

Joint Regional Planning Panel

(Sydney East Region)

15 April 2014

JRPP Number:	2013SYE096
DA Number:	DA-2013/60/A
Local Government Area:	ROCKDALE
Proposed Development:	Mercure Hotel Site - Modification to mixed use development including conversion of Level 1 to residential units, increasing number of units to 328, increase in height of buildings A and B by 230 mm and 400 mm respectively, increase in parking spaces to 494, and associated facade amendments.
Street Address:	20 Levey Street & 34-36 Marsh Street, WOLLI CREEK NSW 2205
Applicant/Owner:	Rockdale Hotel Pty Ltd
Number of Submissions:	One submission (1)
Recommendation:	Partial Approval
Report by:	Fiona Prodromou – Senior Development Assessment Planner

Precis

On 8th July 2010, the JRPP approved a Staged Development (Concept Plan) to upgrade and extend the existing hotel and erect a new part 7 and part 16 storey residential development with a private share way, landscaping and associated car parking.

On 17th April 2013, a Staged Development proposal (DA-2013/60) for the demolition of an existing dwelling house, tennis court and pool of hotel and construction of a mixed use development containing 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 was approved by the JRPP.

DA-2013/60 was approved with a maximum FSR of 2.834:1 as per the GFA Validation prepared by Norton Survey Partners and a variation to the 46m height control, up to a maximum of 48.85m for Building C.

The proposed modifications relate to an increase in overall number of residential units by reducing commercial floor space within the development and reconfiguring approved unit layouts. Additional car parking is proposed, as are minor increases to building heights (Buildings A & B), landscape modifications & unit layout revisions.

The proposal further seeks to modify and delete certain conditions from the original consent.

The proposed modifications have been referred to the Design Review Panel (DRP) under the provisions of SEPP 65. The DRP do not support the unit revisions and reduction in commercial floor space.

The main concern raised is in regards to unit revisions and the resulting configuration of in board bedrooms with narrow window slots, which will provide minimal amenity. The proposal is not considered to improve residential amenity within the development and thus unit revisions and additions are not supported. It is further noted that no additional communal open space is proposed as part of the modification. The original development was approved with a shortfall in communal open space provision; a further deficiency is not supported.

Although the proposed modification provides additional car parking within the development, the overall available number of resident and visitor spaces is not compliant with the rates as adopted within Councils DCP 2011.

The proposal as modified does not comply with the requirements of Rockdale DCP 2011 in relation to unit size, solar access to dwellings & provision of commercial and communal open space within the development. The proposal is not supported by the DRP. However, the request by the applicant for modifications to some conditions is supported. These issues have been discussed within the report.

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

Officer Recommendation

That the S96(2) application to modify development consent DA-2013/60/A at 20 Levey Street & 34-36 Marsh Street, WOLLI CREEK NSW be APPROVED subject to the modifications below.

A. Modifications to Notice of Approval dated 17 April 2013 are as follows:

Amend the following conditions to read;

2. Architectural Plans numbered DA15.1, DA17, DA18, DA23.1, Revision P7, drawn by Spence Pearson Architects for the Winten Property Group, dated 13 February 2013 and received by Council on 22 March 2013;

Architectural Plans numbered DA02, Revision P7, drawn by Spence Pearson Architects for the Winten Property Group, dated 8 January 2013 and received by Council on 22 March 2013;

Architectural Plans titled Cover Sheet, Revision P7, drawn by Spence Pearson Architects for the Winten Property Group, dated 20 December 2012 and received by Council on 22 March 2013;

Architectural Plans numbered DA19, DA20, DA21, DA22, DA23, DA26, DA27, Revision P7, drawn by Spence Pearson Architects for the Winten Property Group, dated 20 December 2012 and received by Council on 23 January 2013;

Architectural Plans numbered DA24.0, DA24.1, DA25, Revision P7, titled Adaptable

Unit Plans, drawn by Spence Pearson Architects for the Winten Property Group, dated 8 January 2013 and received by Council on 23 January 2013;

Architectural Plans numbered DA00, DA01, DA03 to DA09 inclusive, DA10.0, DA10.1, DA11 to DA15, DA16, Revision P7, drawn by Spence Pearson Architects for the Winten Property Group, dated 8 January 2013 and received by Council on 23 January 2013;

Architectural Plans numbered DA29, Revision P7, titled Materials and Finishes, drawn by Spence Pearson Architects for the Winten Property Group, dated 20 December 2012 and received by Council on 23 January 2013;

Drainage plans numbered 3778 – DA – 001, Issue C, Sheets 1 of 5, drawn by EWWF, dated 03/12/14 and received by Council on 13/02/2014.

Drainage plans numbered 3778 – DA – 001, Issue B, Sheets 2 to 5, drawn by EWWF, dated 5 December 2012 and received by Council on 23 January 2013.

13. Parking spaces shall be allocated to residential apartments and non-residential uses within the development in the following manner:
- 305 residential parking spaces.
 - 135 hotel parking spaces.
 - 54 visitor / commercial 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*.

36. The overall development must not exceed a floor space ratio (FSR) of 3:1 calculated in accordance with the Rockdale Local Environmental Plan 2011. For the purpose of the calculation of FSR, the total floor space area of the approved development is 2.84:1.

Prior to the Construction Certificate being issued for stages 4, 5 and 7, a written verification must be provided to Council prepared by a qualified surveyor confirming

that the building in each respective stage has a maximum gross floor area of 6,468m² (Building A), 10904m² (Building B) and 9655m² (Building C), respectively.

46. Ceiling heights for all habitable and non-habitable areas shall be measured vertically from finished floor level to the underside of the ceiling and shall be designed to a height that is in accordance with the provisions of the Residential Flat Design Code.
49. The design of stormwater drainage facilities shall be undertaken in accordance with Council technical specifications for the design of stormwater management facilities, and the principles of Water Sensitive Urban Design (WSUD), except that the stormwater pollution targets for development and redevelopment is adjusted to suite the site constraints and shall be within 10% tolerance of Council's target.
51. The following conditions apply to the design and provision of stormwater drainage.
 - All pipelines within the internal road network shall have a minimum internal diameter of 150mm, and shall be RCP or FRC or PVC sewer grade.
 - Detailed soil and water management plans shall be developed and implemented in accordance with the NSW Department of Housing "Managing Urban Stormwater, Soils and Construction". The design shall include the preparation of an inspection and maintenance programme for soil and water management controls.
 - Soil and water management controls shall be installed and maintained in accordance with the inspection and maintenance programme in the detailed soil and water management plans.
61. Detailed Landscape plans are to be prepared by a qualified Landscape Architect and shall be submitted to Council for approval prior to the issue of the Construction Certificate for the relevant stage of the development. The plan shall be at a scale of 1:100 or 1:200 and comply with the DCP and Rockdale Technical Specification Landscape and all other relevant conditions of this Consent.
92. The relevant stages of development on the site that are the subject of construction or any significant improvement works shall be secured by a 1800mm (minimum) high temporary fence for the duration of the work. Gates shall be provided at the opening points.
130. An Occupation Certificate shall be obtained for Buildings A, B and C (in stages 4, 5 and 7 respectively) in relation to the approved works prior to any use or occupation of the respective building or part thereof.
145. A minimum total of 494 off-street car spaces shall be provided for the overall development and shall be sealed and line marked to Council's satisfaction. The pavement of all car parking spaces, manoeuvring areas and internal driveways shall comply with Australian Standard AS3727 – Guide to Residential Pavements.

Insertion of conditions as follows;

- 26A. The development shall comprise a maximum of 316 dwellings, being 130 x studio / 1 bedroom, 158 x 2 bedroom and 28 x 3 bedroom.
- 26B. Prior to the issue of any Strata Certificate for the development, Rockdale City Council is to approve the parking allocation upon the subject site. Detailed plans and information are to be submitted to Council depicting parking on site and its intended allocation.
- 26C. The maximum height of buildings on site shall be as follows;

Building A – 42.23RL

Building B – 47.4RL

Building C – 50.85RL

Reasons for additional conditions:

- to restrict the height and number of dwellings on site and ensure the appropriate allocation of car parking within the development.

Report Background

PROPOSAL

The proposal is a Section 96(2) to the previously approved Integrated Development at 20 Levey Street & 34-36 Marsh Street, Wolli Creek, known as the Mercure Hotel Site.

The current proposal seeks to amend the originally approved scheme as follows;

1. Increase the number of apartments from 316 to 328, being 12 additional units, as a result of deleting level 1 commercial space within Building A & reconfiguration of unit layouts within Building B, as follows:
 - Deletion of Level 1 commercial floor space (360m²) and conversion into 5 new residential units within Building A, as follows;

Unit	Bedroom	Area
A104	1	55
A105	1	62
A106	1	80
A107	1	80
A108	2	70

- Reconfiguration of approved units within the development (resulting in 7 additional units) and modification to other units, as follows;

Approved Unit	Bedroom / Area Approved	Proposed Units	Bedroom / Area Proposed	Orientation
B001	3 (125sq/m)	B001 B101	2 (71sq/m) 2 (71sq/m)	NW NW
B002	3 (125sq/m)	B002 B102	2 (70sq/m) 2 (70sq/m)	NW NW
B003	3 (125sq/m)	B003 B103	2 (68sq/m) 2 (74sq/m)	NW NW
B004	2 (106sq/m)	B004 B106	1 (53sq/m) 1 (53sq/m)	NE NE
B005	2 (106sq/m)	B005 B105	1 (53sq/m) 1 (53sq/m)	NE NE
B206	2 (96sq/m)	B206 B207	1 (53sq/m) 1 (52sq/m)	NE NE
B306	2 (96sq/m)	B306 B307	1 (52sq/m) 1 (52sq/m)	NE NE
B507	1 (56sq/m)	B507	2 (70sq/m)	SW
B508	Studio (45sq/m)	B508	1 (50sq/m)	NW

B509	3 (100sq/m)	B509	2 (94sq/m)	NW
B608	1 (58sq/m)	B608	2 (70sq/m)	SW
B609	1 (57sq/m)	B609	1 (50sq/m)	NW
A607-A907	Studio (37sq/m)	A607-A907	Studio (40sq/m)	South
A606-A906	Studio (38sq/m)	A606-A906	Studio (40sq/m)	South

2. Increase to the number of car spaces from 484 to 494. Resulting in an increase in residential parking from 289 to 305 and a reduction in visitor spaces from 60 to 54.
3. Modification to ceiling heights in buildings A and B which result in an increase to the overall building height for buildings A and B by 230mm & 400mm respectively.
4. Bedrooms at ground level of Building B, extended further forward to Levey Street boundary hence comprising a front setback of 1.7m to Levey Street at ground level.
5. Removal of areas of planting within the development at ground level.
6. Modification of conditions 13/36/42/43/46/49/51/59/65/130/149
7. Deletion of conditions 30/33/172/150

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 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 Kogarah golf course.

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.

To the west, the subject site fronts Levey Street and is opposite tennis courts in Cahill Park.

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 96 – Modifications of consents

Section 96(2) states:

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and

Comment: The proposal involves a range of modifications including changes to the approved residential unit layouts & mix, increase in overall and floor to floor height, façade and landscape changes and modification to conditions of approval.

The proposal as modified is substantially the same as the development for which consent was originally granted.

(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and

Comment: The original development consent involved a Permit to temporarily pump out groundwater from the site. The proposal as modified was referred to the Office of Water and general terms of approval (GTA) were granted on 15th January 2014. The original consent has been conditioned appropriately with general terms of approval as required by the Office of Water.

(c) it has notified the application in accordance with:

- (i) the regulations, if the regulations so require, or
- (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

Comment: The proposal has been notified in accordance with Council's Development Control Plan 2011 and one (1) submission was received.

(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

Comment: The issues raised in the submission have been considered in the assessment of this application. Refer to the assessment under S79C(1) below.

Section 96(3) states:

In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application. The relevant matters under S79C(1) as listed below.

Section 79C (1) Matters for Consideration - General

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

State Environmental Planning Policy Building Sustainability Index (BASIX)

The applicant has submitted a BASIX certificate, 440470M_03 for the proposed development. The certificate states the following commitments result in the reduction in energy and water consumption shown below.

Reduction in Energy Consumption	20%
Reduction in Water Consumption	40%
Thermal Comfort	Pass

The proposal as amended satisfies the requirements of the SEPP in this regard.

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

The original application was accompanied by an Environmental Site Screening prepared by Environmental Investigation Services (EIS) Pty Ltd dated December 2009 reference number E17427Krpt3. An assessment of the original application concluded that the site was suitable for the proposed use.

On the basis of the above, the JRPP 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 development has been identified within Schedule 3 of SEPP (Infrastructure) 2007 as it will contain more than 75 dwellings. The original development application was referred to RMS and the original development consent was conditioned accordingly.

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

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

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

The proposal has been referred to the Design Review Panel on 6th November 2013. The Panel advised they were not supportive of the proposal in its current form.

In considering the 10 design quality principles in the assessment of the proposal, the following design principles were deemed relevant to the proposal as amended:

Principle 4 - Density

It is understood that the density generally complies, however the proportion of commercial space is far below Council's requirement of 10% and this proposal further reduces the approved 2% proportion of commercial space. The Panel does not support this as it is in a location which is generally dramatically increasing in population and close to key employment/transport infrastructure. It is not convinced that there would not be a market for this small amount of commercial space given the location and large population in the area.

Principle 7 - Amenity

The Panel does not support the change from commercial to residential at first floor level in Block A. The location is satisfactory for commercial use. It offers poor amenity for residential because of orientation and noise from driveway and car park entry. If the commercial is to change to residential, the floor plate needs to be reduced in depth and the units with internal bedrooms should be redesigned.

Units revisions are not an improvement on the approved unit plans and are not supported. The inboard bedrooms with narrow slots and windows have poor amenity and little daylight access.

Principle 9 - Social Dimensions

Although no changes are proposed in the current application to the approved rooftop common spaces, it is recommended that the design should be developed to include some enclosed spaces equipped with basic facilities - sink, urn etc and substantial measures taken to deal with wind impacts on the exposed terrace areas.

c. The Residential Flat Building Code.

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

The proposed new dwellings as part of this S96 have been assessed against the Residential Flat Building Code.

<i>Development standard</i>	<i>YES/NO</i>	<i>Compliance</i>
Apartment building depth 10-18m, with wider buildings need to demonstrate satisfactory daylight and natural ventilation	-	Depth of buildings as approved.
Single-aspect apartments should be limited in depth to 8metres from a window	No	9.4m depth A106/A107 for a minor portion of the unit, otherwise 8.5m for main areas of units
The back of a kitchen should be no more than 8metres from a window	Yes	6.4m to a window within new apartments A104 – A108
Provide primary balconies to all apartments with minimum depth of 2 metres	Yes	2m depth balconies provided
The ground floor retail and commercial spaces and first floor spaces (regardless of use) should have a clear ceiling height of 3.3 m. <i>(Approved as follows: (Building A) Ground = 3.6m (Building A) First = 3.3m (Building B) Ground = 3m (Building B) First = 3m)</i>	Partial	(Building A) Ground = 3.6m <i>(as approved)</i> (Building A) First = 3.1m (Building B) Ground = 3m <i>(as approved)</i> (Building B) First = 3.04m
Habitable rooms to be a minimum 2.7metres ceiling height	No	Seeking to provide 2.4m floor to ceiling height in kitchens. This is satisfactory given compliance with Building Code of Australia.

Accessible storage to apartments: One bed = 6m ³ Two bed = 8m ³ Three bed = 10m ³ Minimum 50% in apartment	Yes	Storage within units and directly adjoining as small storeroom off corridor
Living rooms and private open space for at least 70% of apartment receive a minimum of 3 hours sunlight between 9am and 3pm in mid-winter. In dense urban areas a minimum of two hours may be acceptable	No	68% (104 of 328) dwellings do not receive sufficient solar access in midwinter Of the new dwellings proposed in lieu of first floor commercial space this equates to 4 of 5 new dwellings not receiving sufficient solar access in midwinter (A105/A106/A107/A108)
Limit single-aspect apartments with southerly aspect to 10% <i>45 of 316 as approved (14.25%)</i>	No	48 of 328 (14.63%) as proposed
60% of residential units should be naturally cross ventilated.	Yes	Satisfactory
25% of kitchen of development should have natural ventilation	Yes	Satisfactory
Minimum 20 percent of dwellings in the development have barrier free access.	Yes	Satisfactory

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 as modified 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 provisions of this clause is 46m. The proposed development was approved with the following heights;

- Building A = 42RL
- Building B = 47RL
- Building C = 50.85RL (2.85m over the permissible height).

The proposed development seeks to further increase the height of Buildings A & B, 0.23m and 0.4m respectively, whilst Building C is to be retained at the approved height. The proposed heights for buildings A & B are:

- Building A = 42.23RL
- Building B = 47.4RL

The proposal thus results in an overall height of 40.23m for Building A and 45.4m for Building B. The proposal as amended complies with the height requirement.

Clause 4.4 – Floor Space Ratio (FSR)

A maximum FSR of 3:1 is permitted on the site. The original development was approved with an FSR of 2.834:1 (40 870sq/m GFA) per the original GFA Validation prepared by Norton Survey Partners.

The proposed development as modified was accompanied by a GFA report prepared by Norton Survey Partners, dated 11 February 2014, which confirms the FSR of the development is now 2.80:1 (40 817sq/m). This represents a reduction in GFA across the site of 53sq/m.

The proposal complies with the FSR requirement for the site.

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

The site is subject to land dedications for the extension of Gertrude Street by Council and the F6 Corridor by the RMS. The original consent has been conditioned accordingly to ensure these dedications are provided for public purposes.

Clause 6.1 – Acid Sulfate Soils

The site is within an area classified as Classes 3 and 5 in the acid sulphate soils map. The original application was accompanied by an Acid Sulphate Soils Management Plan. The recommendations of the Management Strategy were included as part of the original conditions of consent. The proposal as amended is therefore consistent with the objectives and requirements of clause 6.1 of the RLEP 2011.

Clause 6.2 – Earthworks

The proposal as modified proposes minor additional basement excavation adjoining the north eastern and eastern sides of the Mercure Hotel. Additional excavation is proposed in order to accommodate additional storage areas and to allow the reconfiguration of the bicycle parking and fan room within the basement. Accordingly, the proposal is 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. The original DA consent has been conditioned accordingly to ensure aircraft noise impacts are minimised within the development.

Clause 6.4 – Airspace operations

The site is affected by the 15.24m building height Civil Aviation regulation. The original proposal was referred to Sydney Airport Corporation Ltd (SACL) for comment with Sydney Airports approving a maximum height up to RL 50.85 AHD.

Given the proposed modifications do not seek to exceed this height, as discussed under Clause 4.3 above; the proposal did not require further consideration by SACL. The proposed modification is acceptable in this regard.

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 development was approved with a ground floor level of 2.85AHD which complies with

this requirement and is not proposed to be modified as part of this application. The proposal is satisfactory in regards to flooding.

Clause 6.7 – Stormwater

Councils Engineer considered revised stormwater plans and information and advised that the proposal is consistent with the objectives and requirements of this clause.

Clause 6.12 – Essential Services

Services are generally available on the site. The original development consent was conditioned accordingly.

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)

Clause	Requirement	DCP	Proposed	Complies
General principles for development				
4.2	Streetscape and site context	Refer to Part 7.1 – Wolli Creek	Bedrooms to ground level unit B001/B002/B003 protrude a further 2.1m forward of original approved ground floor resulting in a front setback at ground level to Levey St of 1.7m	<p>No – Bedrooms to these dwellings should be in alignment with the predominant ground floor building line for Buildings A & B fronting Levey Street.</p> <p>A 1.7m setback to Levey Street at ground floor in this location is inappropriate, particularly given the nature of the rooms and resultant inconsistent building</p>

				alignment at ground floor level.
4.3	Landscape Planning & Design	<p>Comply with tech spec-landscaping & Public domain plan.</p> <p>Landscaped area of 10% required (as defined in RLEP 2011)</p> <p>POS: As per RFDC (min. depth – 2m)</p> <p>Communal area of 5sq.m. per unit = 1640sq.m req. – With good amenity for 328 units</p>	<p>As approved</p> <p>9.6% landscaped area</p> <p>2m</p> <p>Communal areas as originally approved with a total of 1074sq/m</p>	<p>-</p> <p>No – minor variation deemed satisfactory</p> <p>Yes</p> <p>No – further deficiency in provision of COS is not supported.</p>
4.4	Sustainable building design	<p>Energy efficiency</p> <p>Solar access – 3h solar access to 70% units in development and adjoining properties in mid winter</p> <p>Ceiling height ground and first floor 3.3m (Approved as follows: (Building A) Ground = 3.6m (Building A) First = 3.3m (Building B) Ground = 3m (Building B) First = 3m)</p> <p>Cross flow</p>	<p>Revised BASIX submitted</p> <p>68% units within development receive in excess of 3hours solar access in midwinter</p> <p>4 of 5 newly proposed dwellings (A105/A106/A107/A108) do not receive 3hours solar access in midwinter.</p> <p>(Building A) Ground = 3.6m (as approved) (Building A) First = 3.1m</p> <p>(Building B) Ground = 3m (as approved) (Building B) First = 3.04m</p> <p>Satisfactory</p>	<p>Yes</p> <p>No</p> <p>Yes</p> <p>No – 0.2m minor reduction is satisfactory</p> <p>No – As approved No – 0.4m increase to approved – satisfactory.</p> <p>Yes</p>

		ventilation to be maximised.		
		Visual Privacy	Satisfactory	Yes
4.5	Housing diversity and choice <i>As Approved</i> <i>Studio – 1 bed = 130 (41%)</i> <i>2 bed = 158 (50%)</i> <i>3 bed = 28 (9%)</i>	1 bed= 10% (33) -30% (99) 2 bed=50% (164) -75% (246) 3 bed=10% (33) -20% (66)	Studio / 1 Bed = 126 (38%) 2 Bed = 178 (54%) 3 Bed = 24 (7%)	No – minor reduction from 41% deemed satisfactory Yes No – minor reduction from 9% deemed satisfactory
	Adaptable housing	10% (33 required) 32 required as condition of consent 65	31 as per apartment schedule <i>(applicant advises a further S96 is to be submitted in future for Building C, and that the intention is to provide additional adaptable dwellings within this building to satisfy the required total number of adaptable dwellings)</i>	No - given an increase in unit numbers is not being supported, the number of adaptable units are to remain as approved.
	Equitable Access	In accordance with cl. 4.5.2	Access report provided with modification application	Yes
4.6	Car Parking, Access & Movement <i>Approved Parking</i> <i>289 residential</i> <i>135 hotel</i> <i>60 visitor</i> <i>Visitor parking spaces are to be shared with commercial and retail</i>	Refer to Car Parking section further in report.		
4.7	Site Facilities	Waste Laundry Letterboxes Storage (10sq.m)	As originally approved. Storage provided within new dwellings & as storerooms off main common corridor level 1 Building A.	
Section 5.3 - Mixed Use Buildings – Shop top housing				
5.3.14-16	Retail Commercial within development (840sq/m commercial originally	10% (2697.4sq/m) of GFA is for retail /commercial	1.5% (403sq/m)	No

	approved 3.1%)			
Section 5.2 – Residential Flat buildings				
5.2.4	Apartment size & room dimensions	Varies	New dwellings are of sufficient internal / external area, except for A108 a 70sq/m 2 bedroom corner which should be 80sq/m minimum	Partial
Part 7.1 – Wolli Creek				
7.1.7	Height	>13 storeys – Gateway Site	Number of storeys does not change as part of proposed modification	As approved
7.1.8	Street Setback	3m Levey Street	Bedrooms to ground level unit B001/B002/B003 protrude a further 2.1m forward of original approved ground floor resulting in a front setback at ground level to Levey St of 1.7m	<p>No – Bedrooms to these dwellings should be in alignment with the predominant ground floor building line for Buildings A & B fronting Levey Street.</p> <p>A 1.7m setback to Levey Street at ground floor in this location is inappropriate, particularly given the nature of the rooms and resultant inconsistent building alignment at ground floor level.</p>

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

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

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

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

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

Residential Amenity

As previously detailed within this report, units proposed to be created from the previously approved commercial floor space within the development receive minimal solar access in midwinter to main living areas given their orientation which is primarily south facing.

Units A106/A107 are provided with inboard secondary bedrooms which receive minimal solar access in general given their design and southerly orientation.

Unit A108 is a 2 bedroom corner unit, with a total area of 70sq/m. This is undersized as per the RFDC design guidelines and Councils DCP 2011 requirements, where a minimum 80sq/m should be provided.

The provision of additional units A104-A108 within the development is thus not supported.

As previously discussed within this report under the Design Review Panel comments, concern is raised in regards to unit revisions and the resulting configuration of in board bedrooms with narrow window slots, which will provide minimal amenity.

The proposal is not considered to improve residential amenity within the development and thus unit revisions and additions are not supported.

Streetscape

The proposal as amended retains a relatively similar building envelope & form to that which was approved. Minor changes are proposed to the buildings which impact on the external appearance of Building A & B, being;

- a) Bedrooms at ground level of Building B, pushed extended forward to Levey Street boundary hence comprising a front setback of 1.7m to Levey Street at ground level. (B001/B002/B003)
- b) Curving NE edge of balcony to Building A at levels 1-3 adjoining units A103/A203/A303
- c) The squaring off, of North facing units at levels 1-3, Building B. (B104/B105/B204/B205/B304/B305)
- d) Modification to southern elevation of level 1 of Building A to accommodate balcony spaces and steps in this floor level to accommodate residential uses.

Modifications noted (b) to (d) above are deemed satisfactory and are unlikely to result in any significant changes to the overall form, scale and visual appearance of the development. Concern is raised in regards to the location of ground level bedrooms within Building B to units B001/B002/B003 being 1.7m of the front property boundary to Levey Street. Such proximity to the front property boundary at ground level is deemed inappropriate.

Landscaping

The proposal seeks to modify the landscaping scheme at ground level on site as follows;

- i) Introduction of periphery planters at the Gertrude & Levey Street building frontages adjoining commercial tenancy balcony spaces.
- ii) Deletion of NW planter boxes adjoining units B004/B005
- iii) Deletion of planter bed adjoining commercial space CG-C2.
- iv) Deletion of planting at pedestrian crossing adjoining taxi drop off bay
- v) Deletion of planting along internal road & crossing closest to hotel entry.

Deletion of the above landscape elements at ground level are minimal and not likely to adversely impact upon the amenity of future users or occupants.

Given the proposal involves changes to the ground floor level of the development i.e. extending bedrooms to units (B001/B002/B003) closer to Levey Street, this has been reflected in the submitted landscape plan and as such the landscape plan cannot be supported for approval.

Condition 61 of the consent is therefore to be amended to require detailed Landscape plans to be prepared by a qualified Landscape Architect and submitted to Council for approval prior to the issue of the Construction Certificate application for the relevant stage of the development.

Overshadowing

The proposed additional height as part of the amended proposal to Building A (0.23m) & Building B (0.4m) is unlikely to generate significant adverse overshadowing impacts to neighbouring properties. It is reiterated that these buildings comply with the height requirement for the subject site. The proposal is satisfactory in this regard.

Car Parking

Car parking as part of the original application appears to have been assessed and approved under the rates shown in the table below.

Accordingly these rates were also utilised in the assessment of the current S96, which indicates that sufficient car parking is proposed onsite for the development as modified.

Proposal	Rate	Required	Proposed	Complies
126 x studio - 1 bdrm	0.7 per dwelling	89	305	Yes
178 x two bdrm	1 per dwelling	178		
24 x 3 bdrm	1.4 per dwelling	34		
Total Residential Required		301		
Visitor	1 per 7 dwellings	47	54 shared visitor / commercial as per shared parking register	Satisfactory
	DCP Rate			
Commercial (403sq/m)	1 per 40sq/m	10		
Hotel	-	135 as approved	135	
Total			494	Satisfactory

It is important to note that the above rates for both residential and visitor car parking are less than those required under Councils Adopted DCP 2011.

When comparing the above rates against DCP 2011 (*refer to table below*), the proposed development does not provide sufficient car parking for the residential and visitor components of the development on site.

Proposal	DCP Rate	Required	Proposed	Complies
126 x studio - 1 bdrm	1 per dwelling	304	305	No – 47 deficient
178 x two bdrm		48		
24 x 3 bdrm	2 per dwelling			
Total Residential Required		352		
Visitor	1 per 5 dwellings	66	54 shared visitor / commercial as per shared parking register	No - 12
	DCP Rate			
Commercial (403sq/m)	1 per 40sq/m	10		
Hotel	-	135 as approved	135	
Total		563	494	No

Councils Engineer considered the proposal as amended. It was noted that the number of car parking spaces on site does not meet the calculated demand as per DCP 2011.

Notwithstanding, since the proposal as amended does not generate significant adverse additional traffic generation, traffic and parking impacts are deemed satisfactory.

Modification / Deletion of Conditions of Consent

The applicant has requested either modification or deletion of the following conditions.

Condition 2 (Plans)

Proposed changes to the number of units and unit mix on site are not being supported. As such architectural plans within condition 2 are not proposed to be modified.

Condition 2 will however be modified to include reference to the revised stormwater plan for the site which is deemed satisfactory and is consistent with the originally approved ground floor plan of the development.

Condition 13 (Parking Allocation)

Proposed changes to the number of units and unit mix on site are not being supported.

Notwithstanding, condition 13 can be modified to require the development to provide additional residential car parking on site for the 316 dwellings.

Conditions 30/33/172 (Rainwater Tanks)

The applicant seeks to delete the above conditions, stating that a rainwater tank is not part of the development. This is incorrect as concept stormwater plans clearly indicate provision of a rain water tank on site. These conditions are to remain.

Condition 36 (FSR)

Following a review of the original conditions of consent, it was identified that condition 36 which refers to the GFA of each building is inconsistent with the GFA of each building as specified in the GFA verification dated 16 January 2013, prepared by Norton Survey Partners.

It appears that the GFA as noted in condition 36 of the consent was derived from the applicants original Statement of Environmental Effects and was erroneous.

The current S96 which seeks to modify the GFA / FSR of the development was accompanied by a subsequent GFA verification by Norton Survey Partners, dated 11 February 2014 which now correctly refers to the GFA / FSR of the development.

Given the proposed changes to the number of units and unit mix on site are not being supported this correlates with the overall GFA of the development.

Accordingly, condition 36 is to be updated to reflect the correct numerical figures of the originally approved development in accordance with the GFA verification dated 16 January 2013.

Condition 46 (Floor to Ceiling Heights)

The applicant seeks to modify condition 46 of the consent which states as follows;

46. *Ceiling heights for all habitable and non-habitable areas shall be a minimum of 2.7 metres as measured vertically from finished floor level to the underside of the ceiling and shall be designed to a height that is in accordance with the provisions of the Residential Flat Design Code.*

Ceiling heights for all non-habitable areas shall be a minimum of 2.4 metres (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.

Modification is sought in order to provide a lower ceiling height to kitchens within the development as the applicant advises that the presence of bulkheads and building services to kitchens necessitates a ceiling height of 2.4m.

Consideration has been given to the Building Code of Australia, which could otherwise permit a 2.1m floor to ceiling height for kitchens. Accordingly a 2.4m floor to ceiling in these areas as proposed is deemed satisfactory. Condition 46 is to be modified accordingly.

Conditions 49/ 51 (Stormwater)

Councils engineers have considered the request to amend these stormwater conditions and are satisfied that this is appropriate. These conditions may be amended.

Condition 59 (S94 Contributions)

This condition is not proposed to be modified given Council does not support the modification to unit mix.

Condition 65 – Adaptable Dwellings

Given proposed changes to the number of units on site are not being supported; the overall number of dwellings within the development will remain at 316. Condition 65 is thus not

required to be modified, as a total of 32 adaptable dwellings are required within a development with 316 dwellings, as per DCP 2011.

Condition 130 (Occupation Certificate)

The applicant seeks to modify the condition 130 as follows;

An Occupation Certificate shall be obtained for Buildings A, B and C (in stages 4, 5 and 7 respectively) in relation to the approved works prior to any use or occupation of the respective building or part thereof.

The applicant advises that it is sought to modify condition 130 in order to “allow for interim occupation certificates to be issued during the development process, which is necessary to allow unaffected continuity of the existing hotel operations during the construction programme. Specifically the interim occupation certificate will enable the construction of the basement car park and then its subsequent use by the Hotel whilst construction on the remainder of the site continues.”

Council does not object to the modification of this condition.

Conditions 42/43/149/150 (Acoustic Privacy)

The original DA had the following acoustic conditions of consent imposed which sought to maximise acoustic privacy between floors of dwellings and in particular given the design where car parking areas had common walls with residences, specifically habitable areas.

DEVELOPMENT SPECIFIC CONDITIONS

42. 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) 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 in order to retain appropriate internal noise and vibration levels within the residential units.
43. 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) in accordance with the report by Wilkinson Murray, dated August 2012 and received by Council on 23 January 2013.

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE OR COMMENCEMENT OF USE

149. 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 an Acoustical Star Rating of 5 has been achieved in accordance with the standards prescribed by the Association of Australian Acoustical Consultants (AAAC) 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 for each building stage (stages 4, 5 and 7). 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.
150. Testing and evaluation of the floor system is to be carried out at post construction stage by a suitably qualified acoustical engineer to show that an Acoustical Star Rating of 5 in accordance with the standards prescribed by the Association of Australian Acoustical Consultants (AAAC) and in accordance with the report submitted to Council with the Development Application has been achieved. A report is to be submitted to the Principal Certifying authority prior to the issue of the Occupation Certificate for each building stage (stages 4, 5 and 7).

The proposal as amended seeks to modify conditions 42, 43, 149 and delete condition 150, for the following reasons, as outlined in correspondence prepared by Wilkinson Murray, dated and submitted with the S96;

It is our opinion and recommendation that these conditions should be modified for the following reasons:

- The AAAC does not prescribe 5 star Acoustical ratings for apartments. There is a guideline published by the AAAC titled “Association of Australian Acoustical Consultants Guideline for Apartment and Townhouse Acoustic Rating”. However this guideline is not prescriptive nor is it referenced in either condition.*
- The condition requirements are inconsistent, in that they require a 5 AAAC star acoustic rating whilst at the same time the conditions require consistency with the DA acoustic report, which is based on compliance with the requirements of the Section F5 of the BCA.*
- The 5 star requirements of condition 42 are inconsistent with the requirements Rockdale Council DCP 2011. The requirements currently conditioned, apart from being ambiguous, would require a level of acoustic isolation well above that of industry standards and other residential developments in similar surrounding council areas.*
- The adoption of acoustic controls in accordance with Section F5 of the BCA will result in an acceptable level of acoustic amenity for future residents of the development.*

Additional correspondence received from the applicant on 19 March 2014 stated that the requirement to achieve a 5 Star AAAC Acoustic Rating will have significant adverse impacts on the design and build-ability of the approved development. Specifically it will:

- Require the floor/ceiling zone on each level to be increased by 40mm between wet areas within the apartments;*
- have impacts on waterproofing between flexible tiled floors and the rigid tiled wall in wet areas, which has the potential damage to building in the long term; and*
- impose a far more complicated slab construction with set downs required in wet areas within each apartment. This will significantly delay construction and drastically increase construction costs in an area where such costs cannot be accommodated within the apartment sale values.*

Comment

In response to the above, Buildings A & B are below the maximum height limit permitted for the site. Consideration of the above indicates that Buildings A & B can accommodate the additional 40mm slab thickness required at each level and maintain compliance within the height limit for the site, thus complying with the above stated conditions.

The BCA sets out minimum standards in relation to sound transmission and insulation in part F5.

It is important to note that the proximity of occupants within such developments, as compared to the physical separation offered by lower density development leads to residents being more aware of the activities of their neighbours.

Construction in accordance with minimum BCA standards may achieve minimum satisfactory levels of acoustic insulation; however Council policy requires a greater acoustic amelioration between floors and walls of a development than required by F5 of the BCA.

This is to ensure that noise isolation is consistent with the objectives of Councils adopted DCP 2011 and ensures that amenity for future occupants is maximised.

It would appear that cost and investment return is the major factor necessitating this proposed modification. Council has consistently applied the above conditions to Class 2 and 3 development and changes to these conditions are not supported by Council.

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

The relevant matters pertaining to the suitability of the site for the proposed development have been considered in the assessment of the proposal. There are no known major physical constraints, environmental impacts, natural hazards or exceptional circumstances that would hinder the suitability of the site for the development as modified.

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

The development application has been notified in accordance with Council's Development Control Plan 2011 and one (1) letter of objection has been received. The issues raised are addressed below.

View loss from units within 23-26 Marsh Street Wolli Creek

Comment: The objectors property is located to the SW of the subject site. Approval of DA-2013/60 was granted on 17 April 2013. The current proposal does not modify the approved siting or massing of the buildings on site.

Views from the objectors property are likely to be via a view corridor over the currently undeveloped Mercure hotel site. It is likely that these views will be reduced given the approved development of the site.

Any views that are currently available to the objectors property are as a result of the northern neighbour (Mercure Hotel site) not being developed to its full potential.

It is not reasonable to assume that the views currently enjoyed by residents within 23-26 Marsh Street, will be permanently retained. Therefore the view loss is not considered to be a significant degradation of the amenity enjoyed by these neighbours with regards to view loss.

Devaluation of unit given view loss

Comment: The matter of devaluation is not a consideration for Council in the assessment of a development application against the provisions of S79C of the Environmental Planning & Assessment Act, 1979.

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, various components of the proposed modifications are deemed unsatisfactory, whilst others are considered to be reasonable.

Accordingly, the proposal is in part, in the public interest and thus has been supported conditionally.

CONCLUSION

The proposed modifications to some conditions of consent are deemed satisfactory in that they are not likely to create additional unreasonable impacts to the neighbourhood or the environment. These components include modifications to stormwater disposal on site, landscaping at ground level, provision of additional car parking on site, modification to floor to ceiling heights and overall height of Buildings A & B.

Alternatively, a range of other proposed modifications, including additional units within the development, revised unit layouts, deletion of acoustic conditions and reduction in overall commercial and communal area within the development, are unsatisfactory and thus not supported.

As such it is recommended that the application be partially ***approved*** subject to the modifications to conditions of consent attached.