

JOINT REGIONAL PLANNING PANEL (Sydney East Region)

JRPP No	2011SYE032
DA Number	DA-308/2011
Local Government Area	Rockdale Council
Proposed Development	Construct four (4) residential floors containing 72 units above the retail podium in lieu of the two commercial office levels previously approved by Council in DA
Street Address	524-544 Rocky Point Road, Sans Souci
Applicant/Owner	Krikis Tayler Architects Pty Ltd / Sans Souci Central Pty Ltd
Number of Submissions	89
Recommendation	Approval - Deferred commencement consent
Report by	Marta Sadek – Senior Development Assessment Planner

Précis

The development application was submitted to Council on 24 February 2011. The proposal seeks to construct four residential floors containing 72 units above a podium/ground floor retail level, which was previously approved by Council in DA-2007/123 (approved plans and Notice of Determination attached). The proposal will replace the previously approved two commercial levels above the podium with the four residential floors and change the two lowest basement car parking levels to contain parking for the residential units and visitors and storage areas. Vehicular access arrangements for the site will remain the same as previously approved with loading and vehicular access via Jameson Lane.

The site is zoned General Business 3(a) under the provisions of the Rockdale Local Environmental Plan 2000 (RLEP 2000). The proposed development is defined as a 'mixed use premise' under Rockdale LEP 2000 and is permissible with Council consent in the 3(a) zone. The proposal has been assessed against the requirements of relevant state policies, Rockdale Local Environmental Plan 2000 (RLEP 2000), Development Control Plan No. 72 – Mixed Use Premises and other relevant local controls. The proposed height and floor space ratio are consistent with their respective requirements under RLEP2000. The proposal has generally maintained the approved building envelope. The approved building height was RL 27 (including plant room level). The proposed maximum building height is RL 27.4.

The proposal complies with the requirements under RLEP 2000. SEPP 65 applies to the proposal and it has been determined that the proposal can be improved by the imposition of a condition requiring additional communal areas in level 3. This condition has been included in the attached draft Notice of Determination. The proposal is generally consistent with all other controls, except for minor variations that have been identified and addressed in this report.

Adjoining owners were notified of the proposal and 89 submissions were received by Council during the notification period. The issues raised in the submissions have been addressed in this report. The application was amended following the notification period. It is considered that the amended application has provided a satisfactory response to residents concerns and the matters raised by Council officers and the Design Review Panel under SEPP 65.

The proposal is in the public interest and is recommended for approval. As the proposal involves changes to the previous consent DA-2007/123 and those changes are vital to ensuring that this proposal is satisfactory, a deferred commencement condition is proposed requiring amendments to consent DA-2007/123 before DA-2011/308 becomes operative.

Officer Recommendation

1. That development application DA-2011/308 for construction of four(4) residential levels above the retail podium in lieu of the two commercial office levels previously approved by Council in DA-2007/123 at 524-544 Rocky Point Road, Sans Souci be APPROVED as a deferred commencement consent subject to the following:

The consent shall not operate until you satisfy Council about the following matters:

- i. DA-2007/123 is modified, to the extent of any inconsistencies with the residential component approved under this application, in accordance with Section 80A of the Environmental Planning and Assessment Act 1979 and Clause 97 of the Environmental Planning and Assessment Regulation 2000.

Pursuant to Clause 95(3) of the Environmental Planning and Assessment Regulation 2000, the period of the deferred commencement shall be six (6) months.

2. That objectors be notified of the Joint Regional Planning Panel's decision.

Report Background

The subject site was rezoned from Residential 2(a) Low Density to 3(a) General Business on 9 November 2007 (Amendment 37 to Rockdale LEP 2000). On 6 February 2008 Council granted development consent (DA-2007/123) for the following:

“Demolish the existing structures/buildings, remediate the site, erect a three (3) storey commercial building with three basement parking levels, commence a supermarket use on the ground floor and erect an illuminated blade sign.”

The proposal involved 326 car parking spaces, a supermarket on the ground floor, mezzanine level, seven specialty shops retail (677m²) and 2532m² and 2805m² of commercial floor space over two levels. The proposal involved dedication of part of the land for the widening of Jameson Lane from 6.095m to 12m and a splay corner at the intersection of Evans Street and Rocky Point Road.

A further amendment to RLEP 2000 (Amendment 49) allowed an increase to the building height to a maximum of 19 metres.

The subject application is now seeking to construct four residential levels above the podium level approved under DA-2007/123 in lieu of the two commercial floor levels. Council has received legal advice that confirms it can legally consider the current DA under the Environmental Planning and Assessment Act, 1979 although it seeks to alter part of a previously approved development application on the same parcel of land. The legal advice cites the application considered by the Land and Environment Court in *Waverley Council v Hairis Architects (2002) 123 LGERA 100*. The advice indicates that the subject application ‘is an application for consent to carry out specific building works in order to achieve a particular use (Hairis at [28]). That is a proper application. It is almost precisely on all fours with Hairis as to the facts, and precisely on all fours in respect of application of principle.’

The proposal has generally maintained the approved building envelope. The approved building height was RL 27 (including plant room level). The proposed maximum building height is RL 27.4. However, to achieve a better integration of the approved podium and basement levels with the new residential component, the proposal requires modifications to the podium/ground level and the basement car parking levels.

The application DA-2007/123 was referred to the Office of Water given the impact of the proposed excavation on ground water. As the current proposal does not involve changes to basement levels, referral of DA-2011/308 to the Office of Water was not required.

PROPOSAL

The applicant has sought to construct four(4) residential floors containing 72 units above the retail ground floor level in lieu of the two commercial office levels previously approved by Council in DA-2007/123.

The proposal involves changes to the already approved basement and retail ground floor levels as follows:

- DA-2007/123 provided car parking in three basement levels with a total of three hundred and twenty six (326) car parking spaces. The proposed number of parking spaces is 299 (a reduction of 27 spaces).

- Provision of residential parking in basement level 3 (total of 114 cars).
- Provision of residential visitor parking in basement level 2 (total of 19 visitor spaces).
- Provision of storage areas for the residential units at basement levels 2 and 3.
- Conversion of the communal lobbies at ground floor level on the Rocky Point Road frontage to part residential lobbies.
- Reduce the level of the first floor by 300mm (from RL 15.8 to RL 15.5).

The proposal does not involve any other changes to the supermarket/retail, vehicular movement or loading areas on the ground floor.

The proposal provides a mixture of single aspect, cross-through, cross over and corner apartments. 58% of the units are single aspect units. Levels 1 and 3 provide access to the majority of the units via a central corridor. The cross-over units in level 2 have the living areas and principal open space facing the south east. The cross-over units in level 4 have the living areas and principal open space facing the north west towards Rocky Point Road.

The breakdown of unit sizes is:

Studio – 2 units

1 Bedroom – 30 units

2 Bedrooms – 38 units

3 Bedrooms – 2 units

Unit sizes vary from 50 sq.m. for studio units to 137sq.m. for three bedroom units. Pedestrian access to the units is via two residential lobbies on Rocky Point Road.

A communal open space is provided at podium level 1. Additional communal areas are provided in proximity to the lift lobbies in podium level 1.

The gross floor area of the residential component is 6,934sq.m. The previously approved commercial ground floor level with mezzanine has a total gross floor area of 3,934sq.m. This would result in a total gross floor area of 10,868sq.m. resulting in an FSR of 1.98:1 for the site.

EXISTING AND SURROUNDING DEVELOPMENT

The subject site is described as Lot A DP 949012, Lot B DP 949012, Lot C DP 949012, Lot 143 DP 2452, Lot 144 DP 2452, Lot 1 DP 5933, Lot 2 DP 5933, Lot 3 DP 5933, Lot B DP 380002, Lot A DP 380002 and comprises a full street block having a frontage to Rocky Point Road and Jameson Lane of 118.13m and a width of 48.77m to Russell Avenue and Evans Street. The site has a total area of 5,499m² and contains a cross fall of 2m to the rear (east) and 1m to the north. The previous existing buildings on the site have been demolished as part of the approval under DA-2007/123.

Surrounding development consists of a mix of commercial and residential developments of varying scales. To the north of the site is the Sans Souci commercial shopping strip containing single and two storey commercial developments. To the east on the opposite side of Jameson Lane are residential

developments including dwelling houses and single storey villa developments fronting both Russell Avenue and Evans Streets. A child care centre is located on the corner of Russell Avenue and Jameson Lane. To the south, on the opposite side of Evans Street are residential developments including dwelling houses. The land surrounding the site towards the south east is zoned 2(a) and 2(b) in accordance with RLEP 2000.

On the opposite side of Rocky Point Road are single storey dwellings, some of them are used as commercial premises. The land between Broughton Street and Myers Street is zoned 2(a) Low Density residential under Kogarah Local Environmental Plan 1998, administered by Kogarah City Council.

PLANNING CONSIDERATION

The proposed development has been assessed under the provisions of the Environmental and Planning Assessment Act, 1979. The matters below are those requiring the consideration of the Joint Regional Planning Panel.

Section 79C (1) Matters for Consideration - General

Provisions of Environmental Planning Instruments (S.79C(1)(a)(i))

State Environmental Planning Policy No.55 - Contaminated Land (SEPP 55)

The previous approval on the site (DA-2007/123) included conditions of development consent relating to site remediation prior to construction. The current proposal relates only to building work above the podium level. However the proposal involves changes to a more sensitive use. This impacts in the degree of remediation and additional conditions are proposed to address this issue. The proposal is considered satisfactory in respect to SEPP 55.

State Environmental Planning Policy No.65 - Design Quality of Residential Flat Development (SEPP 65)

In accordance with clause 30 of this policy, the consent authority must take into consideration the following:

a. The advice of the Design Review Panel (DRP)

The proposal has been referred to the Design Review Panel on 5 May 2011. The Panel was critical of the documentation submitted with the application, which did not show the relationship of the proposed residential component with the approved commercial podium level and basement parking levels. For instance no plans were submitted of the podium level and basement levels, including elevations.

The Panel supported the proposal in regards to scale, density, social dimensions, safety and security. However the Panel expressed concerns regarding built form, amenity and recommended changes to the proposal to address issues as follows:

- The built form is more appropriate to a commercial development than to a mixed use development given the 'continuous building frontage to Rocky Point Road.'
- Lack of scale/relationship with low density residential development in Russell Avenue and Evans Street. Further refinement of the 'book ends' to be considered.
- A setback on Rocky Point Road would address impact of traffic noise. The Panel suggested a landscape podium on the Rocky Point Road frontage (setback of 4m).
- The parapet element above the podium should make a clear differentiation between the commercial component and the residential entrances.
- A full landscape treatment including street frontages should be considered. There are no details in regards to the landscaping of the private courtyards.
- At podium level 'provide chamfers to widen the accessways from each lift/stair lobby, thus reducing the length of each passageway and providing easier movement and greater visibility.'
- Additional trees should be provided at 'the north-eastern end to provide continuity along the podium.'
- Bedrooms located on the Rocky Point Road frontage will be affected by traffic noise.
- The living areas facing south-east have limited solar access.
- Excessive number of single aspect apartments.
- The access corridors are too long (about 70m long serving 20 apartments). The limited daylight access and ventilation will 'reduce the development to low standard accommodation.'
- The access corridors have minimal width. It is suggested to recess the entry doors to the units by approximately 600mm.
- Greater emphasis to the residential entry points should be achieved.

The Panel concluded that 'the design of the building as a residential building is not viable as presently proposed' and recommended that the applicant revise the proposal to incorporate the issues raised.

Comments: The proposal has been amended. The applicant has attempted to address the issues raised by refining the elements in the façade to create a better distinction between the residential and commercial components and a better scale with the existing development in Russell Avenue and Evans Street. The number of units with bedrooms facing Rocky Point Road has been reduced. This has resulted in an increase to the number of units receiving adequate solar access to the living areas and a reduction to the number of units with bedrooms exposed to traffic noise. The entry doors to the units have been recessed to break the continuity of the corridor. The issue of the length of the corridor has not been resolved satisfactorily. Refer to comments below under RFDC.

In response to achieving a greater setback in the Rocky Point Road frontage, the Panel has acknowledged that this may result in greater impacts to the low and medium density residential area on the opposite side of Jameson Lane.

b. The design quality of the residential flat building when evaluated in accordance with the ten design quality principles

The 10 design quality principles have been considered in the assessment of the proposal and are found to be satisfactory as indicated below.

Principle 1 - Context

The proposal is located on the interface of a low/medium density zone and a commercial zone. The design of the building has achieved a reasonable relationship with surrounding development by providing increased setbacks on the south eastern boundary, minimising overlooking and privacy impacts to the rear and articulating the façade on the street corners to compliment the scale of the development on the opposite side of Russell Avenue and Evans Street. The proposal is considered to provide a satisfactory response to its surroundings.

Principle 2 - Scale

The scale of the development is consistent with the scale envisaged in RLEP 2000 and is considered satisfactory.

Principle 3 - Built Form

The built form is appropriate within the constraints of the site in particular the structural grid already approved for the basement and ground levels and the interface with the low and medium density residential area on the south east. For instance the reduced setback on the Rocky Point Road frontage allows greater separation of the upper levels from Jameson Lane and minimises impacts to the low and medium density zone on the south east.

The amended submission has addressed issues in regards to the relationship of the residential component with the ground level by increasing the width of the entry lobbies and providing architectural elements, which emphasise the residential entries. The façade on Rocky Point Road, whilst extensive has been articulated by the incorporation of architectural elements such as balcony surrounds and distinctive use of materials.

Principle 4 - Density

The proposed floor space ratio does not exceed the maximum permitted on the land (2:1) and is considered appropriate to the commercial character of development in Rocky Point Road.

Principle 5 - Resource, Energy and Water Efficiency

A BASIX certificate submitted with the application shows that the proposal achieves the targets set out by this policy in regards to energy, water and thermal comfort.

Principle 6 - Landscape

The proposed landscape design has been revised. The landscape scheme has been approved by Council's Landscape Architect.

Principle 7 - Amenity

The amenity of the units have been improved in the amended submission by increasing the width of the units, reducing the number of units with bedrooms fronting Rocky Point Road, the incorporation of two communal areas in level 1, provision of storage areas etc. However the corridor in level 3 is narrow and has very limited access to natural light and ventilation. The amenity as proposed is considered poor. Safety is also an issue. A better response could be achieved if there is provision for a communal room within the corridor that would encourage the use of communal indoor spaces and improve safety.

Principle 8 - Safety and Security

The proposed design incorporates security measures in line with the safer by design principles such as natural surveillance (active uses on the street frontage), access control (CCTV facilities at entry points) and territorial re-enforcement (defined boundaries, use of signage to indicate private ownership). Additional conditions are proposed. The proposal is satisfactory in regards to safety and security.

Principle 9 - Social Dimensions

The proposal provides a unit mix as follows:

45% - Studio and 1 bed

53% - 2 beds

2% - 3 beds

The apartment layout provides a variety of unit types, including adaptable units. The proposal also includes a communal area at podium level 1 (approximately 1000sq.m.) that would allow social interaction. This is also enhanced by the provision of indoor communal areas.

Principle 10 - Aesthetics

The amended proposal has improved the character and expression of the building by providing greater emphasis to the residential entries and creating vertical articulation in the Rocky Point Road façade with the use of balconies surrounds. The use of materials and colours in the elevations is satisfactory.

c. The Residential Flat Building Code (RFDC)

The Residential Flat Design Code is a publication by the State Government which further expands on the 10 design quality principles by providing some detailed practical guidance for the design of residential flat buildings. The proposal has been assessed against the Residential Flat Building Code.

In accordance with Council's approach to apartment size, the proposal has been assessed against the requirements of Part 3, apartment layout under the RFDC.

Twelve (12) one bedroom apartments do not achieve the minimum 63.4sq.m. size requirement. However the variation is only minimal (they achieve 63sq.m.) and as such is supported in this instance.

The proposed development is considered to have performed adequately in respect to the issues contained in the RFDC, such as cross flow ventilation, solar access and overall energy efficiency. The majority of the units have cross ventilation (61%). Furthermore the amended proposal provides a greater number of units having the living areas fronting North West and therefore achieving solar access as recommended in the RFDC.

However the proposal still involves access to the units (levels 1 and 3, being approximately 21 units) via a double-loaded corridor. The corridor is only 1.4m wide and is approximately 70 metres long. The RFDC recommends that the number of units accessible from a double-loaded corridor be limited to 8. The objective of this requirement is to achieve safety (i.e. clear sight lines) and provide appropriate levels of natural lighting, ventilation and amenity.

The amended proposal has attempted to address this issue by providing two communal areas in level 1. The communal areas allow a transition between the lift lobbies and the podium landscaped area. However the corridor on level 3 is considered unsatisfactory in regards to safety, security and achieves very poor amenity. As such it is recommended that units 3 and 11 in level 3 be deleted and replaced with communal areas with direct access to the lift lobbies. A condition of consent is proposed to this effect.

Storage areas are provided in each apartment in the form of built-in cupboards. Additional storage area is provided within the basement (approximately 740 m³). The proposal satisfies the storage requirements of the RFDC.

State Environmental Planning Policy - Building Sustainability Index (BASIX) 2004

The applicant has submitted a BASIX Certificate for the amended development. The Certificate number is 357039M_02. The commitments made result in the reduction in energy and water consumption shown below.

Reduction in Energy Consumption	30
Reduction in Water Consumption	40
Thermal Comfort	Pass

A condition is proposed on the consent to ensure that the BASIX requirements are adhered to.

State Environmental Planning Policy (Infrastructure) 2007

This policy applies to the proposal. The application has been referred to the Roads and Traffic Authority (RTA) in accordance with clause 104 of the SEPP. The RTA commented on issues relevant to the traffic and vehicular movements relating to the operation of the loading dock and excavation and construction management

measures. These issues have been addressed by the previous approval of the commercial component and are not relevant to this application. Other issues identified relate to the provision of appropriate signage within the basement levels to avoid conflict in vehicular circulation.

Clause 102 of the SEPP requires consideration of traffic noise. An acoustic report has been submitted, which includes recommended treatment of the glazing to achieve internal noise levels.

Rockdale Local Environmental Plan 2000 (RLEP 2000)

The relevant clauses that apply to the proposal are below.

Clause 12 – Zone Objectives and Controls

The subject site is zoned 3(a) General Business. The proposed mixed use development is permissible upon the site subject to development consent. The proposed mixed use development is considered to generally satisfy the requirements and objectives of the zone.

Clause 18 - Noise and Vibration

Rocky Point Road is classified as a State Road and Clause 18(4) in RLEP 2000 requires the development to incorporate noise mitigation measures, which meet the Environmental Protection Authority requirements. The applicant has submitted an acoustic report prepared by Acoustic Logic Consultancy.

The applicants Acoustic Report is considered to have taken associated noise sources into consideration, including road noise (traffic) and mechanical plant noise from the air conditioning unit. The recommendations of the report have been incorporated in the development consent. The proposed residential dwellings will be appropriately acoustically treated during construction, to ensure noise impact from noise sources is minimal.

Clause 21 - Land filling and excavation

Excavation is required for the construction of the three basement car parking levels on the site. The objectives and requirements of Clause 21 of RLEP 2000 have been considered in the assessment of the application DA-2007/123 and are not directly relevant to this proposal.

Clause 23 - Ecologically Sustainable Development

Ecological sustainability has been considered as part of this application and is consistent with the requirements contained in RLEP 2000.

Clauses 41A – Development of 524-544 Rocky Point Road, Sans Souci

41A(2) The maximum height permitted on the site is 19 metres.

The proposal will have a maximum height of 18.85m and complies with this control.

41A(3) The maximum floor space ratio shall not exceed 2:1

The proposed development comprises a total gross floor area of 10,868 sq.m., which when compared with a site area of 5,499 sq.m. results in an FSR of 1.98:1 and therefore complies with the development standard.

Model Provisions 1980

The clauses from the Model Provisions adopted by RLEP 2000 are listed in clause 10. Pursuant to Part 3 (5)(1) & (2) of the Model provisions, the consent authority must have regard to the aesthetic appearance of the proposal as seen from a main road and the adequacy of the proposal in regards to traffic and access.

The proposal is supported by SEPP 65 and the traffic impacts have been considered as part of the assessment of the proposal. On site parking is provided in accordance with Council's requirements. The proposal is satisfactory having regards to the relevant clauses of the Model Provisions.

Provisions of any Draft Environmental Planning Instruments (S.79C(1)(a)(ii))

Draft Rockdale Local Environmental Plan 2011 (Draft RLEP 2011)

Draft RLEP 2011 is applicable to the subject site. Under this plan the site is proposed to be zoned B4 Mixed Use. Development for the purpose of a mixed use development is defined as "Shop Top Housing" under the Draft Plan and is permissible within the proposed zone, subject to Council consent. The proposed development is considered to be consistent with the objectives of the proposed future zone for the site.

Draft LEP 2011 identifies a maximum floor space ratio (FSR) of 2:1 and a maximum height of 19m. The proposal complies with these requirements and is considered acceptable in this regard. The subject site does not benefit from the FSR and height incentive areas under clause 4.3 and 4.4 of the Draft LEP.

Accordingly, the proposal is generally consistent with the objectives of and generally satisfies the FSR and height controls under the Draft LEP 2011.

Provisions of Development Control Plans (S.79C(1)(a)(iii))

Development Control Plan No. 72 – Mixed Use Premises (DCP 72)

The proposal generally complies with the requirements of DCP 72. The non compliances are listed below.

Clause 4 – Height

This clause restricts the height of a building in the 3(a) zone to three storeys. The proposal is a five storey building. However, the proposed height is consistent with RLEP 2000 and Draft RLEP 2011. As such this variation is supported.

Clause 5 – Setbacks

A minimum 3.5m setback is recommended for the third level. The proposal does not meet this requirement as all floors have nil setback to the front boundary. As stated in the assessment under SEPP 65, the built form is in response to the interface of the site with low and medium density residential properties at the rear. A nil setback at the street frontage creates greater distance of the upper levels from the rear boundary and allows better amenity to surrounding buildings. The proposed setbacks are considered to meet the objectives of this clause and as such the variation to the setback requirement is supported in this instance.

Clause 6 – Landscaping – Deep Soil Planting

A minimum area of 10% of the site area shall be provided as deep soil planting. The approved basement levels limit the amount of deep soil provided on site. A small area of deep soil (86sq.m.) is provided as planter boxes within the podium level. The planter boxes are of an adequate depth to allow planting of reasonable size trees, which would improve the amenity of the communal area and screening/privacy of surrounding properties. Whilst the proposal does not comply with the numerical requirements of this clause, the proposal is considered to be reasonable within the objectives of the clause. As such the numerical variation is supported in this instance.

Clause 9 – Unit sizes

The proposal does not comply with the unit sizes recommended in this clause. However the unit sizes are satisfactory having regard to the RFDC under SEPP 65 as stated above.

Clause 10 – Common corridors

Common corridors are to have a minimum width of 2m. The proposed corridors are 1.4m wide and do not comply with this requirement. As stated under SEPP 65 assessment above, this variation can only be supported if the amenity of the corridors is improved as recommended by a condition of consent.

Clause 13 – Acoustic Privacy

The noise report submitted with the application does not address this clause. A condition of consent is proposed to ensure that the requirements of this clause in regards to noise insulation between floors and walls are met.

Clause 16 – Storage areas

A storage area with minimum dimensions 2x2x2.7m is required within the dwelling. The proposal provides storage areas within the units and additional storage rooms at

basement level and does not meet this requirement. The storage areas as proposed comply with SEPP 65 requirements.

Development Control Plan No. 28 – Requirement for Access (DCP 28)

The proposed building has two adaptable units being unit 13 on level 1 and unit 8 on level 3. An Access report has been submitted. The report concludes that the proposal complies with the BCA, relevant standards and SEPP 65 in regards to access.

Development Control Plan No. 67 – Crime Prevention Through Environmental Design (DCP 67)

The proposal has been assessed in regards to safety and security principles under SEPP 65. The NSW Police has reviewed the proposal and has identified this proposal as 'low crime risk'. The NSW Police recommends conditions of consent to further enhance safety and security. The proposal is satisfactory having regards to the objectives and requirements of DCP 67.

Development Control Plan No. 53 – Construction Site and Waste Management Plan (DCP 53)

A Waste Management Plan has been submitted. The Waste Management Plan incorporates requirements for collection of recycling and general waste. A condition of consent requires that waste is managed on site in accordance with DCP 53.

Development Control Plan No. 78 - Stormwater Management (DCP 78)

The proposal does not result in changes to the building footprint. As such there are no implications in regards to stormwater management. The conditions of consent for the previous approval DA-2007/123 are relevant to this proposal.

Any Planning Agreement that has been entered into under section 93F, or any draft planning agreement that the developer has offered to enter into under section 93F (S.79C(1)(a)(iia))

The proposal is not subject to a Voluntary Planning Agreement (VPA).

Provisions of Regulations (S.79C(1)(a)(iv))

All relevant provisions of the Regulations have been taken into account in the assessment of this proposal.

Impact of the Development (S.79C(1)(b))

Context/Character/Setting

The site has four street frontages and is located on the interface of a low/medium density residential area and a commercial zone. The site has a frontage to a state road. The proposal has been designed within the limits of the controls applying to the site and the approved building envelope under DA-2007/123. The proposal is

satisfactory in achieving a clearer distinction between the ground floor commercial and upper level residential components and it is appropriate in its context.

Traffic and Parking

The parking demand and traffic volumes have been reduced as a result of the change from commercial to residential development. The proposal involves the provision of parking for residents and visitors in accordance with Council's requirements. A condition of consent is proposed to indicate the parking rate that applies.

Privacy

The proposal has generous setbacks to the rear boundary (between 17 and 22 metres). The amended plans have reduced the number of balconies serving living areas facing the rear and as such it is considered that visual impacts on neighbours have been reduced. Privacy impacts on neighbours are not considered unreasonable.

Overshadowing

Solar access to private open space and windows of surrounding properties is provided in accordance with Council's controls, which require a minimum of 3 hours solar access during winter. The proposal is not considered to create unreasonable impacts to surrounding properties in regards to solar access.

Views and Vistas

The proposed development does not create unreasonable impacts on views and vistas.

Wind Impact

A Wind Assessment report prepared by WindTech dated 14 February 2011 was submitted with the application. The report concludes that "wind conditions for most of the outdoor areas within and around the development site will satisfy the appropriate wind comfort and safety criteria. The wind report recommends treatments for those areas within the development exposed to strong winds. The proposal is considered to be acceptable when the principle recommendations detailed in the conclusion of the report are undertaken. In this regard, a condition will be imposed recommending the adoption of the recommendations.

Suitability of the Site (S.79C(1)(c))

The relevant matters pertaining to the suitability of the site for the proposed development have been considered in the assessment of the proposal. Additional conditions of consent are proposed to further minimise any impacts on neighbouring properties. There are no known major physical constraints, environmental impacts, natural hazards or exceptional circumstances that would hinder the suitability of the site for the proposed development.

Public Submissions (S.79C(1)(d))

Adjoining owners were notified of the proposed development application in accordance with Council's Development Control Plan No. 50 - Community Engagement in Development Decisions. There were 89 submissions received by Council regarding the application during the public notification period. The submissions raised the following issues:

Issue: The proposal is an overdevelopment of the site and is out of size and scale with the surrounding development in respect to height, bulk and scale. The site is surrounded by residential developments of a maximum of 2 storeys in height.

Comment: The proposal is located in a commercial zone and complies with the height and density requirements of Council's controls. The design of the proposal has taken into consideration the interface with the low density residential zone by incorporating increased setbacks and minimising overlooking.

Issue: There will be too much pollution (exhaust fumes) from cars and trucks from the site, particularly on the adjacent child care centre.

Comment: The conversion of the top levels into residential reduces the traffic and parking demand for the development. Truck movements are associated with the commercial use of the ground floor and have been considered as part of the approval DA-2007/123.

Issue: Loss of privacy for all surrounding occupants including all the residential dwellings (even on the opposite side of Rocky Point Road and into our back yard) and the adjacent child care centre.

Comment: The amended proposal has reduced opportunities for overlooking properties at the rear by providing fewer units with living areas fronting the south east. Given the zoning and height controls applying to the site, the impacts of the proposed development are not considered unreasonable.

Issue: The area is for two storey development and the proposal is overwhelming; it should be limited to two storeys in height. The proposal is 6m higher than any other building that would be allowed in the foreseeable future. The height should be reduced as was previously the case under Minister Sartor.

Comment: As previously stated in this report, the proposal complies with the Council's height requirements.

Issue: Loss of solar aspect.

Comment: As stated earlier in this report, the proposal complies with the overshadowing requirements of the relevant planning policies.

Issue: Noise impacts on adjoining and adjacent properties with sources including cars and trucks also including the garbage collection vehicles.

Comment: The proposal does not result in additional impacts to those considered under DA-2007/123.

Issue: The commercial building in Ramsgate Beach (containing the Coles and Franklins) is more reflective of the commercial planning in the area.

Comment: Noted.

Issue: The area is undergoing an aging population with little convenient access to essentials.

Comment: The proposal includes commercial units at ground floor level, which will provide services to the local community.

Issue: The proposal fails to meet the needs of the community and fails to address the local planning goals.

Comment: The proposal is consistent with the objectives and requirements of local and state policies.

Issue: Deletion of the commercial office spaces removed the ability to combine a number of essential or related services.

Comment: Whilst the proposal involves a reduction to commercial space, mixed use developments are permissible in the zone with development consent. The proposal retains some commercial space and is therefore consistent with the planning vision for the area.

Issue: Out of character with the surrounding area.

Comment: The area is a mix of planning zones and buildings with varied scale and character. Whilst the proposal may dominate the streetscape for several years, the proposal is not inconsistent with the planning vision for the area.

Issue: The current DA seeks to preserve certain aspects of the original DA-2007/123 and overlay a separate entity. This disparity cannot work nor be responsibly assessed as to its total environmental impact. The manner of information submitted with the DA makes primary assessment impossible.

Comment: The applicant was requested to provide additional information to demonstrate that the approved commercial level and the building design had an appropriate response and relationship with the residential component. This information has been submitted. The design of the building has been amended and the assessment of the proposal concludes that the development as a whole is satisfactory.

Issue: The development must be considered as one entity to assess the impact of the resulting building.

Comment: The resulting mixed use building has been assessed having regards to impacts on the environment and the character and amenity of the area.

Issue: The total concept design defies planning and design credulity – it does not observe the urban design principles (SEPP 65). The development has been designed to maximise the number of units rather than their design. (The objection opposes the proposal in detail on all of the ten said principles).

Comment: Refer to comments under SEPP 65 above. The proposal is generally consistent with the design principles.

Issue: The design of the residential units is bewildering and has a corridor of hotel rooms than a comfortable unit design.

Comment: This aspect of the proposal has been amended. An additional condition is proposed to ensure the provision of communal areas to allow better security and amenity for the future residents.

Issue: The proposal does not comply with the Rockdale LEP 2000 and DCP 72.

Comment: As demonstrated in this report, the proposal meets the objectives and requirements of RLEP 2000. The proposal is generally satisfactory having regard to DCP 72.

Issue: EPA or DECCW must give approval for the excavation of the corner site which was a service station and is contaminated.

Comment: The proposal does not involve any additional excavation of the site. Contamination issues have been addressed under the previous approval DA-2007/123. Additional consideration has been given to the sensitive nature of the proposed residential component in regards to the level of remediation. The proposal is considered to be satisfactory having regard to SEPP 55.

Issue: There is no pedestrian access from the footpath in Rocky Point Road to the units or shops for the whole 118m frontage to the street.

Comment: There are two lobbies within the Rocky Point Road frontage serving the residential floors.

Issue: There must be overshadowing impacts from a building that is 19.5m high.

Comment: The proposed building does not exceed the maximum height stipulated in Council's controls, being 19m. Impacts on solar access are not unreasonable.

Issue: The 118m blank long shopfront to Rocky Point Road will be bleak and unfriendly.

Comment: The proposal involves minimal modifications to the ground floor level to address the new entrances to the residential component. The ground floor level was approved under DA-2007/128.

Issue: The mix and match of the two DAs is a worry. Is it permitted? Objections are raised to this and a lack of detail in the information submitted with the DA. As the applicant has not submitted all of the information for assessment for the entire building is there something the applicant is hiding?

Comment: Council officers have concluded that the proposal is a lawful application based on the legal advice provided by the applicant and case law. The applicant has submitted additional information to address the interface of the commercial and residential components of the proposed building.

Issue: How can an increase in height from 2 to 4 storeys have the same floor space ratio and less car parking proposed?

Comment: The gross floor area has been generally contained within the approved building envelope. Carparking demand for the residential component is less than for the previously approved commercial building.

Issue: Increased crime.

Comment: The proposal has incorporated design features in line with the safer by design principles. The NSW Police has rated the proposal as 'low crime risk'. The proposal is satisfactory having regard to safety and security.

Issue: The resulting garbage will attract vermin to the area.

Comment: A garbage chute is proposed in all levels. Garbage collection will be in accordance with Council's waste collection system. The proposal is satisfactory in regards to waste management.

Issue: We do not need a supermarket. We do not need a block of apartments. If the developers wanted to make money why didn't they erect a villa / townhouse complex and everyone would be happy.

Comment: As stated earlier, the proposed mixed use development is permissible in the 3(a) – General Business zone. The supermarket component has already been approved in DA-2007/123.

Issue: Lack of community consultation from Council.

Comment: The proposal was advertised in the local newspaper and extensively notified to surrounding properties in accordance with the requirements of DCP 50. The amended plans are in response to the assessment of the proposal, including public submissions. The amended proposal reduces the impacts on surrounding properties.

Issue: Detrimental economic impact on the Sans Souci commercial shops like butchery, bakery, fruit shop, newsagency, bottle shop, post office, florists, pharmacy, etc.

Comment: The ground floor commercial/retail component has already been approved. The proposal will result in greater demand for such services as the population will increase, which will benefit the existing shops in the area. The proposal will complement the commercial character of the Sans Souci shopping centre.

Issue: The proposal will place further emphasis on the Site Audit Statement (SAS) and the need to ensure future occupants are protected from the contaminants on the site. E.g. benzene and toxic motor vehicle emissions.

Comment: The contamination issue has been considered under SEPP 55 above.

Issue: I do not want to see shopping trolleys everywhere. How will they be controlled?

Comment: The use of one of the commercial units at ground level as a supermarket was assessed under the previous application DA-2007/123 and is not relevant to the subject application.

Issue: Why is a blank wall going to face Rocky Point Road along the footpath? The proposal should have smaller shops fronting Rocky Point Road.

Comment: The proposal does not involve changes to the façade at ground level other than minor changes to the entry points to the new residential component. This façade was approved under DA-2007/123.

Issue: Loss of property values.

Comment: This claim has not been substantiated. The proposal can not be solely responsible to the loss of property values as there are many socio-economic factors that influence property values.

Issue: There are no other buildings of this nature in the suburb and the development will result in a streetscape that is an eye sore.

Comment: Given the four street frontages, the proposal will be prominent in the streetscape. However the design quality of the proposal is satisfactory and supported by SEPP 65. The proposal is consistent with the scale and density envisaged for the site.

Issue: Has clause 18 under the Rockdale LEP been adhered to in respect to noise and vibration?

Comment: The acoustic report submitted with the application addresses noise impacts from the Rocky Point Road traffic and recommends measures to achieve compliance with the relevant standards.

Issue: The surrounding road network cannot support the proposal. There will be too many trucks. The residential area will be impacted upon by the aggregation of the intensive uses.

Comment: The proposed residential component resulting in a mixed use development generates less traffic than the previously approved commercial development. The proposal is satisfactory having regard to traffic impacts.

Issue: Traffic congestion in the area is beyond belief.

Comment: The proposal is not considered to generate additional traffic congestion than the development previously approved under DA-2007/123.

Issue: Increased on street parking in front our shop (opposite) outside clearway hours will mean our patrons and deliveries will not be able to park on the street.

Comment: The proposal includes the provision of parking for the residents and visitors. The proposal complies with Council's on site parking requirements.

Issue: Increase in pedestrians crossing the road – a fence should be built on the median. A crossing or better lighting of the main road should be provided given the increase in pedestrians crossing the street.

Comment: Rocky Point Road is a state road under the jurisdiction of the RTA. Any works on the road must be approved by the RTA. The proposal is subject to the submission of a Pedestrian Management Plan prior to occupation (under DA-2007/123). Issues regarding pedestrian safety should be part of this Management Plan.

Issue: The proposal would normally require in the order of 140-150 car parking spaces but only has 114 spaces and would therefore be 30 spaces short. One space per 1 bedroom apartment is not enough as couples would need 2 cars.

Comment: The proposed onsite parking complies with Council's policies.

Issue: Severe limitations for kerbside parking on Rocky Point Road due to clearway limitations and therefore will spill into the surrounding residential area.

Comment: The proposal complies with the requirements of Council in regards to the provision of on site parking for residents and visitors.

Issue: The truck turning templates (swept path) of the “Supabarn” is unrealistic and will not work.

Comment: This issue has been addressed under the previous approval DA-2007/123 and is not relevant to the subject proposal.

Issue: The DA must be sanctioned by the RTA and no details have been submitted by the applicant to this effect.

Comment: The RTA has provided comments, which have been considered in the assessment of this proposal where relevant to this application.

Issue: The original consent contains unusual conditions (42 to 44, 60, 65 and 66) in relation to traffic matters which should be resolved before the current DA is determined.

Comment: This claim is not relevant to this proposal.

Issue: The traffic lights at the adjacent intersections will become problematical and dangerous with increased journeys and large delivery trucks.

Comment: Traffic issues have been considered by the RTA, Council’s Traffic Development Advisory Committee and Council’s Technical Services team. The recommendations have been included in the assessment of the proposal and conditions of consent.

Issue: Delivery trucks to a similar Supabarn in Five Dock showed 48 to 70 journeys in an 8 hour period. The trucks were waiting because the loading docks were occupied. Where would the trucks wait if the one dock at Sans Souci was occupied?

Comment: The operation of the loading dock is not relevant to this proposal for the use of the top levels as residential and would have been considered as part of the previous approval DA-2007/123.

Issue: Residential on street car parking in the surrounding streets will be greatly depleted.

Comment: As stated above, the proposal complies with Council’s on site carparking requirements.

Issue: The proposal will impact on bus services to and from Kogarah Station.

Comment: This claim has not been substantiated.

Issue: The proposal will create a new “blackspot” at the adjacent intersections that will become a safety hazard.

Comment: The proposal is not considered to create greater traffic impacts than the development previously approved under DA-2007/123.

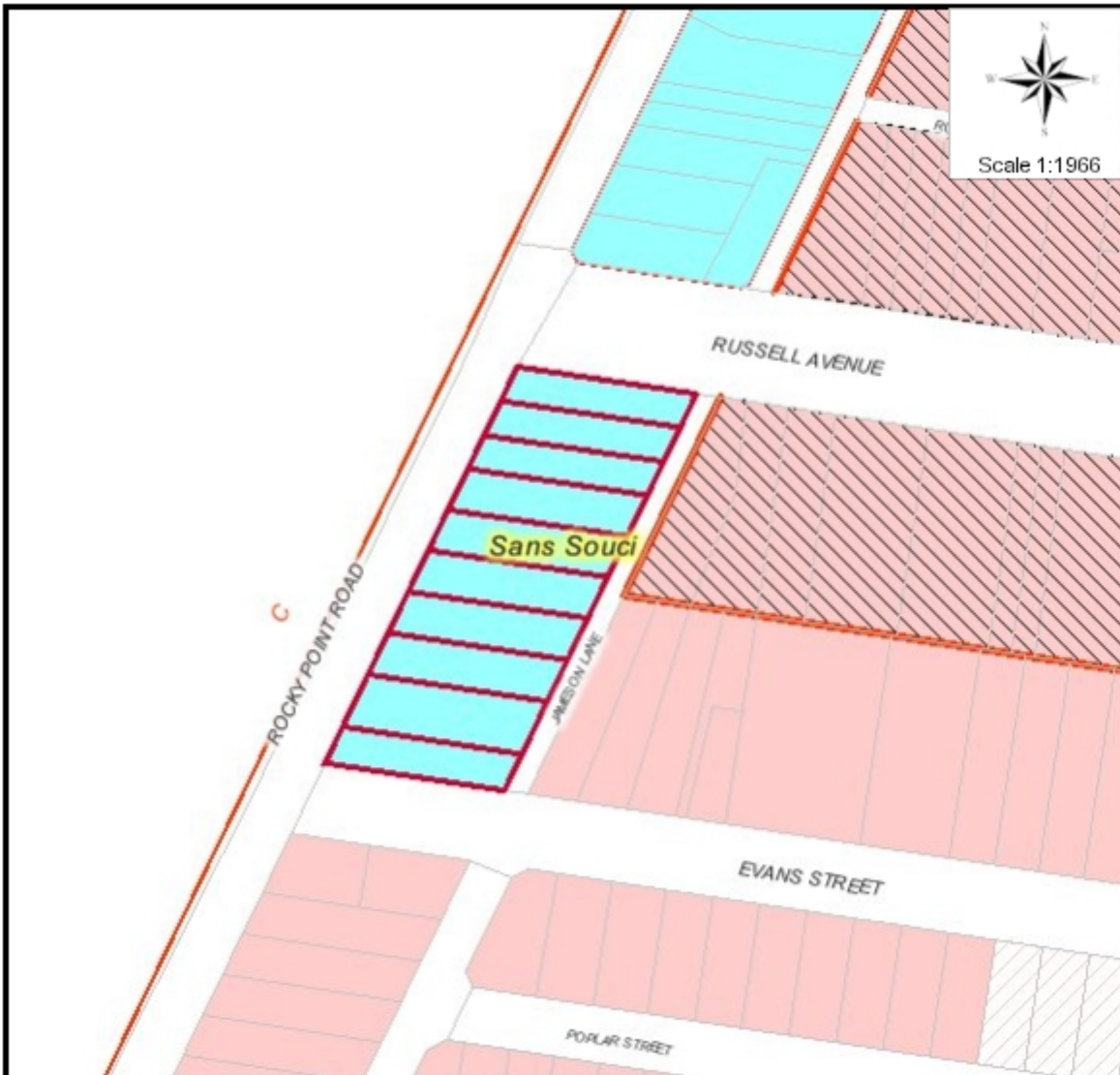
Public Interest (S.79C(1)(e))

The proposal has been assessed against the relevant planning policies applying to the site having regard to the objectives and requirements of the controls. As demonstrated in the assessment of the development application, the proposal will

allow the development of the site in accordance with its environmental capacity. The proposed building is supported by the planning controls, including SEPP 65. Furthermore, the proposal does not create unreasonable impacts on surrounding properties. As such it is considered that the development application is in the public interest.

CONCLUSION

The proposed development has been considered under S79C(1) of the Environmental Planning and Assessment Act, 1979. The application involves the construction of four(4) residential levels containing 72 units above the approved basement and ground floor commercial levels approved in DA-2007/123. The proposal is a satisfactory response to its context. Conditions are proposed to improve the internal amenity of the units and enhance security. Impacts on adjoining properties are not unreasonable. The proposal is consistent with the objectives of the controls under RLEP 2000 and DCP 72. As such, the application DA-2011/ 308 is recommended for approval subject to a deferred commencement condition requiring modifications to consent DA-2007/123.



524-544 Rocky Point Rd Sans Souci