

13140  
5 August 2014

Ms Angela Kenna  
Joint Regional Planning Panels  
Regional Panels Secretariat  
23-33 Bridge Street  
Sydney NSW 2000

Dear Angela,

**AMENDMENT OF DRAFT DA CONDITIONS – CROWN DA  
MULTI-PURPOSE COMMUNITY FACILITY AND CAR PARK – THE KINGSWAY, DEE WHY**

I write to you in regards to the Development Application (DA) for a Multi-Purpose Community Facility and Car Park in Dee Why, (Council reference No. DA2014/0344 and JRPP reference No 2014SYE043). The purpose of this letter is to request the amendment of a number of draft conditions. This matter is timetabled to be determined by the Sydney East JRPP tomorrow, 6 August 2014.

The applicant's team has reviewed the conditions and whilst it generally supports the vast bulk of these, we make note of a handful which require adjustment prior to determination. As a Crown DA the applicant is able to review and seek adjustment to conditions not agreed to, prior to determination. We have sought to resolve these matters with Council today, but have been advised, contrary to our understanding of the process for Crown DAs, that Council is not able to assist us within 24 hours of the JRPP meeting and without a formal written request to the JRPP, and does not seek to negotiate a suitable outcome for both parties until the JRPP meeting itself.

Our comments and suggested re-wording is set out in the Table below, as relevant:

**Table 1 – Amendments to draft conditions**

Condition	Response	Suggested changes
2	<p>We believe this condition is redundant and should be removed as it is in part vague and unenforceable. We believe a certifier would have trouble determining compliance with the condition as it stands and that the relevant parts of the 3 letters quoted should be incorporated into the conditions where they are applicable and reasonable.</p> <p>In its letter, the RMS's 4 recommendations appear to be already covered by the draft conditions.</p> <p>The Ausgrid letter sets out conditions that may be relevant in certain circumstances. It would appear Ausgrid's conditions a, b, d, e and f should be applied to the draft conditions of consent.</p> <p>The NSW Police Force letter appears to raise only one</p>	<ul style="list-style-type: none"> <li>– Delete Condition 2</li> <li>– Insert relevant conditions from the Ausgrid letter as relevant to this application in the relevant part of the draft consent.</li> </ul>

Condition	Response	Suggested changes
	key issue – that of ensuring the façade treatment of the building is not climbable. The BCA has clear requirements to prevent climbable façade treatments. To that end proposed condition 3(a) would generally satisfy this requirement and seek to ensure the BCA is also generally satisfied.	
4(h)	<p>The condition seeks to measure noise affection at any property boundary. We read this as meaning either the property boundary of the noise source or the property boundary of the noise receiver, or both. This is confusing and appears to be contrary to our understanding of the requirements of the NSW Industrial Noise Policy which measures ambient background noise at the receiver's boundary not at the source boundary. See Page26 of the assessment report which supports this view.</p> <p>We recommend that this wording be changed to "...at the receiving boundary of residential and other noise sensitive land uses..." or "receiving property boundaries".</p> <p>This is consistent with the wording in other parts of the draft conditions - and the design is currently based on this.</p> <p>See also Condition 55 below.</p>	<p>Refine Condition 4(h) to read as:</p> <ul style="list-style-type: none"> <li>– "All sound producing plant, equipment, machinery or fittings will not exceed more than 5dB(A) above the background level when measured at any receiving residential property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy."</li> </ul>
14	<p>Changes are sought to this condition to avoid an unnecessary over-engineered solution for a pedestrian crossing at the site. The condition as drafted seeks a design solution consistent with RMS standards which are well beyond the actual level of demand for the traffic and pedestrian usage of the roadway.</p> <p>Whilst we support the need for a crossing to make it a compliant crossing to RMS standards would require markings, signage and other infrastructure well beyond the likely level of vehicular and pedestrian traffic in this area.</p> <p>RMS requirements for a marked pedestrian crossing are:</p> <p>"Normal Warrants: In <u>each</u> of the three one hour periods in a typical day</p> <ul style="list-style-type: none"> <li>(a) The pedestrian flow per hour (P) crossing the road is greater or equal to 30; AND</li> <li>(b) The vehicular flow per hour (V) through the site is greater than or equal to 500; AND</li> <li>(c) The product PV is greater than or equal to 60,000"</li> </ul> <p>If Council state the crossing is mainly used by children and by aged or impaired pedestrians then a reduced warrant can be reviewed:</p> <ul style="list-style-type: none"> <li>(a) " P is greater or equal to 30; AND</li> <li>(b) V is greater than or equal to 200"</li> </ul>	<p>Refine Condition 14 to read as:</p> <ul style="list-style-type: none"> <li>– "Proposed pedestrian access to the development near Civic Drive is to be delineated as a crossing point and set back at least one car length from the exit of the roundabout and clear of vehicles reversing from the adjacent angle car parking bays.</li> <li>– A plan demonstrating compliance is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate."</li> </ul>

Condition	Response	Suggested changes
	<p>However, for either option the pedestrian crossing warrants would not be met due to the lack of vehicular flow, therefore crossing would not be in accordance with RMS requirements.</p> <p>We suggest a condition that removes the RMS standard but provides for a crossing for this key desire line. We support the intent of the condition not the over-engineered solution with respect to its likely level of demand.</p>	
16, 20, 21	<p>The requirement for a range of management plans under these conditions at Construction Certificate stage appears counter-intuitive.</p> <p>These matters are most appropriately and efficiently addressed at Construction Certificate stage once the tendered builder has been appointed and relevant details can be refined and suitable response be prepared. The intent of the conditions can therefore be better satisfied at this later stage and prior to commencement of the operation of the premises.</p> <p>Preference would be for the wording to relate to a final Occupation Certificate rather than any reference to interim certificates. This is to ensure clarity and certainty for the proponent.</p>	<p>– Adjust and relocate Conditions 16,20, and 21 to be required to be satisfied at final Occupation Certificate stage.</p>
22	<p>Delete this condition as it is otherwise duplicated and its objective provided for by condition 51.</p>	<p>– Delete Condition 22.</p>
23	<p>The proponent is of the view that the requirement for a project ecologist to be employed on site during removal of habitat trees is superfluous and unnecessary. As per both Eco Logical reports submitted with the DA, no tree hollows or nests were recorded on the site in trees subject to removal.</p> <p>Preference would be for the recommended actions under the approved Tree Construction Impact Plan to apply as per Condition 1's approved documentation.</p>	<p>– Delete Condition 23</p>
35	<p>The proponent is of the view that the requirement for advance notification for the purposes of Council inspections is superfluous and unnecessary. The proponent is seeking to use a PCA in lieu of Council and deems this suitable and adequate for the purpose of ensuring the requirements of Council as stipulated under the proposed conditions are met.</p>	<p>– Delete Condition 35.</p>
51, 52, 53	<p>These conditions all refer to either interim or final Occupation certificates. Preference would be for the wording to relate to a final Occupation Certificate rather than any reference to interim certificates. This is to ensure clarity and certainty for the proponent.</p>	<p>– Refine conditions 51, 52 and 53 to define only the need for satisfying these requirements at Final Occupation Certificate stage.</p>
54	<p>The proposed hours of operation of the PCYC are supported as is the proposed two year trial period with respect to noise and amenity impacts for both the PCYC and the Car Park components.</p>	<p>Refine Condition 54 to read as follows:</p> <ul style="list-style-type: none"> <li>– The hours of operation of the facility are to be subject to a two year trial from the date of commencement of operation of the facility. The trial hours of operation are to</li> </ul>

Condition	Response	Suggested changes
	<p>The key purpose and environmental impact consideration in relation to the imposition of this condition would appear the impacts of noise and reduction of amenity to a range of neighbouring, mainly residential, land uses. The PCYC has been identified as the key noise source during both the preparation of the DA and the assessment of the DA.</p> <p>The proponent does not support the reduced hours of operation of the car park and prefers the hours revert to 12:30am 7 days per week.</p> <p>The car park is not a key source of noise in the same way that the PCYC is and should be seen as an independent use of the building, which it is and is designed to be. The car park also serves the neighbouring key workers and their shift periods, namely the Dee Why Police Station and Dee Why Fire Station.</p> <p>The 2 year trial will concurrently apply to the car park and its use and impacts can be further assessed once it has operated under the terms of its car park management plan (as required by Condition 16).</p>	<p>be restricted to:</p> <p><b>PCYC Facility</b></p> <ul style="list-style-type: none"> <li>■ 6am to 10pm Monday to Thursday</li> <li>■ 6am to 12 midnight Friday to Saturday</li> <li>■ 7am to 10pm Sundays and Public Holidays</li> </ul> <p><b>Car park</b></p> <ul style="list-style-type: none"> <li>■ 5.30am to 12.30am Monday to Thursday</li> <li>■ 5.30am to 12.30am Friday to Saturday</li> <li>■ 6.30am to 12.30am Sundays and Public Holidays</li> </ul> <p>– During the trial period a Complaints Register should be kept by Council and at the end of the two year trial Council should conduct a review of the level of compliance with the Final Operational Plan of Management. At the end of the two year trial period, an application may be lodged to continue the hours of operation on a permanent basis. Council's consideration of whether the hours of operation should be made permanent should be based on, among other things, the performance of the operator in relation to the compliance with development consent conditions, any substantiated complaints received, submissions received following notification of the review and any views expressed by the Police.</p>
55	As above in relation to Condition 4(h).	<p>Refine Condition 4(h) to read as:</p> <p>– “The use of the premises shall not cause a sound level in excess of 5 dB(A) at any time above the background level when measured at any receiving residential property boundary when measured in accordance with the Environment Protection Authority's Industrial Noise Policy.”</p>

As noted we have sought to work with Council in advance of the JRPP meeting tomorrow, but have not been able to. Accordingly, we seek to resolve these outstanding matters at the timetabled meeting. Should you have any queries about this matter, please do not hesitate to contact me on 9956 6962 or oklein@jbaurban.com.au.

Yours faithfully



Oliver Klein  
Associate