change is not supported. Whilst it is recognised that the Sydney Water should be allowed to design its access handle and turning areas in accordance with their operational requirements, the proposed development forms part of the larger subdivision application which requires consent. As such, consent for the access way must be sought from Council.</p> <p>Accordingly, in response to the above comments provided by Architectus, it is suggested that the JRPP consider the following condition:</p> <p>Access. To formalize safe access to proposed lot 2, a sealed access driveway including a turning area provided at the end of the battle axe handle that enables the largest vehicle using the site to enter and leave in a forward direction must be provided. This access driveway and turning circle is to fully comply with the requirements of AS2890.2 - 2002 and AS2890.1 – 2004.</p> |
| 17-18 | Accepted by Sydney Water, therefore no comments |
| 19 | <p>19 "Please contact Energy Australia's Local Customer Service to obtain documentary evidence that Energy Australia has been consulted and that their requirements have been met"</p> <p><i>Not agreed by Sydney Water.</i> This should be a condition of any future Development Application when development plans for Lot 1 are known.</p> <p>The deletion of Condition 19 is supported</p> |

LDA2010/79 - 20 Goulding Road, Ryde

| Condition | Comment |
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| 20 | <p>20. On-site Detention. "To minimise downstream impacts due to future development on proposed Lot 1, an instrument setting out terms of restrictions on the use of land to be created....."</p> <p>(a) All future development on all proposed Lot 1 shall incorporate an on-site stormwater detention system.....</p> <p>(b) All future development on all proposed Lot 1 should incorporate appropriate turning areas on site to enable vehicles to enter and exist in a forward direction</p> <p>(c) The 88B instrument may not be extinguished or altered without the prior approval f Ryde City Council being obtained".</p> <p><i>Not agreed by Sydney Water.</i> Council should impose this as a condition of future development of proposed Lot 1. It is unreasonable for Sydney Water to incur expense in drafting and registering such a covenant and registering such an instrument when Council can impose the condition readily in future DA's.</p> |
| | Deletion of the above condition is supported |
| 21 | <p>21 Registration of Easements. "The registration of all necessary easements as required to ensure that all proposed lots will have legal access to all utility services, inter-allotment drainage and vehicular access. This shall include the creation of a reciprocal right of way over the first 6m of the access driveway to Lot 2. Prior to release of the Subdivision Certificate....."</p> <p><i>Not agreed by Sydney Water.</i> This should be a condition of development consent for Lot 1 for a future DA if and when development plans are lodged with Council. There is no need for a right of way over the driveway to Lot 2 as Sydney Water will be creating a specific access for the reservoir operations. Any new development will be required to be designed to have it's own access entirely separate from Sydney Water. It is the responsibility of the eventual developer of Lot 1 to secure all necessary easements as these can only be plotted when the development proposal is known with certainty.</p> |
| | Deletion of the above condition is supported. |
| 22 | <p>22 Works as Executed Plan. "A works as executed plan of the constructed inter-allotment drainage system prepared by a registered surveyor....."</p> <p><i>Not agreed by Sydney Water.</i> This should be a condition of a future development consent for Lot 1 if inter allotment drainage is necessary.</p> |
| | The deletion of this condition is not supported. This condition relates the works required for the purposes of the access way and Stormwater Management System and as such, relate to Lot 2. |
| 23 | <p>23 Traffic Management Plan.</p> <p><i>Not agreed by Sydney Water.</i> This should be a condition of a future development consent for Lot 1.</p> |
| | The deletion of the above condition is not supported. This is as it relates to the construction works required for the provision of the access way. In this respect, Goulding Road is a major road and experiences a high load of traffic. The preparation of a Traffic Management Plan will ensure that the construction works for the access way will not impact upon the safety of Goulding Road and its users. |

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| Condition | Comment |
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| 24 | <p>24 Positive Covenant OSD. "The creation of a Positive Covenant under Section 88B of the Conveyancing Act burdening the proposed Lot 2 with a requirement to maintain the stormwater detention system....."</p> <p><i>Not agreed by Sydney Water.</i> If the system is in place then whomever maintains it at the moment continues to have to do so. A paper subdivision, as proposed by this Development Application, does not obliterate this responsibility.</p> <p>The creation of the Stormwater Management System is supported and as such, the above condition is considered necessary to ensure that the system is maintained.</p> |