



13 May 2014

Members of the Sydney East Joint Regional Planning Panel  
C/o Angela Kenna  
Panel Secretariat  
23-33 Bridge Street  
SYDNEY NSW 2000

**Via Email: [Angela.Kenna@planning.nsw.gov.au](mailto:Angela.Kenna@planning.nsw.gov.au)**

Dear Panel Members,

**100-102 ELLIOTT STREET, BALMAIN 2013SYE089 – LEICHHARDT – D/2013/406**

This submission has been prepared in support of the above development application in response to Leichhardt Municipal Council's development assessment report and recommended deferred commencement and general conditions of consent.

We have reviewed the report in detail and generally support the conclusions, but provide comments for consideration regarding the following:

**1. Deferred Commencement Consent**

All of the deferred commencement conditions are adequately specific to give certainty of the outcome. However, if the JRPP has any concerns with the range and number of deferred commencement conditions, we are firmly of the view that these conditions could be moved to 'general conditions of consent' to be satisfied prior to the issue of a Construction Certificate.

***It is recommended that the Panel include the deferred commencement conditions as general conditions of consent.***

**2. Conditions 1(a) (b) and (c)**

Please refer to the enclosed letter from Bates Smart Pty Ltd.

***It is recommended that the Panel delete deferred commencement conditions 1(a), (b) and (c).***

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### 3. Condition 2

Please refer to the enclosed letter from Colston Budd Hunt and Kafes Pty Ltd.

***It is recommended that the Panel delete deferred commencement condition 2.***

### 4. Condition 3(b)

RGH Consulting Group prepared a Foreshore Risk Management Report (September 2013) and an Integrated Retaining Wall Structural and Geotechnical Engineering Report (September 2013) in support of the Development Application. It also prepared a Foreshore Risk Management Report Addendum (January 2014) in response to an additional information request from Council.

The Addendum Report stated the following with regard to the sea wall:

*"Based on inspection, engineering assessment and considering the age, function and performance of the wall we are of the view that the existing structure is sound and RGH has no reason to question the structural adequacy of the wall based on its current state. RGH also considers that the wall does not require any works or maintenance for any structural reasons at present."*

A Rehabilitation Plan setting out a program for rehabilitation repairs is considered unnecessary based on the above, and in terms of it including a program of inspection requirements, the Australian Standards include performance monitoring provisions for this type of structure that could be adopted by the landowner to ensure regular inspections (annually, or after events such as floods or earthquakes) are undertaken to detect any durability or integrity issues.

Furthermore, it is unreasonable to burden the existing and future owners of the development with repairs/works on land it will not own or have control over the use of once it is dedicated.

***It is recommended that the Panel delete deferred commencement condition 3(b).***

### 5. Condition 38(a)

The requirement for a turning circle at the north western end of Elliott Street was considered by the Land and Environment Court. The judgement at Paragraph 55 stated:

55 In relation to the need to construct a turning circle in Elliott Street, we do not consider that the whole of the demand for this facility is a result of the development but that it is likely vehicles associated with the development will need to turn around in that location. Therefore, the costs of the facility should be shared, as suggested by Mr Coady, provided the Council can fund its share of the cost.



Council identifies in its report that land dedication to accommodate the turning circle is likely to be required. The value of the land dedicated would likely cover Roche Group's share of the cost of the facility. Furthermore, conditions 38(b) – 38(i) include significant roadworks and stormwater drainage works that are required external to the site, in addition to payment of S94 monetary contributions. We therefore consider that the cost of design and construction of the turning circle should be borne by Council.

***It is recommended that the Panel delete condition 38(a).***

## **6. Condition 49**

As noted in Section 5 of Council's development assessment report, under the NSW Government's 16 September 2010 direction, contributions for residential development are limited to \$20,000 per dwelling. Should the development be approved as recommended by Council, the total maximum monetary contribution payable would be \$2,080,000 minus the value of the land dedication.

Condition 49 includes a requirement to pay \$1,384,110 in s94 contributions. This amount was determined following the offset of the public land dedication which was valued at \$1,057,528 (refer to Section 5 of Council's assessment report). Combined, Council has applied a total of \$2,441,638 in s94 contributions, which is above the amount that is permitted to be levied under the State Government direction.

Applying the maximum rate of s94 contributions that can be levied by a consent authority, the correct s94 contributions amount should be calculated as follows:

- 104 dwellings x \$20,000 = \$2,080,000
- Minus the value of the land dedication (\$1,057,528) = **\$1 022,472.**

*Note: Council has considered the provision of credits for the existing commercial development on the site and determined that there is a neutral outcome with respect to the existing and proposed commercial components. Therefore the contributions calculated are based solely on the residential component of the development.*

***It is recommended that the Panel amend condition 49 to require a total monetary contribution of \$1 022,472 be made to Council.***

## **7. Condition 51**

Tree 68 is missing from the schedule. This tree is within the Basement footprint and has been recommended for removal. Council has not raised any issue with its removal within the report so we assume that this is an erroneous omission.

***It is recommended that the Panel amend condition 51 to include reference to tree 68 in the Schedule for trees approved to be removed.***





#### 8. Condition 114

Council has restricted the minimum length of stay for the serviced apartments to no less than 4 consecutive nights. This is considered to be overly restrictive and is likely to be commercially unviable.

The definition for serviced apartments in Leichhardt LEP 2000 (and Leichhardt LEP 2013) did not specify a minimum or maximum stay however a Motel is defined within LEP 2000 as being overnight accommodation. In order for the serviced apartments to not conflict with the Motel definition, we consider a 2 consecutive night minimum stay for the serviced apartments to be reasonable and likely to be significantly more viable given that this would enable provision of the apartments for the weekend market as well as weekday business/tourist market.

Any potential amenity concerns with a 2 night minimum stay can be addressed within the Plan of Management required to be submitted to Council (Condition 1A).

***It is recommended that the Panel amend condition 114 to reduce the minimum length of stay within the serviced apartments to 2 consecutive nights.***

We appreciate the Panels consideration of this submission and look forward to discussing it further at the JRPP meeting on 15 May 2014.

Kind regards,

Wes van der Gardner  
General Manager - Development

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12 May 2014

Wes van der Gardner  
General Manager Development  
Roche Group Pty Limited  
365 New South Head Road  
Double Bay NSW 2028

**BATESSMART™**

**100-102 Elliott Street Balmain – JRPP Submission**

Dear Wes,

Taking into consideration the issues raised by the previous design proposals, the new design proposal has sought to directly address the design issues raised by the JRPP and Land and Environment Court.

We have proposed three distinct building types with forms which respond to the differing character of the two street frontages and the harbour foreshore. Key site linkages provide views through, into and out of the site and provide public access to the foreshore and surrounding streets. A central landscaped courtyard complements the landscaped boundary edges and gaps between buildings to maintain the vegetated character of the site and its surroundings.

**JRPP Assessment of previous application**

The previous application was refused by the JRPP for four principal reasons:

- a) its bulky appearance from the water;
- b) the relationship of the proposal to the water;
- c) the inadequate transition from the small-scale environment of Broderick and Elliott Streets; and
- d) the view impact on 13 Broderick Street, which, in the opinion of the Panel, is catastrophic.

To address issues (a) and (b), the Iron Cove frontage has been designed to comprise four discrete buildings separated by landscaped gaps of between six and nine metres. This serves to both reduce perceived bulk when viewed from the water and provide views of the water from the internal open spaces and the public domain behind. The 9m wide gap between buildings C3 and C4 has been designed as a publicly accessible through-site-link, and is axially aligned with Lockhart Street to provide water views when approaching the site from the east.

To address issue (c), the Broderick Street frontage has been designed with a terrace house typology to provide an appropriate transition to the single dwellings on the south side of Broderick Street. The height of the Elliott Street buildings present as three storey frontage with a set-back fourth floor, which is a full storey lower than proposed in the previous application.

To address issue (d), the heights of all buildings have been generally reduced, and a break between buildings A1 and A2 has been located directly opposite 13 Broderick Street. A comprehensive view analysis has been provided which demonstrates that the new massing provides significantly less view impact than proposed in the previous application.

### **Land and Environment Court judgment**

The appeal to the Land and Environment Court was dismissed for three principal reasons:

- 1) traffic and parking; inadequate commercial parking
- 2) arboriculture and landscape; removal of significant trees, including plane trees located near foreshore
- 3) planning and urban design; scheme too high and bulky, setback not accommodating landscaping, bulk not addressing context

To address issue (1), the number of parking spaces has been increased to be at the upper end of the range acceptable to Council.

To address issue (2), the building massing has been designed to retain the majority of significant trees and provide additional landscaped areas between buildings and front setbacks. The new proposal will retain the group of plane trees T46-T51 in front of building C3 and all but one of the trees of category 'A' retention value. Replacement of the compromised Fig Tree T59 is proposed with an established specimen. A key feature of the proposal is the central landscaped courtyard connected by a permeable network of landscaped pedestrian links which provide public access throughout the site and to the foreshore.

To address issue (3), the new scheme proposes buildings of reduced height which are broken down into smaller elements which provide a vertical emphasis and varied setbacks.

The Iron Cove frontage has been designed with four buildings each of which are articulated into a series of 7.5m wide forms that step in plan and section. The width of the forms has been limited to ensure a vertical proportion presents to the foreshore. The buildings have a varied setback from the foreshore building line and are separated by landscaped gaps of six to nine metres to reduce the bulk and scale presented to the foreshore. The visibility of the buildings facing Iron Cove will be filtered through the abundant landscaping. All significant existing trees have been retained and

additional landscaping and pathways are proposed to ensure the landscape quality of the site is maintained when viewed from the water.

Elliott Street buildings are configured into repetitive modules that mimic the arrangement of the tall row terrace houses found elsewhere in the neighbourhood. A 7.5m wide module contains 1 storey of commercial and 2 storeys of residential apartments. Recessed behind the 3 storey street wall is a set-back upper residential level.

To provide an appropriate transition to the single dwellings to the south of the site, the

Broderick Street frontage has been designed with a row of two storey terrace houses which step down with the topography. Under each terrace house, a single level commercial unit is positioned below street level and accessed from the rear east-west link. This arrangement maintains the residential quality of Broderick Street by providing direct stair access to the upper level residences and ensures the building heights are kept to a minimum to maintain views across the site from neighbouring properties.

### **Council Assessment Report**

Throughout the report Council makes several references to the recommendation that the fifth storey of Buildings C1 and C2 be deleted. We submit that a mix of 3, 4 and 5 storeys is an appropriate response to the waterfront context. The height and massing of the proposed development has been developed in accordance with the massing and scale of waterfront buildings in the local area and more specifically the character of the Birchgrove/Elkington Park distinctive neighbourhood.

### **Context**

Council's assessment of the context is limited to the properties immediately to the north and the south of the site, namely the Department of Housing residential flat buildings and No. 2 Broderick Street. We submit that an assessment of the proposal when viewed from the water should be made in the broader context of the Birchgrove/Elkington Park distinctive neighbourhood.

Page A263 of Leichhardt DCP2000 describes the character of the distinctive neighbourhood as follows: "Many waterfront residential developments follow the slope of the land down to the water. This results in a number of residences with a single or double storey street frontage, having 4 or 5 levels visible from the water."

Paragraphs 112-116 of the LEC judgment relate to the building envelope of the foreshore buildings. Paragraphs 112 and 113 of the LEC judgment establish that surrounding development in the Distinctive Neighbourhood is "four to five levels that generally step down with the topography...is vertical

in proportion, with greater height than width [and] built form is generally separated and softened by landscaping”.

We submit that the 3-5 storey height of the waterfront buildings is consistent with the character of the Distinctive Neighbourhood and therefore the local context.

**Visibility of storeys**

The proposed RLs of the eaves of buildings C1 and C2 are the same as building C3 and the northern portion of C4, which have been assessed by Council as being acceptable. Buildings C1 and C2 are able to incorporate an additional storey within the same overall height as they are sited in a localised depression. While the proposed vegetation is not relied upon to screen the buildings when viewed from the foreshore, it is inevitable, given the retained significant trees and vegetation, that the lower levels of the buildings will be screened or concealed. As evident in the submitted photomontages, the actual number of storeys cannot be perceived when viewed from the water.

We recognize that buildings C1 and C2 are sited closer to the foreshore building line and have therefore proposed that the upper level to those buildings be recessed.

**View Loss**

As evident in the detailed view analysis submitted to Council, the height of buildings C1 and C2 do not contribute to loss of significant views from surrounding properties.

Yours sincerely  
Bates Smart Pty Ltd

A handwritten signature in black ink, appearing to read 'Guy Lake', with a stylized, sweeping underline.

Guy Lake  
Director

CC: Peter Mangels, RPS  
Gabrielle Morrish, GMU



# Colston Budd Hunt & Kafes Pty Ltd

as Trustee for C & B Unit Trust  
ABN 27 623 918 759

Our Ref: TR/9253/jj

Transport Planning

Town Planning

Retail Studies

13 May, 2014

Roche Group Pty Limited  
PO Box 325  
DOUBLE BAY NSW 1360

**Attention: Wes van der Gardner**

**Email: [wes@rochegroup.com.au](mailto:wes@rochegroup.com.au)**

Dear Sir,

## **RE: 100-102 ELLIOTTT STREET, BALMAIN (DA 2013/406)**

1. As requested, we have reviewed the traffic matters raised in the JRPP report, noting the Council recommendation for a deferred commencement condition to allow for amended plans to be submitted to incorporate the following changes with respect to the design of the car park:
  - widen the driveway on Elliott Street from 8.5 metres to 12 metres;
  - widen the circulation roadway between Elliott Street and the loading dock;
  - reconfigure the lower ground floor car park area with the relocation of car parking and the car park entry ramp.
2. These changes have been suggested by Council to improve access and circulation within the car park and to address suggested non-compliance with Australian Standards. We note that similar issues were identified by Council with the original DA plans. In late 2013, the applicant engaged CBHK to review the issues raised by Council and to advise if any modifications to the car park design were required. Our review recommended a number of changes to the design of the car park (as set out in our letter dated to 5 February 2014 – copy attached) including widening the driveway from 7 metres to 8.5 metres, relocating parking spaces, and modifications to improve internal circulation. With these changes, the plans that are now the subject of the JRPP report were considered appropriate and generally complied with AS2890.1-2004 and AS2890.2-2002 (sufficient that only minor changes may be required during the

## Colston Budd Hunt & Kafes Pty Ltd

preparation of detailed design plans in order to satisfy a condition requiring compliance with AS2890.1-2004 and AS2890.2-2002).

3. With regard to the three design changes to the car park suggested by Council we offer the following comments:

### *Elliott Street Driveway*

- The basement car park provides 251 parking spaces, the majority of which (some 80%) are Class 1 spaces (commercial/residential). For Class 1 parking areas of less than 300 spaces and access to a local road (such as Elliott Street), Table 3.1 in AS2890.1-2004 suggests a Type 2 driveway (combined entry/exit driveway 6-9 metres wide). The driveway has been widened to some 8.5 metres at the property boundary with a splay on the southern side of driveway. Furthermore as Elliott Street is a dead end street northwest of the driveway, access to/from the site will be left in/right out. Hence provision of single entry and exit lanes (as provided in a Type 2 driveway) will provide satisfactory access to/from the site

### *Access Ramp between Elliott Street and Loading Dock*

- With respect to the ramp between the driveway and loading dock allowing unimpeded access by opposing MRV's, this is not required as the number of deliveries by MRV's per day would be low for a development of this size (one or two per day). In the rare circumstances that an MRV is exiting the site when an MRV wishes to enter the site, the entering truck would wait at the top of the ramp (within the site) while the truck exits the site. If required, additional measures could be implemented such as a mirror on the outside bend of the ramp and a warning sign at the entry, activated and advising entering traffic that a truck is exiting the dock.

### *Access between the Loading Dock and Car Park Entry Ramp*

- To improve circulation along the access between the loading dock and car park entry ramp, some parking spaces were deleted (northern side of aisle), visitor and disabled spaces reallocated, and the car park entry ramp widened (with a splay). Given the relatively low traffic flows along the access, provision of appropriate sight lines, the above modifications, and the allocation of visitor spaces (that is low turnover spaces that would be mainly accessed outside of peak periods), the access between the loading dock and entry ramp is considered to satisfy the objectives of AS2890.1-2004. We

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note that the design of the car park is not unusual and is comparable to many large car parks which have much higher traffic flows.

4. In summary it is our view that the modifications to the car park suggested by Council are not warranted and that the deferred commencement condition is replaced by an operational condition requiring the car park and loading dock be designed to comply with the requirements of AS2890.1-2004 and AS2890.2-2002.
5. We trust the above provides the information you require. Finally, if you should have any queries, please do not hesitate to contact us.

Yours faithfully,

COLSTON BUDD HUNT & KAFES PTY LTD

A handwritten signature in black ink, appearing to read 'T. Rogers', with a stylized flourish at the end.

T. Rogers  
Director