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10 April 2014

Joint Regional Planning Panels  
Regional Panels Secretariat  
GPO Box 39  
Sydney NSW 2001

Dear Secretariat

**RESPONSE TO COUNCIL ISSUES IN JRPP REPORT FOR ITEM 2013SYE096 -  
SECTION 96 APPLICATION NO DA-2013/60/A  
20 LEVEY STREET & 34-36 MARSH STREET, WOLLI CREEK**

We refer to the abovementioned Development Application (DA) and Section 96 modification and write on behalf of the applicant. We note that complementary and supporting letter in relation to this matter has also been prepared by Pikes & Verekers Lawyers (dated 9 April 2014), and accordingly should be read in conjunction with this letter.

JBA and the applicant have reviewed the JRPP report prepared by Council for the forthcoming hearing of this matter on 15 April 2014. Our client has raised concern to a number of matters within Council's report that lead to the recommendations made. These relate to:

- Loss of commercial floorspace;
- Poor amenity of new Block A apartments;
- Amenity of the redesigned 2-bedroom apartments;
- Solar access and south facing apartments;
- Front Setbacks;
- Communal Areas;
- Acoustic Rating of the apartments; and
- Number of apartments approved.

These are addressed in turn below. It should be reiterated that JBA, the applicant and our client's team have been working with Council's officers to seek to suitably resolve various matters. A great number of matters have been resolved in recent negotiations, however the above issues remain unresolved to Council's satisfaction due to a strict adherence to DCP controls, despite reasonable achievement of relevant DCP objectives in the project's context and the circumstances of this case.

As set out in Pikes & Verekers Lawyers' letter, the recently amended legislation is clear in the role that DCPs should play in assessment and decision-making for development. Section 74BA states that DCPs are to provide guidance and that provisions within a DCP are not statutory requirements. To that end, they do not provide determinative weight.

***Loss of Commercial Floorspace / Poor amenity of new Block A apartments***

This matter has been addressed in the Pikes & Verekers Lawyers letter of 9 April 2014 – see 'New Residential Space'.

Additionally, to support the conversion of the commercial floorspace to new apartments in Block A we advise as follows.

The proposal involves the conversion of the first floor commercial space within Building A into five new residential apartments. Two of the proposed five new apartments will be single aspect south facing, while the remaining three apartments will be oriented to the east, the south/east, and the south/west.

The layout of the single aspect south facing apartments has been amended to provide a more appropriate configuration in response to comments made by the DRP, including adjustments to the external façade line and reconfiguration of the bedrooms. This has resulted in a reduced depth in accordance with the RFDC Rule of Thumb and the improvement of the second bedroom so that both bedrooms have external facing windows and access to daylight (Refer **Figure 1**). In light of these changes the apartments will be afforded an appropriate level of amenity and are considered to be acceptable as:

- Three of the five proposed apartments have northern, eastern and western facing facades and balconies;
- All apartments that include a south orientation have oversized balconies that are well in excess of the RFDC 8m<sup>2</sup> requirements;
- All apartments have generously sized living areas and bedrooms that allow for ample indoor space and multiple furniture configurations;
- All apartments will have access to numerous communal facilities (gym, meeting room, pool, rooftop landscaped area) and nearby public open space that is located immediately adjacent to the site.

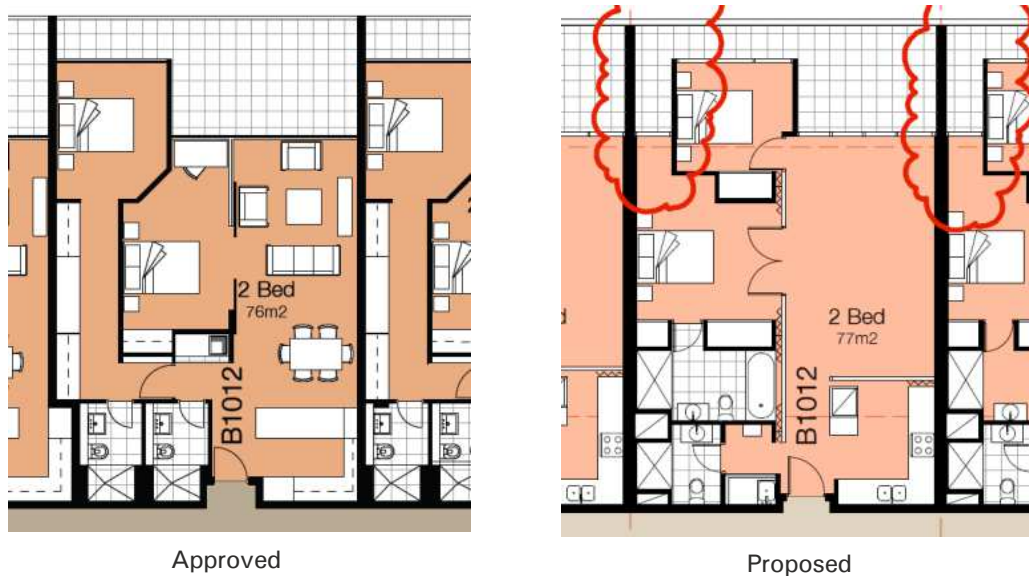


**Figure 1** – Revised apartment layout to converted commercial area

### ***Amenity of the redesigned 2-bedroom apartments***

This matter relates to unit revisions to Block B (Units B1012, B1013, B1002, B1002, B1003 and similar on other floors, which Council believes are not an improvement on the approved unit plans and are not supported. Council (and its Design Review Panel – DRP) considers that the inboard bedrooms with narrow slots and windows have poor amenity and little daylight access.

Contrary to the view of Council and DRP, the proposed revisions to the Block B apartments on Level 10 are considered to deliver an improvement to the approved design. The DRP makes specific reference to the master bedrooms, however the proposed changes need to be considered in a holistic manner to form a considered view on the comparative amenity that is afforded by the alternative designs. The figures below provide a comparison between the approved and proposed scenarios.



**Figure 2** – Comparison between approved and proposed Block B two bed layouts

As shown from the above figures the proposed change to the room configuration delivers a number of flow-on benefits that will substantially increase the apartment's overall amenity, specifically:

- It allows for a larger and more useable master bedroom configuration with a single contiguous space as opposed to an access handle configuration;
- It allows for a larger bathroom to be provided that now includes a full size bath and shower, as opposed to two small bathrooms with showers only;
- It allows for a larger, wider (3.8m) and more functional primary living area in comparison to the narrower (3.4m) more confined living area under the approved scheme; and
- It allows for a larger and more spacious kitchen area in comparison to that of the approved development.

As illustrated above, the flow on amenity benefits of the proposed changes are extensive and considered to significantly outweigh any perceived loss of amenity to the single master bedroom. The revised master bedroom will still receive adequate sunlight by virtue of their north-west orientation which will capture the afternoon sun, and proposed double doors that open onto the living area and which will capture the morning and midday sun.

The north-west orientation of the apartments is such that the full western afternoon summer sun to the main bedroom is not such a desirable outcome from an amenity perspective. The proposed

configuration allows for a less intensely heated primary sleeping quarter during the dominant summer months when residents are seeking a cooler environment.

In addition it is noted that the proposed glazing complies with BCA requirements for light and ventilation. The main bedroom will have a glazed screen wall which will allow light to enter the building through the living area. This in addition to the BCA compliant window which will help deliver a high quality of amenity to this room.

The proposed change to the configuration of apartments B1012, B1013, B1002, B1002, B1003 is therefore considered to be well conceived as they will deliver improved the flexibility to the main living area and an overall enhanced residential amenity and living quality for future occupiers throughout the year.

Council and Design Review Panel noted that 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.

It is not proposed to change the rooftop common space as part of this Section 96 application. The Design Review Panel comments are noted and the opportunities for basic facilities will be explored as part of the design development process. If such facilities are identified as being appropriate and/or desired then such minor changes will be implemented at a later stage as part of any subsequent Section 96 application.

#### ***Solar access and south facing apartments***

The Section 96 plans have also been further amended to now include a larger south facing studio apartment within Block A. Specifically the two south facing studio apartments on Levels 2 to 9 have been increased in size from 37m<sup>2</sup> to 40m<sup>2</sup>. This has been achieved by extending the balconies out and pushing out the glazing line of these apartments. This change provides a larger internal living area as well as increased opportunity for views and daylight. Overall the change will significantly enhance the quality of amenity provided by these apartments and will ensure the achievement of a superior design outcome.

We also point out that the table that appears on pages 9 and 10 of 23 in Council's JRPP Report contains a typographical error in relation to at least 70% of apartments receiving adequate solar access into living rooms and private open space. The table refers to "68% (104 of 328) dwellings do not receive sufficient solar access in midwinter" [our emphasis]. This of course is incorrect, as 68% do receive sufficient solar access in midwinter and is generally compliant with the RFDC Rule of Thumb, which we again point out is just that, a rule of thumb and not an absolute requirement or standard.

Council's report (table on page 10 of 23) states that 4 of the proposed new 5 apartments in Block A will not achieve compliance with the RFDC Rule of Thumb with respect to solar access in midwinter. We note however that their calculation in achieving 68% includes all proposed apartments including the additional 12 apartments sought under this modification (that is, a total of 328). Accordingly, our position regarding level of satisfaction of this rule of thumb is reiterated.

#### ***Front Setbacks***

Council's report states that the required 3.0m setback to Levey Street is not satisfied due to bedrooms at ground level of Building B, extending further forward to the Levey Street boundary and comprising a front setback of 1.7m at ground level.

Importantly, and relevant to this matter, the approved plans (iteration P7) already apply a 1.7m setback at levels 1-4, and under this iteration the ground floor is being brought into alignment with the approved units above.

The ground level setback to Building B is considered to be acceptable as:

- the large majority of the building façade line still maintains the original approved setback distance. The façade line will therefore still predominantly read as being setback 3.8m from the street;
- each apartment is still provided with private open space;
- the planter podium still provides separation between the apartment and the street;
- two bedroom apartments are considered to be a preferential product in this location as they are more flexible, appeal to a wider market and provide an affordable entry level product for people who would otherwise not be able to afford a two bedroom dwelling in the area.

### ***Communal Areas***

Council considers the allocation of communal space for the development to be deficient. Generally, the DCP provision seeking 5m<sup>2</sup>/apartment has not been achieved. The approved scheme provided 1,074m<sup>2</sup> for 316 apartments (or 3.4m<sup>2</sup>/apartment). The current scheme would reduce this to 3.27m<sup>2</sup>/apartment. This reduction would be barely discernable to future residents, particular in recognition of the site being located directly adjacent to Cahill Park (a Regional Park of some 6-7 hectares in area) which provides ample open space. The original decision to approve the 1,074m<sup>2</sup> of communal space would have taken this into account and accepted this in relation to the development's context and need for strict compliance with a DCP control.

### ***Acoustic Rating of the apartments***

This matter has been addressed in the Pikes & Verekers Lawyers letter of 9 April 2014 – see 'Acoustic Isolation'.

### ***Number of apartments approved***

We note Council's recommendation is to refuse consent to the proposed 328 apartments and revert to the already approved 316 apartments. Whilst some assessment has been carried out on the proposed new / additional 5 apartments in Block A as a result of the proposed conversion of commercial floorspace to residential floorspace, we note the only (indirect) reference to any assessment in relation to the proposed additional 7 apartments in Block B is to the reduced setback to Levey Street (as discussed above).

The current proposal in essence, removes less desirable and efficient double-height apartments and introduces 7 additional single-height apartments. In seeking clarification from Council's assessing officer on the level of assessment and reasons for recommended refusal, it would seem lack of compliance with the DCP setback control was deemed sufficient to recommend refusal to approve these apartments.

We note the DCP dwelling mix that requires 3 bed units is a generic control that does not and cannot take into account socio-economic variations between suburbs. For instance, a purchaser looking to buy a 3 bed residence for the purposes of accommodating a small family, in say Surry Hills or Alexandria, has little option but to purchase a unit as the stock and price point of 3 bed terraces makes it unviable. However in the Wolli Creek area the situation is significantly different with a substantial hinterland of conventional small lot housing of an affordable price point.

The applicant originally considered that a 3 bed 'terrace' form of apartment at ground level would be an attractive option to purchasers but the pre-sale marketing campaign has reinforced the relevance of the above statement (in the undesirable nature of double-height apartments) and little interest was shown for this product. With this in mind the applicant amended the apartment layouts to the lower 4 floors of the Block B to provide a product for which there was apparent demand. No additional floor space has been generated and the change has occurred predominantly within the original approved envelope.

We would be pleased to further elaborate and discuss these key matters at the JRPP hearing on 15 April 2014, noting that the client, JBA, and others have registered to speak on these matters. Should you have any queries about this matter, please do not hesitate to contact me on 9956 6962 or [oklein@jbaurban.com.au](mailto:oklein@jbaurban.com.au).

Yours faithfully

A handwritten signature in black ink, appearing to read 'Oklein', written in a cursive style.

Oliver Klein  
*Associate*