

Joint Regional Planning Panel

(Sydney East Region)

Meeting Date: 17 April 2013

JRPP Number:	2012SYE094
DA Number:	DA-2013/60
Local Government Area:	ROCKDALE
Proposed Development:	Staged Development for the demolition of an existing dwelling house, tennis court and pool of hotel and construction of a mixed use development of 3 buildings with heights of 11, 13 & 16 storeys in 3 stages, comprising ground floor retail and commercial areas, 316 residential units, parking for 484 vehicles with retention of the existing Mercure Hotel building
Street Address:	20 Levey Street & 34-36 Marsh Street, WOLLI CREEK NSW 2205
Applicant/Owner:	Rockdale Hotel Pty Ltd
Number of Submissions:	Nil
Recommendation:	Approval subject to conditions
Report by:	Michael Maloof – Senior Development Assessment Planner

Precis

The proposal seeks to refurbish the existing hotel building whilst including a new mixed use development on the northern part of the site which includes a eleven, thirteen storey and sixteen storey tower. The proposal will result in a new lobby for the hotel, improved pedestrian and vehicular access on the site, a new residential complex with 316 units, commercial area of 840m², future construction of the extension to Gertrude Street and car parking for a total of 484 vehicles on the site in both a basement level and upper level car parking areas.

The proposal has been assessed against the provisions of Section 79C of the Environmental Planning and Assessment Act, 1979, Rockdale LEP 2000, Rockdale Development Control Plan 2011 and the Residential Flat Code pursuant to State Environmental Planning Policy (SEPP) No. 65 – Quality of Residential Flat Developments. The proposal will increase the floor space on the site with a total floor space ratio (FSR) of 2.9:1 which complies with the maximum permitted on the site of 3:1. The proposal will vary the current height control of 46m for the site to a maximum of 48.85m under the Rockdale LEP 2011. While an objection

under clause 4.6 of the RLEP 2011 has been submitted with the application, it has been assessed given the property is a landmark site and can be redeveloped in a manner in keeping with the future desired character of the area.

As stated in this report, the proposal provides a positive design solution for the development and is considered to be consistent with the objectives of the height control. In this regard, it is considered that the proposed development is suitable for the site.

On 8 February 2013 the application was referred to the Design Review Panel who recommended approval of the application as it satisfies the design quality principles contained in SEPP 65. The minor matters also raised by the panel can be addressed through the imposition of a condition of development consent.

Adjoining owners were notified of the proposed modification and again of the revised scheme in accordance with Council's Development Control Plan 2011 (DCP) and there were no letters of objection received by Council during either notification period.

Accordingly, the proposed development has been assessed on its merits and the application is recommended for approval as a staged development subject to the recommended conditions of development consent.

The proposal has a Capital Investment Value greater than \$20 million (i.e. \$80 million) and as such the development application is referred to the Joint Regional Planning Panel (JRPP) for determination. The recommendation is for approval.

Officer Recommendation

1. That the JRPP support the variation to the height control contained in clause 4.3 of Rockdale Local Environmental Plan 2011 (RLEP 2011).
2. That development application DA-2013/60 for the demolition of an existing dwelling house, tennis court and pool of hotel and construction of a mixed use development of 3 buildings with heights of 11, 13 & 16 storeys in 3 stages, comprising ground floor retail and commercial areas, 316 residential units, parking for 484 vehicles with retention of the existing Mercure Hotel building be **APPROVED**.
3. That the NSW Department of Planning be advised of the Joint Regional Planning Panel's decision.

Report Background

HISTORY

On 8 July 2010 the JRPP approved a development application (DA-2010/237) which involved a Staged Development (Concept Plan) to upgrade and extend the existing hotel and erect a new part 7 and part 16 storey residential developments with a private shareway, landscaping and associated car parking.

The current proposal varies in comparison to the previous approval in that it is the full DA for the site, includes details of each stage and alters the height and massing of the buildings, whilst maintaining the same maximum height of Building C.

Other recent development approvals/pre development application letters issued for the site include the following:

- DA-2004/697 – Neon illuminated advertising sign - Mercure Accor hotels (former Hilton Hotel) approved on 5 February 2004
- DA-2010/21 - Advertising signage approved on 24 August 2009
- DA-2010/21 - Proposed advertising signage approved on 24 August 2009
- DA-2011/243 - Alterations and additions to the existing Mercure Sydney Airport Hotel approved on 16 May 2011

- PDA-2010/17 - Masterplan DA Hotel/Residential - letter issued on 10 November 2009
- PDA-2012/27 - Staged DA for mixed use – letter issued on 15 June 2012
- DA-2013/84 - Consolidation of existing lots and subdivision into 8 stratum lots still under assessment
- DA-2013/212 - Temporary sales and marketing suites constructed on the roof level of the existing hotel (Level 9) still under assessment

PROPOSAL

The application seeks to erect a new part 11, 13 and part 16 storey residential development within the surrounding curtilage of the existing Mercure Hotel, with landscaping and associated car parking. The proposal will involve a new 11 storey building to the west of the existing tower (block A) and erection of a separate building to the north which includes a 13 storey form (block B) and a 16 storey tower in the north eastern corner of the site (block C).

The proposal will involve the above buildings over one basement car parking level below natural ground level and will include ground level parking with four levels of parking above ground level within the proposed buildings (B and C).

This application involves immediate commencement of the development. However, the applicant has also requested to include staged construction certificates. In this regard, the application includes detailed floor plans and information for all buildings.

The proposal will involve 316 (reduction from 362) residential units including 28 studios (from 17), 102 one bedroom (from 144), 158 two bedroom (from 181) and 28 three bedroom units (same). The proposal also includes a commercial and retail area of 840m², a total of 289 residential on site car parking spaces (from 334), 60 visitor spaces (from 52), 135 hotel spaces (same), 22 motorcycle spaces (from 29) and 36 bicycle spaces (from 47). The proposal will have a total floor space of 41,773m² (from 43,131m²) which when compared with a site area of 14,442m² results in a floor space ratio of 2.9:1 for the site.

The applicant has amended the original plans submitted with this application. In this regard, the plans now vary from the original application on the site in the following regards:

- Reduction in the number of units
- Parking spaces and driveway design
- Increased cross flow and natural ventilation
- Increased access to natural light
- Deletion of the permanent second bedroom which does not have natural ventilation (note that several units have a temporary second bedroom with movable partitions)
- Increased building separation and reduction in scale with a four storey building base
- Increased balconies sizes and private open space
- Increased communal open space

- Reduction in single aspect units
- Improved façade design and external appearance on each street frontage
- Provision of roof top terraces added on two of the buildings

EXISTING AND SURROUNDING DEVELOPMENT

The subject site comprises a total of nineteen (19) lots which contain the existing Mercure Hotel being an 11 storey building, a tennis court, swimming pool, open car park and includes two small residential lots fronting Marsh Street at Nos. 34 and 36 which are vacant and contain a single storey dwelling house respectively.

The site has a total area of 14,442m² which comprises 12,835.3m² of land and 1,606.7m² of land proposed for the future extension to Gertrude Street. The site is an irregular shape almost a rectangle and is relatively flat with changes in levels of between 0.2m and 0.3m along each frontage.

To the north of the site is the eastern end of Cahill Park with and on the opposite side of Rockwell Avenue is the Rowing Club. The site has substantial views (180 degrees) out to the north over the Cooks River. To the east the site fronts Marsh Street and has views out over the golf course which was previously the Cooks Cove Redevelopment Site. An approval still applies to this adjoining site to the east.

To the south, the subject site currently adjoins a recently erected part 6 part 9 storey mixed use development. However, the southern part of the subject site will form the extension to Gertrude Street and therefore will have a substantive separation from the recently constructed mixed use development to the south. To the south west on the opposite side of the Gertrude Street extension adjoining the part 6 part 9 storey development are single storey dwelling houses which will soon be redevelopment into another multi storey mixed use development.

To the west, the subject site fronts Levey Street and is opposite tennis courts in Cahill Park, is opposite Gertrude Street and an existing six storey hotel on the corner of the two streets.

While the proposal varies from the DCP in respect to the height of the tower the proposal involves a landmark site that is capable of supporting the scheme and the proposal is not considered an over-development in that it complies with the maximum permissible floor space ratio applying to the site.

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 91A – Development that is Integrated Development

The proposed development constitutes Integrated Development and requires approval by the NSW Office of Water under the Water Act 1912. The proposal has been referred to the Office of Water and general terms of approval (GTA) have been granted. The conditions of the GTA have been incorporated in the draft Notice of Determination.

Section 79C (1) Matters for Consideration - General

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

Environmental Planning and Assessment Act 1979

Staged Development

The applicant has requested that the current proposal includes a staged development which will involve 8 separate stages of construction. Pursuant to section 83B 3(b) of the Act, Council is not to authorise the development unless “*the staged development application also provided the requisite details of the development on that part of the site and consent is granted for that first stage of development without the need for further consent.*” The applicant has requested the application be treated as a staged development and accordingly, there is no need for a further consent. This has been addressed through the imposition of conditions of development consent. Accordingly, subsequent construction certificate applications that relate to the current proposal are required to be submitted prior to commencement of the particular stages of building works. In this regard, the proposal complies with the above requirement.

State Environmental Planning Policy Building Sustainability Index (BASIX)

The applicant has submitted a BASIX Certificate for the proposed development. The Certificate number is 440470M_02. The commitments made result in the reduction in energy and water consumption shown below. A condition is proposed on the consent to ensure that the BASIX requirements are adhered to.

Reduction in Energy Consumption	20% (target 20%)
Reduction in Water Consumption	40% (target 40%)
Thermal Comfort	Pass (target pass)

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

The application is accompanied by an Environmental Site Screening prepared by Environmental Investigation Services (EIS) Pty Ltd dated December 2009 reference number E17427Krpt3. This report details a search of contaminated land on the site and presents the results of preliminary site investigations. These investigations revealed that that part of the site sampled did not find elevated levels of any contaminants and the results from the examination of the samples were less than the appropriate Health Investigation Levels for “commercial/industrial” land uses.

Notwithstanding this, Council's Environmental Health Officer has reviewed the Environmental Site Screening report and is satisfied that the site can be remediated and be made suitable for the proposed use, provided a Site Remedial Action Plan is submitted and the recommendations identified in Section 12.5 of the report are adhered to. In this regard, appropriate measures to address site remediation and compliance with these requirements can be addressed through the imposition of a condition of development consent.

On the basis of the above, Council can be satisfied that it has fulfilled its statutory obligations under SEPP 55, in relation to this application.

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)

The proposed development has been identified within Schedule 3 of SEPP (Infrastructure) 2007 as it will contain more than 75 dwellings.

Clause 102 of the SEPP requires the consent authority to consider the guidelines issued by the Director General and ensure that the LAeq level of 35dB(A) is not exceeded in any

bedroom or 40dB(A) anywhere else in the building. The current application involves a masterplan and as such, details in respect to the above have not been submitted with the current application but rather will be submitted with the subsequent applications/stages. This can be addressed through the imposition of a condition of development consent.

In accordance with Clause 104(3) of State Environmental Planning Policy (Infrastructure) 2007, before determining a development application for development to which this clause applies, the consent authority must give written notice to the RMS and take into consideration any response from them. The RMS was notified of the proposal and comments received by Council.

The application was referred to Roads and Maritime Services (RMS) and comments were received by Council in relation to the scheme. In this regard, the application was considered acceptable by the agency subject to the imposition of recommended conditions of development consent. Such conditions are to be imposed in any development consent issued for the site.

For the reasons outlined above, the proposed development is considered to meet the requirements of SEPP (Infrastructure) 2007.

Traffic Development Advisory Committee (TDAC)

The previous application was referred to the TDAC for comment and considered on 11 February 2010. The new application is similar to the previous one and therefore did not require re-referral to the TDAC on the basis that the original matters raised by the TDAC are addressed. The following comments were received from the committee in 2010:

- 1 *That the proposed northern access laneway to Marsh Street (one way street) be closed off to vehicular traffic to enhance safety.*
- 2 *That Council verify that Innesdale Road will be closed off at the completion of the proposed Gertrude Street extension.*
- 3 *That the width of the Gertrude Street extension near this site be the same as the width of the other section of the Gertrude Street extension between Princes Highway and Arncliffe Street.*

Comment:

The new application does not include the private shareway along the northern edge of the subject site which formed part of the previous application. Accordingly, the application is acceptable in this regard.

In relation to the closure of Innesdale Road, Council has established that traffic flows on this road may be reduced as a result of the extension to Gertrude Street and the latter becoming the main connecting road between Marsh Street and the Princes Highway. This is to be followed up in a formal report to be prepared by Council for consideration of the Rockdale TDAC at a later date.

The conditions of development consent to be imposed in the current application require a minimum width of the Gertrude Street extension to be 23m. This is largely consistent with the width of the other section of Gertrude Street between Princes Highway and Arncliffe Street.

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

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

The application was referred to the Design Review Panel (DRP) on 15 October 2012 who did not support the application in its current form. The Panel recommended changes be made to the scheme and the amended scheme be reconsidered by the panel. In summary, the changes to be investigated included improving the relationship of the scheme along Gertrude and Marsh Streets, reduce the large institutional form of the development by better articulating the buildings, reduce building width, break up continuous façade lengths and reduce the building scale, reduce bulk of building resulting from the upper car parking levels, increase ventilation and solar access, increase internal amenity and provide a window in the second bedroom, landscaped area, balcony sizes, swimming pool courtyard area, boundary fencing and improve housing mix.

The applicant amended the plans which were placed on public exhibition and re-referred to the DRP. On 8 February 2013 the DRP reviewed the amended plans and recommended that the application satisfies the design quality principles contained in SEPP 65. In this regard, they identified the amendments addressed most of the issues previously raised and the application is supported pending further information subject to minor changes as follows:

- The vista of the building from Marsh Street has been substantially improved. However additional information showing the interface along the Park is needed.
- Few balconies are still undersized but can be conditioned to be compliant
- Screen fencing should be provided to Marsh Street to improve landscape appearance.
- Details to be provided by the applicant indicating that adequate soil depths are provided above structures to ensure the proposed trees are viable and grow to a mature size to provide the effect that is indicated in the renderings.
- A boundary fence in association with a landscape stepped area to the front of the units fronting Cahill Park seems excessive and the Panel does not believe that two layers of security are essential. Details to be provided by the applicant.
- Negotiations to continue with Council relating to embellishment works in Cahill Park
- Storage requirements still require compliance confirmation.
- Further design development should refine the internal layout of units to improve their furnishability and use, particularly the single sided lower units with awkward column locations.

The plans now address the previous concerns and the items above can be addressed through the imposition of conditions of development consent. Accordingly, the proposal is considered acceptable in respect to SEPP 65.

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. The DRP found these matters to be satisfactory at its last meeting of 8 February 2013 as indicated below.

Principle 1 - Context

The Panel considers that the concerns relating to the previous application were generally addressed regarding street frontages. The vista of the building from Marsh Street has been substantially improved. However additional information showing the interface along the Park is needed.

Comment: The applicant has submitted additional information about the interface with the park. In this regard, Council has considered the information which is acceptable subject to the imposition of relevant conditions of development consent.

Principle 2 - Scale

The scale of the development has been substantially reduced by provision of a four storey base element and increased building separation. The height of some buildings has been reduced to provide variation.

Principle 3 - Built Form

The proposed built form has been substantially improved in comparison with the original plans submitted with the application.

Principle 4 - Density

The proposal is consistent with the density controls under RLEP 2011. Reduction in unit numbers and subsequent reduction in parking reduces the visual impact of the building group.

Principle 5 - Resource, Energy and Water Efficiency

The BASIX Certificate demonstrates that the proposal meets the targets of the SEPP. Natural ventilation has been substantially improved as has solar access. The windowless second bedrooms have been mostly removed.

Principle 6 - Landscape

While some balconies still remain undersize, they number few and this can be addressed by way of a condition of development consent. The proposed landscaping is a considerable improvement in comparison with the original scheme. For example, the swimming pool area has been expanded and roof top landscaping provided on two of the buildings. In this regard, the panel supports the scheme subject to conditions relating to soil depth details and fencing details along Cahill Park being provided to Council.

Principle 7 - Amenity

All other amenity issues identified by the DRP and in the assessment of the application have been addressed by conditions of consent or amended plans. In this regard, the amended plans are acceptable to the panel subject to possible improvements to the unit layouts to improve their "furnishability" and use.

Principle 8 - Safety and Security

The proposal achieves a good level of safety and security.

Principle 9 - Social Dimensions

The mix of units whilst still not complying is not considered unreasonable. The windowless second bedrooms have largely been removed and more than adequate communal open space areas have been provided. As such the proposal is supported in regards to social dimensions.

Principle 10 - Aesthetics

The institutional character has been substantially reduced by improved articulation and modulation of the built forms. Details associated with the hotel refurbishment have been provided. The proposal incorporates contemporary architectural elements in the facade, which provide a satisfactory architectural expression.

c. The Residential Flat Building Code.

The Residential Flat Design Code (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. The amended proposal performed quite well in respect to the issues contained within the Residential Flat Design Code, such as open space, spatial arrangement, cross flow ventilation, solar access to the proposed units and overall energy efficiency. The proposal did not comply with maximum building depth (18m), building separation (based on the number of storeys), minimum 25% deep soil zones and minimum balcony width of 2m for several balconies.

The proposal is required to provide a minimum communal open space of 1,580m² and now provides a total of 1,800m². The proposal will provide depths to buildings A, B and C of 22.5m, 22.5m and 23m respectively. While this does not comply with the Code (18m) the applicant has argued that the scheme meets the key objectives of the control and given the minor departure from the control, the scheme is not considered unreasonable in this regard. The proposed building separation for levels 6 to 12 does not comply with the minimum amounts based on the number of storeys, (12m for up to 4 storeys, 18m for between 5-8 storeys and 24m for 9 storeys and above) at one point between buildings B and C of 10m. While this is a significant departure, the buildings have been designed to have an increased separation compared to the original scheme and minimise any impacts through its design due to this non compliance. As such, the proposal is considered acceptable in respect to this variation which is limited to the upper seven levels between Buildings B and C.

A minimum of 25 to 30% of the site area should be provided as communal open space areas under the Code. The site does not contain any communal open space area apart from the ground floor central courtyard which is communal identified as a piazza on the plans. This area includes seating, a water feature, and landscape plantings and is a secure area with card entry only.

The Code requires a minimum 25% deep soil zone and minimum balcony width of 2m for several balconies. The proposal does not comply with the minimum deep soil requirement and contains several balconies that do not comply with the minimum 2m dimension. The revised scheme has been improved with an increase in landscaped area up to 11% which is greater than the previously approved scheme for the site. The proposal represents an improved outcome which is consistent with the objectives of the deep soil clause and is considered acceptable in this regard. Conditions of development consent have been imposed requiring all balconies to contain a minimum dimension of 2m.

Based on the above, the proposed development is considered acceptable in respect to the requirements of the Residential Flat Design Code.

Rockdale Local Environmental Plan 2011 (RLEP 2011)

The site is zoned B4 Mixed Use under the provisions of the Rockdale LEP 2011. Development for the purposes of shop top housing and mixed use development are permissible with Council consent within the B4 Mixed Use zone. The proposal is consistent with the objectives of the zone. The relevant clauses that apply to the proposal are below.

Clause 4.3 - Height of buildings

The maximum permitted height under the RLEP 2011 Height Map referred to in this clause is 46m. The proposed development will have a maximum height of 48.85m (building C) in the northern corner of the site which exceeds this maximum control by 2.85m (6%).

Clause 4.6 allows a variation to a development standard subject to a written request by the applicant justifying the variation by demonstrating:

- (3)(a) that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and*
- (3)(b) that there are sufficient environmental planning grounds to justify the variation.*

In considering the applicant's submission, the consent authority must be satisfied that:

- (i) the applicant's written request is satisfactory in regards to addressing subclause (3) above, and*
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives of the relevant zone.*

5(a) The consent authority must also consider whether contravention of the development standard raises any matter of significance for State or Regional environmental planning, and

5(b) the public benefit of maintaining the development standard

The applicant seeks to vary the following development standards as outlined within the RLEP 2011;

Clause 4.3 (2): The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. (Identifies a maximum permitted height of 46m on the map).

The applicant has submitted the required clause 4.6 variation arguments, outlining why compliance with the above stated development standard is unreasonable and unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify contravening the development standard. The applicant has stated the following with respect to the variation to clause 4.3 (2):

- The variation occurs for one building only with the remaining buildings complying with Council's maximum height control
- The development is consistent with the objectives of the height control.
- The extent of building encroaching on the height control is the top 1.5 floors of the building which is the penthouse level. These floors have been articulated and stepped back so that they reduce the perception of bulk.
- The deviation of 2.85m represents only 6% increase over the height limit which is over approximately 5% of the site area. Thus is it considered reasonable in the context of the magnitude of the height limit and existing approved built form.
- The proposed height complies with the SACL requirements based on the OLS.
- The proposal can be accommodated within the allowable FSR of 3:1 for the site.

- The proposal is no higher than the previous approval applying to the site.
- The site context sets the parameters for which development can be accommodated from an urban design perspective.
- The proposal provides sufficient articulation and modulation across the site.
- Reducing the height of building C to comply would dilute the design outcome by reducing the previously approved building and creating a monotony of buildings heights across the site.
- The proposal positively response to site constraints and the immediate context.
- It will not result in an unreasonable adverse impact on surrounding properties
- The height does not result in significant internal overshadowing
- The tallest building C is optimally located on the site towards the parkland with optimal amenity and views created for the future residents of the development.
- Design measures have been incorporated within the scheme to minimise its mass, bulk, and ensure the achievement of a design outcome that is consistent with the established built form and character of the streetscape.

The above arguments are considered satisfactory and should be supported. The proposed departure from the standard is considered to be minor when considered in conjunction with the entire site and the context of development in the surrounding locality.

Furthermore, strict compliance with the standard would be unreasonable and unnecessary in the circumstances of the case. In terms of whether or not strict compliance with the development standard tends to hinder the attainment of the objects of the EP& A Act 1979, the relevant objects are to 'encourage the promotion and coordination of the orderly and economic use and development of land' and to encourage 'ecologically sustainable development'.

Having regard to the above, it is considered that the variation is well founded and it is recommended that a variation to the height requirement for the site be supported in the circumstances of the case.

Clause 4.4 – Floor Space Ratio (FSR)

A maximum FSR of 3:1 is permitted on the site. The proposed FSR is 2.9:1, which complies with clause 4.4 under the RLEP 2011.

Clause 5.1A – Development on land intended to be acquired for public purposes

Clause 5.1A requires consideration of restrictions applying to the land identified in the Land Reservation Acquisition map. The site is subject to land dedications for the extension of Gertrude Street by Council and the F6 Corridor by the RMS.

The applicant is aware of the F6 reservation and dedication of land to the RMS in the north eastern corner of the site and dedication of land to the south for the extension to Gertrude Street. The plans were amended in accordance with the RMS and Council requirements and now address the above concerns. The application is subject to the imposition of conditions of development consent requiring dedication of that part of the site and the proposal is considered acceptable in respect to the acquisition of land for public purposes.

Clause 6.1 – Acid Sulfate Soils

The site is within an area classified as Classes 3 and 5 in the acid sulfate soils map. The applicant has submitted an Acid Sulfate Soils Management Plan. The recommendations of

the Management Strategy have been included in the draft notice of determination. The proposal is consistent with the objectives and requirements of clause 6.1 of the RLEP 2011.

Clause 6.2 – Earthworks

The proposal involves extensive excavation within the site to accommodate the basement levels. This clause requires Council to consider the effect of the development on the existing drainage patterns, soil stability, and the future use of the land, quality of fill to be excavated and amenity of the adjoining properties. The application was considered by Council's development assessment and engineering sections. These matters have been addressed through the imposition of conditions of development consent. Accordingly, the proposal is considered acceptable in respect to the earthworks to be carried out on the site.

Clause 6.3 – Development in areas affected by aircraft noise

The site is near the 20-25 ANEF contour for 2023/24. An Acoustic Report has been submitted to Council with the application. The report recommends acoustic measures to comply with the relevant standards as required by clause 6.3. A condition of consent is proposed to ensure that the recommendations of the report are carried out and included in the redevelopment of the site. Accordingly, the application is considered acceptable in respect to aircraft noise.

Clause 6.4 – Airspace operations

The site is affected by the 15.24m building height Civil Aviation regulation. The proposal was referred to Sydney Airport Corporation Ltd (SACL) for comment. Sydney Airports approved the proposed height up to RL 50.85 AHD subject to a condition being imposed. The recommended condition has been included in the draft Notice of Determination.

Clause 6.6 – Flood Planning

The site is affected by flooding and as such a minimum floor level of 2.85 AHD is required. The proposal complies with this level. The application was referred to Council's Development Engineer who raises no objections to the proposal subject to the additional conditions of consent which are proposed in line with the requirements of this clause. Subject to compliance with these conditions, the proposal is satisfactory in regards to flooding.

Clause 6.7 – Stormwater

The proposed stormwater system has been approved by Council's Development Engineer and is consistent with the requirements of this clause. In this regard, the proposal is considered acceptable in respect to stormwater drainage subject to the imposition of conditions of development consent.

Clause 6.12 – Essential Services

The applicant has submitted a Services Plan and Site Infrastructure Report with the application. Services are generally available on the site and the proposal is considered acceptable in this regard. Accordingly, additional conditions of consent are to be imposed requiring consultation with relevant utility providers to ensure appropriate provision of services on the site.

Provisions of any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (S.79C(1)(a)(ii))

Draft Rockdale Local Environmental Plan 2011 (Amendment No. 1) - Housekeeping was on public exhibition from 28 June 2012 until 27 July 2012. In addition Draft Rockdale Local Environmental Plan 2011 – Height of Building Maps Amendment was on public exhibition from 27 September 2012 until 12 October 2012. However none of the proposed changes affects the proposal.

There are no other Draft Environmental Planning Instruments applying to this proposal.

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

Development Control Plan 2011(DCP 2011)

The proposal has been assessed against the objectives and controls under DCP 2011 and associated documents being the Wolli Creek Public Domain Plan and Manual (PDP), Technical Specifications for Parking, Technical Specifications for Stormwater, Waste Minimisation and Management and Landscaping. The following issues are relevant to determine compliance of the proposal with the objectives of DCP 2011.

Building Separation

The proposed development will contain a 10m gap between buildings B and C adjacent to the Levey Street frontage and between building B and C above levels 6 to 12 at the northern boundary of the site. The building will contain a driveway on the ground floor between the two buildings, with a connection between each on levels 1 to 4 while level 5 will contain a swimming pool and be open above.

It is considered that the scheme has a design that affords appropriate levels of amenity despite the 10m gap given the design of the window openings and that the gap allows light penetration into the middle of the site given it faces north. In this regard, the proposal is considered acceptable and the increase in this separation in the revised plans addresses the objectives of the control.

Landscaping

Council's DCP requires a minimum provision of 10% deep soil landscaped area on the site. The proposal will contain 11% landscaped areas (an increase from the previous 9.3% deep soil area) across the site. Further, the scheme will contain podium levels with sufficient soil depth as to allow planting of larger species. In considering the amount of land dedicated to the Gertrude Street extension and the extent of landscaping works to be provided on the site, the proposed landscaping areas are considered acceptable and capable of screening and softening the proposed development to satisfy the objectives of the control. Accordingly, the proposal is considered acceptable in respect to landscaping.

Submitted with the application was a concept landscape plan to upgrade Cahill Park to the north which does not form part of the subject site. Council's Technical Services section does not support this plan given it is not suitable for construction purposes, consistent with Council's intentions or the public domain plan for the area. Furthermore, the land is owned and managed by Council and no VPA was previously entered into in relation to it. As such, the concept landscape plan for the park does not form part of the current application and is not recommended for approval.

Balcony Size

As indicated, the balconies were undersize in the original scheme submitted with the application. However, the applicant has since amended the plans to comply with the minimum balcony size and dimension requirements of Council's DCP. However, several of the balconies have been increased but still do not entirely comply. This has been addressed through the imposition of a condition of development consent.

The proposed development is deficient by 12 on site car parking spaces and this is discussed in more detail later in this report.

The remaining elements of the proposal comply with the requirements of Council's DCP 2011. Accordingly, the proposal is considered acceptable in respect to Council's DCP 2011.

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))

Clauses 92-94 of the Regulations outline the matters to be considered in the assessment of a development application. Clause 92 requires the consent authority to consider the provisions of AS 2601:1991 - Demolition of Structures when demolition of a building is involved. In this regard a condition of consent is proposed to ensure compliance with the standard.

The Regulations requires notification to relevant authorities that may have an interest in the application. The proposal has been notified to Sydney Water, Energy Australia, Sydney Airports, NSW Police and the Roads and Maritime Services (RMS). The recommendations provided are included in the draft Notice of Determination.

All relevant provisions of the Regulations have been considered in the assessment of this proposal.

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

Character / Streetscape

The proposal presents the buildings as separate elements from most vantage points with the tower building encapsulating a demarcation point for a prominent landmark site. In this regard, the existing hotel from Cahill Park with the tower building behind is considered to be compatible with the existing frontage to Marsh Street. Similarly, the proposal will have a significant but positive impact on the adjacent Cahill Park from which the tower element will be most visible.

The existing streetscape along Marsh Street contains a mixture of building forms. However, the proposal is considered to be compatible with the future desired character of the precinct and not unlike similar recent approvals along Marsh Street further to the south. In this regard, the proposal is not unreasonable in that it is an "anticipated" redevelopment that is consistent with Council's DCP and is considered to respond well to its surroundings.

The façades of the three main buildings contain a suitable built form with appropriate modulation and now has suitable articulation that incorporates various materials and finishes. The DRP are satisfied with the design of the facades and recognize the bottom, middle and top of the built forms have suitable legibility and define the development in its context. In this regard, particular attention has been paid to the design outcomes. Accordingly, the proposal is considered acceptable in respect to its streetscape outcomes.

Density / Bulk / Scale

The proposal is considered to be in keeping with the bulk and scale of nearby recently approved high rise mixed use developments in the precinct. The proposal complies with the maximum permitted floor space ratio (FSR) for the site and is not unreasonable in respect to its context. The height and scale of the development has been addressed in more detail previously in this report.

Visual Privacy

The general location of the proposed units has been designed to retain adequate privacy between each and to those residential dwellings on adjoining properties. In this regard, there is adequate separation from the hotel and dwellings on the adjoining/adjacent properties and the proposal is considered to be acceptable in respect to privacy.

Overshadowing

The proposed development will have a shadow impact on the existing streets surrounding the site, existing hotel on the subject site and the residential properties within the street block immediately to the south. In this regard, the proposal is not likely to result in any significant adverse impacts in respect to overshadowing over the residential development on the next street block to the south or Cahill Park to the north. This is largely due to the design of the proposal and the orientation of the site. The proposal will result in some shadows being cast to the south in the morning and to the east in the afternoon that may extend out over the existing properties and golf course on the other side of Marsh Street respectively. However, the likely shadows are not considered to be unreasonable given that the shadow will move over the site for a limited number of hours and given the nature of the use to the east. Furthermore, the golf course to the east is known as the Cooks Cove redevelopment and was earmarked to be redeveloped as a new commercial precinct with multi storey buildings of similar height to that proposed.

Accordingly, the shadows likely to be cast from the proposal are not likely to significantly adversely impact on the amenity of any adjacent residential properties. In this regard, the proposal generally complies with the requirements of Council's DCP in respect to overshadowing.

While it is probable that the adjacent properties further to the south west may one day be redeveloped for mixed use development and include residential units, those properties are located a distance from the site that the current scheme is not likely to significantly affect them. Indeed, the subject site benefits from a unique position that lends itself to the current proposal. Accordingly, the proposed development is not considered unreasonable in respect to overshadowing.

Safety and Security

The proposal has been referred to the NSW Police. The NSW Police has rated the proposed development as a moderate crime risk. Conditions of consent have been

recommended in line with the safer by design principles. The recommendations of the NSW Police have been included in the draft Notice of Determination. Subject to compliance with these conditions, the proposal is satisfactory having regard to safety and security.

Traffic/Parking

The application has been accompanied by a Traffic Report prepared by Colston Budd Hunt & Kafes Pty Ltd which states that the proposal will provide a total of 484 on site car parking spaces and is appropriate in this regard. On comparison with Council's DCP, the proposal would be required to provide a total of 496 on site car parking spaces and is deficient by 12 car parking spaces (which represents 2.5%). The proposal generally complies with the minimum requirements apart from 3 visitor spaces and 9 commercial spaces. Developments that reduce parking provisions for the residential component will restrict future strata subdivision of the tenancies. Council's DCP makes provision for a shared parking concession for mixed use development. In this regard, the applicant can submit a shared parking register to show how the deficiency can be mitigated given the high number of spaces and various uses provided on the site. As such, the proposal is considered acceptable subject to the submission of a shared parking register. This has been addressed through the imposition of a condition of development consent.

The upper levels of the proposed development include residential units that wrap around the parking levels on those floors. Paragraph 8 in section 4.6 of Council's DCP 2011 states as follows:

- 8. Car parking and service/delivery areas are to be located so that they do not visually dominate either the development or the public domain*

In addition, paragraph 13 in section 5.3 of Council's DCP 2011 states as follows:

- 13. Any development which contains above ground car parking must 'wrap' the car parking with active building uses on any street frontage. All above ground car parking must be internal to the building; no at-grade car parking is permitted.*

The proposal includes above ground parking for levels 1 to 4 which are "wrapped" by the active residential uses on these levels. As such, the proposed above ground parking will be internal and not be visible from or dominate the view of the site from the street. The car parking spaces are designed with the appropriate dimensions and do not include any mechanical parking systems (like "car stackers") or the like. Accordingly, the proposal satisfies the requirements of Council's DCP 2011 in respect to the location and design of the above ground car parking areas.

Based on the above, the proposal is satisfactory in respect to traffic and parking.

Noise

An acoustic report has been submitted and the recommendations of the report have been included as conditions of consent. The proposed development is not likely to result in any greater noise generation than a high density mixed use development of this nature. In this regard, the proposal is not considered unreasonable in respect to anticipated noise generation. Accordingly, the proposal is satisfactory in regard to noise.

Views and Vistas

The site currently benefits from existing views of the airport and Botany Bay including the horizon and skyline to the east. While the views are significant, the proposal is not likely to detrimentally intrude into any existing views to the east out over the site given the properties to the west and northwest of the site include Cahill Park and the existing hotel on the opposite side of Levey Street. These areas maintain views to the east from the park and to the south of the site respectively. Thus the extent of view intrusion is considered minimal from any neighbouring residential properties. Furthermore, expansive views will remain in other directions for the surrounding properties to the east.

The proposal is considered to make a positive contribution to the existing vista along Marsh Street given the particular regard to the fenestration and design elements to be used on both the new buildings and cosmetic upgrading of the existing hotel. In this regard, the landmark site will add to the legibility of the entry portal to the Rockdale Local Government area without dominating or challenging the context of the site. The proposal is commensurate with other high density areas in Wolli Creek and is not considered unreasonable in respect to its minimal impact on the existing vista along Marsh Street.

Management of Waste

The applicant has been in consultation with Council officers in regards to the provision of on site garbage collection facilities. A Waste Management report was submitted with the application and details how it will be managed using the bin, chute and collection system. The proposal complies with Council's requirements and is therefore satisfactory in regards to waste management

Wind Impacts

A wind assessment report prepared by Windtech was submitted with the application concluding that four additional treatments will mitigate any potentially adverse wind effects of the scheme. In this regard, the proposed development will have little or no influence in the local wind environment. This has been addressed through the imposition of a condition of development consent. The wind conditions for pedestrians in and around the development and the users of the communal areas are therefore considered acceptable. Accordingly, the proposal is considered acceptable in respect to wind impacts.

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

The site is considered to be suitable for the proposed development. It is located on the edge of an established residential neighbourhood and has the capacity to support the proposed additional density and built form. Having regard to the characteristics of the site and its location, the proposed extension to the hotel and residential development is considered appropriate in that:

- the site is zoned to accommodate this type and form of development;
- the nature and form of the proposed development is generally consistent with the development controls which apply to the site;
- the scale and nature of the development is compatible with anticipated future development in the locality;
- the size and dimensions of the land are suitable for the scale of the proposed development;
- the site will have access to all utility services to accommodate the demand generated by the proposed development;
- the proposed development will not result in any unreasonable adverse traffic impacts;
- parking has been provided in accordance with Council's DCP 62;

- the proposed development is not likely to result in any unacceptable environmental impacts in relation to the adjoining and surrounding properties, particularly in terms of overshadowing, views, privacy (aural and visual), solar access and natural ventilation.

The proposed development is not expected to result in any significant adverse environmental impacts and it is therefore considered that the site is suitable to accommodate the proposed development.

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

The development application has been notified in accordance with Council's Development Control Plan 2011 and during the first notification period there were no submissions received by Council in respect of the scheme. The application was amended and resubmitted on 23 January 2013. Adjoining owners were renotified of the amended scheme and Council did not receive any submissions or petitions during the second notification period.

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 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 and future vision for the area. The proposed building is supported by SEPP 65 and will add value to the existing streetscape. 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 a staged Development for the demolition of an existing dwelling house, tennis court and pool of hotel and construction of a mixed use development of 3 buildings with heights of 11, 13 & 16 storeys in 3 stages, comprising ground floor retail and commercial areas, 316 residential units, parking for 484 vehicles with retention of the existing Mercure Hotel building. The proposal is consistent with the objectives of the controls under the RLEP 2011, DCP 2011 and relevant state policies. The proposal complies with the statutory controls apart from the maximum height control. The applicant has justified a variation to the height control and has demonstrated that the strict application of the control would not be in the interests of the future occupants or achieve any significant better outcomes for the site. The applicant has demonstrated that it is unreasonable and unnecessary to comply with the height requirement in the circumstances of the case, and that the proposal meets the objects of the Environmental Planning and Assessment Act 1979. Additionally, the proposal will facilitate the retention and continued operation of a significant hotel on the site.

The design of the proposed development has been amended and represents a suitable scheme for the site that generally complies with Council's requirements and the future desired character of the area. The subject site is a prominent and highly visible landmark site. The Design Review Panel has indicated their support for the design given its improved amenity and use of space and refurbishment of the existing hotel. As such, the proposed development is recommended for approval subject to the proposed conditions of consent attached to this report.