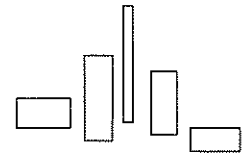


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PIKES & VEREKERS
LAWYERS

9 April 2014

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

Dear Secretariat

**20 LEVEY STREET, DA 2013/60
AND 34 TO 36 MARSH STREET, WOLLI CREEK
Our ref JRP:GT:140253**

We are instructed by Rockdale Hotel Pty Ltd in respect of a section 96 modification application to a development consent granted by the JRPP for redevelopment of property at 20 Levey Street and 34 to 36 Marsh Street, Wolli Creek.

That modification application is to be determined by the JRPP, with JRPP number 2013SYE096. Gary Green of our offices is listed to address the JRPP at its meeting on 15 April, specifically in relation to the acoustic isolation requirement and the conversion of commercial floor space to residential floor space in building A.

Mr Green will also be available to assist the applicant and JRPP on any other matters that may arise during the course of the meeting. This letter is intended to provide a précis of the matters to be specifically addressed by Mr Green.

Acoustic Isolation

- A consent authority in its application of a development control plan provision is required to be guided and to act in accordance with the recent amendments to the Environmental Planning and Assessment Act 1979, in particular section 74BA and section 79C(3A).
- The purpose of a DCP is to give effect to the aims of an Environmental Planning Instrument and to facilitate permissible development.
- The AAAC Five Star Acoustic Rating sets a significantly higher standard than that required by the Building Code of Australia.
- The Five Star standard is not an "acceptable" acoustic standard but rather a "luxury" acoustic standard, the Five Star standard is applied by the DCP to all multi-unit residential development in the Rockdale Local Government Area.



- Aim (2)(c) of the LEP is *"to maintain and improve residential amenity and encourage a diversity of housing to meet the needs of Rockdale residents"*.
- The DCP control arguably works towards improving residential amenity, albeit to an unnecessary standard, however it seriously undermines the requirement to encourage a diversity of housing to meet the needs of residents. The DCP control pushes all residential multi-unit residential development in the Rockdale Local Government Area in to a higher cost, more luxurious form of development and discourages low, medium or moderate cost housing.
- The control, by imposing such an onerous standard and increasing the costs of construction, with no necessary benefit (bearing in mind it is a luxury standard not an acceptable standard), fails to facilitate permissible development, and indeed makes the carrying out of that development more costly and more complex.
- The JRPP in considering the acoustic isolation issue would accordingly give the DCP control limited weight.
- Section 79C(3A)(b) requires a consent authority where a development application does not comply with standards set by a DCP with respect to an aspect of the development, *"to be flexible in applying those provisions and allow **reasonable** alternative solutions that achieve the objects of those standards"* [our emphasis].
- The objective, at 4.4.5A of the DCP is *"to site and design buildings to ensure acoustic and visual privacy for occupants and neighbours."*
- The requirements of the BCA sufficiently ensure acoustic privacy for occupants and neighbours.
- In circumstances where the DCP requirement is unreasonable and incompatible with the requirements of section 74BA, compliance with the BCA acoustic isolation requirement is a reasonable alternative solution which the JRPP would find satisfactory under section 79C(3A)(b).
- The underlying philosophy in the recent changes to the Act which introduced the provisions relied upon above is to remove the complexity, prescription and inflexibility that the legislature has seen creep in to the preparation and application of development control plans. It was intended to make clear that DCP's are to have a lesser status than Local Environmental Plans and State Environmental Planning Policies in the assessment process.¹

¹ Environmental Planning and Assessment Bill 2012 second reading speech, 24 October 2012 per Brad Hazzard, Minister for Planning and Infrastructure.

- Compliance with the BCA is a prescription of section 80A(11) of the Environmental Planning and Assessment Act, together with clause 98 of the Environmental Planning and Assessment Regulation 2000.
- The requirement to carry out building work in accordance with the requirements of the Building Code of Australia is a prescribed condition of any development consent involving building work.
- The Act and Regulation sets the appropriate standard for acoustic isolation, by reference to the provisions of the Building Code of Australia. In circumstances where DCP controls are to be subservient to LEP's and SEPP's, the JRPP would not accept that a DCP could set a more onerous and more prescriptive standard than the Act itself.

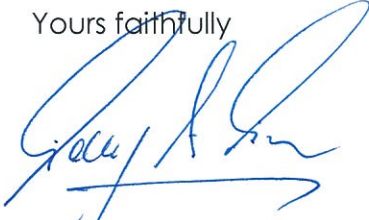
New Residential Space

- Residential flat buildings are permissible in the B4 Mixed Use Zone, the LEP thus provides that development of the subject site may be comprised of 100% residential floor space and 0% commercial or retail floor space.
- In light of the analysis of the legislation applying to DCP's set out above, any DCP requirement that is more onerous than a 0% commercial or retail or commercial component should be given limited weight.
- The commercial space at level 1 of building A is generally undesirable commercial space. It does not front a classified road or higher order retail street per control 17 of section 5.3 of the DCP. It would be difficult to tenant which limits the ability of the development to comply with objectives A, B and G of section 5.3 of the DCP.
- This commercial space was provided specifically for the use of the Hotel and was to be directly linked with and occupied by the Hotel. As commercial space it could only have been of value to the Hotel. It is now surplus to requirements for the Hotel.
- Retention of the space as commercial will not promote or achieve any of the objectives of section 5.3 of the DCP.
- It has already been accepted in the grant of the original approval that a substantially lower amount of commercial floor space than is specified by the DCP control is acceptable for this site and that absent this space, previously dedicated to the Hotel, the remaining commercial space was an appropriate level of new commercial floor space for the achievement of the mixed use and Wolli Creek special precincts objectives.

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- The deletion of this commercial floor space, which never had any relationship to the encouragement of new commercial uses in the future, does not change the compliance of the proposed development with those objectives.

Yours faithfully



Gary Green
Partner

Yours faithfully



Joshua Palmer
Associate