



11511
15 April 2013

Panel Secretariat
Joint Regional Planning Panel
GPO Box 3415
Sydney NSW 2001

Dear Sir/Madam

**DEVELOPMENT APPLICATION JRPP REF - 2012SYE094 / DA REF - 2013/60
20 LEVEY STREET & 34-36 MARSH STREET, WOLLI CREEK**

We write with reference to the abovementioned Development Application (DA) and the upcoming Sydney East Joint Regional Planning Panel on 17 April 2013 where the DA will be determined. First and foremost, we support Rockdale Council officer's recommendation for approval of the DA, subject to conditions.

The purpose of this correspondence is to provide Panel members with additional information in order to seek to amend/delete specific conditions recommended by Rockdale Council to be imposed on any approval given. For ease of reference, a summary of proposed conditions sought to be amended/deleted is provided, along with the reasons/justification for the amendment sought.

1.0 KEY MATTERS

One or two key matters are worth commenting on in order to ensure that the consent is structured in an optimum manner.

1.1 Gertrude Street extension

The Planning Report mentions that the proposal includes the future construction of the Gertrude Street extension (Page 1, précis). Condition 18, Condition 142 and Condition 179 of the draft consent could imply that the consent requires the applicant to construct this road extension.

However, it is critical to note that the proposal includes *dedication* of the land for the Gertrude Street road extension but does not propose to design or construct the road.

The Gertrude Street extension is identified as a forward planning work in Council's Section 94 plan, which levies contributions across the Wolli Creek Redevelopment Area for this road work and other road works identified in the plan. If the applicant were to construct the road, then they would be eligible for a Section 94 offset on the basis of 'works in kind' being provided. The draft consent does not include a Section 94 offset nor is it the applicant's intent to seek one or to construct the road.

The proposed redevelopment has designed in the allowance for the implementation of the Gertrude Street extension and traffic signals at the intersection of Gertrude Street and Marsh Street (to be funded through Section 94 contributions). The location and design has been agreed in principle with Council, the applicant and SHFA (on behalf of Cooks Cove and RMS). A concept

layout was included with the DA to demonstrate that the land to be dedicated could accommodate the required road widths, however, final delivery of the road is reliant on Council finalising their own design for the road extension.

We therefore request that the development consent clearly recognise that the applicant will not be constructing the road nor removing existing road infrastructure (the existing round about) which is in the location of the new road extension. We request deletion of conditions which require the applicant to design or deliver the Gertrude Street road extension.

If some of the road conditions are retained, the applicant is open to submitting a *concept* design (not detailed designs) showing how the width of the road reservation can be accommodated in the dedicated land as is proposed in the draft consent (Condition 18), as long as it is clear that the responsibility and delivery of the road is by Council.

1.2 Staged Development Consent

The planning officer's report mentions the DA seeks a staged DA consent pursuant to Section 83B of the EP&A Act. For the purposes of this Act, a ***staged development application*** is a development application that sets out concept proposals for the development of a site, and for which detailed proposals for separate parts of the site are to be the subject of subsequent development applications (i.e. similar to the old term master plan DA). A staged application may set out detailed proposals for the first stage of development.

For clarity, the DA is a *detailed* DA for all buildings in the development and is not a 'staged' DA for the purposes of the Act. Instead the DA seeks staged construction certificates and occupations certificates for each building. This point is an important procedural clarification as it is the responsibility of the proponent under the Act to advise when they are seeking a staged application. The applicant is not requesting a staged DA for the purposes of Section 83B. This clarification has no other material benefits on Council's recommendation or the draft conditions of consent which have been effectively and appropriately drafted by Council officers to facilitate the issue of multiple CCs for the project. We thank Council for the opportunity to structure the conditions of consent to reflect the staging of the CC's and thereby avoid a potential administrative Section 96.

2.0 CONDITIONS

Overall, the conditions recommended to be imposed by Council officers on any approval granted are considered to be reasonable and relevant. There are, however, a relative small number of conditions which we would request both Panel members and Council to re-consider and accordingly seek to have amended/deleted. The tables below outline those relevant conditions.

Where changes are proposed to the wording of the condition, words proposed to be deleted are shown in **~~bold strike through~~** and words to be inserted are shown in ***bold italics***.

Table 1 – General Conditions

	Council Condition	Proponent Response
-	Property Description 20 Levey Street & 34-36 Marsh Street, WOLLI CREEK NSW 2205 Lot 20 DP 4464, Lot 21 DP 663384, Lot 22 DP 4464, Lot 23 DP 4464, Lot 24 DP 4464, Lot 31 DP 4464, Lot 1 DP 128345, Lot 34 DP 4464, Lot A DP 364528, Lot B DP 364528, Lot 12 DP 4335, Lot A DP 407254, Lot B DP 407254, Lot 6 DP 6824, <i><u>Lot 1 DP367923</u></i> , Lot 5 DP 16050, Lot 4 DP 6824, <i><u>Lot A DP950893, Lot B DP950893</u></i>	Property description needs to be updated to reflect all lots that are part of the development site.
3	The development is to be carried out generally in accordance with the stamped approved plans and the staging strategy outlined in the Statement of Environmental Effects, and accompanying documentation	We request that the last sentence of this condition be deleted.

	Council Condition	Proponent Response
	submitted in respect to this application. This development consent relates to the eight (8) Stages of the development as outlined on page 18 (table 5) of the Statement of Environmental Effects submitted with the application on 23 January 2013. Further details of the separate stages shall be submitted to and approved by Council with each Construction Certificate for the redevelopment of the site.	This consent approves the proposed staging of the Construction Certificates on site. Submission and approval by Council or an accredited certifier is all that should be required prior to issue of each relevant Construction Certificate.
10.	Excavation, filling of the site (with the exception of the area immediately under the building envelope), or construction of retaining walls are not permitted where shown on the approved plans and authorised by a subsequent construction certificate.	The use of the word 'not' implies that excavation and filling are not permitted even when it is shown on the approved plans. It appears that the use of the word not is an oversight or typographical error. If excavation or filling were not permitted the site could not be developed in its proposed form.
11	Mail boxes must be installed along the street frontage of the property boundary in accordance with Australia Post Guidelines. Prominent house numbers are to be displayed, with a minimum number size of 150 mm in height for each number and letter in the alphabet.	Request to delete the condition. Units rather than houses are proposed. Mailbox locations are also shown on the approved plans inside each building.
13	Parking spaces shall be allocated to residential apartments and non-residential uses within the development in the following manner: a) 289 residential parking spaces. a) 135 hotel parking spaces. b) 60 visitor parking spaces. Visitor parking spaces are to be shared spaces servicing the commercial and retail uses. In this regard, a Shared Parking Register is to be submitted to Council in accordance with the requirements of clause 4.6 of Council's DCP 2011. Details are to be submitted to and approved by Council prior to the release of the Construction Certificate for the first stage of development. The onsite car parking spaces allocated for residential use are not to be used other than by a resident within the respective building. The onsite car parking spaces allocated for the hotel use are not to be used other than by hotel guests, function patrons and staff of the hotel use. The strata subdivision of the site is to include a restriction on user pursuant to section 39 of the Strata Schemes (Freehold Development) Act, 1973 as amended, so burdening all car parking allotments in the strata plan and/or an appropriate documentary restriction pursuant to section 88B of the Conveyancing Act 1919, burdening all car parking part lots in the strata plan. All residential visitor spaces, car wash bays and loading bays shall be labelled as common property on the final strata plan for the site. Note: This parking allocation condition applies to any Strata Certificate issued with respect to a Consent issued in accordance with Section 81 (1)(A) of the Environmental Planning and Assessment Act 1979 or a Complying Development Certificate issued in accordance with Part 6 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.	A Shared Parking Register was not proposed as part of the application and is not considered necessary in this instance. This part of the condition is therefore proposed to be deleted. Should the JRPP decide that this requirement is to remain, then it is requested that the timing be changed to prior to the release of the Stage 3 Construction Certificate as this more appropriately relates to the construction of the basements and on-grade parking for the first Building stage. The Stage 1 CC relates only to preliminary works to the hotel and a new hotel substation only.
18	The nominal width of the road reservation for the future Gertrude Street extension shall be 23m. A revised concept engineering plan for the construction of Gertrude Street shall be submitted with the Construction Certificate seeking approval for the first stage of the scheme.	Request that this condition is deleted as the design and delivery of the road is the responsibility of Council. If this second part of the condition is retained, the applicant is open to submitting a <i>concept</i> design (not detailed design) showing how the road reservation required width can be accommodated in the dedicated land, as long as it is clear that the responsibility and delivery of the road is by Council.

	Council Condition	Proponent Response
21	Monitored CCTV facilities shall be implemented throughout the development. Areas of focus include the basement car park (including entry and exits), main entry areas to the development and garbage/storage areas. Details to be provided prior to the issue of the Construction Certificate for each relevant stage of the scheme.	Request that this condition is deleted. CCTV was not proposed as part of the development and is not considered necessary. This condition is therefore proposed to be deleted.

Table 2 – Development Specific Conditions

	Council Condition	Proponent Response
30	The existing and future owners (Registered Proprietor) of the property will be responsible for the operation and maintenance of the retention system. The registered proprietor will: i) permit stormwater to be retained by the system; ii) keep the system clean and free of silt, rubbish and debris; iii) maintain, renew and repair the whole or parts of the system so that it functions in a safe and efficient manner, and in doing so complete the same within the time and in the manner specified in written notice issued by the Council; iv) carry out the matters referred to in paragraphs (ii) and (iii) at the proprietor's expense; v) not make any alterations to the system or elements thereof without prior consent in writing of the Council; vi) permit the Council or its authorised agents from time to time upon giving reasonable notice (but at any time and without notice in the case of emergency) to enter and inspect the land for compliance with the requirements of this clause; vii) comply with the terms of any written notice issued by the Council in respect to the requirements of this clause within the time stated in the notice.	Request deletion of part (i) as Council have advised that OSD isn't necessary on the site.
34	The rainwater tank shall be routinely de-sludged and all contents from the de-sludging process disposed – solids to the waste disposal and de-sludged liquid to the sewer.	This condition is requested to be deleted. A rainwater tank is not proposed as part of the development nor is it a requirement to meet BASIX commitments for the site.
43	The development shall be insulated to achieve an Acoustical Star Rating of 5 in accordance with the standards prescribed by the Association of Australian Acoustical Consultants (AAAC) compliance with Section F5 of the Building Code of Australia 2012 and should be in accordance with the measures and recommendations identified in the report prepared by Wilkinson Murray, dated August 2012 and received by Council on 23 January 2013. In addition, the walls of those residential units on the ground and levels 1 to 4 which abut an internal car parking area shall achieve an Acoustical Star Rating of 5 achieve a level of sound isolation in order to retain appropriate internal noise and vibration levels within the residential units.	The Acoustic Report prepared by Wilkinson Murray (dated August 2012) noted that the building would be designed to achieve an acoustical outcome consistent with the requirements of the BCA. The design requirements to achieve a 5 star rating are higher than that of the BCA and not considered necessary in this instance nor appropriate to specify a standard higher than the BCA.
44	The development shall have an impact isolation between floors which achieves an Acoustical Star Rating of 5 in accordance with the standards prescribed by the Association of Australian Acoustical Consultants (AAAC) compliance with Section F5 of the Building Code of Australia 2012 and should be in accordance with the report by Wilkinson Murray, dated August 2012 and received by Council on 23 January 2013.	As above.
47	Balustrades shall be constructed from a solid/opaque of clear solid material to a minimum height of 1000mm that satisfies the requirements of the Building Code of Australia 2013. The top of the balustrade shall be a minimum height of 1200mm.	The requirement for a solid/opaque material would significantly compromise the design and amenity outcome that is integral to the future success of the development. The design of the development relies on clear

	Council Condition	Proponent Response
		<p>glazing on balustrades to take advantage of expansive district and local views. If opaque glazing was required it would seriously undermine the design quality of the development and the value of the apartments.</p> <p>The revised wording allows for a design outcome consistent with that proposed and ensures a balustrade design in accordance with relevant BCA standards. The height of the balustrade will be in accordance with the BCA which does not necessarily match the heights in this condition.</p> <p>With respect to Council's real concerns regarding unsightly storage and use of the balconies. The applicant will be ensuring that a by law is placed on the relevant Strata titles. This is not dissimilar to the way this is managed in other residential flat building developments across Sydney.</p>
48	<p>Ceiling heights for all habitable areas shall be a minimum of 2.7 metres as measured vertically from finished floor level to the underside of the ceiling.</p> <p>Ceiling heights for all non-habitable areas shall be a minimum of 2.4 (2.25 metres is allowable in instances where coil units are to be installed in a bulkhead) as measured vertically from finished floor level to the underside of the ceiling.</p>	<p>A ceiling height of 2.4m for non-habitable areas is unachievable in some locations within the building. If fan coil units are to be installed a bulkhead will be required within the apartments which will reduce a portion of the ceiling height to approx. 2.25m, with bulkheads for ventilation to the balconies to a ceiling height of approx. 2.4m. A 2.25m minimum height standard provides in these areas provides an outcome consistent with SEPP 65 and the RFDC.</p>
62	Section 94 Condition Flood Management and Mitigation Works	Request to delete condition. This condition appears to duplicate Condition 61 which includes a very similar numerical number for roads and traffic improvement S94 contributions for each building.
63	Section 94 Traffic Facilities in the Vicinity of Gertrude and Levey Streets.	Request to delete condition. This condition appears to duplicate Condition 61 which includes a very similar numerical number for roads and traffic improvement S94 contributions for each building.
66	<p>All building materials shall be flood resistant, or flood compatible to a height of 500mm above the 4% 0.5% AEP flood, or flow level. All internal electrical switches, power points or similar utilities liable to flood damage shall be set at a minimum of 500mm above the 4% 0.5% AEP flood, or flow level.</p>	<p>Updated to be consistent with other flood conditions in the consent which specify 5% AEP.</p>

Table 3 – Prior to Issue of Occupation Certificate or Commencement of Use

	Council Condition	Proponent Response
145	<p>The vehicular entry points in Levey Street are to be clearly marked and signposted "entry only" (south eastern driveway), and "entry" and "exit" (north western driveway) from the street and "no exit" (south eastern driveway) and "exit" internally.</p> <p>The vehicular entry driveway in Gertrude Street is to be clearly marked and signposted "delivery vehicles only" from the street.</p>	<p>The first part of this condition is proposed to be deleted entirely as it is unclear and confusing. There is only one vehicular entry point off Levey Street which facilitates ingress and egress into the site.</p> <p>This condition is considered unnecessary or is required to be reworded to provide better</p>

	Council Condition	Proponent Response
		clarity.
154	Testing and evaluation of the wall insulation system is to be carried out at post construction stage by a suitably qualified acoustical engineer to show compliance with <u>Section F5 of the Building Code of Australia as Acoustical Star Rating of 5 has been achieved in accordance with the standards prescribed by the Association of Australian Acoustical Consultants (AAAC)</u> —in accordance with the report submitted to Council on 23 January 2013 with the Development Application. A report is to be submitted to the Principal Certifying authority prior to the issue of the Occupation Certificate. The report is to include the walls of the residential units that abut the internal car parking areas on the ground floor and levels 1 to 4 of the development	As per the reasons outlined above for condition 43.
162	A certificate from a Registered Surveyor shall be provided to the Principal Certifying Authority (PCA) certifying that the habitable/commercial floor level is constructed a minimum of 500mm above the 1% 0.5% Annual Exceedance Probability (A.E.P) Flood Level . A copy of the certificate shall be provided to Council where Council is not the Principal Certifying Authority.	This condition has been changed to be consistent with all other flood related conditions within the consent, which specify 0.5% AEP.
177	The owner of the premises shall inform Sydney Water that a Rainwater tank has been installed in accordance with applicable requirements of Sydney Water. The overflow from the rainwater tank shall be directed to the storm water system. A first flush device shall be installed to reduce the amount of dust, bird faeces, leaves and other matter entering the rainwater tank. All plumbing work proposed for the installation and reuse of rainwater shall comply with the NSW Code of Practice: Plumbing and Drainage and be installed in accordance with Sydney Water "Guidelines for rainwater tanks on residential properties".	This condition is requested to be deleted. A rainwater tank is not proposed as part of the development nor is it a BASIX commitment.
179	Concept design of the extension of Gertude Street to Marsh Street should be submitted to RMS and Council for approval. This will allow the depiction of land to be dedicated by the proponent towards the future building of the road.	Request to delete condition. Council is responsible authority for delivering the road design with the applicant only dedicating the land free of cost.
181	The roundabout at the intersection of Gertrude Street and Levey Street should be removed when the road is constructed. All traffic entering and exiting the site over the driveway at the eastern end of the site fronting Levey Street should be left-in and left-out only. All vehicles must enter and exit the subject site in a forward direction. All construction vehicles must be accommodated on site during construction.	The proposed development does not involve the construction of the road extension which is the responsibility of Council and funded by Section 94 contributions. As such the requirement to remove the roundabout is considered unreasonable.
187	Off-street car parking spaces, bicycle facilities and loading areas shall be provided to the satisfaction of Council.	We consider this to be a duplication of Condition 13 which specifies the required spaces and various other conditions which govern the design of parking and loading areas. It is a general RMS advice to the Council in response to the DA being referred to them and is not needed as an additional condition.
189	Prior to lodgement of a construction certificate application, the applicant will provide detailed SCATES traffic modelling to the RTA (for review and comment) for the future operation of the Marsh Street / Gertrude Street intersection in the weekday AM and PM peak hours. The SCATES modelling shall include all intersections along Marsh Street from West Botany Street to Link Road. Such modelling would be based upon the forecast traffic numbers / modelling associated with the Cooks Cove proposal coupled with the additional traffic generated by this development. The layout to be modelled should be based upon the most recent conceptual layout of Marsh Street/Gertrude Street with the intent to ensure that there	This condition is requested to be deleted. Traffic has been assessed in detail as part of the development application and determined to be acceptable. The site has been rezoned and afforded an FSR of 3:1 under the newly adopted LEP and the development does not exceed this. The traffic impact of this FSR would have been considered as part of Council's strategic planning exercise in preparing the LEP. The new road being provided as part of the development is in

	Council Condition	Proponent Response
	is adequate capacity (particularly for turn movements) and to ensure that through traffic along Marsh Street is not significantly affected.	direct response to a Council requirement. It is therefore considered that no further modelling is necessary in this instance.

Table 4 – Development Consent Advice

	Council Condition	Proponent Response
f	The water from the rainwater tank should not be used for drinking, Sydney Water shall be advised of the installation of the rainwater tank.	This condition is requested to be deleted. A rainwater tank is not proposed as part of the development nor is it a BASIX commitment.
g	If the development is not subject to BASIX, a mandatory rainwater tank may be required. Rainwater tank requirements for development not subject to BASIX are specified in Council's DCP 78.	This condition is requested to be deleted. A rainwater tank is not proposed as part of the development as it is not a requirement to achieve BASIX.

3.0 SUMMARY

We hope this submission to the Panel is useful in its consideration of the proposed DA.

In light of the merits of the proposal, we have no hesitation in supporting Council officer's recommendation for the proposed development to be approved, subject to reasonable and relevant conditions. Should you have any queries about this matter, please do not hesitate to contact Ben Craig or Clare Swan on 9956 6962.

Yours faithfully



Benjamin Craig
Principal Planner



Clare Swan
Associate

cc – Rockdale City Council (Attention: Michael Maloof, Senior Development Assessment Planner)