

**ATTACHMENT B – RELEVANT CORRESPONDENCE**



**Warringah  
Council**

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16 May 2011

McKees Legal Solutions  
PO Box 2093  
Parramatta NSW 1750

**Attn: Graham McKee**

ACTUAL LETTER SENT TO  
APPLICANT

Dear Mr McKee,

**Re: DA2011/0400 – Demolition works, construction of an infill affordable housing development under SEPP (Affordable Rental Housing) 2009 and strata & stratum subdivision at Nos. 2 & 4 Riverhill Avenue, Forestville and Nos. 751, 753, 755 & 757 Warringah Road, Forestville**

I refer to your application for the above proposal which was received by Council on 25 March 2011. Please note that Council is not seeking any further documentation or amendments to your application.

The assessment of your application reveals the following issues:

**1. State Environmental Planning Policy (Affordable Rental Housing) 2009**

Clause 14:

The following were found to be non-compliant with the Clause 14 Standards and, thus, may be used as a reason to refuse consent:

- (1)(a) Density; and
- (2)(b) Dwelling Size.

**2. State Environmental Planning Policy No. 65 (Design Quality of Residential Flat Development)**

Clause 16:

**Design Quality Principles**

The proposal is inconsistent with the following:

**1. Context**

*Good design responds and contributes to its context. Context can be defined as the key natural and built features of an area.*

*Responding to context involves identifying the desirable elements of a location's current character or, in the case of precincts undergoing a transition, the desired future character as stated in planning and design policies. New buildings will thereby contribute to the quality and identity of the area.*

**Comment:**

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The immediate area of the site is currently characterised by detached dwellings in landscaped settings. In this context, the proposed terraced built form of the development, especially when viewed from the street, is not considered to be consistent with the key built features of the area.

The desirable elements of the localities character are identified in the Desired Future Character Statement in *Warringah Local Environmental Plan 2000* which is discussed later in this letter (see 'Desired Future Character') where it was found that the development, as proposed, is inconsistent with the Statement.

## **2. Scale**

*Good design provides an appropriate scale in terms of the bulk and height that suits the scale of the street and the surrounding buildings.*

*Establishing an appropriate scale requires a considered response to the scale of existing development. In precincts undergoing a transition, proposed bulk and height needs to achieve the scale identified for the desired future character of the area.*

### Comment:

The development proposes three storey terraced built forms along the Warringah Road and Riverhill Avenue street frontages, both of which are predominantly characterised by detached dwellings. The development, as viewed from the street, represents terraced housing which introduces a considerable building bulk and structural massing to the streetscape.

Therefore, the proposed scale of the development in terms of bulk, is not regarded as a considered response to the scale of existing development.

## **4. Density**

*Good design has a density appropriate for a site and its context, in terms of floor space yields (or number of units or residents).*

*Appropriate densities are sustainable and consistent with the existing density in an area or, in precincts undergoing a transition, are consistent with the stated desired future density. Sustainable densities respond to the regional context, availability of infrastructure, public transport, community facilities and environmental quality*

### Comment:

As noted above, the development does not comply with the maximum density provisions under *State Environmental Planning Policy (Affordable Rental Housing) 2009*.

It is acknowledged that *State Environmental Planning Policy (Affordable Rental Housing) 2009* overrides the Density Built Form Control under *Warringah Local Environmental Plan 2000* but, for the purposes of discussion under this Principle it is worth noting that the development proposes a density of one dwelling per 80m<sup>2</sup> in an area which has a existing density of one dwelling per 600m<sup>2</sup>. The existing density of one dwelling per 600m<sup>2</sup> is incorporated into the Draft *Warringah Local Environmental Plan* and thus forms an integral component of the desired future character of the area.

## **Residential Flat Design Codes**

### Driveway Width

The Codes require that a development generally limits the width of driveways to a maximum of 6.0m.

The development proposes a driveway width of 8.2m to Warringah Road. Given the refusal by the Roads and Traffic Authority (RTA) to issue concurrence for access onto Warringah Road, this matter is fundamental in terms of vehicular access/egress to the site.

### Apartment Depths

The Codes require that single-aspect apartments should be limited in depth to 8.0m from a window. The Codes also require that the back of a kitchen should be no more than 8.0m from a window.

The assessment has found that a number of apartments achieve a greater depth of 8.5m.

#### Balcony Widths

The Codes require that primary balconies for all apartments achieve a minimum depth of 2.0m. Developments which seek to vary from the minimum standards must demonstrate that negative impacts from the context-noise, wind – can be satisfactorily mitigated with design solutions.

The assessment has found that a number of apartments achieve a lesser depth of 1.6m.

#### Storage

The Codes require that, in addition to kitchen cupboards and bedroom wardrobes, a development provides accessible storage facilities at specific rates. The total storage required for the development is assessed to be 550m<sup>2</sup>. The assessment has found that the development includes 541m<sup>2</sup> of storage area – all of which are located within the basement areas.

### **3. Warringah Local Environmental Plan 2000**

The Development Application is subject to the remaining provisions of the *Warringah Local Environmental Plan 2000* where the *State Environmental Planning Policy (Affordable Rental Housing) 2009* and *State Environmental Planning Policy No. 65 (Design Quality of Residential Flat Development)* are silent.

#### **Desired Future Character**

The site is located within the C1 Middle Harbour Suburbs Locality under the *Warringah Local Environmental Plan 2000* (WLEP 2000).

The proposed development is considered to be inconsistent with the Desired Future Character Statement in the following regards:

- The development does not represent the character of detached style housing within a landscaped setting; and
- The development will not maintain the visual pattern and predominant scale of existing detached style housing in the locality.

#### **Built Form Controls**

##### Front Setback

The assessment has found that the development encroaches within the front setback area of Warringah Road by 1.0m (balcony to Unit 201).

##### Side Setbacks

The application proposes an encroachment within the side setback of the western boundary resulting in a setback of 0.3m to the driveway from the Upper Basement level. Additionally, the application proposes an encroachment within the side setback of the eastern boundary resulting in a nil setback at the Upper Basement level.

##### Side Boundary Envelope

The development proposes encroachments of varying degrees within the side boundary envelope to Buildings B, C, D, F and G.

### **4. External referral responses**

The following details concerns raised by the various external referral authorities:

#### **Roads and Traffic Authority (RTA)**

The Development Application was referred to the Roads and Traffic Authority (RTA) for concurrence under Section 138 of the Roads Act, 1993. The RTA advise the following:

*"The RTA has reviewed the submitted documentation and does not grant concurrence to the development for the following reason:*

- *Current practice is to limit the number of vehicular conflict points along the arterial road network to maintain network efficiency and road safety. The current practice is reflected in Section 6.2.1 of the RTA's current publication of the Guide to Traffic Generating Developments, which states 'access across the boundary with a major road is to be avoided wherever possible'.*

*Warringah Road (classified road) is a major arterial road, which carries a high volume of traffic, where transport efficiency of through traffic is of great importance.*

*Further to the above, Council as the consent authority shall give attention to Clause 101(2a) of State Environmental Planning policy (Infrastructure) 2007, which reads as follows:*

*"The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:*

- (a) where practicable, vehicular access to the land is provided by a road other than the classified road".*

*As the subject site has alternate vehicular access via Riverhill Avenue, the RTA will not grant its concurrence to the proposed driveway on Warringah Road, classified road) under Section 138 of the Roads Act, 1993."*

Given the above, and in regard to comments made by Council's Traffic Engineer pertaining to vehicular access via Riverhill Avenue, Council cannot recommend approval of the Development Application and the Joint Regional Planning Panel (as the Consent Authority) cannot issue consent.

#### **Aboriginal Heritage Office**

The Aboriginal Heritage Office advises the following:

*"If areas of in situ sandstone outcrop are proposed for impact (such as overhangs over 1m in height or platforms over 2m square), the Aboriginal Heritage Office would recommend a preliminary inspection by a qualified Aboriginal heritage professional.*

*If sandstone outcrops would not be impacted by the development (and if any outcrops that were present were properly protected during works), then no further assessment is required and the Aboriginal Heritage Office would not foresee any further Aboriginal heritage constraints on the proposal."*

Any future development application will be required to submit a preliminary inspection by a qualified Aboriginal heritage professional if the site contains any in situ sandstone outcrops or overhangs which are over 1.0m in height or platforms over 2.0m square. Currently, such information has not been provided and Council are unable to satisfactorily assess this matter.

#### **5. Internal referral responses**

Attached to this correspondence are specific internal referral comments. The internal referral bodies who do not support the proposal are:

- Urban Design;
- Development Engineering;

- Traffic Engineering; and
- Landscape.

The assessment of this application has found that the above-identified issues, in particular the refusal by the RTA to issue concurrence, the matters raised by referral bodies; the inconsistency of the development with the Desired Future Character of the locality, the density and the encroachment of the Side Boundary Building Envelope Built Form Control, are problematic and will not allow for the application to be supported in its current form. In this regard, the time frames required to address these issues and submit the required information/amended plans to Council will not allow Council to assess the application in the appropriate timeframes for determination by the Joint Regional Planning Panel. In addition such action is inconsistent with Councils *"Applications for Development Handling of Unclear, Non-Conforming, Insufficient and Amended Applications"* adopted Policy hence, you are strongly encouraged to withdraw the application, attend a pre-lodgement meeting with Council staff and resubmit the application when all of the above issues are addressed.

Council will hold the processing of your application for a period of seven (7) calendar days from the date of this letter to allow you time to consider your position and inform Council as to your intention to withdraw the application or rely upon the information submitted to date. Should you choose to withdraw the application, Council will refund a portion of the DA fees dependent upon how much time and resources has been expended on the processing of your application to date. Should you not withdraw the application within the above-mentioned timeframe the proposal will be reported to the Joint Regional Planning Panel (JRPP) for determination in its current form.

Should you wish to discuss any issues regarding this letter please do not hesitate to contact the responsible officer Tony Collier on 9942 2111 during the access hours of 9.30am to 10.30am and 3.00pm to 4.00pm Monday to Friday (excluding public holidays).

Please be assured that Council has adopted this procedure in the interests of streamlining the processing of all Applications. Your co-operation in this matter is appreciated.

Yours sincerely

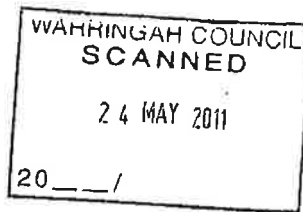


Rod Piggott  
**Team Leader, Development Assessment**

Encs: Referral responses.

**McKEES**  
Legal Solutions

Local Government, Planning and Environment Law



Warringah Council  
Civic Centre 725 Pittwater Road  
Dee Why NSW 1099



Our Ref: GMC:dt:21705

23 May 2011

**Attention: Tony Collier**

**Rc: DA2011/0400**

**Property: 2 - 4 Riverhill Avenue & 751 - 757 Warringah Road, Forestville**

Dear Tony,

We refer to your letter of 16 May 2011 and confirm our discussion as follows:

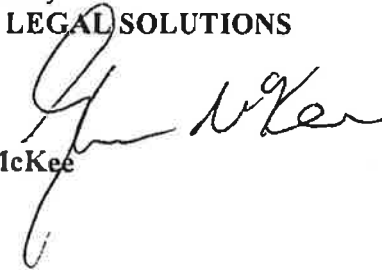
1. The applicant will not be withdrawing the development application
2. The applicant will be amending the proposed development application in response to the RTA and Council traffic engineer comments, and the decision of the RTA to change its previous position that access from Warringah Road to the site would be acceptable.

In terms of the Aboriginal Heritage Office, we note that there are no sandstone outcrops on the site that will be impacted by the development.

As we understand it, Council's planning officer has not visited the site. Please contact David Tyrrell at this office to arrange access at a time convenient.

Yours faithfully

**MCKEES LEGAL SOLUTIONS**

  
**Graham McKee**  
Principal

# Mc KEES

Legal Solutions

Local Government, Planning and Environment Law



The General Manager  
Civic Centre  
725 Pittwater Road  
DEE WHY NSW 2099  
**Attention: Tony Collier**

Our Ref: GMCdt:21705

8 June 2011

**By Hand**

Dear Sir,

**Re: DA 2011/0400**

**Property: 2 - 4 Riverhill Avenue & 751 - 757 Warringah Road, Forestville**

We refer to the above matter, Council's letter of assessment dated 16 May 2011 and the RTA referral response dated 27 April 2011. In response to the assessment undertaken by Council and its referral bodies, we *enclose* the following amended documents:

- Architectural plans – CKDS Architecture
  1. DA-001 – Cover Sheet
  2. DA-101 – Lower Basement Floor Plan
  3. DA-102 – Upper Basement Floor Plan
  4. DA-103 – Ground Floor Plan
  5. DA-104 – First Floor Plan
  6. DA-105 – Second Floor Plan
  7. DA-106 – Roof Plan
  8. DA-201 - Elevations
  9. DA-301 - Sections
  10. DA-302 - Sections
- Schedule of Amendments
- Landscape Plans – Paul Scrivener: Issue E
  1. Sheets 1 – 7
- Hydraulic designs – Drawing No. WARRINGAH751\_757-SWG.DWG, Sheets 1 – 8
- Civil and Stormwater Drainage Design Certification

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The General Manager

8 June 2011

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Regulation 55(1) of the *Environmental Planning and Assessment Regulations 2000* permits an applicant to amend a development application before it is determined. The Clause states "*but only with the agreement of the consent authority*" and we note that Council has stated that it will not, pursuant to its policy, accept amended plans. We are seeking Council reconsider its position and accept the amended plans for the following two reasons:

1. On 16 December 2010, the applicant's traffic consultant, Tim Rogers, met with the RTA to discuss access from Warringah Road. The RTA did not object to ingress from Warringah Road, under the condition that a suitable slip lane be provided, and additional access be provided on Riverhill Avenue in order to distribute traffic from the primary road network. The applicant prepared the design concept and DA documentation based on this initial advice.

On 27 April 2011, the RTA published its referral response reneging on the initial advice provided to the applicant, stating that:

*"As the subject site has alternate vehicular access via Riverhill Avenue, the RTA will not grant its concurrence to the proposed driveway on Warringah Road (classified road) under Section 138 of the Roads Act, 1993."*

In order to remove all traffic related issues, the applicant has amended the application, incorporating the RTA and Councils advice. The amendments are as follows:

- The Driveway on Warringah Road has been removed; and
  - All ingress and egress to the site is provided via Riverhill Avenue.
2. On 20 May 2011 State Environmental Planning Policy (Affordable Rental Housing) 2009 was amended. In order to improve the development's fit within the Riverhill streetscape and character, the southern elevation has been amended as follows:
    - Proposed louvers on the first floor have been deleted
    - Planting is provided outside the southern facing bedrooms to create privacy
    - Increased areas of landscaping and deep soil zones allows the areas directly outside the bedrooms to be planted with a feature tree and series of other mid-layer shrubs to ensure that building length and bulk is broken down, streetscape presentation is improved and privacy for future occupants is significantly enhanced.
    - The roof over the entry to level 1 apartments has been extended, having the effect of breaking into four portions this southern elevation.

The General Manager

8 June 2011

- PSR reduced to 0.75:1

The above amendments, while being minor, improve the design of the development and render the Riverhill aspect more compatible with the character of the C1 Locality. We request that Council assess DA 2011/0400 and prepare its report to the Joint Regional Planning Panel based on the *enclosed* amended plans.

Please confirm whether or not Council intends to notify the amended plans with the neighbouring residents. In the event Council does notify, we will immediately provided notification plans and further fees.

Should you have any questions please contact Graham McKee or David Tyrrell in his absence.

Yours faithfully

**MCKEES LEGAL SOLUTIONS**

**Graham McKee**  
Principal

Encl.





**Warringah  
Council**

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14 June 2011

McKees Legal Solutions  
PO Box 2093  
Parramatta NSW 1750

**Attn: Graham McKee**

Dear Mr McKee,

**Re: DA2011/0400 – Demolition works, construction of an infill affordable housing development under SEPP (Affordable Rental Housing) 2009 and strata & stratum subdivision at Nos. 2 & 4 Riverhill Avenue, Forestville and Nos. 751, 753, 755 & 757 Warringah Road, Forestville**

I refer to your application for the above proposal which was received by Council on 25 March 2011, Council's letter to you dated 16 May 2011 and revised plans dated 8 June 2011.

As advised in our previous correspondence dated 25 March 2011, the assessment of this application found that the application was deficient in satisfying elements of the various relevant planning instruments and controls. In particular, the refusal by the RTA to issue concurrence, the matters raised by Council's Development Engineer; the inconsistency of the development with the Desired Future Character of the locality, the density and the encroachment of the Side Boundary Building Envelope Built Form Control, were listed as being fundamentally problematic and would not allow for the application to be supported in its current form.

In this regard, the time frames required to address these issues and submit the required information/amended plans to Council would not allow Council to re-assess and re-notify the application within the appropriate timeframes. You were advised that the submission of revised/amended plans and information was inconsistent with Councils "Applications for Development Handling of Unclear, Non-Conforming, Insufficient and Amended Applications" adopted Policy and were subsequently encouraged to withdraw the application, attend a pre-lodgement meeting with Council staff and resubmit the application when all of the identified issues are addressed.

Consequently, you are advised that, in accordance with aforementioned Policy, the revised/amended plans and any supporting documentation cannot be accepted by Council.

The Development Application was referred, in its current form, to the Joint Regional Planning Panel for briefing purposes on 9 June 2011. At that Briefing, the Panel has set 27 July 2011 for the determination of the Development Application. This meeting will be a public forum and you will be advised of the meeting date by JRPP.

Should you wish to discuss any issues regarding this letter please do not hesitate to contact the responsible officer the undersigned on 9942 2111 during the access hours of 9.30am to 10.30am and 3.00pm to 4.00pm Monday to Friday (excluding public holidays).

Yours sincerely



LaShita Haidari

**A/Team Leader Development Assessment**

## Tony Collier

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**From:** David Tyrrell [davidtyrrell@mckees.com.au] on behalf of Graham Mckee [grahammckee@mckees.com.au]  
**Sent:** Thursday, 23 June 2011 12:06 PM  
**To:** Council Mailbox  
**Cc:** Tony Collier  
**Subject:** TRIM: Warringah Road, Forestville - JRPP advising  
**TRIM Dataset:** TM  
**TRIM Record Number:** 2011/124251  
**TRIM Record URI:** 1866426

### Attention: Ryan Cole

Hi Ryan

After calling you, Tony Collier returned my call and we had a half hour discussion about the project, discussing the following:-

1. The general content of our discussions
2. The assessment report being prepared by Tony which was to enclose the amended plans and make a short reference to the planning matters responded to.
3. The opportunity for the applicant to meet with the Council officer carrying out the assessment (Tony Collier) and potentially his team leader, or if appropriate yourself.
4. The fact that it was "*out of his control*" to exercise any discretion into accepting the amended plans... Irrespective of the circumstances.

Ryan, we appreciate you considering the matter further and believe that the issues fall into two categories. The first relates to the processing of our client's application and communications with the JRPP. The second relates to the applicant being given a reasonable opportunity to provide input into the assessment process and respond with additional information... For example, relating to the character of the local area test and the assessment of weight and relevance to the desired future character statement.

### Process

We formally request that the applicant be given the opportunity to meet with Malcolm Ryan (the Director of Planning) in order to be given a reasonable opportunity to put the case to the Council that the policy of not accepting amended plans should be varied in the circumstances of this case. The most persuasive reason is that the plans which Council intend to assess and put before the JRPP as the relevant consent authority, are not capable of being approved due to the concurrence required by the RTA. Despite pre DA discussions with the RTA, they changed their position after the DA lodgement and determined that access was to be denied to Warringah Road. By not allowing the plans to be amended, it is effectively denying the applicant the opportunity to submit a DA which is capable of being approved before the consent authority.

Secondly, the Council's standard policy of requiring the withdrawal of the DA rather than amended plans is reasonable where the underlying permissibility of the development remains unchanged. Significantly, in this case the amendments to the Affordable Rental Housing SEPP mean that should this DA be withdrawn, no similar application could be lodged.

Thirdly, the unprecedented retrospective imposition of a character test within the savings provision of the amending Affordable Rental Housing SEPP, would dictate, on the basis of reasonableness, that an applicant would be given the opportunity to respond by amending their application.

In summary, as a matter of process, we look forward to the opportunity to speak with those who have the relevant delegation or capacity to exercise the discretion as to whether or not the policy should be enforced.

A further issue relating to process involves the opportunity that may (and in our opinion should) be afforded to the applicant in a letter of advice to the JRPP as to the reasons why the amended plans should be considered by them as the consent authority.

A very important procedural element which needs to be carried out at the earliest possible time, in the event the JRPP is to have the capacity to consider the development application as amended, is the notification of the plans. The most critical and talked about issue by the residents who attended the onsite briefing initiated by the applicant after the DA was lodged, was the impact of the development's traffic on Riverhill Road at peak times. We as the applicant have no alternative but to ensure, as we progress to seek to have the JRPP approve the amended plans, that those affected neighbours are notified of the RTA and Council's decision to support the denial of any access to Warringah Road.

We look forward to discussing these procedural matters further in due course.

### **Assessment**

Our discussions with Tony Collier have confirmed that Council will not ignore the amended plans, and will infact attach them to the assessment report. Mr. Collier has indicated there will also be a summary paragraph which identifies which planning issues the amended plans have responded to.

We understand that Mr. Collier is approaching completion of his report and in this regard, the applicant formally seeks an opportunity to meet with him and Council's team leader – if appropriate, so as to respond to any issues of concern – especially relating to compliance with the Affordable Rental Housing SEPP's provisions and in particular, the weight and relevance to be given to the character issues.

The purpose of this email is to set out, in order to assist Council, an appropriate response to the applicant's request and the circumstances of this case.

We look forward to your response, and invite you to telephone Graham McKee on 0408 240 099.

Regards,

**Graham McKee**  
**McKees Legal Solutions ~ accelerated Development Approvals**

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23/06/2011